

*** HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ I.T.T.A No.100 OF 2003

% 23.09.2014

Commissioner of Income Tax (Central), Andhra Pradesh, Hyderabad.
..... Appellant

And

M/s. Nagarjuna Fertilizers and Chemicals Ltd., Nagarjun Hills, Hyderabad.
.....Respondent

! Counsel for the appellant: Sri S.R. Ashok

^ Counsel for respondent : Sri S. Ravi

< Gist:

> Head Note:

? Cases referred:

[1] 2002 (255) S.C 273

**HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

-
I.T.T.A No.100 OF 2003

JUDGMENT:- *(Per Hon'ble Sri Justice L. Narasimha Reddy)*

This appeal preferred by the revenue presents an important question of law which in turn would unfold as and when the discussion progresses.

The respondent is a company incorporated under the Companies Act and was submitting the returns year after year. The disparity between the profits that are posted by a company in its annual report on the one hand and those that are shown in the returns filed under the Income Tax Act, 1961 (for short, 'the Act') was a matter of serious concern for the revenue. After making several efforts to fill up the gap, the Parliament enacted Section 115JA of the Act. According to this provision, wherever the profits of the company as

reflected in the returns are less than 30% of what is posted in the books of account submitted as part of its obligation under the Company Act, the tax leviable would be 30% of the latter. Obviously for this reason, the profit and loss account which is part of annual report of a company becomes relevant.

For the assessment year in its book profits, the respondent posted a sum of Rs.4,28,17,995/-. This included a sum of Rs.3,81,48,960/- which is said to be interest on inter corporate deposits for the four consecutive previous years i.e., 1985-86 to 1988-89. A note was appended to the returns with a request to exclude the amount of Rs.3,81,48,960/- from assessment by stating that the said amount is referable to the earlier assessment years and has also suffered tax. In his order dated 31.03.1993, the Assessing Officer did not accept that plea. Thereupon, the respondent filed I.T.A.No.77/CC.III/CIT(A)III/93-94 before the Commissioner of Appeals-III, Hyderabad. The plea of the appellant was that once the amount has suffered tax and its inclusion in the book profit was only for the purpose of reflecting the financial state of affairs, there was no basis to bring it under the purview of the tax once again under Section 115J of the Act. That was accepted and the Commissioner partly allowed the appeal by deleting the profits for the assessment years 1986-87 and 1987-88 on the ground that Section 115J of the Act was not in force at the relevant point of time. However, he did not allow such deduction for the assessment year 1988-89 and 1989-90. The respondent filed I.T.A.No.570/Hyd/94 before the Hyderabad Bench of the Income Tax Appellate Tribunal (for short, 'the Tribunal'). Revenue also filed I.T.A.No.796/Hyd/94 feeling aggrieved by the deletion of the component of interest from the purview of Section 115J of the Act for the assessment years 1986-87 and 1987-88. Through its common order dated 21.06.2002, the Tribunal accepted the contention of the respondent for all the four years and to that extent, it has set aside the order of the Assessing Officer. Hence, this appeal by the revenue.

Sri S.R. Ashok, learned Senior Counsel for the appellant submits that whatever may have been the justification for the Commissioner and the Tribunal for excluding the interest for the assessment years 1986-87 and 1987-88 on the ground that Section 115J of the Act was not on the statute

book at the relevant point of time; there was absolutely no basis for it, to allow deduction of amount for the assessment years 1988-89 and 1989-90. He submits that once the respondent has reflected the amount in the book profit, referable to Section 115J of the Act, neither the department nor the assessee has any option to ignore the same in the context of levying tax under that provision. He placed strong reliance upon the judgment of the Supreme Court in **Apollo Tyres Ltd. V. Commissioner of Income-tax**^[1].

The learned Senior Counsel further submits that just as an Assessing Officer cannot probe into the correctness or otherwise of the facts and figures contained in a profit and loss account submitted by a company as a part of its obligation under the Companies Act, the assessee also cannot pick up an item from such profit and loss account and seek exclusion thereof from the purview of the tax.

