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% **03.06.2011**

Present: Ms. Mahua Kaltra, Advocate for the appellant.
Mr. M.P. Singh, Standing Counsel for Commissioner of
Income Tax.

+ CM No.11453/2011 in ITA 800/2011

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The delay in re-filing the appeal is condoned because of the reason stated in the application.

The application is disposed of.

ITA 800/2011

The appellant, which is an insurance company, had made provision for diminution in the value of investment at ₹7,42,06,000/- which was disallowed by the Assessing Officer taking note of the fact that the appellant had created a provision of ₹19,28,01,000/- as against immediately preceding year wherein provision was made to the extent of ₹11,85,95,000/-. The Assessing Officer was of the view that such a provision was not necessary and was in respect of unascertained liability which was incurred on investment under Section 115JB of the Income Tax Act. This view has been upheld by the CIT(A) as well as ITAT. The ITAT has made following observations in this regard:

“On a careful consideration of the issue, we are of the considered opinion that the provision made by the assessee for notional losses on revaluation of investment is in fact a reserve irrespective of the nomenclature given by the assessee. We are also



of the considered opinion that the substance of the claim is to be considered and not the nomenclature. The provision in question made by the assessee in substance is a reserve for meeting future losses, if any, on account of diminution in the value of its investments and is covered within the scope of amended provisions of Rule 5(a) of the First Schedule of the I.T. Act. With due respect the decisions cited by the Id. counsel are of no help to the assessee in view of the retrospective amendment of Rule 5(a) of the First Schedule of the I.T. Act. It is also observed that the Ld. CIT(A) has also held that the provision in question being an unascertained liability was required to be added back while computing the deemed income of the assessee company u/s 115 JB of the I.T. Act. In our considered opinion, the assessee has not sold the investments in question during the relevant accounting period and notwithstanding the guidelines given by the IRDA to reflect the true position of assets and liabilities in the relevant balance sheet of the assessee, the notional losses claimed only on the basis of prevailing market price could not be allowed against the actual business profits of the relevant accounting period. It is also observed that the special provisions for payment of tax u/s 115JB are applicable notwithstanding anything contained in any other provision of the Income Tax Act, including sec. 44 r.w. Schedule 1 of the I.T. Act for computing the income from "Insurance



Business". As per the provisions of sec. 115JB(2), the assessee company is required to prepare its profit and loss account in accordance with the provision of parts II and III of Schedule VI of the Companies Act. It is clear from the perusal of the relevant provisions that the claim of loss not actually incurred on the investments which have neither been sold nor transferred otherwise, is only a provision for unascertained liability and cannot be allowed to be reduced from the income of the assessee."

We do not find that any substantial question of law arises in the aforesaid circumstances.

The appeal is dismissed.


A.K. SIKRI, J.

JUNE 03, 2011
acm


M.L. MEHTA, J.