



\$~14

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

% Date of Decision : 28th March, 2012.

+ ITA 612/2009

COMMISSIONER OF INCOME TAX Appellant
Through Ms. Rashmi Chopra, sr. standing
counsel

versus

R.T.C.L. LTD. Respondent
Through Dr. Rakesh Gupta and Ms. Poonam
Ahuja, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

This appeal filed by the Revenue under Section 260 A of the Income Tax Act, 1961 ('Act', for short) impugns order dated 29.8.2008 passed by the Income Tax Appellate Tribunal ('Tribunal' for short) in the case of R.T.C.L. Ltd. and relates to assessment year 2002-03. Having heard the counsel for the parties, we feel no substantial question of law arises in the present appeal.



2. The Assessing Officer vide order dated 15.3.2005 had assessed total income of the assessee at Nil under Section 143(3) of the Act. Subsequently, notice under section 154 of the Act was issued and a rectification order dated 21.07.2006 under the said Section was passed recording:-

“After going through the records it was found that while computing book profit the assessee had claimed prior period adjustment for Rs.3,74,59,471/- which was inadmissible nature.

In compliance to this office notice u/s 154 of the Act dated 22.11.2005, the assessee has filed its reply dated 22.02.2006, which is placed on record. The assessee has submitted that calculation of book profits were made strictly an accordance with and in compliance of the provision contained in Section 115JB of the Act. The reply of the assessee has been considered. It is found that prior period expenses cannot be adjusted against book profits of calculating tax u/s 115JB of the Act with these remarks the income is computed as under:

Income as per P & L A/c	2,38,63,629/-
-------------------------	---------------

(Prior period adjustment for Rs.3,74,59,471/-
Not allowed as discussed above)

Revised income	2,38,63,629/-”



3. In the first appeal, the assessee was unsuccessful and the order under Section 154 was confirmed by the CIT(Appeals), who held as follows:

“4. I have considered facts of the case and arguments taken by Sh. Taneja quite carefully. It is seen that for the purpose of working out the profits u/s 115 JB of the I.T. Act, the profits as computed in the profit and loss account for the relevant accounting year had only to be considered. Certainly, it is undisputed fact that further debit of Rs.3,74,54,471/- was not the expenditure for the current year but undisputedly it was prior period adjustments on account of change in the depreciation method. Profits for the relevant period as shown in the P & L account is relevant and while working out such profits and adjustments for prior period cannot be allowed as per relevant provision of I.T.Act. Since while passing the 143(3) order, the AO has committed apparent mistake of the law. Therefore, in my considered view the AO was fully justified in rectifying the said mistake through aforesaid order passed u/s 154 of the I.T. Act. Various decisions which are relied upon by Sh. Taneja are having different facts and, therefore, under the facts of present case these cannot be applicable. With this discussion, the rectification order passed by AO is hereby confirmed by rejecting relevant grounds of appeal.”

4. It is noticeable from the aforesaid findings of the Assessing officer and the CIT(Appeals) that the respondent-assessee was



following the straight line method of depreciation under the Companies Act, 1956, prior to the assessment year 2002-03. However, in the year in question, it changed the method to written down value method and the difference due to the said change of ₹3,74,59,471/- was shown in the profit and loss account under the head 'Expenditure - Depreciation'. Due to this change, the said/current year's book profits got reduced to ₹13,14,552/-.

5. There are two aspects of the matter. First aspect relates to whether or not this adjustment, is permissible and should be taken into consideration while computing book profits under Section 115JB. We may notice clause (iia) to Explanation 1 to Section 115JB(2) is inserted by the Finance Act, 2006 w.e.f. 1.4.2007 and reads:-

“115JB-

xxx

Explanation [1].- 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 (2), as increased by-”

xxx

(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or”



6. We are not inclined to go into the said question and issue in the present case as we feel that the Assessing Officer could not have examined and gone into the said aspect while exercising limited jurisdiction under Section 154 of the Act. The jurisdiction under the said Section is confined and restricted to rectification of errors and mistakes which are apparent from the record. The Assessing Officer cannot go into a debatable issue on which two or more views are possible and pass an order on merits. We have quoted the orders passed by the Assessing Officer as well as CIT(Appeals). They have not indicated or specifically stated how and why the issue was clear and that no debate or two views were possible. The contention of the assessee, which has been referred to by the Tribunal in the impugned order, shows that there was considerable controversy on the said aspect and this is clear when we read the following paragraph from the order of the Tribunal:-

