

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
INCOME TAX APPEAL No. 80 of 2007

Commissioner of Income Tax,
Haldwani, District Nainital.

.....Appellant.

Versus

M/s Kumaon Gases Ltd.
Rampur Road,
Rudrapur.

.....Respondent.

Present:- Mr. Arvind Vashisth, Advocate for the appellant.
Mr. Piyush Gargh, Advocate for the respondent.

Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble Sudhanshu Dhulia, J.

Barin Ghosh, C.J. (Oral)

1. The assessee is a limited liability company governed by the provisions of Companies Act, 1956. It took loan from Uttar Pradesh Financial Corporation. In relation thereto, it was required to pay interest to Uttar Pradesh Financial Corporation. It did not pay the same. However, liability in relation thereto accrued in terms of the agreement inter se the assessee and the Financial Corporation. This liability was reflected in its Accounts. Yearly profits of the assessee, however, was not reduced by such liability, inasmuch as, in fact the liability was not discharged by the assessee. During the relevant year, the Financial Corporation waived liability of the assessee on account of such interest to certain extent. The Assessing Officer purported to add the same to the book-profit of the assessee, while exercising powers under Section 115JA of the Income Tax Act, 1961. In the appeal preferred, assessee contended that it is beyond the competence of the Assessing Officer to touch book-profit, in the manner he purported to touch the same. Appellate Authority held that assessee deviated from the method of accounting. On that ground, the action of the Assessing Officer was upheld. Assessee went before the Tribunal. Before the Tribunal once again, it was contended that the assessee deviated from the method of accounting. The deviation was not, however, indicated. In paragraph 2 of Part-II of Schedule -VI of the Companies Act, it has been provided that Profit & Loss Account shall

be so made so as to clearly disclose the result of the working of the Company during the period covered by the Accounts and should disclose every material feature, including credits or receipts and debts or expenses in respect of non-recurring transactions or transactions of an exceptional nature. In the instant case, the liability on account of interest though accrued was not met and the same was, accordingly, reflected in the Accounts year after year. Admittedly, yearly profits of the assessee were not reduced by the quantum of yearly liabilities accrued on account of interest in the Accounts of the assessee. The assessee accordingly did not credit the amount of waiver to the profit and loss account. The same was adjusted in the balance sheet by reducing the liability on account of interest. In the circumstances, there was no deviation from the method of accounting by the assessee. In the event, Accounts have been maintained by an assessee, which is a company, in accordance with the provisions of Parts-II and III of Schedule VI of the Companies Act, 1956, as held by the Hon'ble Supreme Court in the case of **Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi** reported in **AIR 2002 SC 2131**, the Assessing Officer cannot add to the book-profit disclosed by such Accounts anything except those, which by virtue of Section 115J are required to be added. Admittedly, the matter dealt with herein is not one of those which are to be added to book-profit under Section 115JA. Taking note of the said judgment of the Hon'ble Supreme Court and applying the principles laid down therein, the Tribunal held that while dealing with a matter under Section 115JA also, the Assessing Officer has no authority to add anything to book-profit in the event Accounts have been maintained in accordance with the provisions of Parts-II and III of the Schedule VI to the Companies Act, 1956, except those mentioned in said Section. While doing so, the Tribunal held that Sections 115J and 115JA are *pari materia* to each other. It seems that the present appeal has been preferred to contend that those two provisions are not *pari materia*. For the purpose of this appeal, it would suffice for us to declare that the right to touch book-profit by the Assessing Officer in relation to Section 115J is identical to

such right in relation to Section 115JA and the same is governed by the law declared by the Hon'ble Supreme Court in the case of **Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi** (supra). We, accordingly, answer the questions raised in the appeal and dispose of the same without any interference with the judgment and order of the Tribunal.

(Sudhanshu Dhulia, J.) (Barin Ghosh, C.J.)

29.10.2010

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