



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

+ **ITA No. 851/2009**

Reserved on : September 16, 2009

Pronounced on: September 22, 2009

INDO RAMA SYNTHETICS (I) LTD ...Appellant

Through: Mr. Ajay Vohra, Ms. Kavita Jha, Ms. Akansha Aggarwal and Mr. Sriram Krishna, Advocates.

VERSUS

COMMISSIONER OF INCOME TAXRespondent

Through: Mr. Sanjeev Sabharwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

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VALMIKI J. MEHTA, J

1 The present appeal under Section 260-A of the Income Tax Act, 1961 has been filed by the appellant company against the order dated 16.1.2009 passed by the Income Tax Appellate Tribunal for the Assessment Year 2001-2002



whereby the Tribunal has held that for the purpose of computing “book prof under Section 115 JB of the Act, the amount withdrawn from the revaluation reserve and credited to the profit and loss account is not to be reduced from the net profit as per the profit and loss account unless the book profit had been increased by the amount of the reserve in the year of the creation of such reserve.

2 The appellant company is engaged in the business of manufacture of, inter alia, yarn and polyester. For the assessment year 2001-2002, the appellant company computed “book profit” under Section 115 JB of the Act, after reducing the net profit by the amount withdrawn from the revaluation reserve created on revaluation of the fixed assets. The Assessing Officer did not allow the said reduction on the ground that since the revaluation reserve had been created in the Assessment Year 2000-2001 and had not been added back while computing book profit for that year, in terms of the proviso to clause (i) of Explanation-1 of Section 115 JB, such reduction was not permissible. The CIT(A) upheld the order of Assessing Officer and held that reduction from net profit in arriving at the book profit is permissible in respect of withdrawal from any reserve created after 01.04.1997 and can only be done if the book profit had been increased by the amount of reserve in the year of the creation of such reserve.



3 That the relevant provision of Section 115 JB proviso to clause-(i)

Explanation 1 reads as under:-

“115JB.-----Special provision for payment of tax by 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, 2001, is less than seven and one-half 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 seven and one-half per cent.
- (2) Every assessee, being a company, shall; for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI of the Companies Act; 1956 (1 of 1956):

...

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-

.....

if any amount referred to in clauses (a) to (h) is debited to the profit and loss account, and as reduced by-

- (i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account

Provided that where this section is applicable to an assessee in any previous year , the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below second proviso to section 115JA, as the case may be ;or]

.... ”



4. The Tribunal while interpreting said section has very effectively and exhaustively looked at the issue and given the finding with which we concur.

The ITAT has held as under:-

“61. Now looking into the provision of section 115 JB of the Act, we find that proviso to clause 1 of the explanation inserted/substituted w.e.f. 1.4.97, the reserves of any nature, except other than reserve specified under section 33 AC, if debited to P&L Account is to be added back to the book profits of the assessee company. As per clause (i) the amount withdrawn from any reserve or provision, if any, such amount credited to P&L Account is required to be reduced from P&L Account after adjustment as specified in clauses (a) to (f). From the amended provision it is clear that prior to the insertion/substitution of clause (i) of aforesaid explanation it was open to the assessee to reduce the sum withdrawn from revaluation reserve, while computing book profit, amounts withdrawn from provision/reserve and credited to P&L Account, even if in the year in which the provision/reserve had been created but the amount of such reserve had not been added back while computing book profit for that year, notwithstanding that the reserve had been debited to the P&L Account. From the comparison of the provisions of section 115JB it is clear that prior to insertion of the proviso to clause (i) of the explanation of section 115 JB the assessee was entitled to reduce the sum from revaluation reserve while computing book profit under section 115JB of the Act even if in the year in which the provision/reserve had been created but the amount of such reserve has not been added back while computing book profit for that year notwithstanding that the reserve had been debited to P&L Account. However, after the insertion of the proviso to clause (i) of explanation to section 115JB of the Act, in similar facts and circumstances, the assessee has been deprived from this benefit by clearly mandating that in case the amount of such reserve has not been added back by the assessee in AY 2000-01, i.e. when the assessee company created the revaluation reserve while computing the book profit for that year, then the amount is statutorily to be included while computing the book profits under section 115JB of the Act. What we interpreted herein above is just a result of a plain reading of the relevant provisions, which are devoid of any ambiguity or doubt so no other meaning could be ascribed thereto. We are further of the opinion that the Tribunal is bound to give literal interpretation to ambiguous provisions of the Act and not interpret them in any other manner which are against the wisdom of the creators of the statute who created/amended the provision with the intention that the same is to be followed while considering the issues depending on the application thereof. Hence, we are also duty bound to adhere to the plain meaning of the section in the manner as indicated above and apply the same while deciding the issue.”



5. Before us, the learned counsel for the appellant/assessee has again urged what was urged by him before the Tribunal that the appellant company simply acted on the basis of accounting standards prescribed by ICAI on the treatment of reserve created on revaluation of fixed assets and that revaluation reserve is essentially in the nature of an adjustment entry to balance both sides of the balance sheet and there is no question of taking the same to the profit and loss account and, therefore, the issue of adjusting the book profit on account of creation of the revaluation reserve does not arise.

6. We are of the opinion that since there is no dispute that the provision of clause (i) of Explanation-1 to Section 115 JB is applicable to the issue in question and the language of the same being plain and clear, we agree with the view of the Tribunal on the interpretation of this provision as stated by it in para 61 and as reproduced by us above. In fact, it is not disputed that the assessee company takes benefit of additional depreciation on account of revaluation of the fixed assets by increasing the revaluation reserve in the relevant assessment year 2000-2001 and consequently, the same definitely has the effect of reducing the net profit for the said Assessment Year. Looking to the scheme of the provision of Section 115 JB, and which is a Minimum Alternate Tax (MAT) provision and so introduced by the legislature to be applicable to those companies which avoid paying tax by debiting in the profit and loss account, various expenses/entries etc as specified in Section 115 JB Explanation-1 such



as Income Tax paid or payable, amounts carried to any reserve, provision losses for subsidiary companies, the amount of depreciation etc as provided in the provision. A normal literal interpretation of the provision is, therefore, the order of the day with respect to this MAT provision.

7. We, therefore, have no reason to disagree with the view taken by the Tribunal. No question of law arises in the present appeal and the same is therefore dismissed.

VALMIKI J.MEHTA, J

A.K. SIKRI, J

September 22 , 2009
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