

(2014) 02 AP CK 0088

In the Andhra Pradesh High Court

Case No : Referred Case No. 23 of 2000

Deccan Tools Industries (P) Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 115J, 115-J

Citation : (2014) 367 ITR 295

Hon'ble Judges : G. Chandraiah, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : A.V. Sive Kartikaya, Advocate for the Appellant; S.R. Ashok, Sr. S.C, Advocate for the Respondent

Judgement

Challa Kodanda Ram, J.—At the instance of the assessee, the two questions of law set out hereunder have been referred said to be arising out of the order of the Income Tax Appellate Tribunal, Hyderabad Bench "A" (for short "the Tribunal"), dated 03.07.1996 passed in I.T.A. No. 520/Hyd/1991, for the assessment year 1990-1991 for the opinion of this Court.

i) Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal is justified in holding that depreciation has to be worked out in accordance with Rules prescribed in Schedule XIV of the Companies Act for the purpose of working out the book profit U/S. 115J of the income tax Act?

ii) Whether on the facts and in the circumstances of the case, the Hon'ble income tax Appellate Tribunal is justified in holding that the company is not permitted to claim depreciation in accordance with the rates prescribed under the income tax Rules, 1962?

2. After hearing the learned Senior Counsel Sri S.R. Ashok for Revenue and learned counsel for respondent, Sri A.V.A. Siva Kartikeya, we consider it appropriate to add one more question as follows:

iii) "Whether in the facts and circumstances of the case, the Income Tax

Appellate Tribunal was justified in upholding the order of the authorities below in redrawing the profit and loss account and whether such action of redrawing the profit and loss account is permissible in law?

3. The principal grievance as espoused by the assessee before the authorities below is that the assessee is entitled to adopt the rates of depreciation as provided under the Income Tax Rules, 1962 (in short "the Rules") in the process of drawing up profit and loss account as required to be done under sub-section 1(a) of 115J of the Income Tax Act (in short "the Act") for the purpose of arriving at the book profits.

4. The facts as can be gathered from the orders of the authorities below are that for the assessment year 1990-1991, for the purpose of Section 115-J of the Act, the assessee had claimed depreciation at the rates as provided under the Income Tax Rules instead of adopting the rates as prescribed in Parts-2 and 3 of Schedule VI of the Companies Act, 1956. At this stage, we will make it clear that when we say that the assessee had adopted the depreciation as provided under the Rules, it is not to be construed as the same is not in conformity with the rates prescribed under the Schedule-VI of the Companies Act. All the authorities below were of the opinion that the assessee is not entitled to adopt the rates as prescribed under the Income Tax Rules for the purpose of drawing up the profit and loss account while computing the book profits u/s 115J of the Act.

5. Reasoning of the authorities below is to the effect that only when there is a bona fide technical necessity higher rate of depreciation than specified in the Schedule XIV of the Companies Act can be allowed to be claimed. For coming to the said conclusion the authorities relied on Accounting Standard No. 6 issued by the Institute of Chartered Accountants of India. In that view of the matter, the assessing authorities reworked out the depreciation by providing minimum rates of deprecation as provided under the Companies Act in terms of Part-II and III of the Schedule-VI of the Companies Act, in place of the depreciation as claimed by the assessee, which is inconformity with the Rules.

6. Now, it is well settled by the judgment of the Supreme Court in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, , that it is impermissible for the Assessing Officer to redraw the profit and loss account as long as the same is prepared in terms of the Companies Act, and the same is required to be adopted for the purpose of calculating the profits u/s 115-J of the Act. It may be useful to extract the Para No. 8 of the judgment of the Supreme Court in the case of Apollo Tyres (Supra):

"Therefore, we are of the opinion, the Assessing Officer while computing the income u/s 115-J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing

Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J."

7. The above judgment further followed in the case of Malayala Manorama Co. Ltd. Vs. Commissioner of Income Tax, Trivandrum, .

8. In the present case, the learned counsel for the Revenue on going through the Assessment order, which is the forming part of the record, would fairly concealed that the Assessing Officer had committed an error in redrawing the profit and loss account by making changes by adding depreciation debited to profit and loss account by the assessee, which is impermissible by them in terms of the statute and also in the light of the judgment of the Supreme Court in Apollo Tyres case (supra). The fairness on the part of the learned Senior Counsel for the Revenue is highly appreciable.

9. Therefore, in the light of the judgment of the Supreme Court in Apollo Tyres case (Supra), the action of the Assessing Officer in redrawing the profit and loss account for the purpose of sub-section 1(a) of 115J of the Act, is totally unauthorized. In the facts of this case, we are of the opinion that the Tribunal erred in not appreciating the arguments of the assessee in proper perspective.

10. In the light of the discussion above, all the three questions are answered in favour of the assessee and against the Revenue. No order as to costs.