

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO

&

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

TCA.No.359 of 2008

Commissioner of Income Tax III,
Chennai

Appellant

Vs

M/s Metal & Chromium Plater(P) Ltd,
New No.26, Old No.10, Adya Club Rd,
Raja Annamalaipuram,
Chennai 600 028.

Respondent

Prayer: Tax case (Appeal) filed under Section 260A of the Income Tax Act against the order the Income Tax Appellate Tribunal, Madras "B" Bench, dated 25.10.2007 in ITA No.2115/Mds/2006.

For Appellant : Mr. T.R.Senthilkum
Senior Standing Counsel (I.T)
For Respondent : Mr T.Poornam

J U D G M E N T

[Judgment of the Court was made by Anita Sumanth, J.]

1. The assessment year is 2003-2004. We are called upon to decide the following substantial question of law admitted for our consideration.

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that Capital

gains which form part of the net profit is the profit and loss account of the assessee company, should not be taken into account for calculation of tax on book profits as per section 115JB of the Act?"

2. An assessment was completed in terms of Section 143(3) of Income Tax Act, whereunder, the assessee had preferred a claim for exemption u/s 54EC of the Income tax Act (hereinafter referred to as 'Act'). The assessing officer does not question the eligibility of the assessee to such exemption in regular computation. In so far as the tax payable as per regular computation was less than 7.5% of the Book Profits, the provisions of Minimum Alternate Tax (MAT) stood attracted. While processing the computation of tax in terms of Section 115JB of the Act, the assessing officer was of the view that the assessee was not entitled to the grant of relief u/s 54EC of the Income Tax Act.

3. Placing reliance on the judgment of the Supreme Court in the case of **Apollo Tyres Ltd vs CIT (255 ITR 273)** and Bombay High Court in the case of **Commissioner of Income Tax Vs. Veekaylal Investments (P) Ltd (249 ITR 597)** the claim under section 54EC was rejected for the purpose of computation of tax under Section 115 JB of the Act.

4. Appeals before the Commissioner of Income Tax (Appeals) and the Income tax Appellate Tribunal, at the instance of the Assessee and thereafter the Revenue were decided in favour of the Assessee vide orders dated 20.6.2006 and 25.10.2007 respectively which are assailed in appeal before

us in terms of Section 260 A of Income Tax Act.

5. We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel appearing for the appellant and Mr T.Poornam, learned counsel appearing for the respondent assessee.

6. The allowance or otherwise of the claim under Section 54AC has to be seen in the context of the provisions of Section 115 JB which is a self contained code of assessment. The levy of tax is on the 'book profits' after effecting various upward and downward adjustments as set out in terms of the Explanation thereto. The provisions of sub-section (5) of s.115 JB open the assessment to the application of all other provisions contained in the Income tax Act except if specifically barred by that section itself. S.115 JB (5) reads as follows;

'(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.'

7. Thus, the adjusted book profits would be further eligible to the benefits set out in the other provisions of the Act and the plain language of Section 115 JB thus admits of the grant of relief under section 54 EC in an assessment thereunder. We now deal with the case law relied upon by the Assessing officer in denying relief to the assessee. The Supreme Court, in the case of Apollo Tyres, (supra) is to the effect that the assessing officer is not empowered to embark on an enquiry with regard to the entries in the profit and loss account maintained in accordance with the provisions of the

Companies Act 1956 and approved in the AGM except to the extent of effecting modifications in accordance with the Explanation to section 115J. The Bombay High Court in the case of Veekaylal Investments (supra) considers the inclusion of capital gain for the purposes of assessment under section 115 J. Both judgements are rendered in the context of Section 115 J which does not contain a provision analogous to sub-sections (4) of section 115 JA or (5) of section 115 JB of the Act. Thus while an assessment u/s 115J would be concluded exclusively on the basis of the book profits as adjusted by the items set out in the Explanation thereunder, in an assessment in terms of sections 115 JA or JB, the adjusted book profits would be further subjected to the effect of other provisions of the Act that are specifically brought into play by virtue of sub-sections (4) of section 115JA and (5) of section 115JB.

8. Reliance of the learned standing counsel on the decision of the Division Bench of the Kerala High Court in the case of **N.J.Jose and Co.(P) Ltd. vs. Asst. Commissioner of Income Tax and another (321 ITR 133)** is also distinguishable for the same reason as aforesaid.

9. In view of the above discussion, the substantial question of law is answered against the Revenue and in favour of the assessee. The departmental appeal is dismissed without costs.

(N.R.R.J.,) (A.SM.J.,)

09.11.2016

msr

NOOTY. RAMAMOohana RAO, J.

&

ANITA SUMANTH, J.

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