



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.05.2013

+ **ITA No.1181/2011**

COMMISSIONER OF INCOME TAX - II

.....Appellant

versus

M/S MBL & Co. LTD

.....Respondent

AND

+ **ITA No.573/2012**

COMMISSIONER OF INCOME TAX - II

.....Appellant

versus

M/S MULTIPLEX CAPITAL LTD.

.....Respondent

Advocates who appeared in this case:

For the Appellant : Mr N.P. Sahni, Sr. Standing Counsel.

For the Respondent : Mr Salil Aggarwal, Mr Ajay Wadhwa and,
Mr P.C. Yadav, Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These are appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") challenging the decisions



of the Income Tax Appellate Tribunal. The Tribunal has held that rebate available to an assessee under Section 88E of the Act was liable to be adjusted from the tax as payable irrespective of whether the tax was computed under the provisions of Section 115JB of the Act or under the normal provisions of the Act. Both the appeals raise a common question of law, which has been framed as under:-

“Whether the Income Tax Appellate Tribunal is correct in holding that for the purpose of Section 115JB of the Act rebate under Section 88E of the Act cannot be taken into consideration or is not relevant/material?”

2. As the issue involved in both these appeals is similar they are being disposed of together.

3. In ITA No.573/2012, the assessee company is a member of the National Stock Exchange and the Bombay Stock Exchange and is, *inter-alia*, engaged in the business of dealing in shares and securities listed on the two Stock Exchanges. The assessee filed a return of income for the assessment year 2007-2008 declaring an income of ₹ 3,66,77,400/- which was calculated as per normal provisions of the Act. The tax payable on such income was calculated at ₹ 3,17,981/- under the Act. The assessee had during the year paid Security Transaction Tax amounting of ₹ 1,07,19,814/- and hence claimed a rebate as per the provisions of Section 88E of the Act on that count. Accordingly, the net tax payable was claimed to be Nil. The profit and loss account of the assessee disclosed an income of ₹ 3,55,71,182/- and under the Minimum Alternative Tax scheme, the tax payable as per section 115JB of the Act was calculated at ₹ 35,57,118/-. The assessee claimed that even if tax was computed under the provisions of Section 115JB of the Act, no tax was payable as the assessee was



entitled to claim a credit of ₹ 1,07,19,814/- under Section 88E of the Act being the Security Transaction Tax borne by the assessee.

4. The return filed by the assessee was taken up for scrutiny and the Assessing Officer framed an assessment calculating the tax on book profits under Section 115JB of the Act at ₹ 39,09,336/-. The Assessing Officer further declined to admit any rebate under Section 88E of the Act as he was of the view that rebate under Section 88E of the Act could only be claimed on the tax payable as per normal computation under the Act and this rebate was not available on the tax as computed under Section 115JB of the Act.

5. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before CIT(Appeals). The CIT(Appeals) passed an order dated 25.06.2010, *inter-alia*, allowing the challenge preferred by the assessee with regard to the rebate under Section 88E of the Act. The CIT(Appeals) held that a taxing statute needs to be interpreted strictly and there was nothing in the language of Section 88E of the Act that limited the availability of rebate only on the tax as calculated under the normal provisions of the Act. The revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal also did not accept the contention on behalf of the revenue that rebate under Section 88E of the Act would not be available against the tax as computed under Section 115JB of the Act. The Tribunal held that Section 87 of the Act did not differentiate between the total income computed under the regular provisions or as calculated under Section 115JB of the Act. Section 115JB only provides for an alternative method of calculating taxable income and tax payable thereon, in respect of those assessee's who although they disclosed a book profit but nonetheless, either did not pay any tax or paid a low tax as their computation of income under the normal provision was either a loss or significantly lower than the disclosed book profits.



6. The facts in the case of ITA No.1181/2011 are similar. In this case also, the assessee is a member of the National Stock Exchange and the Bombay Stock Exchange and carries on the business of dealing in securities listed on the said Stock Exchanges. The assessee disclosed an income of ₹ 8,12,68,281/- as per the normal computation provisions under the Act. The book profits of the assessee were higher and the income liable to tax under the MAT scheme was disclosed as ₹ 8,17,58,465/-. The assessee had borne Security Transaction Tax of ₹ 3,37,07,299/- whereas the tax payable under the normal computational provisions of the Act worked out to be ₹ 2,43,80,484/-. The tax payable in terms of Section 115JB of the Act was computed as ₹ 81,75,847/-. Since the Security Transaction Tax borne by the assessee exceeded the tax payable as computed under the normal provisions of the Act as well as under Section 115JB of the Act, the assessee declared that it was not liable to pay any tax. The Assessing Officer passed an Assessment Order dated 22.12.2009 for the relevant assessment year, 2007-2008, holding that the rebate under Section 88E was not available to the assessee while determining the tax payable as computed under the provisions of Section 115JB. An appeal was preferred by the assessee before CIT (Appeals) challenging the aforesaid view of the Assessing Officer, which was allowed by the order dated 29.03.2010. The revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal upheld the decision of the CIT (Appeals) and found that there was no basis for declining the rebate under Section 88E to the assessee with respect to the tax computed under Section 115JB.

