(2014) 06 CAL CK 0085

In the Calcutta High Court

Case No : ITA No. 298 of 2004

Kanoi Paper Industries Ltd. APPELLANT

Vs

Commissioner I. Tax RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:
Companies Act, 1956 — Section 211, 263, 32

Citation : (2014) 06 CAL CK 0085

Hon'ble Judges : Sudip Ahluwalia, J;G.C. Gupta, J

Bench : Division Bench

Advocate : J.P. Khaitan, Senior Advocate, Advocate for the Appellant; Nizumuddin, Advocate for the Respondent

Judgement

1. The Court: The subject matter of challenge in this appeal is a judgment and order dated 18th December, 2003 by which the learned Tribunal reversed the order of the CIT(A) and allowed the appeal preferred by the Revenue. The learned Tribunal held as follows:

9.. .... In the instant case, there is no dispute to the fact that the assessee has computed the depreciation as per Schedule XIV of the Companies Act but had not chosen to provide the same in its Profits & Loss A/c. and has shown the same as per the Notes on Accounts. The Profit & Loss A/c. prepared by the assessee as per Part II & III of Schedule VI of the Companies Act clearly shows that the Profit & Loss A/c. was prepared by the assessee was completely in accordance with the said provisions which laid down that depreciation could be charged to the Profit & Loss A/c. or could be provided for or also could not be provided for after making necessary mention about it the Notes and Schedules to the Profit & Loss A/c.. Once the assessee chooses not to provide for depreciation in its Profit & Loss A/c., it is not open to the assessee to make adjustment for the depreciation for which he is eligible while computing deemed income u/s. 115JA. The basic factor for arriving at deemed u/s. 115JA is the "book profit". Such book profit can be adjusted, i.e. reduced or increased only in terms of Explanation below Section 115JA. No adjustment has been provided in respect of depreciation which has not been charged to the Profit & Loss A/c.

We had carefully gone through all the adjustments mentioned in the said explanation but do not find any such adjustment in the said explanation so as to entitle the assessee to further reduce its book profit as per the Notes on Accounts. 10. The Hon''ble Supreme Court in the case of Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, have held that while assessing a Company for Income Tax u/s. 115J, the correctness of the Profit & Loss A/c. prepared by the assessee-company and certified by the statutory auditors of the Company as having been prepared in accordance with the requirement of PART II & III of Schedule-VI of the Companies Act, cannot be examined by the A.O. and the A.O. 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 115JA. As a corollary, the assessee is also not empowered to tinker with the book profit shown in the Profit & Loss A/c. except the extent provided in the Exemption to Section 115J.

2. The assessee has come up in appeal.

3. Mr. Khaitan, learned Senior Advocate, appearing for the appellant, submitted that the learned Tribunal fell into a patent error in not appreciating that notes of account are a part of the balance sheet or profit and loss accounts, as the case may be, under sub-Section 6 of Section 211 of the Companies Act. He drew our attention to a judgment of the Delhi High Court in the case of Commissioner of Income Tax Vs. Sain Processing and Wvg. Mills (P.) Ltd., , wherein for reasons discussed in the judgment the Division Bench came to the following conclusion:

19. To our minds the use of the expression "net profit" makes it clear that depreciation not debited to the profit and loss account will have to be taken into account while determining the "book profit" u/s 115J of the Act as long as it forms part of the prescribed accounts.

4. Mr. Nizumuddin, learned Advocate, appearing for the Revenue, submitted that the Apex Court has already held in the case of Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, that the assessing officer has limited power of making increases and reductions as provided for in the Explanation to Section 115JA. Therefore, the learned Tribunal was correct in taking the view it took. He submitted that the same Note was struck by the Delhi High Court in the case of Commissioner of Income Tax Vs. C.J. International Hotels Ltd., wherein the following views were expressed:

..... The fact that the Tribunal applied the decision of the Supreme Court in the case of Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, as well as The Commissioner of Income Tax Vs. Kovai Maruthi Paper and Board P. Ltd., cannot therefore be faulted. The Tribunal concluded as under:

While the Assessing Officer would be well within his jurisdiction to compute depreciation u/s 32 on the rates provided in Appendix I to the income tax Rules, 1962, for computing total income under other provisions of the Act, he cannot disturb the book profit, which has been certified to be drawn in the profit and loss account as per the Companies Act. Therefore, we are of the view that the order passed by the Assessing Officer was not erroneous, which is one of the pre-conditions for invoking jurisdiction u/s 263 of the act. Since it was not erroneous, it could not have been termed to be prejudicial to the interest of the Revenue. In this view of the matter, we set aside the order of the learned Commissioner of income tax. In the result, ground No. 2 is allowed.

