courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 17/09/2026

(2008) 07 GUJ CK 0044

In the Gujarat High Court

Case No : IT Ref. No. 55 of 1999

Commissioner of Income Tax — APPELLANT

Vs

Rubamin (P) Ltd. — RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:
Income Tax Act, 1961 — Section 115J, 115J(1A)
Companies Act, 1956 — Section 205, 350

Citation : (2008) 218 CTR 162 : (2009) 312 ITR 18

Hon'ble Judges : Jayant Patel, J;Akil Kureshi, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; None, for the Respondent

Judgement

Akil Kureshi, J.—At the instance of the Revenue, following questions have been referred to this Court:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the CIT(A)''s order deleting the addition of Rs. 61,602 being the difference in the amount of depreciation as a result of changing the method of providing the depreciation from straight line method to WDV method?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the CIT(A)''s order deleting the disallowance of Rs. 9,58,068 representing the assessee''s claim for depreciation as prior period adjustments as a result of the assessee''s switch over from straight line method to WDV method for providing depreciation?

2. The assessee is a company in which public are not substantially interested. While framing the assessment for the asst. yr. 1989-90, the AO made addition of two amounts of Rs. 61,602 and Rs. 9,58,068 by disallowing depreciation as claimed by the company, as the AO was of the view that the company should provide depreciation only in accordance with the rates prescribed in the Companies Act and the assessee company could not have adopted the method of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-tax-…

depreciation from straight line method to WDV method.

3. Hearing the appeal by the assessee, CIT(A) accepted the stand of the assessee that for the purposes of Section 115J of the IT Act, 1961 (''the Act'' for short) only those adjustments, which are specified in the Explanation to the said section, can be made from the book profit, and depreciation not being one of them and further that the accounts of the company having been prepared in accordance with the Schedule VI to the Companies Act, the AO was in error in disallowing the depreciation as claimed by the company. Such additions as made by the AO were thereupon deleted by the CIT(A).

4. The Revenue approached the Tribunal against the order passed by the CIT(A). The CIT(A) (sic-Tribunal) negatived the stand of the Revenue on this issue by observing that-

2.4 The Revenue is in appeal. We have heard the rival submissions. Similar issue came up for consideration before the Tribunal Indore Bench in Beta Naphthol (P) Ltd. v. Dy. CIT (1994) 50 TTJ (Ind) 375 and the Tribunal after referring to excerpts from a guide to the companies audit issued by the ICAI, and paras 25 and 26 of the order of Cochin Bench of the (1992) 43 ITD 464 answered the issue in favour of the assessee.

2.5 In Dy. CIT v. Samir Diamond Mfg. (P) Ltd. (1998) 61 TTJ (Ahd) 419 it was held that the rates prescribed in Schedule XTV of the Companies Act are only the minimum rates for limited purposes of dividend declaration (Section 205) and managerial remuneration (Section 350) and that the assessee being a private limited company, Section 350 is not applicable and that both Parts II and III of Schedule VI to Companies Act do not provide for rates of depreciation for purposes of arriving at the book profit and that the assessee is free to adopt any rate of depreciation not below the rate mentioned in Schedule XTV and any method of depreciation-straight line method or WDV method provided adequate disclosure is made In the ''notes'' forming part of the accounts. Reliance was also placed on the decision in (1993) 47 ITD 154 (Bom). In Sterling Steels & Wires Ltd. v. Dy. CIT 80 Tax 343 the Amritsar Bench of the Tribunal has taken similar view on the issue. Thus there are decisions in favour of the order of the CIT(A). For these reasons, we uphold the order, and dismiss the Departmental grounds on the issue of depreciation.

5. Under these circumstances, the questions, as already noted, have been referred to us for our opinion.

6. Having heard the learned Counsel, Mr. Manish Bhatt for the Revenue, we find that the question is no longer res Integra. The apex Court, in the case of Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, , held that the AO, while computing the book profit of a company u/s 115J of the Act has only power of examining whether the books of accounts are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO thereafter has the limited power of making increases and

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-tax-…

reductions as provided for in the Explanation to Section 115J. The AO does not have the jurisdiction to go beyond the net profit shown in the P&L a/c except to the limited extent provided in the Explanation. It was further observed that while looking into the accounts of the company, the AO has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by that Act and the same is to be scrutinized and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies. It was observed that Sub-section (1A) of Section 115J does not empower the AO to embark upon a fresh inquiry in regard to the entries made in the books of account of the company.

7. It may be noted that the CIT(A), in its appellate order, in terms, held that the AO reworked the profit of the company for the purposes of Section 115J. From the working done, it would "be observed that the AO added depreciation of Rs. 61,602 and Rs. 9,58,068 on account of change over from straight line method to WDV method. The CIT(A) further observed that the method followed by the company is in accordance with the guidelines prepared by the Institute of Chartered Accountants and further that the AO was not permitted to make such adjustments as were not covered explicitly by the Explanation.

8. In view of the above findings of the CIT(A), upheld by the Tribunal and not seriously challenged by the Revenue before us and in view of the ratio of the apex Court in the case of Apollo Tyres Ltd. (supra), we find that the CIT(A) as well as the Tribunal committed no error in upholding the stand of the assessee regarding the depreciation for the relevant assessment year.

9. In the result, we answer both the questions In the affirmative, i.e., in favour of the assessee and against the Revenue.

10. Reference is disposed of accordingly.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-income-tax-…