Sri S. Ravi, learned Senior Counsel for the respondent and Sri Pushyam Kiran, assisting him, submit that the amount of Rs.3,81,48,960/- constituted the interest on corporate deposits for four assessment years earlier to the assessment year in question and in respect of two such assessment years the provisions under Section 115J of the Act was not in existence at all since it came into effect, only from 1.4.1988. It is argued that even in respect of other two assessment years i.e., 1988-89 and 1989-90, there was absolutely no basis for the Assessing Officer to subject such amounts for tax twice. since the amounts were subjected to tax in the corresponding assessment years. The learned counsel further submit that notwithstanding the authenticity that is attached to the profit and loss account or the books profits that are reflected in the accounts that are prepared and submitted as part of obligation under the Companies Act, the basic tenets such as that the same amount cannot be brought under the tax twice cannot be ignored and that the exercise to be undertaken by the Assessing Officer is contrary to the explanation to Section 115J of the Act.

Another contention of the learned counsel is that the 'book profit' referable to Section 115J of the Act takes in its fold only the income referable to the year, previous to the concerned assessment year and not any thing

which has accrued to an assessee, much earlier, in point of time, particularly, an amount, that has suffered tax. According to the learned counsel, the judgment in **Apollo Tyres' case** (1 supra) does not operate as a bar for an assessee to plead the factum of the amount having been suffered to tax and there is nothing in that judgment which prohibits the exercise in this behalf.

The circumstances, in brief, that warranted the enactment of Section 115J of the Act have already been taken note of. The provision reads as under:

“115J. Special provisions relating to certain companies.- (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company (other than a company engaged in the business of generation or distribution of electricity), 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, 1988 but before the 1st day of April, 1991 (hereafter in this section referred to as the relevant previous year), is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(1A) 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).

Explanation.—For the purposes of this section, “book profit” means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (1A), as increased by—

- (a) the amount of income-tax paid or payable, and the provision therefore; or
- (b) the amounts carried to any reserves (other than the reserves specified in section 80HHD or sub-section (1) of section 33AC), by whatever name called; or
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or
- (d) the amount by way of provision for losses of subsidiary companies; or
- (e) the amount or amounts of dividends paid or proposed; or
- (f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies; or
- (g) the amount withdrawn from the reserve account under section 80HHD, where it has been utilised for any purpose other than those referred to in sub-section (4) of that section; or
- (h) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilised within the

period specified in sub-section (4) of that section;

(ha) the amount deemed to be the profits under sub-section (3) of section 33AC,

if any amount referred to in clauses (a) to (f) is debited or, as the case may be, the amount referred to in clauses (g) and (h) is not credited to the profit and loss account, and as reduced by,—

(i) the amount withdrawn from reserves (other than the reserves specified in section 80HHD) or provisions, if any such amount is credited to the profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1988 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation; or

(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

(iii) the amounts as arrived at after increasing the net profit by the amounts referred to in clauses (a) to (f) and reducing the net profit by the amounts referred to in clauses (i) and (ii) attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD; so, however, that such amounts are computed in the manner specified in sub-section (3) or sub-section (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be; or

(iv) the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of clause (b) of the first proviso to sub-section (1) of section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

(2) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A or sub-section (3) of section 80J.

We felt it necessary to extract the entire provision to understand the concept of book profit, adopted for the purpose of that Section. From a perusal of the explanation, it becomes clear that notwithstanding the freedom given to an assessee to state its book profit in its annual report submitted as part of its obligation under the Companies Act; he is kept under obligation to be truthful. The book profit is liable to be increased or decreased, depending

upon the factors that are mentioned in the explanation. One central theme that runs across all through, is that the profit and loss shall be with reference to the relevant previous year, as is evident from the following expression occurring in explanation:

“profit and loss account for the relevant previous year”.

