(2011) 05 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No''s. 931 of 2008 and 516 and 517 of 2010

Commissioner of Income Tax APPELLANT

Vs

Steriplate P. Ltd. RESPONDENT

Date of Decision : 30-05-2011

Acts Referred:
Income Tax Act, 1961 — Section 115JB, 115JB(2)

Citation : (2011) 338 ITR 547

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of I. T. A. Nos. 931 of 2008, 516 and 517 of 2010 as learned counsel for the parties are agreed that the issue raised in all the three appeals is identical and relates to the interpretation of Explanation 1 to section 115JB(2) of the income tax Act, 1961 (in short "the Act"). For brevity, the facts are being taken from I. T. A. No. 931 of 2008.

2. This appeal has been preferred by the Revenue u/s 260A of the Act against the order dated March 27, 2008, passed by the income tax Appellate Tribunal, Delhi Bench "C", New Delhi (hereinafter referred to as "the Tribunal") in I. T, A. No. 2470/Del/2007, relating to the assessment year 2002-03, claiming the following substantial question of law :

Whether, on the facts and circumstances of the case, the hon''ble income tax Appellate Tribunal was right in law in upholding the order of the learned Commissioner of income tax (Appeals) in deleting the adjustment of Rs. 91,80,973 made by the Assessing Officer by holding that the provision of diminution in value of investment does not fall within the purview of clause (c) of Explanation 1 to section 115JB(2) of the income tax Act, 1961 ?

3. Briefly stated, the facts necessary for adjudication as narrated in the appeal are that the assessee filed its return for the assessment year 2002-03 on

October 31, 2002, declaring nil income and also computed nil book profit for the purposes of section 115JB of the Act. The Assessing Officer, vide order dated February 17, 2005, recomputed the book profit at Rs. 54,30,985 by making an adjustment for provision for diminution in value of investment at Rs. 91,80,973. The Assessing Officer held that the provision so made by the assessee fell under clause (c) of Explanation 1 to section 115JB(2) of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of income tax (Appeals) (in short "the CIT(A)") who, vide order dated March 12, 2007, deleted the adjustment of Rs. 91,80,973 made by the Assessing Officer to the book profit u/s 115JB of the Act holding that the provision for diminution in value of investments is not a provision for liability, much less a provision for unascertained liability. The said provision does not fall within the purview of clause (c) of Explanation 1 to section 115JB(2) of the Act. Dissatisfied with that order, the Department filed an appeal before the Tribunal. The Tribunal, vide order dated March 27, 2008, upheld the order of the Commissioner of income tax (Appeals) in deleting the adjustment of Rs. 91,80,973 made by the Assessing Officer and dismissed the appeal. Feeling aggrieved, the Revenue has approached this court by way of the instant appeal.

4. We have heard learned counsel for the parties.

5. Learned counsel for the Revenue submitted that after the amendment by the Finance (No. 2) Act, 2009, made effective retrospectively from April 1, 2001, clause (i) of Explanation 1 had been inserted in section 115JB(2) of the Act whereby any amount or amounts set aside as provision for diminution in the value of any asset shall not reduce the book profits of an assessee. According to the learned counsel, after the retrospective amendment, the ground on which the claim of the assessee had been accepted by the Commissioner of income tax (Appeals) and the Tribunal no longer survives. In other words, it was urged that the book profits, thus, would increase as the amount of provision of Rs. 91,80,973 would not be adjusted in the profits of the assessee.

6. Learned counsel for the assessee did not dispute that after the amendment which has been made effective retrospectively, with effect from April 1, 2001, in view of the introduction of clause (i) of Explanation 1 to section 115JB(2) of the Act, the claim of the assessee was not maintainable.

7. It would be advantageous to reproduce here clause (i) of Explanation 1 to section 115JB(2) of the Act as inserted which is as under :

Explanation 1.--For the purposes of this section, ''book profit'' means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by-...

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account, and as reduced by,--...

8. The aforesaid amendment has been made retrospective and is effective from April 1, 2001. The assessment years involved in the instant appeals are subsequent thereto and, therefore, the same governs the present appeals.

9. Accordingly, it is held that the adjustment of Rs. 91,80,973 claimed by the assessee as provision for diminution in value of investment was not tenable and the same would be added in the profit which thereby would enhance the book profit u/s 115JB of the Act. Accordingly, the appeals stand allowed.

