

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

I.T.A. NO.87 OF 2012

BETWEEN:

M/S YOKOGAWA INDIA LTD.,
NO.96, ELECTRONICS CITY COMPLEX
HOSUR ROAD
BENGALURU – 560 100.

(REPRESENTED BY ITS
HEAD TREASURY AND TAXATION AND
COMPANY SECRETARY
SR.B.SHIVADUTT
AGED ABOUT 43 YEARS
S/O SRI.B.K.BHANDARY)

... APPELLANT

(BY SRI.CHYTHANYA K.K., ADV.,)

AND:

THE DEPUTY COMMISSIONER OF INCOME TAX
L.T.U
BENGALURU

... RESPONDENT

(BY SRI.K.V.ARAVIND, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961 ARISING OUT OF ORDER DATED 12.09.2011 PASSED IN ITA NO.1191/BANG/2010, FOR THE ASSESSMENT YEAR 2005-06, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO: (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, (II) SET ASIDE THE ORDER OF THE TRIBUNAL IN ITA NO.1191/BANG/2010 DATED 12.09.2011, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to Assessment year 2005-06. The appeal was admitted by a bench of this Court by order dated 12.09.2012 on following substantial questions of law:

- (i) *Whether on the facts and in the circumstances of the case, the honourable tribunal was right in law in not allowing deduction of brought forward loss or unabsorbed depreciation relating to non-STPI*

units in computing book profits under Section 115JB?

(ii) Whether on the facts and in the circumstances of the case, the honourable tribunal was right in law in adjusting the past profits of the STPI units from the brought forward loss or unabsorbed depreciation relating to non-STPI units and thus not allowing reduction of the brought forward loss or unabsorbed depreciation relating to non-STPI units while computing the book profits under Section 115JB?

(iii) Whether on the facts and in the circumstances of the case, the honourable tribunal ought to have held that the STPI unit being outside the purview of MAT, the past profits of STPI unit should be kept out while computing the brought forward loss unabsorbed depreciation for the purpose of computing the book profits under Section 115JB?

2. Facts giving rise to filing of this appeal briefly stated are that the assessee is engaged in the business of manufacture, trading and distribution of processed control instruments. It filed return of income for the Assessment year 2005-06 on 31.10.2005 declaring an income of Rs.3,26,76,628/-. The return of income was processed under Section 143(1) of the Act on 30.03.2007 and a refund of Rs.69,65,608/- was issued by way of adjustment against the demand for the Assessment year 2004-05. In the meanwhile, the assessment was taken up for scrutiny and a notice under Section 143(2) of the Act was issued to the assessee on 10.07.2006. In response to the notice, the assessee entered appearance. The assessing officer vide order dated 29.12.2008 *inter alia* held that profit and loss account of the assessee shows that an amount of Rs.209.30 Lakhs is the total brought forward loss of the previous year, which is to be considered for the

purposes of Section 115JB of the Act. It was held that assessee representative stated that the amount of Rs.209.30 Lakhs consists entirely of unabsorbed depreciation and it has no element of brought forward business loss in it. Thus, it was held that no amount of brought forward loss has to be reduced in the computation of income. It was further held that in computation of income under Section 115JB of the Act, a sum of Rs.8,44,51,767/- being unabsorbed depreciation claimed in the audit report in Form No.29B does not deserve to be reduced. Accordingly, the book profit of Rs.21,14,42,000/- was adopted by not giving the benefit of deduction of unabsorbed depreciation amounting to Rs.8,44,51,767/-.

3. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by an order dated 27.08.2010, inter alia held that when there is a loss shown in the books of accounts, it has to be

considered and there is no reason to go beyond to discover its genesis. It was further held that if Section 115JB of the Act is applied to the case of the assessee as a whole, there is no reason as to why only one particular amount has to be worked out in a different manner. The Commissioner of Income Tax (Appeals) concurred with the reasoning of the assessing officer and dismissed the appeal.

4. The assessee thereafter filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal vide order dated 12.09.2011 held that as per Section 115JB of the Act, book profit is defined as net profit as shown in profit and loss account for relevant previous year prepared under sub-Section (2) in accordance with the provisions of Articles-II and III of the Schedule VI of Companies Act, 1956 and thereafter increased by the amount specified in clauses (a) to (f) and reduced by clauses (i) to (viii). Thus, the net profits have to be determined as per provisions of

Companies Act and thereafter adjustments have to be made. It was further held that assessee cannot adjust the book profit except as provided under the Companies Act and in the instant case, the assessee is trying to compute the brought forward losses under the income tax provisions and not under the companies Act, which is not permissible. In the result, the appeal preferred by the assessee was dismissed. In the aforesaid factual background, the assessee has approached this court.

5. Learned counsel for the assessee submitted that loss brought forward and unabsorbed depreciation has to be taken as per books of accounts and not as per balance sheet. It is further submitted that tribunal ought to have reduced the lower of the brought forward loss and unabsorbed depreciation as per books of account relating to non 10A unit while arriving at book profit for the purposes of Section 115JB of the Act. While inviting the attention of this court to Section 10A as well as Section 115JB it is submitted that from the various

adjustments mentioned in explanation-1, two adjustments with reference to Section 10A are evident viz., clause (f) of Section 115JB, which seeks to increase the net profit by the amount of expenditure relatable to any income to which Section 10A applies and clause (2), which seek to reduce the net profit by the amount of income through which any of the provisions of Section 10A applies, if such amount is credited to profit and loss account. It is submitted that clause (iii) of explanation-1 provides for reduction of the net profit by the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of accounts. It is also urged that the assessee is eligible to claim the deduction of Rs.8,44,51,768/- being the lower figure. However, the tribunal has adjusted the past profits of 10A unit against the aforesaid figure to eventually conclude that the appellant is not eligible to any deduction. It is further submitted that while passing the impugned order, the tribunal has misinterpreted the statutory

provisions. In support of aforesaid submissions, reliance has been placed on the following decisions

