IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA No. 19 of 2001
Date of decision: February 19,2020

M/s Sharman Udyog Pvt. Ltd.
.. Appellant

v.

Commissioner of Income Tax, Ludhiana 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.

The assessee is in appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the 1961 Act') against the order dated 22.6.2000 passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for short, 'the Tribunal') partly allowing the appeal of the revenue. Following substantial questions of law have been claimed in the appeal:

"(a) Whether in the facts and circumstances of the case, the orders Annexures P-1 and P-3 are legally sustainable?

(b) Whether in the facts and circumstances of the case, the assessee is entitled to charge arrears of depreciation due to a change in the method of providing depreciation for earlier years to the profit and loss account of the current year for the purpose of computing book profit U/s 115-J of the Act?

(c) Whether in the facts and circumstances of the case, "Book Profit" for purposes of Section 115-J of I.T. Act has to be calculated for arriving at the said figure had to be worked out as per schedule VI of the Companies Act and not as per the Income Tax Act and the Income Tax Rules?

(d) Whether in the facts and circumstances of the case on correct interpretation of Section 115-J of I.T. Act for determining the "Book Profit", the appellant had option to adopt depreciation rates prescribed in the Income Tax Rules, 1962 in preference to the rates prescribed in Schedule XIV of the Companies Act, 1956.

(e) Whether in the facts and circumstances of the case, the meaning of "Book Profit"appearing in Section 115-J of the I.T. Act, I.T.A.T. is legally correct in view of "booklet on Taxation of Companies" issued by Directorate of Income Tax, R. S. P and Public Relations, New Delhi?

(f) Whether Set-Off of business loss or unabsorbed depreciation whichever is less under Clause iv of explanation to sub section (IA) of Section 115-J can only be in respect of depreciation already provided for in the relevant assessment year as per the companies act or can

> the assessee choose the revised method for claiming unabsorbed depreciation of the earlier years?"

However, while arguing the matter, arguments have been addressed with regard to questions (b) and (c) which would cover the entire controversy in the present appeal.

The relevant facts are that the appellant-company was engaged in manufacture of woven labels. The return for the assessment year 1989-90 was filed showing 'nil' income. The case was taken up in scrutiny. The Assessing Officer vide order dated 28.10.1991 disallowed the depreciation claimed by the appellant as per the provisions of the 1961 Act and Income Tax Rules, 1962 (for short, 'the Rules'). The Appellate Authority partly allowed the appeal and directed the Assessing Officer to compute profit under Section 115J of the 1961 Act by allowing depreciation as provided under the 1961 Act and the Rules. It was further held that deduction on account of unabsorbed depreciation be also allowed. Feeling aggrieved, the revenue preferred the appeal. The Tribunal vide order dated 22.6.2000 partly allowed the appeal of the revenue and held that depreciation as provided under the Companies Act, 1956 (for short, 'the 1956 Act') is to be allowed and the assessee is not entitled to charge arrears of depreciation to profit and loss account, hence the present appeal.

As regards question (c), similar question has been answered by us in ITA No. 134 of 2000—**M/s Gita Forging (P) Ltd. v. Commissioner of Income Tax Patiala and another,** decided on 5.2.2020 in favour of assessee.

With regard to question (b), learned counsel for the appellant argued that the matter is covered by the decision of the Supreme Court in

Apollo Tyres Ltd. v. Commissioner of Income-tax, Kochi, 2002 (255) ITR 273.

Learned counsel for the revenue was not in a position to dispute that the Supreme Court in **Apollo Tyres Ltd.'s case (supra)** dealt with the issue involved while dealing with question (i) framed in that case.

Question (i) before the Supreme Court, brief facts as noted for the said question and the conclusion are reproduced below:

> "**Question (i)**
>
> (i) Can an Assessing Officer while assessing a company for income tax under Section 115J of the Income Tax Act question the correctness of the profit and loss account 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 Schedule VI to the Companies Act?
>
> **Brief facts:**
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> The assessee company while determining its net profit for the relevant accounting year has provided for arrears of depreciation in its profit and loss account which according to the Revenue is not in accordance with Part II and III of Schedule VI to the Companies Act, 1956 (the 'Companies Act'). Hence, the assessing officer while considering the case of the assessee company under Section 115-J of the IT Act recomputed the said profit and loss account of the company so as to exclude the provisions made for arrears of depreciation. The said action of the assessing officer in

questioning the correctness of the accounts maintained by the company was challenged by the company before the Income Tax Appellate Tribunal ('the tribunal') which among other things held that the assessing officer has no authority to reopen the accounts of a company which is certified by the auditors of the company as having been maintained in accordance with the provisions of the Companies Act and which account has been accepted in the General Meeting of the Company as well as by the Registrar of Companies. This view of the tribunal was not accepted by the High Court which held that the assessing officer has the authority to examine whether the accounts of the company have been maintained in accordance with the requirement of Sub-section (1A) of Section 115-J and in that process if he finds that the accounts of the company are not in accordance with the provisions of the Companies Act, he could make the necessary changes before proceeding to assess the company for tax under the Explanation to Section 115-J of the IT Act.

Conclusion:

Therefore, we are of the opinion, the assessing officer while computing the income under Section 115-J has only the power of examining whether the books of account are certifies 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 the said section. To put it differently, the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J."

In view of the above, question (b) 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.

Parties through their counsel are directed to appear before the Assessing Officer on 5.4.2020.

The appeal is disposed of accordingly.

(AVNEESH JHINGAN)
JUDGE

(AJAY TEWARI)
JUDGE

February 19, 2020
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No