(2007) 02 MP CK 0032

In the Madhya Pradesh High Court

Gilt Pack Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:
COMPANIES ACT, 1956 — Section 205
Income Tax Act, 1961 — Section 115A, 115J, 205, 260A, 32

Citation : (2007) 209 CTR 405 : (2007) 163 TAXMAN 331

Hon'ble Judges : S.K. Seth, J;S.K. Kulshreshtha, J

Bench : Division Bench

Judgement

S.K. Kulshreshtha, J.—The assessee has filed this appeal u/s 260A of IT Act, 1961 against the order dt. 2nd Aug., 2000 of the Tribunal in ITA No. 701/Ind/1995 by which the Tribunal has reversed the order of CIT(A) and disallowed the depreciation of Rs. 9,70,663 for the asst. yr. 1990-91.

2. This appeal was admitted on the following substantial questions of law:

(1) Whether the Tribunal was justified in placing reliance upon the law laid down by this Court in Commissioner of Income Tax Vs. Krishna Oil Extraction Ltd., when the issue involved before the Tribunal in an appeal filed by the assessee was not the same which was subject-matter of Krishna Oil Extraction Ltd. ?

(2) Whether the Tribunal was justified in disallowing a claim of assessee pertaining to depreciation amount of Rs. 9,70,663 and if so whether it is legally sustainable ?

3. The appellant is a limited company governed by the provisions of Companies Act, 1956. The appellant claimed depreciation of past years in the sum of Rs. 9,70,663. The AO disallowed the same on the ground that for the purposes of computation of book profit of a company, the adjustments as provided in the Explanation to Sub-section (1A) of Section 115J have to be made with reference to the profit as per P&L a/c prepared in accordance with the provisions of Part II and Part III of Sch. VI to the Companies Act, 1956. The AO further observed that

the said proviso of the Companies Act makes it clear that current year''s depreciation as computed in accordance with the Companies Act has to be debited to the P&L a/c and that the loss or depreciation whichever is less for earlier years has to be deducted in view of the provisions of Section 205 of the Companies Act. It was under these circumstances that the AO held that the assessee company has incorrectly debited the sum of Rs. 9,70,663 on account of arrears of depreciation on the basis that the company changed the method of calculating the depreciation from straightline method to the method of WDV on the cost; of machinery.

4. The matter was carried further in appeal before the CIT(A). The CIT(A) considered the claim of the assessee in paras 11 and 12 of his order (Annex. ''B''). It was observed in the said paras as under:

11. Insofar as arrears of depreciation at Rs. 9,70,663 are concerned these were debited for purposes of changing method for claiming deduction of depreciation from straightline method to the method of writing off 90 per cent of the cost of machinery for 7 years. The Authorised Representative has relied on the appellate order No. IT-419/91-92/237, dt. 30th June, 1992 in which CIT(A) has directed the AO to work out the amount of brought forward business losses as also brought forward depreciation and allow the claim of the appellant while working out profit u/s 115J, and while working out figure he should also take into account the unabsorbed depreciation as also the unabsorbed loss for asst. yr. 1989-90. Since the AO has not given effect to the above appellate order though specifically directed by my predecessor and has rejected the claim of arrears of depreciation, I would hold that the arrears of depreciation has to be deducted while computing book profit for the purposes of Section 115J. From the plain reading of the language of Section 115A(1A) it is clear that the appellant is required to work out the profit and loss as per Sch. VI to the Companies Act which reads as under:

The amount provided for depreciations, renewals or diminuations in value of fixed assets. If such a provision is not made by means of a depreciation charge, the method adopted for making such a provision, if no provision is made for depreciation, the fact that no provision has been made shall be stated and the quantum of arrears of depreciation computed in accordance with Section 205(2) of the Act shall be disclosed by way of a note.

12. As per Section 205(2)(b) of the Companies Act, appellant had fully complied with the provisions of the Companies Act and claimed arrears of depreciation for the purposes of Section 115J. I am supported in this regard by the decision of the Tribunal, Indore Bench, Indore, in the case of Commissioner of Income Tax Vs. Krishna Oil Extraction Ltd., in which the Hon''ble Members of the Tribunal have held that the appellant was entitled to change the method of depreciation from straightline method to WDV and was thereby entitled to claim extra depreciation as arrears of the past years being the difference between the two methods for the purposes of computation of profits u/s 115J of the IT Act. Since the method employed by the appellant for claiming depreciation was bona fide

and not a casual departure from the regular method which has hitherto been adopted by him for a number of years, the claim of the appellant cannot be brushed aside lightly. The claim for arrears of depreciation is thus within the four corners of law and justified and thus the AO is directed to allow arrears of depreciation at Rs. 9,70,663 while working out taxable profits u/s 115J of the IT Act.

5. From the above observations made by the CIT(A), it is clear that as per Section 205(2B) of the Companies Act, the appellant had fully complied with the provisions of the Companies Act and claimed the arrears of depreciation for the purposes of Section 115J. He fortified his arguments by referring to the decision in Beta Nepthol (P) Ltd. v. Dy. CIT (1994) 50 TTJ (Ind) 375 and allowed the depreciation claimed by the assessee.