'KESHAVJI RAVJI & CO. V. CIT', (1990) 183 ITR 1 (SC), CIRCULAR NO.762 DATED 18.02.1998, 'BUDGET SPEECH 2000', 242 ITR (ST.) 1, 'MEMORANDUM EXPLAINING THE PROVISIONS OF THE FINANCE BILL, 2000', 242 ITR (ST.) 33, 'CBDT CIRCULAR NO.794, DATED 09.08.2000', 'JAYSHREE TEA & INDUSTRIES LTD. & ANOTHER V. UOI & OTHERS', (2006) 285 ITR 506 (CAL.)', 'CIT, BANGALORE V. M/S YOKOGAWA INDIA LTD.', 2011-TIOL-711-HC-KAR-IT, 'CBDT CIRCULAR NO.495 DATED 22.09.1987, 'CIT VS. SRF LTD.', (2012) 342 ITR 106 (DELHI), 'R& B FLCON (A) PTY. LTD. V. CIT', (2008) 301 ITR 309 (SC), 'CIT V. WILLIAMSON FINANCIAL SERVICES', (2008) 297 ITR 17, 'HINDUSTAN UNILEVER LTD. VS. DCIT', (2010) 325 ITR 102, ' CIT V. PAHARPUR COLLING TOWERS (P) LTD.', (1996) 219 ITR 618 (SC),

'SRI.VENKATESHWARA TOURIST HOME (P) LTD.', (1996) 219 ITR 618 (SC), 'SRI.VENKATESHWARA TOURIST HOME (P) LTD. V. ADIT (INVESTIGATION)', (1998) 233 ITR 0736 (KARN.), 'CIT VS. HARPRASAD AND CO PVT. LTD.,', (1975) 99 ITR 118 (SC), 'APOLLO TYRES LTD. VS. CIT', (2002) 255 ITR 273 (SC), 'VARGHESE (K.P) VS. ITO', (1981) 131 ITR 597 (SC), 'CIT VS. VEGETABLE PRODUCTS LTD.,', (1973) 88 ITR 192 (SC).

6. On the other hand, learned counsel for the revenue has supported the order passed by the tribunal and has invited our attention to the decision of the supreme court in **'APOLLO TYRES LTD. VS. COMMISSIONER OF INCOME-TAX', (2002) 122 TAXMAN 562 (SC)** and has submitted that there cannot be two incomes, one for the purposes of Companies Act and another for the purposes of Income Tax Act. It is further submitted that if the legislature had

intended the assessing officer to reassess complete income then it would have stated in Section 115J that 'income of the company as accepted by the assessing officer'. It is further submitted that Section 115J makes the income reflected in the companies books of accounts as deemed income for the purposes of assessment of tax and the provisions of Minimum Alternate Tax are self contained code in itself. In support of aforesaid submission, reference has been made to decision of the supreme court in '**JOINT COMMISSIONER OF INCOME-TAX V. ROLTA INDIA LTD., (2011) 196 TAXMAN 594 (SC).**

7. We have considered the submissions made on both the sides and have perused the record. The supreme court in **APOLLO TYRES LTD.,** supra had an occasion to deal with provisions of Section 115J of the Act and while taking into account the budget speech of the then Finance Minister made in parliament at the time of introducing the said section held that the income tax

authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It was further held that with a view to bring such companies within the tax net, Section 115J was introduced in the Act with a deeming provision, which makes the company liable to pay tax on at least 30% of its book profits as shown in its accounts. For the aforesaid purpose, Section 115J makes the income reflected in the companies books of account as the deemed income for the purposes of assessing the tax. It has also been held that sub-Section (1A) of Section 115J does not empower the assessing officer to embark upon a fresh enquiry with regard to the entries made in the books of accounts of the company. The said sub-Section mandates the company to maintain its account in accordance with the provisions of Companies Act. Section 115JB was inserted in the Act by Finance Act, 2000 with effect from 01.04.2001. Explanation-(1)

to Second proviso to Section 115JB(1) provides that for the purposes of this Section, book profit means the profit as shown in the statement of profit and loss account for the relevant previous years prepared under sub-Section(2). The supreme court in **'J.K.INDUSTRIES LTD. VS. UNION OF INDIA', (2008) 297 ITR 176 (SC)** has held that books of account do not include balance sheet and profit and loss account. It has further been held that balance sheet and profit and loss account are financial statements. Section 10A of the Act permits a newly established undertaking in Free Trade Zone to claim a deduction from profits as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive Assessment years relevant to the previous year, in which undertaking begins to manufacture of produce such article or things or computer software as the case may be, shall be allowed from the total income of the assessee.

8. Now we may advert to the order passed by the Income Tax Appellate Tribunal. The tribunal has held that net profits have to be determined as per the provisions of the companies Act and thereafter, the adjustments have to be made. It has further been held that the assessee cannot adjust the books of profit except as provided under the companies Act. While passing the order, the tribunal has misconstrued the relevant statutory provisions. It is also pertinent to note that the tribunal has not dealt with the claim of the assessee for deduction under Section 10A of the Act. Therefore, in the fact situation of the case, the remand of the matter to the tribunal for decision afresh has become imperative. It is therefore, not necessary for us to deal with the substantial questions of law framed by this court.

In view of the preceding analysis, the order passed by the Income Tax Appellate Tribunal is hereby quashed

and the matter is remitted to the tribunal for decision afresh in accordance with law.

In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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