

ORDER SHEET

ITA NO.200 OF 2009
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME-TAX)
ORIGINAL SIDE

CIT,CENTRAL-II, KOLKATA

Versus

M/S SHYAM CENTURY FERROUS LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 22nd July, 2016.

MR.M.P.AGARWAL, MS.MAMTA BHARGAVA, ADVOCATES FOR APPELLANT
MR.J.P.KHAITAN,SR. ADVOCATE, MR. SIDDHARTH DAS, ADVOCATE FOR RESPONDENT

The Court : The subject matter of challenge is a judgment and order dated 20th March, 2009 passed by the learned Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.694(Kol) of 2008 pertaining to the assessment year 2004-05 by which the learned Tribunal allowed the appeal preferred by the assessee.

The aggrieved revenue has come up in appeal.

The following questions of law has been suggested by the revenue:-

“Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is correct in deleting the addition of Rs.3,60,20,761/- being excise subsidy received to the book profits, as a reserve according to Explanation (b) to Section 115JB of the Income Tax Act, 1961 ?”

The facts and circumstance of the case briefly stated are as follows:-

The assessee is a newly established undertaking, which is entitled to the benefit under section 80IB. It would appear from the assessment order that under the normal computation, the total income after giving deduction under section 80IB was ‘Nil’. In the computation under section 115JB, the assessing officer added to the book profit a sum of Rs.3,60,20,761/- received on account of excise duty refund subsidy.

The order was unsuccessfully challenged by the assessee before the CIT(A). In a further appeal by the assessee, the learned Tribunal deleted the addition regard being had to the order passed during assessment of the previous year and the subsequent year as also referring to the Apollo Tyres Ltd.

In the case of Apollo Tyres Ltd. Vs. CIT. reported in (2002) 255 ITR 273, the jurisdiction of the assessing officer was held to be restricted as follows:-

“Therefore, we are of the opinion, the Assessing Officer while computing the income under section 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.”

Mr.Khaitan, learned senior advocate appearing for the assessee submitted that the auditors have not qualified the accounts in their report. He added that the assessing officer could have resorted to Clause (b) of Explanation 1 of Section 115JB provided the reserve had been created by debiting to the profit and loss account, which reads as follows:-

“(b) the amounts carried to any reserves, by whatever name called [other than a reserve specified under section 33AC]”

Since the reserve was not created by debiting the profit and loss account, the assessing officer had no power to go behind the accounts. The assessing officer, according to him, over stepped his jurisdiction which was also affirmed by the CIT(A).

The learned Tribunal, according to him, realising the mistake gave the benefit which was lawfully due to the assessee.

Mr. Agarwal, learned advocate, appearing for the revenue submitted that the authoritative pronouncement in the case of Apollo Tyres Ltd. Vs.CIT (supra) was binding and, therefore, the assessing officer and CIT(A) erred in not following that judgment.

In that view of the matter, the appeal is admitted but the question is answered in the affirmative and against the revenue.

The appeal, as such, is dismissed.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

sb.