6. The Revenue then approached the Tribunal in an appeal against the judgment of CIT(A) which dealt with the issue in para 11 of its order dt. 2nd Aug., 2000 (Annex. ''C''). It was observed that from the orders of the authorities below the assessee had debited the arrears of depreciation at Rs. 9,70,663 on account of change in method for claiming deduction of depreciation from straightline method to the method of writing off 90 per cent of the cost of the machineries for 7 years. It was observed that it was a recognised method, but the claim for the earlier years cannot be allowed to be deducted from the profit of relevant previous years for determining the book profit u/s 115J of the Act in view of the provisions of law. The Tribunal relied on the decision in Commissioner of Income Tax Vs. Krishna Oil Extraction Ltd.,

7. Since the first question formulated, as extracted hereinabove, relates to the applicability or otherwise of the judgment rendered in Krishna Oil Extraction Ltd. (supra), we may refer to the ratio of the said case. In the said case, the following two questions were considered by a Division Bench of this Court:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the prior period depreciation is an allowable deduction while computing book profit under Expln. (iv) to Section 115J of the IT Act, 1961, r/w Section 205(1)(b) of the Companies Act, 1956 ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the prior period expenditure should not be excluded from the computation of book profits u/s 115J within the meaning of net profit given in the Explanation below Section 115J(1A) of the IT Act, 1961 ?

It was observed that the provisions of Section 205(1), Clause (b) of the first proviso to the Companies Act stand statutorily incorporated in the IT Act and, therefore, in order to work out the book profit, the loss and depreciation has to be worked out in terms of the Companies Act and thereafter, set off has to be made of whichever is less. In this connection, we may usefully refer to the decision of apex Court in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, . In the said case, the Supreme Court has observed that the AO while computing the book profit of a company u/s 115J of the IT Act, 1961, has only the 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 and thereafter, the AO has the limited power of making increases and reductions as provided for in the Explanation to Section 115J of the IT Act. It has specifically been laid down that the AO does not have the jurisdiction to go behind the net profit shown in the P&L a/c except to the extent provided in the Explanation to Section 115J.

8. In the controversy raised before us, learned senior counsel appearing for appellant has raised a solitary question as to whether the change in the method of depreciation will disentitle the assessee to claim the amount worked out in accordance with such change. Learned senior counsel submits that since the deduction was claimed on the ground that the depreciation was worked out in accordance with the WDV in departure from earlier method of straightline, the Tribunal was bound to allow the said amount as depreciation. Learned senior counsel has further submitted that insofar as applicability of the case of Krishna Oil Extraction Ltd. (supra) is concerned, since the said case relates to the maintenance of accounts of a company in accordance with the Companies Act, the said decision has no relevance.

9. Insofar as the question No. 1 is concerned, we have already referred to the decision in Krishna Oil Extraction Ltd. (supra) and the Apollo Tyres (supra). We are of the view that since the controversy has been narrowed down, as stated hereinabove, the first question relating to the applicability or otherwise of the decision of Krishna Oil Extraction Ltd. (supra) to the facts of this case, is not relevant and, therefore, the same is answered in favour of the appellant/ assessee.

10. Coming to the second question as to whether the Tribunal was justified in disallowing the claim of the assessee pertaining to the depreciation of Rs. 9,70,663, learned senior counsel has placed heavy reliance on the decision of Bombay High Court in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, . The question before the Bombay High Court was whether it was open to the AO to make adjustment to the book profit beyond what is authorised by the definition given in Explanation to Section 115J of the IT Act. It was observed that if the accounts are prepared and certified in accordance with Part II and Part III of Sch. VI to the Companies Act, 1956, the AO thereafter has limited powers of making increases and reductions as provided for in the Explanation to Section 115J. The Bombay High Court in the said decision was considering the following two questions:

(1) Whether in view of specific definition of the expression ''book profit'' given in Explanation to Section 115J(1) of the IT Act, it is permissible for the AO to make adjustments to the book profit beyond those authorised by the definition and to recast the P&L a/c ?

(2) Whether, on the facts and in the circumstances of the case, the Departmental authorities and the Tribunal were justified in rejecting the amount of depreciation actually debited to the P&L a/c admittedly prepared in accordance with Parts II and III of Sch. VI to the Companies Act, 1956, and in holding that the assessee ought to have provided depreciation on the same basis as adopted in the earlier years ?

11. After answering the question No. 1, though the High Court of Bombay observed that question No. 2 had become academic, it observed that under the Companies Act, 1956, both straightline method and WDV method were recognised. The observations contained in para 11 of the judgment read as under:

11. In view of our answer to question No. 1, question No. 2 becomes academic. It is not in dispute that under the Companies Act, 1956, both straightline method and WDV method are recognised. Therefore, once the amount of depreciation actually debited to the P&L a/c is certified by the auditors, then, as per the decision of the apex Court in the case of Apollo Tyres Ltd. (supra), question No. 2 has to be answered in the negative and in favour of the assessee.

12. We may, at this stage, refer to the decision of the Supreme Court in the case of Karnataka Small Scale Industries Development Corpn. Ltd. v. CIT (2003) 179 CTR (SC) 1 : AIR 2002 SCW 4926. It has been observed that had Section 115J not been introduced, the assessee would have been entitled under the provisions of Sections 32(2), 32A(3), 72(1)(iii), 73, 74, 74A(3) and 80J to carry forward only unabsorbed depreciation allowance u/s 32. It was observed that once the depreciation was allowed in the previous year, it was not open to the assessee to claim reduction with regard thereto for determining whether the total income should be quantified u/s 115J(1).

13. In view of the above decision of the Supreme Court, with great respect, we differ from the decision of Bombay High Court in Kinetic Motors Co. Ltd. (supra) insofar as it holds that the straightline method can be bypassed to switch over to the method of WDV with retrospective effect. We are of the considered view that though under the Companies Act, the assessee has the option of adopting straightline method and WDV method for claiming depreciation, the change from one method to another has to be prospective. Under these circumstances, our answer to the question No. 2 is that the depreciation, upon change of method, can be claimed prospectively only from the date the change has been effected.

14. In view of the foregoing discussion, this appeal is disposed of with no orders as to costs.

