



\$~Part II-B (R-23)

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

+ **INCOME TAX APPEAL NO. 52/2000**

Date of decision: 21st August, 2013

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr. Abhishek Maratha, Sr. Standing
Counsel.

Versus

M/S PRAKASH TUBES LIMITED

..... Respondent

Through Mr. Prakash Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961(Act, for short) relates to Assessment Year 1989-90. The following substantial question of law was admitted for hearing vide order dated 30th November, 2000:-

“Whether the Tribunal has correctly interpreted the provisions of Section 115-J so far as mode



of computation of income is concerned?”

2. The respondent-assessee is a limited company and for the year under consideration it has filed its return declaring income of Rs.91,25,683/- under Section 115-J of the Act. The assessee, however, had claimed that it was entitled to carry forward its losses including investment allowance of Rs.2,19,04,511/- as its taxable income was being assessed on the basis of book profits under Section 115-J and not under the normal provisions.

3. The Assessing Officer did not agree, observing that the computation of income under Section 115-J of the Act does not effect the determination of the amount to be carried forward to the subsequent year under the normal provisions. The Assessing Officer also made other additions while assessing the taxable income under the normal provisions.

4. Commissioner of Income Tax (Appeals) agreed with the Assessing Officer on the question of carry forward of losses, including investment allowance. He, however, allowed some relief to the respondent-assessee on additions made under the normal provisions.

5. Aggrieved, the respondent-assessee preferred an appeal before the tribunal. No appeal was preferred by the appellant-Revenue against the order passed by the CIT(Appeals).

6. Income Tax Appellate Tribunal by the impugned order dated



16th August, 1999 followed its earlier order for the preceding ye 1988-89, which in effect means that the appeal filed by the respondent- assessee was allowed. In other words, the stand of the respondent- assessee that they were entitled to carry forward of unabsorbed losses, including investment allowance was accepted in view of the fact that income taxable had been computed on book profits under Section 115- J and not under the normal provisions.

7. The aforesaid view of the tribunal is not in consonance with the authoritative pronouncement of the Supreme Court in *Karnataka Small Scale Industries Development Corporation Limited versus Commissioner of Income Tax*, 2002 (258) ITR 770 (SC) wherein the contours of Section 115-J and the normal provisions have been explained. It has been held that Section 115-J (1) commences with the non-obstante clause and provides for two stage assessment. The first stage requires computation of income under the normal provisions and the second stage requires computation of book profits as per provisions of Section 115-J. In case the income computed under the normal provisions is less than 30% of the book profits, then the assessee's deemed total income chargeable to tax for the relevant previous year would be equal to 30% of the book profits. At the first stage, profits are computed under the normal provisions and deductions allowable under the Act have to be taken into consideration. The



deduction, which are allowed, do not get disturbed or obliterated even if the assessee pays tax on the book profits under Section 115-J. Thus, when Section 115-J is invoked and is applied, it does not affect the computation made under the normal provisions. They stand on their own legs and do not get effected. Accordingly, the unabsorbed losses, including investment allowance, which were duly taken into consideration and accounted for while computing tax under the normal provisions, do not get displaced or erased and adjustments made have to be given full effect to.

8. Accordingly, the question of law mentioned above has to be answered in favour of the appellant-Revenue and against the respondent-assessee.

9. At this stage, learned counsel for the respondent-assessee submits that similar issues had arisen for Assessment Years 1988-89 and 1991-92, but Revenue had not preferred any appeal and they accepted the order of the tribunal. If this is correct, the consequences will follow. It is also stated that there has been re-computation of the investment allowance pursuant to the order passed by the CIT (Appeals), which has attained finality. This is a factual matter. In case any order has attained finality, the same will be given due effect to. However, we clarify that investment allowance, etc. which has to be adjusted while computing the deduction under the normal



provisions will not be allowed to be carried forward. The appeal disposed of. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 21, 2013
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