

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA 131/2007**

**THE COMMISSIONER OF INCOME TAX ..... Appellant  
Through Mr.R.D. Jolly, Adv.**

**versus**

**THE MOTOR and GENERAL FINANCE LT ..... Respondent  
Through Mr. O.S. Bajpai with  
Mr.V.N. Jha, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE MADAN B. LOKUR**

**HON'BLE MR. JUSTICE V.B. GUPTA**

**O R D E R**

**03.03.2008**

**The Revenue is aggrieved by an order dated 12th January, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench ?D? in ITA No. 4671/Del/2003**

**relevant for the Assessment Year 1997-98.**

**The Tribunal has held that the notice for re-assessment issued to the Assessee under Section 148 of the Income Tax Act, 1961 (for short the Act) is**

**hit by the proviso to Section 147 of the Act in as much as the notice was issued**

**beyond the period of limitation.**

**The reasons for issuing the notice have been placed on record and they read as follows: -**

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**?The assessment for the Asstt. year 1997-98 was completed u/s 143(3) of the I.T.**

**Act 1961 on 21.3.2000 by the then JCIT Spl. Range-10, New Delhi at an income of**

**Rs.4,69,82,360/-.**

**In the instant case for the said year, it is seen that the assessee had shown**

**lease equalisation charges amounting to Rs.8,63,09,927/- which were added back**

**during the course of asstt. Proceedings. However, for the purpose of computation of book profit u/s 115JA the amount was not added back although, it**

**was required to do so since this was not a liability incurred by the assessee**

**but was only a provision created in the books of accounts.**

**As per explanation to section 115JA, book profit means the net profit as shown**

**in the profit and loss account for the relevant previous year as prepared in accordance with the provisions of part II and III of Schedule VI to the Company's Act 1956, as increased by amounts referred to in Clause (a) to (f) of**

**the said explanation, if any such amount is debited to the profit and loss account. The amount of Rs.8,63,09,927/- relating to lease equalisation charges**

**is the provisions on account of unascertained liability and is accordingly liable to be added in clause (c) of explanation to section 115JA. Incidentally, in the A.Y. 1998-99, similar stand was taken by the A.O. and the addition was**

**confirmed by CIT (A) in appeal no. 193/2001-02 dated 22.3.2002. The assessee**

**failed to include this amount while calculating book profit u/s 115JA.?**

**A perusal of the reasons would show that the facts regarding Lease Equalization Charges were disclosed by the Assessee and in fact in the original**

**assessment order, an amount of Rs.8,63,09,927/- towards Lease Equalization**

**Charges was added back to the income of the**

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**Assessee. All that the Assessing Officer says in the reasons recorded is that**

**the Assessee had failed to include this amount while calculating the book profit**

**under Section 115-JA of the Act.**

**It is now settled law that once the facts have been disclosed by the Assessee, what inference is to be drawn from the facts is the duty of the Assessing Officer.**

**There is no doubt from a reading of the reasons recorded, that all the relevant facts were disclosed by the Assessee with regard to the Lease Equalization Charges and, in fact, this amount was even added back to the income**

**of the Assessee in the assessment order. There is no case of any failure to**

**truly disclose all material facts ? it is only a question of drawing an inference from these facts.**

**Learned counsel for the Revenue has submitted that there was no full and true disclosure by the Assessee in as much as the amount should have been shown**

**by the Assessee while calculating the book profit under Section 115-JA of the**

**Act. We are not in agreement with learned counsel for the reason that all the**

**facts have been disclosed. The inference from these facts has to be drawn by**

**the Assessing Officer. Since the Assessing Officer did not draw the correct inference, it does not mean that there**

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**was non-disclosure of all facts by the Assessee.**

**Under the circumstances, we are of the opinion that the Tribunal did not**

err in coming to the conclusion that the Assessee had disclosed all material

facts and that they were before the Assessing Officer.

No substantial question of law arises.

Dismissed.

MADAN B. LOKUR, J

MARCH 03, 2008 V.B. GUPTA, J

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