Form No.(J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA NO.323 OF 2007
COMMISSIONER OF INCOME TAX, KOLKATA - I, APPELLANT
Versus
THE PEERLESS GENERAL FINANCE & INVESTMENT CO. LTD., RESPONDENT

PRESENT:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA
And
The Hon'ble JUSTICE SIDDHARTHA CHATTOPADHYAY

For Appellant: Mr. M. Nizamuddin, Advocate.

For Respondent: Mr. J.P. Khaitan, Sr. Advocate, with Mr. S. Basu, Advocate.

Heard on : 19.04.2016

Judgment delivered on: 19.04.2016

GIRISH CHANDRA GUPTA, J.: The subject matter of challenge in this appeal is an order dated October 13, 2006, passed by the learned Income Tax Appellate Tribunal, "D" Bench, Kolkata, in ITA Nos.448 and 449(Kol.)/2006, pertaining to the assessment years 1997-98 and 1998-99.

The revenue has come up in appeal. The questions of law formulated at the time of admission of the appeal are as follows:

(1) *Whether on the facts and in the circumstances of the case Tribunal was justified in holding that the Assessing Officer was not justified in making the addition, of Rs.120.39 crores and Rs.325.15 crores to the book profit in respect of assessment years 1997-98 and 1998-99 respectively and directing for deletion of the said amounts while computing the book profit of the assessee for the purpose of section 115J of the Income Tax Act, 1961 by disregarding that said amounts have been claimed by the assessee in earlier year and was already allowed?*

(2) *Whether on the facts and in the circumstances of the case Tribunal was justified in deleting the addition of Rs.16.2 crores on account of provision for doubtful debt and Rs.15.36 crores on account of provision for diminution in value of investment by Rs.15.36 crore while computing book profit of the assessee, by misinterpreting and not correctly appreciating the true scope of explanation (c) below section 115J of the Income Tax Act, 1961?*

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

The assessee has been collecting processing charges from the certificate holders from the financial year 1989-90. The Reserve Bank of India objected to such collection of funds on account of processing charges. The assessee challenged the direction of the Reserve Bank of India. The Apex Court directed the Reserve Bank of India to consider the assessee's submission. Pursuant to the aforesaid order of the Apex Court, after reconsidering the matter the

Reserve Bank of India directed that the processing charges already collected in excess of the prescribed rates should be credited to the accounts of the certificate holders. Such direction was issued on March 22, 1996. On the basis thereof, the assessee claimed deduction of a sum of Rs.613.21 crores in the assessment year 1996-97. The break up of the aforesaid sum of Rs.613.21 crores is as follows:

Assessment year	Excess amount of collection of processing charges
1993-94	Rs.105.98 crore
1994-95	Rs.202.25 crore
1995-96	Rs.304.98 crore
Total	Rs.613.21 crore

It is a fact that though the assessee claimed deduction of the aforesaid sum of Rs.613.21 crores, the same had not been debited to the profit and loss account for the financial year 1995-96. The Assessing Officer refused to allow such deduction. The CIT(A) upheld that order. But the learned Tribunal, by its judgment and order dated October 31, 2001, reversed the orders of the Assessing Officer and the CIT(A) and allowed the entire claim of the assessee in respect of the sum of Rs.613.21 crores.

For the assessment year 1997-98, the Assessing Officer made normal computation by his order dated March 30, 2000 disallowing a sum of Rs.120.32 crores debited by the assessee to the profit and loss account on account of refund or repayment to the depositors, being the money which was collected by way of processing charges, as per the aforesaid directions of the Reserve Bank of India.

The Assessing Officer originally did not make any computation under section 115JA. He sought to fill up the lacunae by resorting to section 154 and passed a rectificatory order on July 15, 2005. In his rectificatory order, he made computations under section 115JA and disallowed the following sums:

(a) Rs.120.39 crores on account of refund to the depositors pursuant to directions of Reserve Bank of India;

(b) Rs.26,42,72,000/- on account of provision for doubtful debts; and

(c) Rs.15,36,98,000/- on account of provision for diminution in value of investment.

Aggrieved by the order of the Assessing Oofficer, the assessee preferred an appeal. The CIT(A) reversed the disallowance of a sum of Rs.26,42,72,000/- on account of provision for doubtful debts and the sum of Rs.15,36,98,000/- on account of provision for diminution in value of investment. He, however, affirmed disallowance of a sum of Rs.120.39 crores.

In an appeal preferred by the assessee, the Income Tax (Appellate) Tribunal has reversed the order of disallowance by holding as follows:

"The only reason given by the A.O. for making the addition of Rs.120.39 crores is that the assessee has claimed the deduction twice, once in assessment year 1996-97 and again in assessment year 1997-98. However, while taking this stand, the A.O. made a fundamental mistake and he mixed up the claim of the assessee while computing the regular income in assessment year 1996-97 with the computation of book profit in assessment year 1997-98. It is settled law that the computation of total income for the purpose of Income Tax Act and the computation of book profit for the purpose of section 115JA are two separate and distinct computations. As per section 115JA, the A.O. has to make these two computations separately. First he has to compute the total income as per the provisions of the Income Tax Act. Thereafter, he has to compute the book profit as per section 115JA and work out 30% thereof. Now 30% of the book profit and the total income as computed as per the provisions of Income Tax Act is to be compared and whichever of them is higher shall be deemed to be total income of the assessee of the relevant assessment year. The deduction of

