OD – 5

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/116/2019

COMMISSIONER OF INCOME TAX (LARGE TAX PAYER UNIT), KOLKATA
VERSUS
UNITED BANK OF INDIA

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI
The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 24th November 2023.

Appearance:
Ms. Smita Das De, Adv.
…. for appellant

Mr. Abhrotosh Majumder, Adv.
Mr. Soumitra Chowdhury, Adv.
Mr. Avra mazumdar, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
… for the respondent

The Court:- Heard Ms. Smita Das De, learned Senior Standing Counsel for the Income Tax Department/appellant and Mr. Avra Mazumdar, learned Counsel for the respondent.

This appeal has been admitted on the following substantial question of law :-

> "Whether a nationalised banking company would be subject to the requirements of Section 115 JB of the Income Tax Act, 1961?"

Section 115JB of the Income Tax Act, 1961 as it stood at the relevant point of time i.e. relating to Assessment Year 2005-06, is reproduced below :-

> ***115JB.*** *(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2001, is less than seven and one-half per cent of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half per cent.]*
>
> *(2). Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):*
> ***Provided*** *that while preparing the annual accounts including profit and loss account, -*
>
> *(i) the accounting policies;*
> *(ii) the accounting standards adopted for preparing such accounts including profit and loss account;*
> *(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :*
>
> ***Provided further*** *that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act, -*
>
> *(i) the accounting policies;*
>
> *(ii) the accounting standards adopted for preparing such accounts including profit and loss account;*
>
> *(iii)the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year failing within the relevant previous year.*

Learned counsel for the Appellant fairly states that the question involved in this appeal is squarely covered against the revenue by judgement of this Court dated 03.12.2021 in ITA No. 12 of 2021 (*Principal Commissioner of Income Tax -vs- Damodar Valley Corporation*).

Both the learned counsel for the parties jointly agree that the substantial question of law involved in the present appeal is squarely covered against the Appellant by above referred co-ordinate Bench judgment of this Court and in view thereof, the appeal deserves to be dismissed.

In view of the aforesaid, this appeal is dismissed and the aforequoted substantial question of law is answered accordingly.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

RS