IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE DR.JUSTICE P.DEVADASS

T.C.A.No.1790 of 2006

Commissioner of Income Tax, Chennai. .. Appellant

Vs.

M/s.Three Bags India P.Ltd.,
203, Velacheri Main Road,
Velachery,
Chennai-600 042. .. Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act against the order, dated 11.11.2005 in I.T.A.No.2739/Mds/2004 on the file of the Income Tax Appellate Tribunal, Chennai-B-Bench, Chennai.

For appellant : Mr.T.Ravikumar, Senior Standing Counsel for Income Tax
For respondent: Mr.A.S.Sriraman for Mr.S.Sridhar

JUDGMENT
(The Judgment of the Court was delivered by Nooty.Ramamohana Rao,J)

This appeal is preferred by the Revenue under Section 260-A of the Income Tax Act, against the order, dated 11.11.2005 in I.T.A.No.2739/Mds/2004 on the file of the Income Tax Appellate Tribunal, Chennai-B-Bench, Chennai.

2. The appeal was admitted by this Court on 17.07.2006 for the following substantial question of law:

"Whether on the facts and in the circumstance of the case, the Tribunal was right in holding that relief under Section 80-HHC is allowable while arriving at the book profits as per Clause (vii) of Explanation to Section 115-JA(1), when the assessee itself had not claimed the deduction under Section 80-HHC in the normal computation, since it had filed "NIL" Return ? "

3. The respondent-assessee-Company has Returned for the assessment year 1998-1999 on 27.11.1998 admitting 'Nil' income under normal computation as well as under Section 115-JA of the Income Tax Act. The Return was processed under Section 143(1)(a) on 20.05.1999. The excess claim of Rs.24,370/- under Section 80-HHC was disallowed while computing the book profits under Section 115-JA. The assessee preferred appeal before the Commissioner of Income Tax (Appeals), which was allowed on 11.12.2001 on the ground that the said claim could not have been disallowed under Section 143(1)(a) of the said Act. Under the normal computation, the assessee-Company has not claimed any deduction under Section 80-HHC, as it Returned 'Nil' income, after adjusting the brought-forward losses. However, it has claimed deduction under Section 80-HHC in a sum of Rs.1,85,505/- while computing the book profits under Section 115-JA. The assessing officer, by order dated 27.01.2004, came to the conclusion that under the normal computation, since the assessee-Company arrived at 'Nil' income, after setting-off the earlier year losses, it is not entitled to any deduction under Section 80-HHC. In that view of the matter, the assessee-Company was also held to be not eligible to claim the deduction based on

Section 80-HHC while computing the book profits for the purpose of Section 115-JA, and hence, the claim was rejected by the assessing officer and demand of tax payable at Rs.24,568/- was raised. The Commissioner of Income Tax (Appeals), by order dated 23.09.2004, agreed with the view of the assessing officer and held that the assessee is not eligible to claim the deduction under Section 80-HHC while calculating the book profits for the purpose of Section 115-JA, and hence, the appeal was dismissed. The assessee approached the Income Tax Appellate Tribunal, which by the impugned order, dated 11.11.2005, allowed the appeal of the assessee. In paragraph 7 of its order, the Tribunal relied on a judgment rendered earlier by the Tribunal in the case of DCIT Vs. Govind Rubber (P) Ltd. (MUM) and faithfully extracted paragraph 16 of the judgment in Govind Rubber (P) Ltd. case thereunder.

4. Heard Mr.T.Ravi Kumar, learned Senior Standing Counsel of the Income Tax, appearing for the appellant/Revenue and Mr.A.S.Sriraman, learned counsel appearing for Mr.S.Sridhar, learned counsel for the respondent/assessee.

5. Learned Senior Standing Counsel appearing for the Revenue brought to our notice the judgment of the Supreme Court rendered in the case of Ajanta Pharma Ltd. Vs. Commissioner of Income Tax, reported in 2010 (327) ITR 305 (SC) = 2010 (234) CTR (SC) 139. It was pointed out in the course of the judgment of the Supreme Court that the scheme of levy of minimum tax has now come to be introduced, as the zero tax companies and companies paying marginal tax have grown and hence, to address the malady, the concept of Minimum Alternative Tax (MAT) came to be introduced. The words "book profit" had been defined in Section 115-JA(2) of the Act, read with the Explanation thereto, to mean the net profit as shown in the profit and loss

account, as increased by the amount(s) mentioned in Clauses (a) to (f) and as reduced by the amount(s) covered by Clauses (i) to (ix) of the Explanation, and such adjustments are now called as "upward and downward adjustments". Hence, the Supreme Court has considered the scheme contained in Section 115-JA as a self-contained code and will apply notwithstanding any other provisions of the Income Tax Act. Dealing with the specified roles assigned to Section 80-HHC and Section 115-JB, in paragraph 9 of the judgment, the Supreme Court noticed that while Section 80-HHC provides for tax incentives, Section 115-JB refers to levy of MAT on the deemed income and thus, Section 80-HHC and Section 115-JB operate in different spheres. It was noted therein further that for the purposes of computation of book profist under Chapter VI-A of the Act, one needs to keep in mind the upward and downward adjustments, which are required to be made for arriving at the book profits under Section 115-JA together with the Explanation contained therein. In paragraph 10 of the judgment of the Supreme Court, the contention that both eligibility as well deductibility of the profits have to be considered together for working out the deduction as stipulated under Clause (iv) of Explanation to Section 115-JB of the Act, was specifically rejected, finding no merit in that contention. Ultimately, the Supreme Court concluded the issue in the following words:

> "10. .. .... If the dichotomy between "eligibility" of profit and "deductibility" of profit is not kept in mind then S.115-JB will cease to be a self-contained code. In S.115-JB, as in S.115-JA, it has been clearly stated that the relief will be computed under S.80-HHC(3)/(3-A), subject to the conditions under sub-cls.(4) and (4A) of that Section. The conditions are only that the relief should be certified by the

> chartered accountant. Such condition is not a qualifying condition but it is a compliance condition. Therefore, one cannot rely upon the last sentence in Cl.(iv) of Explanation to S.115-JB (subject to the conditions specified in sub-cls.(4) and (4-A) of that Section) to obliterate the difference between "eligibility" and "deductibility" of profits as contended on behalf of the Department."

Hence, the difference between eligibility and deductibility of profits, has got to be maintained all through.

6. Further, the learned Senior Standing Counsel has also drawn our attention to the judgment of the Supreme Court in the case of Jeyar Consultant and Investment Pvt. Ltd. Vs. Commissioner of Income-Tax, reported in 2015 (373) ITR 87 (SC), wherein, the Supreme Court, after considering its earlier judgments rendered in the case of IPCA Laboratory Ltd. Vs. Deputy CIT, reported in (2004 (12) SCC 742 = 2004 (266) ITR 521 (SC) and also in the case of A.M.Moosa Vs. CIT, reported in 2007 (9) SCR 831 = 2007 (294) ITR 1 (SC), held as under:

> "18. It stands settled, on the co-joint reading of *IPCA* and *A.M.Moosa*, that where there are losses in the export of one type of goods (for example self-manufactured goods) and profits from the export of other type of goods (for example trading goods) then both are to be clubbed together to arrive at net profits or losses for the purpose of applying the provisions of section 80HHC of the Act. If the net result was loss from the export business, then the deduction under the aforesaid Act is not permissible. As a fortiori, if there is net profit from the export business, after adjusting the lossess from one type of export business from other type of export business, the benefit of the said provision would be granted.
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> 19. .. .. However, the appellant-assessee relies upon section 80HHC(3)(b), as existed at the relevant time, to contend that the profits of the business as a whole, i.e., including profits earned from the goods or merchandise within India will also be taken into consideration. In this manner, argues the appellant, even if there are

> lossess in the export business but profits of indigenous business outweigh those lossess and the net result is that there is profit of the business, then the deduction under section 80HHC should be given. However, having regard to the law laid down in *IPCA* and *A.M.Moosa*, we cannot agree with the learned counsel for the appellant. From the scheme of section 80HHC, it is clear that deduction is to be provided under sub-section (1) thereof which is "in respect of profits retained for export business". Therefore, in the first instance, it has to be satisfied that there are profits from the export business. That is the pre-requisite as held in *IPCA* and *A.M.Moosa* as well. Sub-section (3) comes into picture only for the purpose of computation of deduction. For such an eventuality, while computing the "total turnover", one may apply the formula stated in clause (b) of sub-section (3) of section 80HHC. However, that would not mean that even if there are lossess in the export business but the profits in respect of business carried out within India are more than the export lossess, the benefit under section 80HHC would still be available. In the present case, since there are lossess in the export business, the question of providing deduction under section 80HHC does not arise and as a consequence, there is no question of computation of any such deduction in the manner provided under sub-section (3)."

7. In the above view of the matter, what follows is, for the purpose of providing the incentive contemplated under Section 80-HHC, the profits earned from the export business, which might include, in a given case, exports carried out of the goods manufactured by the assessee as well as by trading the goods manufactured by others, and the lossess sustained in any one of these branches of exports business, are liable to be adjusted against the profits earned by the other branch of export business.

8. A reading of the principles enunciated by the Supreme Court in the cases of Ajanta Pharma Ltd. (cited supra) and Jeyar Consultant and Investment Pvt. Ltd.

(cited supra), it becomes crystal clear that the Tribunal has arrived at an incorrect comprehension of the spheres assigned respectively by Section 80-HHC and Section 115-JA of the Income Tax Act. Therefore, the impugned order passed by the Tribunal is not sustainable.

9. Since the assessee-Company has not been provided with an opportunity to demonstrate that they did Return the profits from their export business for the assessment year concerned, which profits of export business, are set-off against the carry forward lossess sustained in the business, as a whole for the previous year, resulting in taxable income being Returned as "Nil" and also for the purpose of computation of book profits under Section 115-JA, the extent of profits made by the assessee from the export business, has got to be looked into and taken into consideration and since that aspect of the matter has not been dealt with by the Tribunal, we set aside the impugned order passed by the Tribunal and remit the matter back to the Tribunal for consideration afresh by it in accordance with law.

10. The appeal is allowed to the extent indicated above. No costs.

(N.R.R.J) (P.D.S.J)
27.09.2016

Index: Yes / no

Internet: Yes / no

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Copy to

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   121, Mahatma Gandhi Road, Chennai-600 034.

2. The Assistant Commissioner of Income Tax,
Company Circle III(2),
121, Mahatma Gandhi Road, Chennai-600 034.

3. The Registrar,
Income Tax Appellate Tribunal, "B" Bench,
Chennai.

NOOTY.RAMAMOHANA RAO,J

and

P.DEVADASS,J

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