

IN THE HIGH COURT OF KARNATAKA, BENGALURU
DATED THIS THE 9TH DAY OF NOVEMBER, 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

ITA NO.172/2016

BETWEEN:

M/S B & B INFRA TECH LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
HAVING ITS OFFICE
NO.17, 4TH FLOOR
SHAH SULTAN APARTMENT
ALI ASKER ROAD
BANGALORE-560 052
REP. HEREIN BY ITS DIRECTOR
MR. BHARAT BHANDARI

....APPELLANT

(BY SRI.C.K.NANDA KUMAR, ADVOCATE)

AND:

INCOME TAX OFFICER
WARD 12(1), BANGALORE
NO.14/3, 4TH FLOOR
RASHTROTHANA BHAVAN

(OPP. RBI), NRUPATHUNGA
ROAD, BANGALORE-01.

...RESPONDENT

(BY SRI.K.V. ARAVIND, STANDING COUNSEL)

THIS APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 07.10.2015 PASSED IN ITA NO.726/BANG/2014, FOR THE ASSESSMENT YEAR 2005-2006.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **JAYANT PATEL J**, DELIVERED THE FOLLOWING :

ORDER

Learned counsel appearing for appellant has tendered a memo dated 03.11.2016 for putting on record the corrigendum for change of name and title before the Tribunal. Same is taken on record.

2. Appellant - assessee has preferred the present appeal by raising following substantial questions of law:

(a) Whether the Tribunal was right in characterizing both capital receipts and revenue receipts in a like manner for the computation of book

profits under Section 115 JB of the Income Tax Act, 1961?

(b) Whether the Tribunal was right in confirming that the computed book profit was to include amounts that were excluded under the Section 2(24) of the Income Tax Act and hence holding that the Minimum Alternate Tax would enlarge the scope of the "INCOME" under the Income Tax Act, 1961?"

(c) Whether the Tribunal was right in declining to accept the documents requested by the assessing officer on the ground that the production of documents amounts to production of additional evidence?"

3. However, in our considered view, only question which may be required to be considered is"

"Whether the profit shown in the books of account for the purpose of taxable liability as per the provisions of Section 115JB of the Income Tax Act, 1961 can be altered on any subject or item which otherwise is not falling in the explanation to Section 115JB of the Act?"

4. We have heard Mr. C.K.Nandakumar, learned counsel appearing for appellant and Mr.K.V.Aravind, learned counsel appearing for respondent.

5. Brief facts are that assessee filed return and submitted books of accounts. In the books of accounts submitted by the assessee, as per the profit and loss account, profit shown was of Rs.43,97,427/-. However, in the schedule under the head 'other income', assessee claimed deduction of Rs.43,00,000/- as capital receipt and filed 'Nil' return. In the assessment proceedings, assessing officer by order dated 24.12.2007 found that 'Book Profit' is defined under Section 115JB of the Act and Section 115JB of the Act is a self contained code and will apply notwithstanding any other provisions of the Income Tax Act. There is no scope of any deduction under any other head than provided by way of

explanation under Section 115 JB of the Act. Assessing Officer ultimately treated the book profit shown as per profit and loss account of Rs.43,97,427/- for the purpose of applying tax, rate at 7.5% and further consequential surcharge and education cess and interest, assessed amount of tax payable including interest of Rs.6,11,341/-.

6. Assessee carried the matter in appeal before CIT (Appeals). It appears that CIT (Appeals) concurred with the view of the assessing officer by relying upon the decision of Apex Court in the case of **APOLLO TYRES LTD. vs COMMISSIONER OF INCOME TAX, KOCHI AND OTHERS** reported at **255 ITR 273** and found that book of profits arrived at as per the provisions of Income Tax Act cannot be tinkered with. Matter was further carried in an appeal before the Tribunal and Tribunal in the conclusion, at paragraph 7, observed thus:

“7. we have considered the rival submissions as well as relevant material on record. The amount of Rs.43 lakhs pertains to remission of liability under one time settlement of outstanding loan with ING Vysya Bank. The assessee has prepared its P & L A/c by including this amount as income. However, the assessee has contended that this amount should be excluded for the purpose of computing book profits u/s 115JB of the Act. The assessee has placed reliance on various judgments as referred above. We note that the ratio of the decisions relied upon by the assessee is based on the premise that if an item of income or expenditure is required as per Part II of Schedule VI of the disclosed in the P & L A/c and has been disclosed in the notes forming part of the accounts, then the said disclosure in the notes to the accounts would be treated as disclosure of that particular item of income or expenditure as the case may be, in the P & L A/c for the purpose of book profits u/s 115JB. In the case in hand, the assessee got remission of liability of Rs.43 lakhs under one time settlement by the ING Vysya Bank which has been disclosed by the assessee in the P & L A/c. This disclosure, in the P & L A/c is strictly as per the requirement of Schedule VI of the Companies Act and further in

conformity with the mandatory accounting standard AS 5. Therefore, the treatment of the amount in the books of account and particularly in the P & L A/c, is as per the provisions of Schedule VI of the Companies Act as well as accounting standard AS 5. Hence, any disclosure in the notes to accounts would not require any change in the P & L A/c already prepared as per Schedule VI of the Companies Act. The decisions relied upon by the assessee are applicable on the facts and circumstances where if an item of income or expenditure which is required to be disclosed in the P & L A/c prepared as per provisions of Schedule VI of the Companies Act but instead of disclosing the said item in the P & L A/c, it was disclosed in the notes to the accounts, then such item of income or expenditure will be treated as part of the P & L A/c for the purpose of computing book profits u/s 115JB. Once P & L A/c is admittedly prepared as per Schedule VI of the Companies Act, the neither the AO has any power to tinker with it nor the assessee is permitted to claim exclusion or inclusion of any item of income or expenditure as the case may be, for the purpose of computing book profits u/s 115JB except the permissible adjustment provided under the Explanation to Section 115JB of

the Act itself. It is not disputed that this amount does not fall in the ambit of any of the clauses of Explanation to 115JB. Therefore, once this amount has been disclosed in the P & L A/c prepared strictly as per provisions of Schedule VI of the Companies Act, the same cannot be excluded for the purpose of computing book profits u/s 115JB. We find that the CIT (A) has rejected the claim of the assessee by following the judgment of the Hon'ble Supreme Court in the case of Apollo Tyres (supra) as well as the Hon'ble Bombay High Court in the case of CIT vs. HCL Comnet Systems & Services Ltd. (305 ITR 409). Accordingly, in the facts and circumstances of the case as well as above discussion, we do not find any error or illegality in the impugned order of the CIT (A)."

The Tribunal accordingly dismissed the appeal. In the circumstances, present appeal before this Court is filed.

7. At this stage, we may usefully refer to the decision of Apex Court in the case of **APOLLO TYRES LTD vs. COMMISSIONER OF INCOME TAX, KOCHI**

AND OTHERS reported in **2002(9) SCC page 1** wherein at paragraphs 7 & 8 it was observed thus:

“7. The above speech shows that the Income Tax Authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that Section 115-J was introduced in the IT Act with a deeming provision which makes the company liable to pay tax on at least 30% of its book profits as shown in its own account. For the said purpose, Section 115-J makes the income reflected in the companies' books of accounts as the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Part II and III of Schedule VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the IT Act has to accept the authenticity of the accounts with reference to the provisions of the

Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the Revenue that it is still open to the Assessing Officer to re-scrutinize this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. In our opinion, reliance placed by the Revenue on Sub-section (1-A) of Section 115-J of the IT Act in support of the above contention is misplaced. Sub-section (1-A) of Section 115-J does not empower the assessing officer to embark upon a fresh inquiry 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 account in accordance with the requirements of the Companies Act which mandate,

according to us, is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of Section 115-J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There can not be two incomes one for the purpose of Companies Act and another for the purpose of income tax both maintained under the same Act. If the legislature intended the assessing officer to reassess the company's income, then it would have stated in Section 115-J that "income of the company as accepted by the assessing officer". In the absence of the same and on the language of Section 115-J, it will have to be held that the view taken by the tribunal is correct and the High Court has erred in reversing the said view of the tribunal.

8. Therefore, we are of the opinion, the assessing officer while computing the

income under Section 115-J 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 of making 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 profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J.”

The aforesaid shows that as per the view taken by Apex Court, books of accounts certified by the authorities under the Companies Act for the purpose of computing income is to be accepted as per Section 115JB of the Act and the increase or reduction is permissible only to the extent provided under explanation to the said Section. To put it differently, there is no jurisdiction for the assessing officer to go beyond the profit shown in

the 'profit and loss account' except to the extent provided in the explanation to Section 115JB of the Act.

8. Learned counsel appearing for appellant attempted to contend that while giving the treatment to profit and loss account, one has to see the taxable liability of the income. According to him, capital receipts cannot be termed as 'profit' for the purpose of income tax and therefore if it was not liable to be added as income for the purpose of income tax Act or there is no taxable liability as it is not a business income and therefore the adjustments made or deduction claimed as per the statement should be accepted irrespective of the fact that whether it falls under the explanation of Section 115JB of the Act or not. Whereas, Mr. Aravind, learned counsel appearing for respondent – revenue contended that Section 115JB of the Act is having overriding effect over any other provisions of the Act and

it is a complete code by itself. Assessing officer is bound to treat profit as per profit and loss account in the account prepared by the assessee as per the companies Act and such amount of profit can either be reduced or added if any of the conditions specified in the explanation to Section 115JB are satisfied, otherwise not. Hence, he submitted that there is no substance in the appeal.

9. In our view, Tribunal has rightly found that issue is already covered by the decision of Apex court in the case of Apollo Tyres supra. Of course, Tribunal has referred to another decision of Bombay High Court. In our view, when the provisions of Section 115JB of the Act has overriding effect upon other provisions of the said Act and when the mechanism or operation of the area is a complete code by itself, any deduction which is otherwise not provided by the explanation would be

outside the scope of operation of Section 115JB of the Act. We do not find that Tribunal has committed any error. Therefore, substantial questions of law stand answered in favour of the revenue and against the assessee. Appeal is disposed of accordingly.

**SD/-
JUDGE**

**SD/-
JUDGE**

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