

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case (Appeal) Nos.1615 and 1616 of 2005

Commissioner of Income Tax

Chennai.

... Appellant

-vs-

M/s.NEPC India Limited,

Chennai.

... Respondent

Tax Case (Appeals) filed under Section 260 A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'A' Bench, dated 13.12.2002 in ITA.Nos.1019/Mds/2002 and 1265/Mds/2002.

For Appellant : Mr.T.R.Senthilkumar,
Standing Counsel for
Income Tax Dept.

For respondent : Mr.C.V.Rajan

COMMON JUDGMENT

(The Judgment of the Court was made by
CHITRA VENKATARAMAN, J.)

The Revenue has come up on appeals as against the common order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 13.12.2002 in ITA.Nos.1019/Mds/2002 and 1265/Mds/2002 raising the following substantial questions of law:-

" 1.Whether in the facts and circumstances of the case, the Tribunal was right in remanding the matter to the assessing officer to consider claims made in the revised return, when such return was filed beyond the time limit prescribed under Section 139(5)? and

2. Whether in the facts and circumstances of the case, the Tribunal was right in not giving a finding on how the assessing officer could consider claims made in a revised return which was filed beyond time?"

2.The assessee is engaged in the business of manufacture and sale of windmills, power generation and airlines. In the return of income filed on 28.11.1997, the assessee showed the

book profit before the Assessing Officer at Rs.5,537.87 lakhs. The assessee further admitted Rs.1,601.36 lakhs being 30% of the book profit as deemed income under Section 115JA of the Income Tax Act. Evidently, the assessee did not pay the tax on the basis of the book profit calculated under Section 115JA.

3.It is a matter of record that on 8.7.1999, the assessee filed a revised return of income for the same assessment year 1997-98 along with revised profit and loss account and balance sheet, showing 'book loss' before taxation in the place of 'book profit' as shown in the original profit and loss account. It is stated that the said course was adopted by the assessee, consequent on the order passed by the Registrar of Companies, on an inspection conducted by him under Section 209A of the Companies Act, 1956 pointing out certain mistake committed, while preparing the original profit and loss account and balance sheet.

4.It is further seen from the narration that the revision to the profit and loss account and balance sheet was made as regards the inter divisional transfer of 24 windmills from manufacturing unit to power generating unit. Thus, what was originally treated as sales by the Company was rectified as inter divisional transfer by reason of the objections raised by the Regional Director, Department of Company Affairs that the inter divisional transfer of windmills could not be treated as sales. Thus, with the profit and loss re-computed and balance sheet redrawn, the assessee claimed that there was no tax liability under Section 115JA, the book results being book loss shown as Rs.2,636.42 lakhs before taxation.

5.The Assessing Officer processed the return under Section 143(1) and viewed that the revised return of income filed by the assessee after one year from the end of the assessment year 1997-98 as not valid in the eye of law. The Assessing Officer pointed out that the assessee should have filed the revised return of income on or before 31.3.1999. Aggrieved by the assessment, the assessee went on appeal before the Commissioner of Income Tax (Appeals), which was dismissed by the Commissioner that the order was not an appealable order under Sections 246A to 248 of the Income Tax Act.

6.During the course of scrutiny of the assessment under Section 143(2), the assessee requested the Assessing Officer to take cognizance of revised return of income filed for the purpose of arriving at the tax liability under Section 115JA and to arrive at the taxable income under the provisions of the Income Tax Act, excluding Section 115A provisions also. Reiterating the view already taken by the Assessing Officer that the revised return of income was non est in the eye of law, the Assessing officer rejected the revised returns filed by the assessee and the amount was computed based on the materials gathered from various sources after giving opportunity to the assessee.