Rs.613.21 crores was claimed by the assessee in assessment year 1996-97 while computing its total income as per provisions of I.T. Act. However, the same was not divided in the books of account or P/L Account. Thus, it was not claimed from the book of profit of financial year 1995-96 relevant to assessment year 1996-97. The claim of deduction from total income of Rs.613.21 crores in assessment year 1996-97 will not debar the assessee from debiting the amount in the books of account in the subsequent years. In fact, debiting of the amount in the books of account is essential; otherwise the balance sheet of the assessee will not depict the true and fair financial position of the assessee-company. Therefore, we are unable to accept the contention of the revenue that deduction of Rs.120.39 crores was claimed twice for the purpose of section 115JA. In fact, the claim of deduction twice by the assessee is while computing the total income as per provisions of I.T. Act and not u/s.115JA. The assessee has already claimed the deduction of Rs.613.21 crores while computing the total income for A.Y. 1996-97. In the year under consideration, it has again claimed the deduction of Rs.120.39 crores while computing its total income. The same is disallowed by the A.O. if the assessee files the appeal against the addition of Rs.120.39 crores to the total income, then revenue would be quite justified in contending that the deduction of Rs.120.39 crores is claimed twice while computing the total income of the assessee. However, so far as the computation of book profit is concerned, the claim of deduction from the book profit is only once and not twice. In view of the above, we respectfully following the decision of Hon'ble Apex Court in the case of Apollo Tyres Ltd.(supra) hold that the A.O. was not justified in making the addition of Rs.120.39 crores to the book profit. The same is directed to be deleted while computing the book profit of the assessee for the purpose of section 115JA of the Income Tax Act."

Mr. Nizamuddin, learned Advocate appearing for the revenue, reiterated the submissions advanced before the learned Tribunal that the assessee is seeking to claim the benefit twice over. For the first time, it has claimed the benefit for the assessment year 1996-97 and is also seeking to take the benefit of the same expenditure in the current assessment year, i.e. to say 1997-98. This submission advanced by Mr. Nizamuddin is altogether fallacious. In the assessment year 1996-97, admittedly the books of accounts of the assessee were not debited by the sum of Rs.613.21 crores. The deduction was initially not allowed by the assessing officer but ultimately allowed by the learned Tribunal. Normal computation and computation under section 115JA are two different channels. They flow simultaneously until taxable income of the assessee in the normal computation exceeds 30% of the book profit. So long as the taxable income of the assessee does not exceed 30% of the book profit, the normal computation is of no use nor is of any consequence as far as taxation is concerned because taxation in all those cases shall take place on the basis of deemed income. It is a fact that the assessee has debited a sum of Rs.120.39 crores to his books of accounts only in the assessment year 1997-98 and that debit entry is on account of an ascertained liability based on an order of the Reserve Bank of India. Therefore, with regard to justifiability of that debit entry, there was never any doubt. The Apex Court has, in the case of ***Apollo Tyres, reported in (2002) 255 ITR 273***, held 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."

Once there is no dispute that the books of account were maintained in accordance with law and were duly certified, the assessing officer's limited jurisdiction is as indicated by Their Lordships in the case of ***Apollo Tyres(supra)***. It was therefore not open to the assessing officer to disallow the debit entry of a sum of Rs.120.39 crores. Therefore, the order passed by the learned Tribunal is a perfectly justified order.

In that view of the matter, the first question is answered in the affirmative and in favour of the assessee. It is, however, clarified that similar disallowance was there by the assessing officer of a sum of Rs.325.15 crores for the assessment year 1998-99 which has also been set aside by the learned Tribunal and we confirm that order.

In so far as the second question is concerned, it may be pointed out that both the provision for doubtful debts and the provision for diminution in the value of investment are now covered by the explanation (g) to sub-section (2) of section 115JA which provides as follows:

"(g) the amount or amounts set aside as provision for diminution in the value of any asset."

It may be pointed out that the aforesaid clause (g) was introduced with effect from April 1, 1998. Disallowances were made in the assessment year 1997-98. Therefore, the amendment which became operative with effect from April 1, 1998 could not apply to the assessment year 1997-98. We are also supported in our view by the judgment of the Apex Court in the case of ***CIT -vs- HCL Communito System & Services Ltd., reported in (2008) 305 ITR 409(SC)***, wherein Their Lordships were also concerned with the assessment year 1997-98 and the following views were expressed:

"As stated above, the said Explanation has provided six items, i.e., item Nos. (a) to (f) which is debited to the profit and loss account can be added back to the net profit for computing the book profit. In this case, we are concerned with item No.(c) which refers to the provision for bad and doubtful debts. The provision for bad and doubtful debts can be added back to the net profit only if item (c) stands attracted. Item (c) deals with amount(s) set aside as provision made for meeting liabilities, other than ascertained liabilities. The assessee's case would, therefore, fall within the ambit of item (c) only if the amount is set aside as provision; the provision is made for meeting a liability; and the provision should be for other than an ascertained liability, i.e., it should be for an unascertained liability. In other words, all the ingredients should be satisfied to attract item (c) of the Explanation to section 115JA. In our view, item (c) is not attracted. There are two types of "debt". A debt payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case, the "debt" under consideration is a "debt receivable" by the assessee. The provision for bad and doubtful debt, therefore, is made to cover up the probable diminution in the value of the asset, i.e., debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for a liability, because even if a debt is not recoverable no liability could be fastened upon the assessee. In the present case, the debt is the amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, in our view, item (c) of the Explanation is not attracted to the facts of the present case. In the circumstances, the Assessing Officer was not justified in adding back the

provision for doubtful debts of Rs.92,15,187/- under clause (c) of the Explanation to section 115JA of the 1961 Act."

In that view of the matter, question no.2 is answered in the affirmative and in favour of the assessee.

The appeal is thus dismissed. The parties shall, however, bear their own costs.

(GIRISH CHANDRA GUPTA, J.)

I agree, **(SIDDHARTHA CHATTOPADHYAY, J.)**

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