

**Court No. - 39**

**Case :- INCOME TAX APPEAL No. - 103 of 2016**

**Appellant :- The Pr. Commissioner Of Income Tax-I**

**Respondent :- M/S J.K. Synthetics Ltd.**

**Counsel for Appellant :- Shubham Agrawal**

**Hon'ble Dilip Gupta,J.**

**Hon'ble Ravindra Nath Kakkar,J.**

This appeal has been filed by the Principal Commissioner of Income Tax-I, Kanpur under Section 260A of the Income Tax Act, 1961 against the order dated 26 June 2015 passed by the Income Tax Appellate Tribunal for the Assessment Year 1990-91.

The substantial question of law that has been framed is as follows:-

“1. Whether the Hon'ble ITAT is justified in law and on facts in upholding the decisions of CIT(Appeals) without appreciating that the assessee company has shown high depreciation in the Profit & Loss A/c during the year under consideration and defeated the provisions of Section 115J of the Act?

2. Whether the assessee can be permitted to enhance the depreciation by revaluation of the assets upwards and thereby reducing its income.”

It has been pointed out by Sri Shubham Agrawal, learned counsel for the appellant and Sri R.S. Agrawal, learned counsel appearing for the respondents that the same questions of law were framed in **Income Tax Appeal No.451 of 2009 Commissioner of Income Tax-II Kanpur Vs. M/S. J.K. Synthetics Ltd. Kamla Tower Kanpur<sup>1</sup>** between the same parties for the Assessment Year 1988-89 and following the decision of the Supreme Court in **Apollo Tyres Ltd. Vs. Commissioner of Income-Tax<sup>2</sup>** the appeal was dismissed. Paragraphs 5, 6 and 9 of the judgment are reproduced below:-

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1 2016 UPTC 49

2 (2002) 255 ITR 273 (SC)

“Before this Court, the Department has proposed that a question of law arises for consideration, namely, that since the profit & loss account was not prepared in accordance with the provisions of part II and III of Schedule-VI to the Companies Act, the Assessing Officer was justified in revising the net profit under Section 115J of the Act.

The Supreme Court in Apollo Tyres (Supra) considered the question as to whether the Assessing Officer while assessing a Company for income-tax under Section 115J of the Income Tax Act could question the correctness of the profit and loss account prepared by the assessee-company and certified by the statutory auditors of the company as having been prepared in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act.

.....

In the light of the aforesaid, we find from a perusal of the assessment order that the net profit shown in the profit and loss account of the company was prepared in accordance with Parts II and III of Schedule VI to the Companies Act. Once this finding has been given, the Assessing Officer could not go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115J of the Act. We are of the opinion that the provision of Section 115J does not empower the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The Supreme Court has categorically held in Apollo Tyres (Supra) that there cannot be two incomes, one for the purpose of the Companies Act and another for the purpose of income-tax.”

As the matter stands decided against the department in Income Tax Appeal No.451 of 2009, no substantial question of law arises for consideration.

The appeal is, accordingly, dismissed.

**Order Date :-** 18.4.2016  
NSC

(Ravindra Nath Kakkar, J.) (Dilip Gupta, J.)