
(2014) 11 GUJ CK 0062
Gujarat High Court
Case No: Tax Appeal No. 437 of 2000

Dy. C.I.T

APPELLANT

Vs

Gujarat Filaments Ltd.

RESPONDENT

Date of Decision: Nov. 17, 2014

Acts Referred:

- Companies Act, 1956 - Section 205
- Income Tax Act, 1961 - Section 115J, 115J, 115J(1A), 143(1), 143(3)

Hon'ble Judges: Kaushal Jayendra Thaker, J; K.S. Jhaveri, J

Bench: Division Bench

Advocate: K.M. Parikh, Advocate for the Appellant; S.N. Divatia, Advocate for the Respondent

Judgement

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K.S. Jhaveri, J.

While admitting the appeal on 04.12.2000, the following substantial question of law was formulated for our consideration;

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law and on facts in upholding the order of the Commissioner of Income Tax (A) deleting the addition of Rs. 96,67,300/- made by the Assessing Officer to the book profit on account of additional depreciation debited in the accounts for the earlier years because of change in the method of providing depreciation retrospectively?"

2. Briefly stated, the facts are that the assessee-company is engaged in the business of manufacture of Filaments. The assessee filed its return of income for the A.Y. 1989-90 declaring total income at Rs. 6,69,000/-. However, after assessment

scrutiny, the total taxable income was determined at Rs. 35,69,270/-. On appeal, the CIT(A) deleted the addition of book profit and directed the A.O to recompute the book profit and thereby, allowed the appeal in part.

3. The order of CIT(A) was challenged before the Appellate Tribunal. Vide order dated 03.06.2000, the Appellate Tribunal allowed the appeal filed by Revenue in part. Being aggrieved by the same, the present appeal has been preferred.

4. We have heard learned counsel for both the sides. Identical issue came up for our consideration in Tax Appeal No. 390 of 1999, which came to be disposed of vide judgment and order dated 07.04.2011. For ready reference, the said judgment is reproduced hereunder;

"1. In this appeal under section 260A of the Income Tax Act, 1961 (the Act), the appellant revenue has challenged order dated 7th May, 1999 made by the Income Tax Appellate Tribunal, Ahmedabad Bench "A" in ITA No. 4681/Ahd/1992 for assessment year 1989-90.

2. At the time of admitting the appeal, this Court had, by an order dated 4th September, 2000, formulated the following two substantial questions of law:--

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the order of the CIT(A) deleting the addition of Rs. 20,77,946/- made by the Assessing Officer to the book profit on account of additional depreciation debited in the accounts for the earlier years because of change in the method of providing depreciation retrospectively?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the order of the CIT(A) directing not to charge interest u/s 234-B and 234-C of the Act since the total income was determined under section 115-J of the Act?

3. The assessment year is 1989-90 and the relevant accounting period is the year ended on 31st March, 1989 (15 months). The Assessing Officer computed the total income of the assessee company under section 143(3) of the Act at Rs. 2,92,880/- after adjusting brought forward losses and unabsorbed depreciation vide assessment order dated 24th February, 1992. The Assessing Officer separately computed the taxable profit of the Company under section 115J of the Act according to which, the chargeable profit under section 115J came to Rs. 11,11,550/-. The Assessing Officer negatived the assessee's claim for additional provision of depreciation to the extent of Rs. 20,77,946/-. According to the assessee, it had changed the method of providing depreciation from Straight Line Method (SLM) to Written Down Value (WDV) Method which has resulted in a short fall in the depreciation provided as per the old method as compared to the new method and the shortfall was charged to the Profit and Loss Account for the current assessment year 1989-90. The Assessing Officer disallowed the claim of the assessee on the

ground that section 205 of the Companies Act, 1956 read with section 35D of the said Act does not entitle the assessee to claim depreciation for the earlier years placing reliance upon the decision of the Supreme Court in the case of [McDowell and Co. Ltd. Vs. Commercial Tax Officer](#), . Being aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) who upheld the contention of the assessee and directed the Assessing Officer to recompute the book profit without disallowing the additional claim for depreciation. The Commissioner (Appeals) found that the change in method adopted by the assessee was one which was permitted by the Accounting Standards prescribed and was not barred by the provisions of the Companies Act or by the provisions of section 115J of the Act. He, accordingly, deleted the addition made by the Assessing Officer. Being aggrieved, the revenue carried the matter in appeal before the Tribunal but did not succeed.

