

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.02.2013

+ ITA 20/1999

O.B.C. Appellant

versus

COMMR. OF INCOME TAX-1 & ANR. Respondent

Advocates who appeared in this case:

For the Appellant : Mr Rajat Navet, Advocate.

For the Respondent : Mr Sanjeev Sabharwal, Sr. Standing Counsel with Mr Puneet Gupta, Jr. Standing Counsel.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

This appeal under section 260A of the Income Tax Act, 1961 has been filed by the assessee being aggrieved by the order dated 23.02.1999 passed by the Income Tax Appellate Tribunal, New Delhi in ITA No.331/Del/93 relating to the assessment year 1989-90. On 29.10.1999 this Court had framed the following questions for consideration: -

- “1. Whether Section 115-J is applicable to a banking company?”

2. Whether the phrase “ascertained liability” as used in Explanation (c) of Section 115J(1A) of the Income Tax Act, 1961 includes in its sweep, the entire amount set aside for payment of bonus or merely the actual payment of bonus?
3. Whether on the facts and circumstances of the case the Tribunal was right in holding that the following items were unascertained liabilities and were, therefore, rightly added back to the book profits of the assessee by invoking Section 115-J(1A) read with Explanation (c) of the Act?
 - a) Rural Branches-provision for bad and doubtful debts 2,30,34,000
 - b) Reserve for bad and doubtful debt further provision 6,56,00,000
 - c) Reserve for bad & doubtful debts 5% of taxable income 30,00,000”

2. The learned counsel for the appellant/ assessee submitted at the outset that question Nos.2 & 3 are covered in favour of the assessee. In so far as question No.2 is concerned, he placed reliance on the decision of the Bombay High Court in the case of **CIT vs. Echjay Forgings Pvt. Ltd.:** (2001) 251 ITR 15 (Bom.) where the Bombay High Court considered the question as to whether the net profit was required to be increased by an amount of ₹3,46,370/- being the provision for bonus while considering

computation under section 115J of the said Act. The Bombay High Court observed as under: -

“IV. Whether the net profit was required to be increased by an amount of ₹3,46,370/- being the provision for bonus:

The assessee has shown that it was liable to pay bonus under the Payment of Bonus Act. Accordingly, it provided for payment of bonus to the employees. Therefore, it cannot be said that the provision for bonus amounting to ₹3,46,370/- is not an ascertained liability till it is actually paid to the employees.”

3. We see no reason to take a different view from that adopted by the Bombay High Court. However, Mr Sabharwal, appearing on behalf of the revenue, raised a pointed question as to whether, in fact, the provision for payment of bonus in this case was actually an ascertained liability. He raised this issue because, according to him there is a suggestion given in the Tribunal's order that the provision for payment of bonus was a mere estimation as would be apparent from paragraph 7.1 of the impugned order. However, the learned counsel for the assessee categorically submitted that the provision for payment of bonus was computed on the basis of the provisions of the Payment of Bonus Act, 1965 and, therefore, it was an ascertained liability. The position in law is clear that if the provision for bonus had been computed on the basis of

Payment of Bonus Act, 1965 then it would be an ascertained liability. However, if it was only an estimation then it could not be regarded as an ascertained liability. Since, the position is not clear on facts, we direct that the assessing officer should determine as to whether the computation of the provision for bonus was on the basis of Payment of Bonus Act, 1965. If so, the said provision would have to be treated as an ascertained liability. On the contrary, if he finds the provision for payment of bonus was not in accordance with the provisions of the Payment of Bonus Act, 1965 and it was merely an estimation then the original assessment of the assessing officer would hold. The question No.2 is answered accordingly.

4. In so far as question No.3 is concerned, the learned counsel for the appellant/ assessee submitted that it was covered by the decision of the Supreme Court in the case of **Commissioner of Income Tax vs. HCL Comnet Systems and Services Ltd.:** (2008) 305 ITR 409 (SC). We find that this submission of the learned counsel for the appellant is well founded particularly in respect of the year in question, that is, assessment year 1989-90. Accordingly, question No.3 is decided in favour of the assessee/ appellant and against the revenue.

5. In view of the aforesaid answers to question Nos.2 & 3 the learned counsel for the appellant submits that he does not press question No.1. Accordingly, all the questions pressed before us are answered and the appeal is allowed to the aforesaid extent.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

FEBRUARY 14, 2013
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