IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1609 OF 2013

The Commissioner of Income Tax, Central-1,
Mumbai. … Appellant
v/s
M/s. Forever Diamonds Pvt. Ltd., Mumbai … Respondent

Mr.P.C. Chhotary for the appellant.

Mr.Atul Jasani for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 12TH AUGUST 2015

P.C.:

This appeal by the revenue challenges the order dated 23 January 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2004-05.

2 The revenue urges the following question of law for our consideration :

Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal was correct in holding that the Assessing Officer has no power to recast the profit and loss account even when the same is, according to him, not correctly prepared in accordance with Schedule VI to the Companies Act, 1956 ?

3 The grievance of the revenue is that, when according to the Assessing Officer the accounts as prepared and as audited are manifestly in conflict with the manner in which the accounts have to be prepared under the Companies Act, then it is open to the Assessing Officer to recast the accounts for the purposes of Section 115JB of the Act. The Tribunal, by the impugned order negatived the revenue's contention by relying upon the decision of the Supreme Court in ***Apollo Tyres Ltd. v/s C.I.T.,*** reported in ***255 ITR 273***. It has very pertinently quoted the following observations from ***Apollo Tyres Ltd.*** in the impugned order as under:

> *"The Assessing Officer, while computing the book profits of a company under section 115J of the Income Tax Act, 1961, 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 section 115J. The Assessing Officer does not have the jurisdiction to go behind the net profits shown in the profit and loss account except to the extent provided in the Explanation. The use of the words "in accordance with the provision of Parts II and III of Schedule VI to the Companies Act" in section 115J was made for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the*

> *company, the Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by that Act and the same to be scrutinized and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company."*

The aforesaid observations of the Apex Court concludes the issue by holding that the Assessing Officer does not have a power to embark upon the fresh enquiry with regard to the entries made in the books of accounts of the Company when the accounts of an assessee Company is prepared in terms of Part II Schedule VI of the Companies Act scrutinized and certified by the statutory auditors, approved by the Company in general meeting and thereafter filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. Thus, the issue is no longer *res integra*. Moreover, if the grievance of the revenue is to be accepted, then the conclusiveness of accounts prepared and audited in terms of Section 115JB of the Companies Act would be set at naught. This without successfully impeaching the Auditor's certificate or without the Registrar of Companies holding that the accounts have not been prepared in accordance with the provisions of the Companies Act.

4 Mr.Chhotaray, learned counsel for the revenue submitted that ***Apollo Tyres Ltd.*** (supra) was dealing with Section 115J of the Act, while this appeal deals with Section 115JB of the Act, therefore not applicable. However, we do not find any such distinction which could warrant the Assessing Officer ignoring the decision of the Apex Court in ***Apollo Tyres Ltd.*** *(supra)* while applying the provisions of Section 115JB of the Act which, according to us, are similar in nature to the provisions of Section 115J of the Act. It may also be noted that no such distinction was sought to be made either before the Tribunal or raised in the grounds of appeal filed before us.

5 It is also pertinent to note that while correcting this order dictated in Court, we found that in the grounds of appeal taken before us, the revenue concedes that the reliance in the impugned order on the decision of this Court in ***C.I.T. v/s Adbhut Trading Co. (P) Ltd.,*** reported in ***338 ITR 94***, would conclude the issue. However, the grounds mention that the same need not be followed as it is not accepted by the revenue, although no appeal was filed to the Apex Court in view of low tax effect. In spite of the very issue being concluded by an order of this Court in respect of Section 115JB of the Act, the same was not pointed out at the hearing. Instead the counsel for the revenue insisted on seeking to make distinction between Sections 115JB and 115J of the Act without pointing out the decision of this Court in ***Adbhut Trading*** (supra) and taking up the Court's time. We expect the counsel

appearing before us to be candid and when matters are covered by orders of this Court or the Apex Court and to state so. This would ensure quicker disposal of matters.

6 In view of the above, as the issue stands settled by the decision of the Apex Court in ***Apollo Tyres Ltd.*** (supra), and of this Court in ***Adbhut Trading*** (supra), the question as proposed does not give rise to any substantial question of law. Accordingly, appeal dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***