7. Before proceeding to consider the rival contentions, it is appropriate to quote the relevant provisions of the Act. Section 115JB, Section 87 and Section 88E of the Act are quoted below:-

"115JB – Special provision for payment of tax certain companies - (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, 2007, is less than ten 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 ten per cent]."

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“87 - Rebate to be allowed in computing income-tax - (1) In computing the amount of income-tax on the total income of an assessee with which he is chargeable for any assessment year, there shall be allowed from the amount of income-tax (as computed before allowing the deductions under this Chapter), in accordance with and subject to the provisions of sections 88, 88A, 88B, 88C, 88D and 88E, the deductions specified in those sections.

(2) The aggregate amount of the deductions under section 88 or section 88A or section 88B or section 88C or section 88D or section 88E shall not, in any case, exceed the amount of income-tax (as computed before allowing the deductions under this Chapter) on the total income of the assessee with which he is chargeable for any assessment year."

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“88E – Rebate in respect of Securities Transaction Tax - (1) Where the total income of an assessee in a previous year includes any income, chargeable under the head “Profits and gains of business or profession”, arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions, computed in the manner provided in sub-section(2), of an amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions



entered into in the course of his business during that previous year:

Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes alongwith the return of income, evidence of payment of securities transaction tax in the prescribed form:

Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).

(2) For the purposes of sub-section (1), the amount of income-tax on the income arising from the taxable securities transactions, referred to in that sub-section, shall be equal to the amount calculated by applying the average rate of income-tax on such income.

Explanation.—For the purposes of this section, the expressions, “taxable securities transaction” and “securities transaction tax” shall have the same meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004."

8. Minimum Alternate Tax (MAT) scheme was introduced by inserting section 115J in the Act by the Finance Act, 1987. The Finance Minister in his speech indicated the object of introducing the said scheme as under:

"It is only fair and proper that the prosperous should pay at least some tax. the phenomenon of so-called "zero tax" highly profitable companies deserves attention. In 1983, a new section 80VVA was inserted in the Act so that all profitable companies pay some tax. this does not seem to have helped and is being withdrawn. I now propose to introduce a provision whereby every company will have to pay a "minimum corporate tax" on the profits declared by it in its own accounts. Under this new provision, a company will pay tax on at least 30 percent of its book profit. In other words, a domestic widely held company will pay tax of at least 15 percent of its book profit. This measure will yield a revenue gain of approximately Rs 75 crores."



The MAT scheme was improvised further and section 115JB was introduced in the Act by the Finance Act, 2000 w.e.f. 01.04.2001. At the material time, the rate of MAT was prescribed at 7.5%. The purpose of introducing the MAT scheme was to tax profitable companies who otherwise were not liable to pay tax on account of various deductions and higher depreciation available to them in computing the taxable income under the normal provisions of the Act. The import of Section 115JB of the Act is to provide an alternative method of computation of tax by accepting the book profits as shown by the assessee, albeit with certain adjustments as specified in Explanation 1 of Section 115JB (2) of the Act and levying tax on the same as alternative to the tax computed under the other provisions of the Act. Thus, in cases where assessee's taxable income, as computed under various provisions of the Act, results in the tax payable thereon being lower than the tax as computed under Section 115JB, the tax under the minimum alternative tax scheme as contained in Section 115JB would be payable. As held by the Supreme Court in the case of, **Apollo Tyres Ltd. v. CIT:(2002) 255 ITR 273 (SC)**, the Assessing Officer while computing the tax payable under Section 115J of the Act was not required to make any assessment as to the profits of the assessee but was required to accept the audited final accounts and compute the tax at the rate specified.

9. It is also relevant to consider the scheme of the Act. Section 4 of the Act provides for the basis of charge of Income Tax with respect to the total income and is the charging section. Section 5 of the Act provides for the scope of total income of a person. Chapter III of the Act provides for certain income and certain entities whose incomes are not liable to be included in the total income which is eligible to tax. Chapter IV of the Act provides for computation of income under various heads of income. Chapter V of the Act provides for income of the persons which are to be clubbed while computing the income of an assessee.