7.On a perusal of the revised balance sheet, the Assessing Officer further noticed that the assessee reduced its sales turnover with respect to inter divisional transfer of 24 windmills from Rs.10,261 lakhs to Rs.1,890 lakhs. The assessee submitted that the same had been carried out in view of the objection raised by the Registrar of Companies, by invoking the provisions of Section 209A of the Companies Act, 1956. The Assessing Officer pointed out that

during the course of assessment proceedings, the assessee was asked to produce the book of accounts based on which the revised profit and loss account and balance sheet were prepared. Since the assessee had not produced any document regarding revised profit and loss account and balance sheet and conduct of extra ordinary General Meeting to prove the genuineness of the division of accounts on the basis of the order of the Registrar of Company Affairs for verification, the Assessing Officer viewed that the assessee is liable to pay tax under Section 115JA as determined under Section 143(1)(a) on the basis of the original return of income.

8. Thus, the Assessing Officer viewed that the observation made by the Regional Director was only with respect to method of accounting of inter divisional transfer of windmills rather than valuation of inter divisional transfer of windmills. Hence, the assessee should have credited the expenditure account to the extent of Rs.10,261 lakhs i.e. transfer price of 24 windmills rather than crediting the same to the sales account. In considering the same, the Assessing Officer pointed out that enquiries conducted with the Registrar of Companies, Madras and Coimbatore and with SEBI, revealed that the assessee had not filed any revised balance sheet for the financial year 1996-97 and any document with reference to revised annual report, consequent to the order passed by the Registrar of Companies' records that the original balance sheet and profit and loss account are only recognised as valid documents. Aggrieved by the order passed, the assessee went on appeal before the Commissioner of Income Tax (Appeals).

9. It is pointed out by the Commissioner of Income Tax (Appeals) to the order passed for the assessment year 1995-96, holding that the assessee could not reopen its own accounts. Thus, placing reliance on the decision of the Apex Court reported in 53 ITR 134 (SC) (Swadeshi Cotton and Flower Mills Pvt. Ltd case), the Commissioner of Income Tax (Appeals) rejected the assessee contention. He held that the liability to pay tax under Section 115JA according to the original profit and loss account and balance sheet of the assessee could not be changed and the order of assessment under Section 115JA remained untinkered. Aggrieved by the same, the assessee went on further appeal before the Tribunal.

10. In paras 19 to 21, the Tribunal pointed out that consequent to the inspection by the Office of Registrar of companies and objection to the depiction of inter divisional transfer of windmills as sales, the assessee revised its profit and loss account and balance sheet. The corrected accounts were placed before the shareholders for their approval. Note no.7 of the Notes attached and forming part of the accounts was approved by the shareholders in the annual general meeting. After considering the said position, the Tribunal considered the sale price of WTG as well as cost price of WTG. Taking note of the above said facts and that the revised profit and loss account and balance sheet were the result of the objection raised by the Regional Director of Company Affairs, the Tribunal remanded the assessment to the Assessing Officer to examine the issue, as to whether the accounts was revised solely with a view to wriggle away from the demand of tax. The Tribunal further pointed out that inter divisional transfer should not have been shown as sales. In any event, if such attempt was made only to do away with the tax being demanded on the basis of 30% of book profits, such issue had to be

looked into once again by the officer. Aggrieved by the same, the Revenue preferred the present appeals before this court.

11. It is evident from the reading of Section 115JA that an assessment to MAT arises only when the total income as computed under this Act is less than thirty per cent of its book profit, that the total income of the assessee chargeable to tax is deemed to be an amount equal to thirty per cent of such book profit. Explanation to this Section defines 'book profit' to mean the net profit as shown in the profit and loss account prepared under sub section (2) of Section 115JA that for the purposes of assessment under section 115JA, every assessee being a company has to prepare its profit and loss account for the relevant assessment year in accordance with the provisions of Parts II and III of Schedule VI to the companies Act 1956.

12. In considering the said provision, in the decision reported in (2002) Vol. 255 ITR page 273 (SC) (Apollo Tyres Ltd v. Commissioner of Income Tax), the Apex Court held that while computing the book profits of a company under section 115J, the Assessing Officer has a limited 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 has only the limited jurisdiction of making increases and reductions as provided for in the Explanation to Section 115J. Thus, 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 Apex further held as follows:

"While so looking into the accounts of the company, an Assessing Officer under the IT Act has 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 and the same to be scrutinised and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act.".....