4. Heard Mr. K.M. Parikh, learned standing counsel for the appellant and Mr. M.J. Shah, learned advocate appearing on behalf of the respondent assessee.

5. Mr. M.J. Shah, learned advocate for the respondent assessee drew the attention of the Court to the impugned order of the Tribunal. It was pointed out that before the Tribunal, on behalf of the assessee, the decision of the Tribunal in the case of Deputy Commissioner of Income Tax (Assessment), SR-2, Baroda v. M/s. Rubamin (P) Ltd. in ITA No. 1544/Ahd/93 dated 12th August, 1998 had been relied upon wherein an identical issue had been decided in favour of the assessee. It was submitted that the decision of the Tribunal in the aforesaid case was carried in appeal before this Court and that this Court held in favour of the assessee by placing reliance upon the decision of the Apex Court in the case of [Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi](#), . It was, accordingly, submitted that the controversy involved in the present case stands concluded by the aforesaid decisions of this High Court as well as the Supreme Court.

6. The facts are not in dispute. In the present case, the Assessing Officer had made the addition in question on the ground that the assessee could not claim depreciation which was not provided for in the books of accounts of the assessee for the earlier years. However, as noticed hereinabove, the assessee in the present case had changed the method of providing depreciation from Straight Line Method to Written Down Value Method and the resultant shortfall in depreciation was charged to the Profit & Loss Account for the current year. Both the Commissioner (Appeals) as well as the Tribunal have taken note of the fact that the assessee's change of method in accounting from Straight Line Method to Written Down Value method was in accordance with the accounting standards issued by the Institute of Chartered Accountants. The Tribunal, accordingly, held that the disallowance made by the Assessing Officer was not warranted by the provisions of the Companies Act or by the provisions of section 115J of the Act as there was no bar for a change in the method of accounting standards recognised for the purpose of the Companies

Act.

7. It is not in dispute that the short fall in the depreciation, was charged to the Profit & Loss Account, which was computed in accordance with the provisions of the Companies Act. In the circumstances, the present case would stand squarely covered by the decision of the Supreme Court in the case of [Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi](#), wherein the Court has held that the Assessing Officer, while computing the income under section 115J, 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 to make increases and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profits shown in the Profit & Loss account except to the extent provided in the Explanation to section 115J. The Court held that 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. The said sub-section, as a matter of fact, mandates the Company to maintain its accounts in accordance with the requirements of the Companies Act which mandate is bodily lifted from the Companies Act into the Income Tax Act for the limited purpose of making the said accounts so maintained as a basis for computing the company's income for levy of income tax. The Court also held that there cannot be two incomes, one for the purpose of the Companies Act and another for the purpose of income-tax maintained under the same Act.

8. This Court, in the case of CIT v. Rubamin (P) Ltd. was called upon to decide the question as to whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the deletion of addition of Rs. 61,602/- being the difference in the amount of depreciation as a result of changing the method of providing the depreciation from the Straight Line Method to the Written Down Value Method. The Court followed the decision of the Apex Court in the case of Apollo Tyres Ltd. v. C.I.T. (supra) and held in favour of the assessee. Thus, it is apparent that the controversy involved in the case of Commissioner of Income Tax v. Rubamin (P) Ltd. (supra) is similar to the controversy involved in the present case and as such the same stands concluded in favour of the assessee by the decision rendered in the said case.

9. In the circumstances, for the reasons stated in the decision of this Court in the case of Commissioner of Income-Tax v. Rubamin (P) Ltd. (supra), the question is answered in the affirmative, that is, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the deletion of addition of Rs. 20,77,946/- made by the Assessing Officer to the book profit on account of additional depreciation debited in the books for the earlier years because of change in the method of providing depreciation retrospectively.

10. Insofar as the second question which relates to charging of interest under sections 234B and 234C is concerned, Mr. M.J. Shah, learned advocate for the respondent invited attention to the decision of the Supreme Court in the case of [Commissioner of Income Tax Vs. Kwality Biscuits Ltd.](#), wherein the Supreme Court has confirmed the decision of the Karnataka High Court in [Kwality Biscuits Ltd. Vs. Commissioner of Income Tax](#). It was submitted that the controversy involved in the present case stands concluded by the aforesaid decision in favour of the assessee.

