

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 100 of 2006

Commissioner of Income Tax. Appellant

Versus

M/s Premium Taxcons Pvt. Ltd. Respondent

Mr. Arvind Vashishth, Advocate for the appellant.
Mr. S.K. Posti, Amicus Curiae for the respondent.

JUDGMENT

Coram: Hon’ble J.S. Khehar, C.J.
Hon’ble Tarun Agarwala, J.

J.S. KHEHAR, C. J. (Oral)

Through the instant Appeal, the Revenue has assailed the order passed by the Income Tax Appellate Tribunal dated 28.02.2006 (while disposing of ITA No. 3612/Delhi/01), pertaining to the assessment of M/s Premium Taxcons Pvt. Ltd., Danpur, Rudrapur, District Udham Singh Nagar, Uttaranchal for the assessment year 1998-1999.

2. It is not a matter of dispute that the controversy raised by the Revenue in the instant Appeal pertains to “book profit”. It is also not a matter of dispute that the controversy is to be adjudicated in terms of the mandate of section 115JA of the Income Tax Act, 1961 (hereinafter referred to as the “Act”). Section 115JA (aforementioned) is being extracted hereunder:

“115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but before the 1st day of April 2001 (hereinafter in this section referred to as the relevant previous year) is less than thirty 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 thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956) :

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of such financial year falling within the relevant previous year.

Explanation.- 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 (2), as increased by-

- (a) the amount of income-tax paid or payable, and the provision therefor; or
- (b) the amounts carried to any reserves by whatever name called; or
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- (d) the amount by way of provision for losses of subsidiary companies; or
- (e) the amount or amounts of dividends paid or proposed; or
- (f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

If any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by,-

- (i) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account:

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but ending before the 1st day of April, 2001 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation*; or

- (ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or
- (iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.- For the purposes of this clause,-

- (a) the loss shall not include depreciation;
- (b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is *nil*; or
- (iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or
- (v) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in sub-section (4) and sub-section (5) of section 80-IB, for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the profits and gains under sub-section (4) or sub-section (5) of section 80-IB; or
- (vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility as defined in the *Explanation* to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that sub-section; or
- (vii) the amount of profits of sick industrial company for the assessment year commencing from the assessment years relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.- For the purposes of this clause, “net worth” shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); [or]

- (viii) the amount of profits eligible for deduction under section 80HHC, computed under clause (a), (b) or (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in sub-sections (4) and (4A) of that section;
- (ix) the amount of profits eligible for deduction under section 80 HHE, computed under sub-section (3) of that section.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) 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.”

3. The solitary contention of the learned counsel for the appellant is based on sub-section (4) of section 115JA. Based on the aforesaid sub-section, it is the vehement submission of the learned counsel for the appellant, that all the provisions of the Act will be deemed to be applicable for determining “book profit”, besides the express provisions of Section 115JA.

4. On first blush, the instant submission seems to be justified, inasmuch as, sub-section (4) clearly mandates that the provisions of Section 115JA will be read in addition to other provisions of the Act. The aforesaid however has a rider, namely, unless expressly provided otherwise. Insofar as the issue of “book profit” is concerned, we have been called upon to determine, whether the explanation under section 115JA (2) of the Act will have to be accepted as the exclusive basis for determining “book profit”, or whether, the same is determinable on the basis of other provisions of the Act. Having given our thoughtful consideration to the aforesaid contention of the learned counsel for the appellant, we are satisfied, that the explanation under sub-section (2) of Section 115JA of the Act leaves no manner of doubt that the term “book profit” has been exhaustively defined therein, so as to include one of the six eventualities referred to therein. Since, admittedly, the revenue income sought to be included by the appellant in the income of the respondent (assessee) does not fall within anyone of the six eventualities delineated in the explanation under Section 115JA (2) of the Act, we are satisfied that the Income Tax Appellate Tribunal was fully justified, in not accepting the plea of the Revenue, to include the income received by the assessee, which had earlier been written off as a bad debt, as a part of the “book profit”.

5. For the reasons recorded herein above, we find no merit in this appeal and the same is accordingly dismissed.

(Tarun Agarwala, J.)
14.12.2009

(J.S. Khehar, C. J.)
14.12.2009

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