".....If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of Section 115-J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes, one for the purpose of the Companies Act and another for the purpose of income tax, both maintained under the same Act. If the legislature intended the Assessing Officer to reassess the company's income, then it would have stated in Section 115-J that income of the company as accepted by the Assessing Officer."

13. The said observation was again reiterated by the Apex Court in the decision reported in (2008) 300 ITR 251 (SC) (Malayala Manorama Co. Ltd. v. Commissioner of Income Tax).

14. Thus, applying the decision to the facts of the present cases, once the assessee has filed revision of balance sheet and profit and loss account, on the basis of what has been objected to by the Regional Director, Department of Company Affairs and the same had been

placed before the annual general meeting and approved, it is not open to the Assessing Officer to reject the accounts or rescutinize the accounts to satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. Once the book results show negative, the question of invoking the provisions under Section 115 JA does not at all arise herein.

15. In the background of the above said facts, the question arises for consideration herein is as to whether the revised profit and loss account and balance sheet in the form of revised returns would really have to be considered by the Assessing Officer within the meaning of Section 139(5), as the same has already been rejected as non est in the eye of law.

16. As already noted above, the assessment under Section 115JA arises only on the stated circumstances of the total income computed under the Act less than 30% of the book profit. Once the step is crossed and the assessment is to be made under Section 115 JA, it is unnecessary for the Assessing Officer to rescutinize the accounts and satisfy himself that the accounts have been maintained in accordance with the provisions of the Companies Act. When accounting of the transaction between the units of the company was found to be incorrectly entered as sale and as pointed out to be so by the Regional Director, the company corrected the same so that the accounts reflect the correct state of affairs. In the process, if the book results are to show a result different from what was originally projected, the mere fact that it resulted in a negative result could not take away the correctness of the results projected. If, for the purpose of assessment of profits under section 115 JA, the Revenue could rest safely on the accounts maintained as per the provisions of the Companies Act, the same should hold good on the revised result too. Ultimately, what matters in the assessment, is the correctness of the accounts. It is not denied by the Revenue that the transaction is inter divisional transfer of 24 WTG. There is no grievance from the Revenue that the transaction of inter divisional transfer between one Unit and another is not by way of sale. In the background of the said admitted fact, the only question that arises herein is as to how the Assessing Officer has to arrive at the assessable income of the assessee.

17. It is not denied by the Revenue that the revision of the book results on the changed nature of transaction was itself on account of the objection raised by the Regional Director, Department of Company Affairs. That being the case, we do not find any justification in the contention of the Revenue that the revised results do not merit any consideration. Even if the revised return is treated as a time barred one, when once the assessment is made under Section 143(2) based on the materials gathered, the department cannot fight shy of considering the materials coming in the form of the Regional Director's direction and its effect on the account results. The revised profit and loss account and balance sheet were approved by the shareholders in the annual general meeting to be treated as revised claim. In this, we do not find any ground to read an intention that the revision was done with a view to revise the liability of the assessee under the Act. Even though, the assessee has not filed any Tax Appeal before this Court, on this observation of the Tribunal, we are bound to observe that the said statement is without any basis. In the light of what we have observed in the preceding paragraph, we have no hesitation in remanding the matter back to the Assessing officer to examine the issue once

again, uninfluenced with any of the observations made by the Tribunal as regards the valuation, but looked into the claim of the assessee in the background of the nature of transaction i.e. inter divisional transfer of WTG from manufacturing unit to power generating unit as not by way of sale.

18. With the above observation, the Tax Cases are dismissed. No costs.

(C.V.,J) (K.R.C.B.,J)
06.07.2012

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Index:Yes

Internet:Yes

To

1. The Commissioner of Income-Tax , Chennai.

2. The Income Tax Appellate Tribunal,
Bench 'A' Chennai.

3. The Commissioner of Income Tax (Appeals)
Central-I, Chennai.

CHITRA VENKATARAMAN, J.

and

K.RAVICHANDRABAABU, J.

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