“As to whether the arrears of depreciation can be provided or not, the matter is settled by various decisions of the Tribunal as also by the decision of the Bombay High Court in the case of Kinetic Motor Co. Limited 262 ITR 330 wherein also there was a change in the method of providing depreciation and the profits of the assessee were lowered



by Rs.6,32,65,430/-. The High Court held that under the Companies Act, both the straight-line method and written down value method are recognized and, therefore, once the amount of depreciation actually debited in the profit and loss account was certified by the auditors, it was not permissible for the Assessing Officer to make any book adjustments in view of the decision of the Supreme Court in the case of Apollo Tyres Limited vs. Cit 255 ITR 273. Besides above, we find that there are decisions of the Tribunal holding the similar view, namely, Calcutta Bench of the Tribunal in the case of JCT Limited vs. DCIT 253 ITR 61, Cochin Bench of the Tribunal in the case of Apollo Tyres Limited vs DCIT 43 ITD 464, Bombay Bench of the Tribunal in the case of Modern Woollens, Ltd. Vs. DCIT 47 ITD 154 and Amritsar bench of the Tribunal in ITA No. 353/Ars./91 order dated 14.4.1994. In all these cases, it was held that the net profit as shown in the accounts of the assessee after writing off arrears of depreciation of the earlier years would alone represent the book profits of the assessee and it was not for the Assessing Officer to substantiate his own figures in its place. The learned DR however buttressed the view from a different angle and submitted that the arrears of depreciation had been claimed by the assessee below the line of the profit and loss account and, therefore, it cannot form part of the profit & loss account and book profit to be provided only above the profit line. This issue is also not res Integra and the Tribunal in the case of Gulf Oil Corporation Limited vs.



ACIT 111 ITR 124 dealt with the issue by observing as under:

“6. We have duly considered the rival submissions and material on record. Sub-section (2) of Section 115JB provides that every assessee company shall prepare its profit and loss account in accordance with the provisions of Part-II and Part-III of Schedule VI to the Companies Act, 1956. The said Schedule-VI does not speak of the Appropriation Account at all. It is only as a matter of fact that most of the companies segregate to reflect as to what has been appropriated where out of the profits earned by them. Otherwise, sub-clauses (a) and (b) of clause (viii) of Note-II in para 3 of Part-II of Schedule-VI specifically provide that the aggregate amounts set aside or proposed to be set aside to reserves should be distinctly shown in the Profit and Loss account. Similarly, sub-clause (b) and sub-clauses (a) and (b) of clauses (xii) and (xiii) respectively in Note-II of Part-II of Schedule – VI provide that profits or losses in respect of transactions not usually undertaken or undertaken in exceptional circumstances or which are of non-recurring nature should be shown in the Profit and Loss Account. The aggregate amount of dividends paid and proposed are also to be shown in the Profit and Loss Account. The point we are trying to drive home is that all the items which are generally classified in the Appropriation Account are in fact to



the included in the Profit and Loss Account prepared as Part-II and III of Schedule-VI. Therefore, we are in agreement with the argument of the learned counsel that the starting point for computation of book profits for the purposes of Section 115JB should be Rs.660.81 lakhs which is the final balance in the Profit and Loss account carried to balance Sheet. It may also be noted from the above discussion that even extraordinary items have to be debited to the Profit and Loss Account. Having adopted the figure of Rs.660.81 lakhs as the starting point, the same has to be increased by the items specified in clauses (a) to (f) and has to be reduced by the items specified in clauses (i) to (vii) given in the Explanation. No other adjustment is permitted by law and also as laid down by the Supreme Court in the case of Apollo Tyres Ltd. (supra). None of the clauses given in the Explanation provide for the increase or decrease of the book profits (sic.) by extraordinary items. The reference of AS-5 by the learned Department Representative does not in any manner advance the case of the revenue. It merely says that prior period and extraordinary items should be separately disclosed along with their nature so that their impact on the operating results can be perceived. It does not say that they are not part of the Profit and Loss Account. Similarly, the Guidance Note issued by the ICAI also does not help the revenue as it merely says that sometimes, Appropriation Account is included as a separate section of the Profit



and Loss Account. But, as we have seen earlier, Parts-II and III of Schedule-VI to the Companies Act do not speak of Appropriation Account at all. In the light of this discussion, we are convinced that it was in accordance with law for the assessee to have taken Rs.978.55 lakhs as the base figure to compute the book profits for the purposes of Section 115JB.”

7. We may also notice that it is the contention of the assessee that the book profits as declared were in conformity and as per provisions of part II and III of the Schedule VI of the Companies Act, 1956. It is stated by the assessee that the Assessing Officer and the CIT(Appeals) have not adversely commented or stated that the entry was contrary to part-II and III of the said Schedule. The first proviso to Section 115JB(2) has not been specifically referred to and applied by the Assessing Officer and the CIT(Appeals). They have not stated as to why and how the book profits were not computed in consonance with provisions of part II and III of the Schedule VI of the Companies Act, 1956. The issues and contentions being debatable and in the realm of uncertainty, we do not think the Assessing Officer was right in invoking under Section 154 of the Act. The Tribunal was right in observing that the action of the Assessing Officer under Section 154 was not warranted. With the aforesaid observations, we decline to entertain the present appeal.



We clarify that we have not examined the question on merits and it is left open. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

MARCH 28, 2012
vld/Bisht