In its profit and loss account, referable to Section 115J of the Act, the respondent reflected the book profit of Rs.4,28,17,995/-. In page No.26 of its balance sheet which is part of 14th annual report for the year 1989-90, the respondent stated as under:

“Interest on inter corporate deposits in respect of earlier years after profit and loss account is Rs.3,81,48,960/-.”

In the note on account that are mentioned in the schedule-12, the following explanation is furnished with reference to the said amount:

“15. Pursuant to the change in the accounting policy of the Company, interest income on inter Corporate Deposits amounting to Rs.400.90 lakhs including Rs.381.49 lakhs pertaining to earlier years, which was hitherto netted off from ‘Expenditure During Construction Pending Allocation’ has now been credited to interest income in the Profit and Loss Account. Consequent to this change in the accounting policy as compared to earlier years, the profit for the year is higher by Rs.400.90 lakhs and Reserves and Surplus and Expenditure During Construction Pending Allocation are higher by Rs.400.90 lakhs.”

It is on the basis of this, that the respondent claimed deduction of sum of Rs.3,81,48,960/- from the book profits. The Assessing officer, however, did not agree. The fact that these very amounts have been subjected to tax in the earlier assessment years was agreed to, even by the Assessing Officer. The same is evident from the following paragraph.

“2. Pursuant to Note No.5 of Notes to accounts interest on inter corporate deposits pertaining to the financial years ended 31.3.86; 31.3.88 and 31.3.89 corresponding to the Assessment years 1986-87, 87-88, 88-89 and 89-90 aggregating to Rs.3,81,48,960 has been credited to the profit and loss account for the assessment year 90-91. The assessing officer at the time

of making assessment for the above said assessment years has not considered the claim of the company and has included the above sum for assessment purposes. Since this amount has already been assessed by way of regular assessment u/s.143(3) the same is not considered in the computation statement to arrive at the taxable income/loss for the year under assessment.”

The only basis for him to disallow the deduction was that the said amount was not reflected under Section 115J of the Act at any point of time and once they are reflected in the current assessment year, there is no way, that the amount can be ignored.

The plea of the appellant that once the amount, representing the interest on corporate deposit for the four years has been subjected to tax, that cannot be brought under the purview of the tax either directly or indirectly, did weigh only in part with the Commissioner. The yardstick adopted by him was that for the two years 1986-87 and 1987-88, Section 115J of the Act was not on the statute book and as such, the interest on corporate deposits for those two assessment years cannot be the subject matter of the assessment year 1994-95. As regards the other two subsequent assessment years, he took the view that as the interest for the two years not having been reflected in the book profits under Section 115J of the Act, they are liable to be brought under the purview of tax, for the current assessment year. In the appeals preferred by the appellant as well as the respondent, the Tribunal was impressed by the fact that the amount for the subsequent two years also has been subjected to tax, earlier. At more places than one, it emphasised this. In the course of its discussion, the Tribunal took the assistance of precedents and observed as under:

“It is the fundamental rule of law on taxation that unless otherwise expressly provided, income cannot be taxed twice. *Laxmipat Singhanian v. CIT (72 ITR 291) (SC)* Taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over the payment of tax on the taxpayer unless the language of the statute is so compellingly certain that the court has no other alternative than to accept it. (*Tata Steel & Iron Co., v. Union of India 75 ITR 676*). In other words, there can be double taxation if the legislature has distinctly enacted it. A plain reading of Section 115J does not, to our mind, employ the language expressly or impliedly to subject to tax the same item of income

twice. Though there is no specific provision u/s.115J for deducting income that has been taxed in the earlier year, though credited to profit and loss account in a subsequent year while computing the book profits liable to tax, the proposition laid down by the special bench of the Tribunal in the case of Sulej Cotton Mills Propounds such a theory. The general concept of taxation does not allow the taxation of income twice.”

It is on this basis, that the Tribunal excluded the interest on corporate deposits, for all the four years.

The principal contention urged by the learned Senior Counsel for the department is that the facts and figures furnished in the profit and loss account by a company as a part of its obligation under the Companies Act which in turn referable under Section 115J of the Act are to be taken on their face value; and just as the department is precluded from analysing or correcting them, the assessee also cannot be permitted to ignore any component mentioned therein. There cannot not be any quarrel with this proposition. The judgment of the Supreme Court in **Apollo Tyres’s** (1 supra) is to the effect that the profit and loss account referable to Section 115J of the Act is subjected to several verifications under the mechanism of the Companies Act and the same cannot be the subject matter of scrutiny by the Income Tax Assessing Officer. Even while conceding inviolability the profit and loss accounts of a company, their Lordships kept intact the freedom of Assessing Officer to undertake scrutiny with reference to explanation. The relevant portion reads as under:

“There cannot be two incomes one for the purpose of the Companies Act and another for the purpose of income-tax both maintained under the Company’s income, then it would have stated in Section 115J that “income of the company as accepted by the Assessing Officer”. In the absence of the same and on the language of section 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.”

Two aspects becomes relevant in this regard. The first is whether the interest on corporate deposits of the respondent that is mentioned in the profit and loss account for the assessment year 1994-95 can be treated as the one “for the relevant previous year” which expression occurs at more places than one in Section 115J of the Act”. Even the Assessing Officer did not doubt the

plea of the respondent that the amount is referable to four assessment years and the corresponding break up was also given. The reason for which the respondent has shown the interest referable to four earlier years in the profits and loss of account for the assessment year 1994-95 are not immediately before us. However, on the undisputed facts, those figures cannot be said to be the income or book profit "for the relevant previous year".

Secondly, one of the cardinal principles of taxation is that no amount shall be brought under the purview of the taxation, unless there is specific legislative sanction for it. If one takes into account the complex and complicated scheme under the Act, it is evident that the Parliament has taken every precaution to ensure that no amount is subjected to taxation twice, unless the relevant provision specifically permits of it. There is nothing in the Act which permits the interest on corporate deposits, to be taxed twice.

From a perusal of the order of the Assessing Officer, it becomes clear that for their own reasons, the respondent did not want to reflect the income on corporate deposits for the four years mentioned above, in any form whatever. However, the Assessing Officers who dealt with the returns for the corresponding years, did bring those interests directly under the purview of the tax and the tax was levied. Though the facility to bring those very amounts under Section 115J of the Act was available for two assessment years 1988-89 and 1989-90, that was not resorted to, obviously because an Assessing Officer is precluded from making any additions, deletions, or alterations to the profit and loss account, referable to Section 115J of the Act. The reason is that it is only the authorities under the Companies Act that are conferred with the power to scrutinise such accounts. Therefore, a straight forward way of bringing those amounts under tax was adopted and tax was levied. With that the said amounts are no longer available to be dealt with under the Act in any form whatever.

Therefore, the mere inclusion of those amounts in the profit and loss account referable to under Section 115J of the Act for the assessment year 1994-95 did not make much of difference from the point of view of income tax. Bringing those amounts to tax once again, may be, under Section 115J of the

Act could have resulted in anomaly if not absurdity. It is too well known that no provision can be understood or interpreted in such a way as to lead an absurd or anomalous situation. This principle gets attracted with added vigour, when a situation is brought about, by operation of two different enactments.

Though the judgment of the Supreme Court in **Apollo Tyres's case** (1 supra) was not in existence when the matter was decided by the Commissioner or the Tribunal, we do not find any thing in the orders passed by them which runs contrary to the principle laid down by the Supreme Court, therein. We do not find any force in the appeal.

The appeal is accordingly dismissed. Miscellaneous Petitions, if any, pending in this appeal shall stand disposed of. There shall be no order as to costs.

L. NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

Date:23.09.2014

Note:

L.R copy to be marked.

Ks/gk

HON'BLE SRI JUSTICE L. NARASIMHA REDDY
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

I.T.T.A No.100 OF 2003

Date:23.09.2014

ks/gk

[\[1\]](#) 2002 (255) S.C 273