

ORDER SHEET  
ITAT 147/2011  
Subsequently renumbered as  
ITA 134/2011

IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction (income tax)

ORIGINAL SIDE

STONE INDIA LTD

Versus

THE CIT (APPEALS-I)

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ASHA ARORA

Date : 23rd June, 2016.

Mr. R.K. Murarka, Sr. Adv. Appears with Ms. S. Roy Chowdhury, Adv.

Mr. A. Mitra, Adv. Appears.

The Court : The appeal is directed against a judgment and order dated January 7, 2011, passed by the learned Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.1254/Kol/2010, pertaining to the assessment year 2006-07, by which the learned Tribunal allowed an appeal preferred by the revenue. The aggrieved assessee has come up in appeal.

The following questions of law were formulated on June 16, 2011, when the appeal was admitted:

- "(i) Whether the learned Tribunal below committed substantial error of law in reversing the finding of the Commissioner of Income Tax (Appeals) to the effect that "in computing the book profit for assessment year 2001-02 the provision so debited was not allowed as a deduction and thereby the book of profit under Section 115JB for the year ended 31.03.2001 was increased by the amount of the provisions and in the light of Clause (i) of Explanation to Section 115JB, the amount of Rs.1,30,53,000/- withdrawn from the provision of diminution in value of investment was required to be released from the net profit to arrive at book of profit under Section 115JB" assessing it to be based on incorrect facts.
- (ii) The assessing officer not having allowed deduction for provision for diminution in value of investment amounting to Rs.7,05,73,000/- in the Profit & Loss Account for the year ended 31.03.2001 in computing the book profit for the assessment year 2001-02, whether the learned Tribunal below committed substantial error of law in passing the order impugned by setting aside the order passed by the Commissioner of Income Tax(Appeals)."

The facts of the case, briefly stated, are as follows.

Assessment was completed for the assessment year 2006-07 on November 28, 2008, under section 143(3) of the I.T. Act, 1961, computing loss under normal provisions at Rs.2,52,22,051/- and book profit under section 115JB at Rs.6,62,77,000/-. Upon scrutiny, it was noticed that the computation of income under normal provisions was started with the net profit of Rs.8,70,11,000/- for the year ended on March 31, 2006. But the computation of book profit under section 115JB was started with an amount of Rs.7,39,58,000/- after excluding a

sum of Rs.1,30,53,000/- relating to a write back of the provision for diminution in the value of investment.

Notice under section 148 of the I.T. Act was issued. The assessee offered the following explanation in writing:

*"In the Profit and Loss A/c. for the year ended 31.03.2001 the assessee had debited Rs.7,05,73,000/- being the provision for diminution in the value of investment in computation of Book Profit u/s. 115JB of the Act for the assessment year 2001-02 the said provision for diminution in the value of investment was added back to the Book Profit. In other words, in computing Book Profit for the assessment year 2001-02 no deduction was allowed in respect of provisions made for diminution in the value of investment.*

*Out of the said provision made in the assessment year 2001-02 the assessee wrote back Rs.1,30,53,000/- in the accounts for the year ended 31.03.2006. clause - (i) of explanation u/s. 115JB(2) provides that the Book Profit shall be reduced by the amount withdrawn from any reserve or provisions, if any such amount is credited to the P&L A/C. In the present case, the assessee created the provision for diminution in the value of investment by debiting to the P&L A/C after 1<sup>st</sup> April 1997 & out of the said provision amount was withdrawn and credited to the P&L A/C. in view of Clause - (i) of Explanation to Section - 115JB the amount written back out of the said provision was rightly reduced in the computation of Book Profit.*

*The question whether provision for diminution in the value of investment was deductible in computation of Book Profit was debatable question. However, the Finance Act, 2009 amended Section - 115JB with retrospective effect. As per new proviso, provision for diminution in the value of investment is not to be allowed as*

*such provision is also not included in the Book Profit. As such there is no mistake in computation of Book Profit u/s. 115JB for the assessment year 2006-07."*

The Assessing Officer did not accept the explanation. He added the sum of Rs.1,30,53,000/- in computing the book profit.

In an appeal, the CIT(A) reversed the order passed by the Assessing Officer.

In a further appeal by the revenue, the learned Tribunal has set aside the order passed by the CIT(A) and restored the order passed by the Assessing Officer.

Mr. Murarka, learned Senior Advocate, submitted that for the year 2000-01, corresponding to the assessment year 2001-02, the assessee had created a reserve of a sum of Rs.7,05,73,000/- on account of diminution in the value of investment. He submitted that going by clause (i) of explanation to section 115JB, the book profit is required to be increased by "the amount or amounts set aside as provision for diminution in the value of any asset". He does not dispute that during the year 2000-01 corresponding to the assessment year 2001-02, the assessee had filed a return showing loss of Rs.93,17,054/-. He does not also dispute that during the year 2000-01 corresponding to the assessment year 2001-02, the book profit of the assessee was not increased by the sum of Rs.7,05,73,000/-. But he is interested in contending that he is entitled to the deduction under clause (i) of explanation to section 115JB which provides as follows:

*"(i) The amount withdrawn from any reserve or provision (excluding a reserve created before the 1<sup>st</sup> day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:*

**Provided** *that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves*

*created or provisions made in a previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be;"*

This submission of Mr. Murarka is plainly fallacious. The deduction can be claimed provided the amount of Rs.7,05,73,000/- has been added to the book profit of the assessment year 2001-02. Admittedly, such addition was not made. Therefore, there is no scope for deduction as contended or claimed by Mr. Murarka.

Mr. Murarka is interested in contending that in the year 2001-02, there was a loss of Rs.3,00,08,000/- which, after various deductions, stood at a sum of Rs.93,17,050/-. Mr. Murarka is further interested in contending that the loss of Rs.3,00,08,000/- should be deemed to have been increased by the sum of Rs.7,05,73,000/- and on that basis, the benefit for deduction should have been allowed.

We are unable to accept this submission. Deduction, as we read the section, can only be claimed provided the book profit has actually been increased by the aforesaid sum of Rs.7,05,73,000/-. Since book profit was never increased, the question of any deduction on account of any credit from the supposed provision does not arise. Therefore, the view taken by the learned Tribunal, according to us, is the correct view.

Mr. Murarka submitted that the legal fiction introduced by the amendment of 2009 has to be taken to its logical conclusion and it may not be permitted to boggle.

We are unable to accept this submission. The amendment of 2009 did not create any legal fiction. All that it says is that if any amount of book

profit has in fact been increased, corresponding deduction may be availed in future. Since there has been no increase, there is no question of any deduction.

For the aforesaid reasons, the questions formulated at the time of admission of the appeal are accordingly answered against the assessee.

The appeal is, therefore, dismissed. Parties shall bear their own costs.

(GIRISH CHANDRA GUPTA, J.)

(ASHA ARORA, J.)

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