

Income Tax Appeal No. 451 of 2009

Commissioner of Income Tax-II, Kanpur.....Appellant

Vs.

M/s J.K.Synthetics Ltd. Kamla Tower Respondent
Kanpur

Hon'ble Tarun Agarwala, J.

Hon'ble Surya Prakash Keserwani, J.

(Per: Tarun Agarwala, J.)

We have heard Sri Shubham Agrawal, the learned counsel for the appellant and Sri Rupesh Jain along with Sri R.S. Agrawal for the assessee.

The assessee is a public limited company engaged in the manufacture of synthetic yarn and cement. For the assessment year 1988-89, the assessee filed a return declaring a loss. The return was not accepted and the Assessing Officer passed an assessment order under

Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) after making certain additions and disallowances under various heads. Being aggrieved, the assessee filed an appeal, which was partly allowed. The matter was taken to the Tribunal. The Tribunal allowed the appeal against which the Department has filed the present appeal.

The assessee claimed depreciation after reevaluating its fixed assets. The Assessing Officer found that as per Section 115J of the Act, net profit shown in the profit & loss account was in accordance with the provisions of part II and III of Schedule VI to the Companies Act, 1956. The Assessing Officer however, was of the opinion that the method of computation of profit & loss was not in consonance with the provisions of Section 350 of the Companies Act, and, consequently, disallowed the excess depreciation and added that amount in the profit & loss account. The assessee's appeal against this part was rejected by the appellate authority but was accepted by the first Tribunal relying upon the decision of the Supreme Court in the case of **Apollo Tyres Ltd. Vs. Commissioner of**

Income-Tax, (2002) 255 ITR 273 (SC). The Tribunal held as under:

“We have considered the rival submission and the decisions relied upon by the Id. A.R. Since the Revenue has not brought to our notice any other decision contrary to the decisions relied upon by the Id. Counsel, we decide this issue in assessee's favour as covered by the decision of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (supra). This ground of the assessee is allowed.”

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.

The Supreme Court held that the Assessing Officer was bound to rely upon the authentic statement of accounts of the company and had to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act. The Supreme Court held that the Assessing Officer while computing the income under Section 115J had only the power of examining whether the books of account were certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter had a limited power of making increases or reductions as provided for in the Explanation to the said Section. The Supreme Court, consequently, held that the Assessing officer did 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.

The said decision was reiterated by the Supreme Court in **Malayala Manorama Co. Ltd. Vs. Commissioner of Income-tax, (2008) 300 ITR 251 (SC)** and again by a Division Bench of this Court in **Commissiioner of Income-Tax Vs. Amrit Banaspati Co.Ltd., (2010) 320 ITR 399 (All)**, wherein the Court held:

“The Tribunal while deciding the issue has given convincing, cogent and satisfactory reasons upon appreciation of evidence and material available in record. We cannot substitute our opinion for that of the Tribunal unless it is found that the conclusion drawn by the Tribunal is based on incorrect facts or irrelevant or impermissible by law. It is not disputed that the books of account are duly certified by the authorities under the Companies Act and profit and loss account has been properly maintained in accordance with Parts II and III of Schedule VI to the Companies Act, 1956. Depreciation was claimed on the revaluation amount and such depreciation in the opinion of the directors was not excessive or unreasonable. We do not find any illegality or infirmity in the order of the Tribunal.”

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.

Learned counsel for the appellant contended that the Tribunal had allowed the appeal of the appellant merely by referring to the decision of the Supreme Court in the case of **Apollo Tyres (Supra)** and such disposal of the appeal was not the proper way to deal with the appeal. The learned counsel submitted that the Tribunal, being the last fact finding authority, should have

examined the matter and should have passed a reasoned and speaking order. It was submitted that since the Tribunal did not do so, the order of the Tribunal should be set aside and the matter should be remitted again to the Tribunal for a fresh decision. In support of his submission the learned counsel has placed reliance upon a decision of the Supreme Court in **Commissioner of Central Excise, Bangalore Vs. Srikumar Agencies, 2008(232) E.L.T. 577 (S.C.)**.

There is no quarrel with the aforesaid proposition, namely, the Tribunal should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reference is placed. However, in the instant case, as we have observed above, once net profit shown in the profit and loss account of the Company has been prepared in accordance with the provisions of part II and III of Schedule VI to the Companies Act, it was not open to the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. Therefore, the question of remitting the matter to the Tribunal does not arise.

In our view the controversy involved in the present appeal is squarely covered by the decision of the Supreme Court in the case of **Apollo Tyres (Supra)**. No substantial question of law arises for consideration. The appeal is dismissed.

Dt. 01.10.2015

MAA/-

(Surya Prakash Kesarwani,J.)

(Tarun Agarwala,J.)