

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 134 of 2000

Date of decision: February 05, 2020

M/s Gita Forging (P) Ltd.

.. Appellant

v.

Commissioner of Income Tax, Patiala and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Alok Mittal, Advocate for the appellant.
Mr. Rajesh Katoch, Senior Standing Counsel and
Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel for the
revenue.

...

AVNEESH JHINGAN, J.

By this common order, four appeals bearing ITA Nos. 120 and 134 of 2000, 8 of 2001 and 19 of 2002 are being disposed of as similar issue is involved. For the sake of convenience, facts from ITA No. 134 of 2000 have been taken. Following substantial questions of law have been claimed:

“(i) Whether in the facts and circumstances of the case, the orders Annexure P-1 and P-3 are legally sustainable?

(ii) Whether in the facts and circumstances of the case, on correct interpretation of Section 115J of the Income Tax

Act for determining the book profit, the appellant had the

option to adopt the depreciation rates prescribed in the Income Tax Rules, 1961 in preference to the rates prescribed in Schedule XIV of the Companies Act, 1956?

- (iii) Whether in the facts and circumstances of the case, the depreciation for purposes of Section 115J of the Income Tax Act had to be worked out as per Schedule VI of the Companies Act or as per the Income Tax Rules, and Income Tax Act?”

The relevant facts are that the assessee filed return for the assessment year 1990-91 showing nil income. The case was taken up for scrutiny. The assessment under Section 115J of the Income Tax Act, 1961 (for short, 'the 1961 Act') was framed on 31.12.1991 at an income of ₹1,80,450/-. The depreciation was allowed but only as per the provisions of the Companies Act, 1956 (for short, 'the 1956 Act'). The Appellate Authority vide order dated 20.4.1992 allowed the appeal and remanded the matter back to the Assessing Officer to re-compute the income by allowing depreciation for the written down value method and also by providing depreciation pertaining to the earlier years. The revenue preferred an appeal before the Tribunal, the same was allowed on 16.2.2000. It was held that the issue that depreciation is to be provided as per the provisions of the 1956 Act is concluded in favour of the revenue, the order of the Appellate Authority was set aside, hence the present appeal.

The issue in a narrow compass is whether while computing income under Section 115J of the 1961 Act, the depreciation is to be allowed only as the provisions of the 1956 Act and not as per the Income

Tax Rules, 1962 (for short, 'the Rules').

Learned counsel for the appellant argued that the matter is covered in favour of the assessee by a decision of this Court in **Commissioner of Income Tax v. Sona Woollen Mills (P) Ltd., (2008) 300 ITR 202.**

In the aforesaid judgment, this Court following the decision of the Supreme Court in **Apollo Tyres Ltd. v. CIT, (2002) 255 ITR 273** dis-agreed with the view taken by Kerala High Court in **CIT v. Dynamic Orthopedics (P) Ltd., (2002) 257 ITR 446 (Ker.)** and Madhya Pradesh High Court in **CIT v. Vandana Rolling Mills Ltd., (1998) 234 ITR 693 (MP)** holding that depreciation could not be calculated as per the provisions of the Rules.

In **Apollo Tyres Ltd.'s case (supra)**, the Apex Court dealt with the following question:

“Can an AO while assessing a company for income-tax under s. 115J of the IT Act question the correctness of the P&L a/c prepared by the assessee-company and certified by the statutory auditors of the company as having been prepared in accordance with the requirements of Parts II and III of Sch. VI to the Companies Act?”

The Supreme Court considered Section 115J of the 1961 Act, examined the objects of introducing the said provision, considered the budget speech and held as under:

“5.....we find it difficult to accept the argument of the Revenue that it is still open to the AO to re-scrutinise this account and satisfy himself that these accounts have been

maintained in accordance with the provisions of Companies Act. In our opinion, reliance placed by the Revenue on sub-s. (1A) of s.115J of the IT Act in support of the above contention is misplaced. Sub-s. (1A) of s. 115J does not empower the AO 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 IT 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 s. 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot 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 AO to reassess the company's income, then it would have stated in s. 115J that “income of the company as accepted by the AO. In the absence of the same and on the language of s. 115J, it will

have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

Therefore, we are of the opinion, the AO while computing the income under s. 115J 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 AO 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 AO does not have the jurisdiction to go behind the net profit shown in the P&L a/c except to the extent provided in the Explanation to s. 115J.”

The Supreme Court in **Malayala Manorama Co. Ltd. v. Commissioner of Income-Tax, (2008) 300 ITR 251** while dealing with the question: “Whether in respect of a company consistently charging depreciation in its books of account at the rates prescribed in the Income-tax Rules, the Income-tax Officer has jurisdiction under section 115J of the Income-tax Act, 1961, to rework net profits by substituting the rates prescribed in Schedule XIV to the Companies Act, 1956?” allowed the appeal of the assessee and set aside the view taken by Kerala High Court.

Learned counsel for the revenue was not able to dispute the above discussed legal position, however, placed reliance on a decision of this Court in ITA No. 78 of 2005-- **Commissioner of Income Tax I, Ludhiana v. M/s Oswal Sugar Limited**, decided on 2.11.2012 and argued that it has been held that the Assessing Officer is entitled to adjust the profit

where he finds that the profit is not determined as per Schedule VI to the 1956 Act.

The reliance on the aforesaid judgment is of no help to the revenue. The judgment of the Supreme Court in **Apollo Tyres Ltd.,'s case (supra)** was found to be not applicable in the facts of that case. The issue related to profit and loss not being determined in accordance with Part II and Part III of Schedule VI to the 1956 Act was the bone of contention whereas in the present case, the controversy is as to whether depreciation can be claimed as per the Rules or has to be restricted as per Schedule VI to the 1956 Act.

In view of the decision of this Court in **Sona Woollen Mills (P) Ltd.'s case (supra)**, the question is answered in favour of the assessee. The matter is remanded back to the Assessing Officer to compute the income under Section 115J of the 1961 Act in accordance with law.

The parties through their counsel are directed to appear before the Assessing Officer on 15.4.2020.

The appeals are disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

February 05, 2020
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No