11. The Karnataka High Court in the said decision which came to be affirmed by the Supreme Court held thus:--

Section 234B casts the liability for payment of interest for default in payment of advance tax if the assessee is liable to pay advance tax under section 208 and has failed to pay such tax or, where the advance tax paid by such assessee under the provisions of section 210 is less than 90 per cent of the assessed tax, then he is liable to pay simple interest at the rate of two per cent for every month to the date of determination of total income under section 143(1) and, where the regular assessment is made, to the date of such regular assessment on the amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid has fallen short of the assessed tax. Under the Explanation, "assessed tax" means the tax on the total income as declared in the return or the tax on the total income determined under section 143(1) or on regular assessment, as reduced by the amount of tax deducted or collected at source in accordance with the provisions of Chapter XVII.

Under section 234C also, if there is liability to pay advance tax under section 208 and if there is failure to pay such tax or if it is not paid in instalments prescribed in the section, then the liability for interest arises.

Section 208 contemplates the liability to pay advance tax in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter is Rs. 1,500 or more. The computation of advance tax is provided under section 209. Under section 209(1)(a) firstly, the estimate of current income is to be made. If there is no current income there is no liability for making the estimate. It is not a case where the Income-tax Officer has passed an order for payment of advance tax.

Under section 115J, where the total income of the company is less than 30 per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to 30 per cent of such book profit. It is thus, by way of deeming fiction that this income has been considered to be the deemed income. The profit and loss account has to be prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act. In the Explanation under section 115J(1A) it is provided that for the purposes of this section "book profit" means the net profit as shown in the profit

and loss account for the relevant previous year prepared under sub-section (1A) as increased by various amounts given in the section. Thus, for the purpose of assessing tax under section 115J, firstly, the profit as computed under the Income-tax Act has to be prepared and thereafter the book profit as contemplated by the provisions of section 115J are to be determined and then the tax is to be levied. The liability of the assessee for payment of tax under section 115J arises if the total income as computed under the provisions of the Act is less than 30 per cent of its book profits. This exercise for determining the total income in accordance with the provisions of the Act and that of book profit can be only after the end of the relevant assessment year. It is only the deemed income for which the provisions of section 115J have been incorporated. When a deeming fiction is brought under the statute it is to be carried to its logical conclusion but without creating further deeming fiction so as to include other provisions of the Act which are not specifically made applicable. Since the entire exercise of computing the income or that of book profit could be only at the end of the financial year, the provisions of sections 207, 208, 209 or 210 cannot be made applicable, until and unless the accounts are audited and the balance-sheet is prepared even the assessee may not know whether the provision of section 115J would be applicable or not. The liability would be after the book profits are determined in accordance with the Companies Act. The words "for the purposes of this section" in the Explanation to section 115J(1A) are relevant and cannot be construed to extend beyond the computation of liability of tax. Accordingly, we are of the view that the Income-tax Appellate Tribunal was not justified in directing to charge interest under sections 234B and 234C of the Income-tax Act. This question No. 2 is therefore answered in favour of the assessee and against the Revenue.

Thus, it is apparent that the controversy which is raised by virtue of the second question, stands concluded by the aforesaid decision. In the circumstances, it is not necessary to set out the facts and contentions in detail.

12. Following the decision of the Karnataka High Court in the case of Kwaliti Biscuits Ltd. v. C.I.T. (supra) as affirmed by the Supreme Court in the case of C.I.T. v. Kwaliti Biscuits Ltd. (supra), the question is answered in the affirmative, that is, the Income Tax Appellate Tribunal was right in law in upholding the order of the CIT(A) directing not to charge interest under section 234B and 234C of the Act since the total income was determined under section 115J of the Act.

13. In the light of the aforesaid discussion, the appeal is dismissed with no order as to costs."

5. The facts in the above-referred Tax Appeal and in this appeal are identical and therefore, we are following the decision rendered in the aforesaid Tax Appeal and do not deem it necessary to give elaborate reasons for disposing of this appeal.

6. In view of the aforesaid, the question raised in this appeal is answered in favour of the assessee and against the Revenue. The appeal is, accordingly, dismissed.