5. Mr. Khaitan submitted in reply that the Apex Court in the case of Apollo Tyres Ltd. [supra] held at page 280 as follows:

Therefore, we are of the opinion, the Assessing Officer while computing the income u/s 115J 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 115J.

6. He submitted that the stress laid by the Apex Court is on the factor as to 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. If the books of account have not been properly maintained and are not certified, to have been properly maintained, by the authorities under the Companies Act, the restriction would not become operative. In the present case, the auditors have not certified that the books of account were properly maintained in accordance with the provision of the Companies Act. The auditors in their certificate have indicated that the depreciation was not charged to the Profit & Loss A/c. and therefore, the certificate was subject to Note No. 9 amongst others.

7. We have considered the rival submissions advanced by the learned Advocates and are of the opinion that the submissions advanced by Mr. Khaitan must prevail. The Assessing Officer does not have jurisdiction to go behind the net profit shown in the Profit & Loss A/c., except as provided in the statute, in those cases where the accounts have been properly maintained. Even sub-section 1 of Section 115JA, provides as follows:

115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 [but before the 1st day of April, 2001] (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

8. When the Statute provides for computation of book profit of the assessee being a Company which has computed the total income under this Act in respect of any previous year, it has to be implied that the legislature intended to mean that the assessee, being a Company, has computed total income correctly as per the provisions of the Act. If the total income has not been correctly computed, then the bar created limiting the jurisdiction of the Assessing Officer would not be operative.

9. For the aforesaid reasons, the findings of the learned Tribunal indicated above are reversed.

10. The second question which has been raised by the appellant-assessee is with regard to the following findings of the learned Tribunal.

16. The next grievance of the assessee relates to not allowing deduction of prior period expenses of Rs. 1,28,986/- charged to the profit and loss A/c., while arriving at book profit Section 115JA.

17. We have heard the rival contentions. There is no adjustment as provided in Explanation to Section 115JA which empowered either the A.O. or the assessee to tinker the profit with regard to the prior period of expenses charged to the profit and loss A/c.

11. Mr. Khaitan submitted that this point is equally covered by a judgment of the Delhi High Court in the case of The Commissioner of Income Tax Vs. Khaitan Chemicals and Fertilizers Ltd., and relied upon the following passage from the head note.

Because of the prescribed accounting standard which had to be followed by the assessee in view of the provisions of section 115JA(2) read with section 211 of the 1956 Act, the assessee was required to show the prior period items/ extraordinary items separately so that their impact on the current profit or loss could be perceived. The fact that the assessee adopted the alternative approach of showing such items in the statement of profit and loss after determination of current net profit or loss, did not mean that these items were not to be taken into account in computing the net profit as envisaged in section 115JA. Thus, what the assessee had done was only to indicate the prior period items/ extraordinary items separately. This did not mean that the figure of net profit was to be arrived at de hors these items. Thus, the Tribunal was correct in law in holding that the Assessing Officer had failed to appreciate that the net profit for the purposes of section 115JA was to be computed only after deducting the prior period expenses/extraordinary items.

12. He submitted that this judgment was also delivered by the same Bench as in

the case of CIT vs. C.J. International Hotel Ltd.

13. The view expressed by the learned Tribunal, according to us, is an example of inconsistency in seeking to disallow this claim of the assessee. On account of depreciation, the learned Tribunal opined that the Assessing Officer had no jurisdiction to tinker with the books of accounts certified by the auditors, but with regard to this item of expenditure, the learned Tribunal exhorted the Assessing Officer to tinker with the books of accounts. There was no question of allowing any adjustment as per Explanation to Section 115JA. The prior period expenditure amounting to a sum of Rs. 1,28,986/- was already shown in the profit and loss account as per accounting standards. The learned Tribunal purported to disallow the aforesaid expenditure on the basis of a mistaken belief that the assessee was seeking adjustment of the aforesaid sum in computing the book profit but missed the fact that the expenditure had already been taken into account in computing the net profit.

14. For the aforesaid reasons, both the views expressed by the learned Tribunal are set aside and the appeal preferred by the assessee is allowed.