Chapter VI of the Act provides for the aggregation set off and carry forward of losses. Chapters IV, V and VI of the Act thus provide for the machinery provision for computing the total income of an assessee. Chapter VI A of the Act provides for deduction which are allowable from the total income of an assessee as computed under the Chapters IV, V and VI of the Act. The resulting income is taxable under the Act. The Act has other machinery provisions in aid for computing, collection and recovery of tax. Chapter VIII of the Act provides for rebate and reliefs in respect of tax payable by an assessee. It can be seen from the scheme of the Act that there are extensive machinery provisions for computing of total income of an assessee and the tax payable thereon. The tax as determined is subject to rebate as may be available under the Chapter VIIIA of the Act. Section 87(1) of the Act provides that the rebate as available under Sections 88, 88A, 88B, 88C, 88D and 88E will be allowed to an assessee in computing the income tax payable by him on the total income of the assessee. There is a clear distinction in the scope of chapter VIIIA of the Act and other provisions which specify deductions that are available to an assessee in computing his total income. Whereas deductions allowed in computing the total income are a part of the machinery section to determine the total income of the assessee, the rebates under the Chapter VIIIA of the Act provide for certain deductions from the tax payable as computed on the total income of an assessee.

10. Section 115JB of the Act provides for computation method for determining the total income of an assessee as an alternative to the total income as computed under Chapters IV, V, VI, VIA of the Act and under other provisions of the Act. Section 115JB also specifies the rate at which tax is payable on the income as determined under the said section. Section 88E provides for remission of tax to the extent of Securities Transaction Tax as paid by the assessee provided the condition specified therein is satisfied, namely, the



income of the assessee includes income chargeable under the head “Profits and gains of business or profession”, arising from taxable securities transactions, and the assessee furnishes alongwith the return of income, evidence of payment of securities transaction tax in the prescribed form. We find that there is no reason why the remission in tax which is available under Section 88E of the Act to an assessee be not available on the tax as computed under the Minimum Alternative Tax scheme as both Section 115JB of the Act as well as the other provisions of the Act referred above have been enacted to provide the machinery for computing total income of an assessee which is exigible to income tax. The rebate under Section 88E of the Act provides for certain rebates available on the tax payable by an assessee. In our view, there would be no rationale to limit the plain words of Section 88E of the Act and hold that the rebate in payment of the tax is only applicable to tax as determined under the normal provisions of the Act and not available with respect to minimum alternative tax as computed under Section 115JB of the Act. The purpose of Section 88E of the Act is to grant an assessee, to a limited extent, credit in tax on account of Security Transaction Tax already borne by him in respect of the business carried out by him in dealing in securities. This rebate would be equally applicable to tax as computed under Section 115JB of the Act as under the normal provisions of the Act. A division bench of the High Court of Karnataka has, in the case of **Commissioner of Income Tax v. M/s Horizon Capital Ltd.**: ITA No.434/2010 decided on 24.10.2011, held that the rebate under Section 88E of the Act would be available to tax as payable under Section 115JB of the Act. The relevant extract from the said judgment is quoted below:-

15. Under Section 88E, where the total income of an assessee in a previous year includes any income chargeable under the head “Profits and gains of business of profession”, arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income



arising from such transactions. Section also provides the limit to which deductions shall be given.

16. Therefore, it is clear that the assessee is liable to pay Securities Transaction Tax when he enters into securities transaction. Tax is payable simultaneously after realizing the consideration. However, if that transaction is included in the total income of the assessee where the total income is assessed either under the provisions of the Act or under Section 115JB when tax chargeable on such income is arrived at, he is given the benefit of tax deductions of the amount, which he has paid under section 88E by virtue of Section 87. When under Section 82A, the assessee is made liable to pay tax with an assurance that it will be deducted and 87 of the Act gives effect to such promise made under the statute. That is the reason why the word used to rebate. The amount paid is handed back to the assessee. In other words, payment of tax twice on the same income is avoided.

17. Therefore, the contention that this benefit is not available to the assessee whose total income is assessed under Section 115JB has no substance. In other words, when the total income is assessed and the tax chargeable is computed, it is from that tax which is chargeable, the tax paid under Section 88E is given deduction, by way of rebate, under Section 87 of the Act. This is the legislative intent. That is a promise to give deduction of the tax already paid. This is the mode in which tax already paid is handed back at the time of final computation. Therefore, the judgment referred by the Tribunal is strictly in accordance with law and does not suffer from any legal infirmity, which called for interference. We do not see any substantial question of law involved in this appeal, which merits admission. The appeal is dismissed."

11. We are also of the view, and accordingly hold, that the Income Tax Appellate Tribunal was correct in holding that the provisions of Sections 87 and 88E of the Act apply to the total income computed under Section 115JB of the Act and the assessee would be entitled to a deduction to the extent of the Security Transaction Tax borne by him during the course of business in the relevant previous year.



12. The question framed in the present appeals is answered against the revenue and appeals are dismissed. No order as to cost.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

MAY 17, 2013
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