

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 17TH DAY OF SEPTEMBER 2009

PRESENT

THE HON'BLE MR.JUSTICE D.V. SHYLENDRA KUMAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

ITA No.750/2008

BETWEEN:

1. The Commissioner of Income-Tax,
C.R. Building,
Queens Road,
Bangalore
 2. The Asst. Commissioner of Income-Tax,
Circle -12(1)
C.R. Building,
Queens Road,
Bangalore.
- ...Appellants.

(By Sri.K.V. Aravind, Standing Counsel for the
Revenue)

AND:

M/s. Mysore Breweries Ltd.,
Jalahalli Camp Road,
Yeshwanthpur,
Bangalore - 560 022.

...Respondent.

(By Sri.R. Shivacharan, Adv.)

This Income Tax Appeal is filed under 260-A of I.T. Act 1961 arising out of the order dated 08-02-2008 passed in I.T.A.No.458/BNG/2007, for the assessment year 2003-2004, praying to (i) formulate the substantial questions of law stated therein (ii) allow the appeal and set aside the order passed by the ITAT Bangalore in ITA.No.458/BNG/2007, dated 08-02-2008 confirm the orders of the Appellate Commissioner and Assistant Commissioner of Income, Circle -12(1), Bangalore.

This Income Tax Appeal coming on for hearing this day, **SHYLENDRA KUMAR. J.**, delivered the following: -

JUDGMENT

This Appeal by the Revenue is against the order dated 8.02.2008 passed in ITA.No.458/BNG/2007 by the ITAT, Bangalore, in respect of the respondent - M/s. Mysore Breweries Ltd., the assessee.

2. The respondent - assessee is a company. The assessment year in question is pertaining to 2003-2004 and the dispute related to the ascertainment of book profits of the company for the purpose of Section 115 JB of the Income Tax Act, 1961 (for short 'the Act').



3. While the assessee was successful before the Tribunal in getting rid the addition of a sum of Rs.53 lakhs, which in the opinion of the Assessing Officer was an amount which was required to be added back in terms of Clause (c) of Explanation 1 to sub-section (2) of Section 115 JB, the First Appellate Authority as well as the Tribunal opined that it is not an amount which fits into this particular clause and therefore does not get back into the quantification of the book profits of the assessee, which in turn would result in the reduction of the tax liability of the assessee to that extent.

4. While the Revenue has carried the matter to this Court by way of appeal under Section 260-A of the Act, Sri. Aravind, learned Standing Counsel for the Revenue points out that there is an intervening development, such as a change of law, brought about by Section 46 of Finance (No.2) Act, 2009, whereby, to the provisions of Section 115 JB and to the clauses in the series (a) to (h) as figured earlier occurring in the



Explanation, one more clause viz., clause (i) had come to be inserted by this amendment which reads as follows :-

*"(i) the amount or amounts set aside as provision for diminution in the value of any asset,
if any amount referred to in clauses (a) to (l) is debited to the profit and loss account, as as reduced by, - "*

and in this view of the development of law, learned Standing counsel for the Revenue would submit that the question is now squarely covered by the statutory provisions and it virtually pre-empts a debate which otherwise would have been necessitated.

5. Learned Standing Counsel would also point out that a consequence of this nature has been taken note by this Court to the changes brought about in the provisions of Section 115JA of the Act by the very Finance Act as per the provisions of Section 44 of this Act, whereunder an additional clause (g) had come to be inserted corresponding to the present clause (i) in

Section 115JA and because of the insertion of clause (g) therein as one of the clauses to the Explanation to sub-section (2) of Section 115JA.

6. The amendment having retrospective effect w.e.f. 1.4.1998 and the assessment being of the year 2003-2004, the amendment necessarily covers this period and therefore, the question has to be answered in favour of the Revenue and against the assessee.

7. We have heard Sri. Shivacharan, learned counsel for the respondent-assessee on this aspect and while the learned counsel would submit that *prima facie* though the view taken by this Court in the earlier appeal in ITA.No.113/2007 disposed of on 9.9.2009, appears to be the legal position and that covers this case also and would nevertheless request some more time to make further submissions.

8. We are not inclined to grant time as prayed for by the learned counsel for the assessee to contribute further to the debate as we find no further scope and hence we decline the request for further



adjournment and dispose of the appeal answering the question in favour of the Revenue and against the Assessee only on the basis of the amendment.

9. Accordingly, the appeal is **allowed**.

Sd/-
JUDGE

Sd/-
JUDGE

NG*