

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.04.2009

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Tax Case (Appeal)Nos.6 and 8 of 2009

The Commissioner of Income Tax

Central I, Chennai ... Appellant

Vs.

M/s. Jumbo Bag Ltd.,

58 Halls Road

Kilpauk

Chennai 600 010. ... Respondent

Tax Case Appeals filed under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 4.07.2008 passed in ITA No.354 and 355 /Mds/2008 relating to the assessment year 2001-2002 and 2002-2003.

For appellant :Mr.J.Narayanasamy

JUDGMENT

(Judgment of the Court was delivered by

K.RAVIRAJA PANDIAN, J.)

The revenue is on appeal against the order of the Income Tax Appellate Tribunal, dated 4.07.2008 passed in ITA Nos.354 and 355 /Mds/2008 relating to the assessment years 2001-02 and 2002-03.

2. The assessment in the case of the assessee for the assessment year 2001-02 was completed under section 143(3) r.w.147 of the I.T. Act on 31.1.2005 on the basis of computation book profit under Section 115JB Rs.77,57,105. The original assessment for the assessment year 2002-03 was completed under Section 143(3) on 31.1.2005 determining the book profit under Section 115JB at Rs.81,23,508/- While completing the assessment the Assessing Officer had allowed deductions under Section 80HHC of Rs.9,19,200/- on the book profit under Section 115JB for the assessment year 2001-02 and Rs.18,71,525/- on the book profit under Section 115JB for the assessment year 2002-03. On perusal of the records relating to the above assessment years, the Commissioner of Income Tax found that when the taxable income was nil after setting off depreciation for the respective assessment years, no deduction under Section 80 HHC was allowable. Hence, a notice under Section 263 was issued calling upon the assessee to submit its explanation as to why the claim of deduction

under Section 80HHC should not be withdrawn. The assessee submitted its reply stating that when two views are possible and the assessing officer had followed one view the Commissioner of Income Tax could not hold that the assessment was erroneous and prejudicial to the interests of the revenue and take action under Section 263 of the Act. The assessee placed reliance on the decision of the Gujarat High court in the case of Commissioner of Income Tax Vs. Arvind Jewellers (259 ITR 502). The Commissioner of Income Tax did not accept the assessee's contention that the assessing officer had consciously followed a particular view. The Commissioner of Income Tax has recorded a finding that the assessment order clearly showed that the assessing officer had not applied his mind to this issue at all. The Commissioner of Income Tax also rejected the assessee's objection that when two views are possible the Commissioner of Income Tax could not invoke the jurisdiction under Section 263. Thus, the Commissioner of Income Tax set aside the assessments made by the assessing officer for the assessment years 2001-02 and 2002-03 with a direction to redo the assessment after withdrawing the deduction under section 80 HHC wrongly allowed while computing book profit under section 115JB. Aggrieved by the order of the Commissioner of Income-tax, the assessee filed appeals before the Income-tax Appellate Tribunal and the Tribunal allowed the appeals in favour of the assessee by following the decision of the Special Bench of Mumbai Tribunal in the case of DCIT VS. SYNCOME FORMULATIONS (I) LTD (2007)(106 ITD 193) and the decision of the Supreme court in the case of MALABAR INDUSTRIES CO. LTD VS. COMMISSIONER OF INCOME TAX (243 ITR 83). Aggrieved by the same, the revenue has filed this appeal by formulating the following question of law:

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in cancelling the order of the Commissioner of Income Tax under section 263 on the ground that deduction under section 80HHC was allowable on the basis of book profits and not on the basis of eligible profits under Section 80HHC as per computation under the normal provisions of the Income Tax Act, while computing the books profits under Section 115JB ?

3. We have heard the argument of the learned counsel for the revenue and perused the materials available on record.

4. The issue involved in the present appeals is squarely covered by the decision of a Division Bench of this Court in which one of us (K.Raviraja Pandian,J) was a party in the case of Commissioner of Income Tax vs. Rajanikant Schnelder and Associates P. Ltd., reported in 302 ITR 22), wherein it has been observed as follows:-

"4. We are not able to subscribe our view to the grounds taken in the appeal that the deduction under Section 80 HHC is allowable only on the profits and gains arrived at under Sections 28 to 44B of the Income Tax Act. In the case on hand, it is the stand of the assessee that the relief under section 80HHC should be based on the profit ascertained under Section 115JA only but not on income computed under Sections 28 to 44 of the Act. The Tribunal after considering the Judgments of the Supreme Court in the case of Surana Steels P. Ltd., vs. Deputy CIT (1999) 237 ITR 777 and in the case of Apollo Tyres Ltd., vs. CIT (2002) 255 ITR 273 (SC) and analyzing the order impugned found that the provisions of Section 115J are similar to the provisions of Section 115JA of the Act. In order to come to the conclusion the Tribunal has also taken note of sub-section (4) of section 115JA and referred to the dictum laid down by the Supreme Court in the case of Apollo Tyres Ltd., vs. CIT (2002) 255 ITR 273 wherein it was held that the Assessing Officer while computing the book profits of a company under Section 115J of the Income Tax Act, 1961, has only the power to examine whether such 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 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. While 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 that Act and the same to be scrutinized and certified by the statutory auditors and approved by the company in the 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 115H 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.

5. The Assessing Officer is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit under Section 115J and the book profit so arrived at should be the basis for taxation and therefore, the computation under Section 80HHC should be limited to the case of profits of eligible category only. The Tribunal has also come to the conclusion that in view of the non obstante clause available in Section 115JA it was clear that the provisions is a self-contained one and no other provision would have effect on it and thereby it was to be implemented as contained in the said provision. The Tribunal has also further given a reason to the effect that section 80HHC is clear about this aspect that profit only is to be taken into account but not income and sub-section (3) of Section 115JA itself took care of the provisions relating to the adjustment of loss or depreciation and carry forward of the income. The finding arrived at by the Tribunal is correct and followed the decision of the Supreme Court. We are of the view that the conclusion arrived at by the Tribunal cannot be complained of".

5. Hence, following the same, the question of law is answered against the revenue and the appeals are dismissed.

krr/

To

The Income Tax Appellate Tribunal,
Chennai 'B' Bench,
Chennai