

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 464 OF 2017

Pr. Commissioner of Income Tax -4 .. Appellant

Versus

Harinagar Sugar Mills Ltd .. Respondent

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• Mr. Suresh Kumar for the Appellant
.....

**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : JUNE 10, 2019.

P.C.:

1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal, Mumbai ("the Tribunal" for short) dated 12.4.2016.

2. Following questions are presented for our consideration:-

- "(i) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the order of the CIT(A) in directing the Assessing Officer to delete the addition on account of excess depreciation claimed by the assessee?
- (ii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that capital subsidy

received as excise duty reimbursement is not a revenue receipt?"

- (iii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the order of the CIT(A) in directing the Assessing Officer to delete the addition made to the book profit on account of excess depreciation and subsidy received by way of reimbursement of commercial tax (VAT)?"

3. In so far as Question No. (I) is concerned, we notice that similar issue had come up for consideration before this Court in Revenue's Income Tax Appeal No. 1710 of 2014 in case of this very assessee for earlier assessment year. While disposing of the appeal by an order dated 3.4.2017, the Court recorded that the learned counsel for the Revenue has instructions not to press this ground. This question is, therefore, not considered.

4. In so far as question Nos. (ii) and (iii) are concerned, the same were considered in case of this very assessee in Income Tax Appeal No. 1132 of 2014. By an order dated 4.1.2017 while disposing of the Revenue's appeal, the Court made following observations:-

"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. **Regarding question no. (ii):-**

(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 result, the appeal is dismissed.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]