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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1132 OF 2014

Commissioner of Income Tax-4 ..Appellant
Versus
M/s. Harinagar Sugar Mills Ltd. ..Respondent

....
Mr. Suresh Kumar for the Appellant.
Ms. A. Vissanji i/b. Mr. S. J. Mehta for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 4th JANUARY, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st January, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-09.

2. This appeal raises the following questions of law for our consideration :-

> *"(i) Whether on the facts and in the circumstance of the case and in law, the Tribunal is correct in holding that subsidy received as Excise Duty reimbursement is not a revenue receipt?*

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in upholding the order of Commissioner of Income Tax (Appeals) in directing the Assessing Officer to delete the addition made to book profits on account of subsidy received by way of excise duty?"

3. **Regarding question no.(i):-**

(a) It is undisputed position before us as also before the Tribunal that the subsidy scheme formulated by the Government of Bihar was for the purpose of attracting capital investment and to encourage setting up/expansion of existing units. Thus the object/purposes of the subsidy was for the purposes of encouraging capital investments in the State of Bihar. Consequently the impugned order holds that subsidy would be on Capital account and could not be considered to be on Revenue account.

(b) In fact this issue about the object/purpose of the subsidy deciding its character as revenue or capital is no longer res integra in view of the decision of the Supreme Court in CIT, Madras v/s. Ponni Sugars & Chemicals Ltd. (2008) 9 SCC 337 and in Civil Appeal No.10666 of 2013 (CIT v/s. M/s. Shree Balaji Alloys) rendered on 19th April, 2016. Thus the test has been correctly applied by the Tribunal in accordance with the above decisions.

(c) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus not entertained.

4. **<u>Regarding question no.(ii):-</u>**

(a) The issue raised in this question is consequential to question no.(i). We have already held that the subsidy received by the respondent-assessee from the State of Bihar was in the nature of capital receipt. Hence the same cannot be added to arrive at book profits of the respondent-assessee under Section 115J of the Act.

(b) However, it is pertinent to note that the question as proposed also seeks addition to book profits on account of excess depreciation along with subsidy received by the respondent-assessee. It is settled position in law as held by the Apex Court in ***Apollo Tyres Ltd. v/s. CIT 255 ITR 273*** that the Assessing Officer while computing the book profit under Section 115J of the Act has only a power to examine whether the books of account have been maintained in accordance with the provisions of the Companies Act and have been duly audited. The book profits as reflected in the duly audited account have to be accepted by the Assessing Officer and the only limited power he has to increase/ decrease the book profit as arrived at by the assessee is only in terms of the Explanation to Section 115J of the Act.

In the present case, the Revenue is not invoking the explanation to Section 115J of the Act to vary the book profit declared in the audited accounts of the respondent-assessee. Thus, the question as proposed herein does not give rise to any substantial question of law as it also stands concluded against the Revenue by the decision of the Apex Court in Apollo Tyres Ltd. (supra).

5. In the above view, question no.(ii) as proposed is not entertained.

6. Appeal is dismissed. No orders as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa