



* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 24.09.2008

+ **ITA 1092/2008**

**THE COMMISSIONER OF INCOME
TAX DELHI-I**

... Appellant

- versus -

M/S C. J. INTERNATIONAL HOTELS LTD

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Suruchi Aggarwal
For the Respondent : Mr Aseem Mowar

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This appeal by the revenue is directed against the order dated 15.02.2008 passed by the Income Tax Appellate Tribunal in ITA 775/Del/2006 pertaining to the assessment year 1998-99. The assessee had preferred the appeal before the Tribunal being aggrieved by the



was that the Commissioner had erred in giving a direction to the Assessing Officer to re-compute the income under Section 115 JA (wrongly indicated as Section 115JB in the impugned order) considering the impact of excess depreciation claimed by the assessee.

2. The Tribunal considered the decision of the Supreme Court in the case of *Apollo Tyres Ltd v. CIT: (2002) 9 SCC 1 (= 255 ITR 273)* and noted that once the accounts have been certified by the auditor to have been prepared in accordance with the provisions of Companies Act, then the Assessing Officer will not have any jurisdiction to go behind the net profit shown in the Profit & Loss Account except to the extent provided in the Explanation to Section 115J. The decision in *Apollo Tyres Ltd (supra)* was in respect of Section 115J. The Tribunal held that that decision would be applicable in the present case. Following the decision of the Supreme Court in *Apollo Tyres Ltd (supra)*, the Tribunal concluded as under:-

“.....While the Assessing Officer would be well within his jurisdiction to compute depreciation under Section 32 on the rates provided in appendix-I to Income Tax Rules, 1962, for computing total income under other provisions of the act, he cannot disturb the book profit, which has been certified to be drawn in the Profit & Loss Account as per the Companies Act. Therefore, we are of the view that the order passed



was not erroneous, it could not have been termed to be prejudicial to the interest of the revenue. In this view of the matter, we set aside the order of the learned CIT. In the result, ground No. 2 is allowed.”

3. The Supreme Court in *Apollo Tyres Ltd (supra)* had categorically held as under:-

“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 certified 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.”

4. While the Tribunal proceeded on the basis that the present case fell under Section 115JB we find that the present case is actually one under Section 115JA. The Tribunal held that the decision of the Madras High Court in the case of *CIT v. Covai Muruthi paper & Board (P) Ltd* : 294 ITR 57 was applicable to the present case. For this purpose the Tribunal was of the view that the provisions of Section



appeal. As such, we are not expressing any opinion on the issue as to whether the provisions of section 115JA and 115JB are analogous or not. It was unnecessary for the Tribunal to have gone into this aspect because the decision in *Covai Maruthi paper & Board (P) Ltd (supra)* was one which was rendered in the context of Section 115JA and the present case also arose in the context of Section 115 JA. The Tribunal was under a mistaken impression that the present case was one which fell under Section 115JB and that is the reason why the observation was made that the provision of Section 115JA and Section 115JB were analogous. This conclusion was unnecessary. However, that does not change the ultimate result of the case. In as much as the decision in *Covai Maruthi paper & Board (P) Ltd* was directly applicable to the present case. The fact that the Tribunal applied the decision of the Supreme Court in the case of *Apollo Tyres Ltd* as well as *Covai Maruthi paper & Board (P) Ltd. (supra)* cannot therefore be faulted.

The Tribunal concluded as under:-

“While the AO would be well within his jurisdiction to compute depreciation us 32 on the rates provided in appendix-I to I.T. Rules, 1962, for computing total income under other provisions of the act, he cannot disturb the book profit, which has been certified to be drawn in the Profit & Loss Account as per the companies act. Therefore, we are of the view that the order passed by the AO was not erroneous, which is one of the pre conditions for invoking jurisdiction u/s 263 of the act. Since it was not erroneous, it could not have been termed to be



5. We agree with the views expressed by the Tribunal. Consequently, no substantial question of law arises for our consideration. The appeal is dismissed.

Amal Kumar
BADAR DURREZ AHMED, J

Rajiv Shakti
RAJIV SHAKDHER, J

September 10, 2008
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