IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.12.2018

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THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case (Appeal) No.743 of 2009

The Commissioner of Income Tax
Coimbatore. .... Appellant / Respondent

Vs.

M/s.Bannari Amman Spinning Mills Limited
252, Mettupalayam Road,
Coimbatore - 641 043. .... Respondent / Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 20.08.2008 made in ITA No.191/Mds/2007 for the Assessment Year 1998-1999, against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore, dated 09/11/2006 made in ITA No.441/05-06 for the assessment year 1998-99 against the order of the Assistant Commissioner of Income Tax, Company Circle I(2)(i/c), Coimbatore dated 25.01.2006 made in PAN No.AAACB8513A/B-10 for the assessment year 1998-99.

For Appellant : Mr.T.R.Senthil Kumar
Sr. Standing Counsel

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

J U D G M E N T

(Delivered by DR.ANITA SUMANTH,J)

This Tax Case (Appeal) is filed by the Revenue as against the order passed by the Income Tax Appellate Tribunal, Madras dated 20.08.2008 made in ITA No.191/Mds/2007 in respect of Assessment Year 1998-1999 and has been admitted on the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that for the purpose of working out book profits under Section 115 JA arrears of depreciation included in the profit and loss appropriation account is to be taken note of?

(ii) Whether the arrears of depreciation which arose on account of the change in the method of computing depreciation from written down value method to straight line method from the assessment year 1998-1999 is to be allowed?"

2. An order of assessment was passed in terms of section 115 JA of the Income Tax Act, 1961 (in short, 'Act') on 25.01.2006, wherein an adjustment was made to the amount of depreciation claimed by the assessee.

3. The assessee had, in the present year changed the method of computing depreciation from written down value (WDV) method to straight line method. Consequent upon the change and based upon on the Accounting Standards issued by the Institute of Chartered Accountants of India, the arrears of depreciation in respect of the earlier years was also claimed in the present year.

4. The Assessing Authority was of the view that excess depreciation had been claimed in so far as the claim related to the arrears of depreciation and added back depreciation to the tune of Rs.1,16,21,660/-.

5. This assessment was challenged before the Commissioner of Income Tax (Appeals) (in short 'CIT(A)'), who vide order dated 09.11.2006 dismissed the appeal.

6. In second appeal, the Tribunal, applying the rationale of the judgment of the Supreme Court in the case of Apollo Tyres Ltd. V. Commissioner of Income Tax ((2002) 255 ITR 273) and CIT V. Kovai Maruthi Paper and Board Pvt. Ltd. (294 ITR 57) allowed the assessees' appeal on the ground that no adjustments could be made over and above the net profit that was computed by the assessee in its profit and loss account.

7. We have heard Mr.T.R.Senthil Kumar, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.R.Vijayaraghavan, learned counsel appearing for the respondent/assessee.

8. Section 115 JA is a complete code by itself falling within Chapter XII B of the Act setting out special provisions in relation to taxation of companies.

9. Section 115 JA provides for taxation of deemed income and provides for an assessment based on the 'book profits' laid before the company at its Annual General Meeting in accordance with the provisions of section 210 of the Companies Act, 1956.

10. The Explanation to the provision sets out the permissible upward and downward adjustments to the net profits in arriving at the taxable 'book profit' under section 115 JA.

11. The Full Bench of the Supreme Court in the case of Apollo Tyres Ltd. (supra) has specifically considered the power of the Assessing Officer to question the correctness of the profit and loss account concluding that the power/discretion of the Assessing Officer to make an adjustment to the net profit will be limited to those items mentioned in the Explanation and it is not open to him to re-scrutinise the accounts or to go behind the net profit as shown in the profit and loss account.

12. In the light of the above, the conclusion of the Tribunal to the effect that no adjustments could be made to the depreciation is unavailable.

13. The substantial questions of law are answered in favour of the assessee and against the Revenue.

14. The Tax Case (Appeal) is dismissed. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1) The Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai

2) The Commissioner of Income Tax, Coimbatore.

3) The Commissioner of Income Tax (Appeals)-I, Coimbatore.

4) The Assistant Commissioner of Income Tax,
Company Circle I(2)(i/c), Coimbatore.

+1cc to Mr.T.R.Senthilkumar, Advocate, S.R.No.83878

Tax Case Appeal No.743 of 2009

VBA(CO)
SSM(02/01/2019)