

ITA No. 566 of 2007
G.A. No. 2819 of 2007

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ/Civil Appellate/Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA - I Plaintiff/Petitioner/Applicant

Versus

ISPAT INDUSTRIES LTD.

Defendant/Respondent

BEFORE:

The Hon'ble JUSTICE PINAKI CHANDRA GHOSE

The Hon'ble JUSTICE SANKAR PRASAD MITRA

Date : 23rd November, 2007.

The Court :- We have perused the application filed for condonation of delay. We are satisfied with the grounds mentioned therein. Hence delay is condoned and the application being G.A. No. 2819 of 2007 is allowed.

We have heard learned Counsel for the parties. We have also perused the order passed by the learned Tribunal. The question arose whether the deletion as made by the CIT (A) is correct in the facts and circumstances of the case. All the questions which were raised before the Tribunal were duly dealt with by the ld. Tribunal extensively and the reasons were given by the learned Tribunal after taking into consideration the decision of the Hon'ble Apex Court in 255 ITR 273 (SC)(Apollo Tyres Ltd vs. C.I.T.). The ld. Tribunal also relied upon the

said decision in particular with regard to computation of book profit for the purpose of 115J and the following observation has been made:

"The assessing officer, while computing the book profits of a company under section 115J of the Income Tax Act, 1961, 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 Section 115J. The Assessing Officer does not have the jurisdiction to go behind the net profits shown in the profit and loss account except to the extent provided in the Explanation. The use of the words 'in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act' in section 115J was made for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. When so looking into the accounts of the company, the Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by the Act and the same to be scrutinized and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company.'

Accordingly, it appears that the learned Tribunal correctly held that the Assessing Officer has to accept the authenticity of the account maintained in accordance with the provisions of the Companies Act in particular Part II and Part III of Schedule VI to the said Act which

specifically certified by the auditors and approved by; the Company in the Annual General Meeting.

Hence we do not find that there is any fault on the part of the Tribunal to decide the matter nor there is any substantial question of law involved which is required to be gone into by this Court.

Accordingly, this application is dismissed.

All parties concerned are to act on a signed copy of the minutes of this order on the usual undertakings.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(PINAKI CHANDRA GHOSE, J.)

(SANKAR PRASAD MITRA, J.)

dg.