

Assistant Commissioner of Vs. Lallacherra Tea Co. (P.) Ltd.

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Court : Income Tax Appellate Tribunal ITAT Guwahati

Decided On : May-07-1992

Reported in : (1992)42ITD446(Gau.)

Judge : V Gandhi

Appellant : Assistant Commissioner of

Respondent : Lallacherra Tea Co. (P.) Ltd.

Judgement :

1. This appeal by the Revenue for the assessment year 1988-89 is directed against the order of the Commissioner of Income-tax (Appeals) for short CIT (A) and sole point of controversy relates to carry forward of unabsorbed losses. The controversy arises in the following circumstances: 2. The assessee is a private limited company carrying on business of manufacture and sale of tea. For the assessment year 1988-89 the assessee company filed its return declaring income of Rs. 74,450 on July 29, 1988. The Assistant Commissioner of Income-tax (A.O. in short) on consideration of the relevant material computed the assessee's income at Rs. 2,55,866 which was set off against brought forward losses of Rs. 4,87,417 of the assessment year 1987-88. The net result of above was that carry forward loss to be adjusted in the following assessment year worked out at Rs. 2,31,551. This figure is subject-matter of controversy before me.

3. The A. O. after computing the total income found that "special provisions relating to Companies" contained in Section 115J of the Income-tax Act

(hereinafter referred to as 'the Act') were applicable in this case as total income computed was less than 30% (thirty percentage) of the "book profit". He then computed book profit in terms of Explanation to Section 115J(1) of the Act at Rs. 2,48,158 and treated 30% (thirty percentage) thereof i.e., Rs. 74,477 (rounded to Rs. 74,450) as "deemed total income chargeable to tax" under Section 115J of the Act.

4. The assessee assailed the determination of unabsoibed carry forward losses in appeal before the CIT (A) and contended that sum of Rs. 74,450 charged to tax under Section 115J could not be deducted from the brought forward losses. The CIT (A) considered provisions of Sub-sections (1) and (2) of Section 115J of the Act and allowed relief to the assessee as claimed. The Revenue has brought the issue in appeal before the Tribunal.

5. Mrs. S. Jhingran, the learned Departmental Representative, strongly assailed the order of the CIT (A). She argued that the CIT(A) has misconstrued the provisions of Section 115J(2) of the Act which specifically saves application of Sub-section (1) to certain provisions including provisions relating to carry forward and set off of business losses. Mrs. Jhingran further drew my attention to pages 2987 and 2988 of Chaturvedi and Pithisaria's Income-tax Law, 4th edition volume 3 and pointed out that the learned authors as per illustration given at above pages has shown that amount of carry forward losses remains unaffected by application of provisions of Section 115J of the Act. Miss. Jhingran also filed copy of the decision of the Income-tax Appellate Tribunal, Gauhati Bench, Gauahati dated January 17, 1992, in the case of Universal Pipes (P.) Ltd. v. Dy. CIT, Gauahati.

6. Shri R.C. Verma, the learned counsel for the assessee, strongly supported the impugned order. He emphasised that amount which has been charged to tax cannot be treated as adjusted against losses. In this connection he drew my attention to Commentary of Sampath Iyengar's Law of Income-tax, 8th edition. He further referred to pages 2320 to 2322 of Commentary by Chaturvedi and Pithisaria referred to earlier and to the decision cited at above pages. It was submitted that legal fiction of Section 115J of the Act should not be extended beyond its legitimate field. After hearing and before disposal of appeal certain

further submissions in writing have been submitted by Shri Verma which are considered and placed on record. In the alternative Shri Verma has contended that two views of the matter being possible one in favour of the assessee should be adopted. Shri Verma accordingly submitted that the order of the CIT(A) be upheld.⁷ I have given careful thought to the rival submissions of the parties. I have also considered the relevant statutory provisions applicable in this case along with material placed on record. Section 115J of the Act, which as per N. Palkhivala was "economically unsound and morally repugnant", sought to penalise the so-called "zero tax" companies. The section provides that where total income of a company computed under the Act in respect of any assessment year is less than 30% (thirty percent) of its book profit (computed as per the Explanation), the total income of company chargeable to tax shall be deemed to be an amount equal to 30% (thirty percent) of such "book profit".

8. In the present case application of Section 115J is not in dispute.

There is further no dispute regarding computation of total income or "deemed total income" under Section 115J(1) of the Act. The A.O. computed current year's income at Rs. 2,55,866 and set off of the same against brought forward losses and took it at nil. He then took deemed total income under Section. 115J(1) of the Act at Rs. 2,48,158 and brought 30% (thirty percent) thereof i.e., Rs. 74,450 to tax under the above sub-section. It is the claim of the assessee that the above amount which has been charged to tax cannot be said to have been "set off and adjusted against losses (brought forward) in the assessment year. The above amount has been treated as total income. If Sub-section (1) of Section 115J of the Act alone is to be considered, the assessee's contention is to be accepted. After all, an amount which is charged to tax cannot simultaneously be taken as adjusted against losses. It is contradictory to demand tax on an amount which is adjusted. The other proposition that in case of two reasonable views of a statutory provision, the court has to adopt a view which favours the assessee is well settled and unexceptional. I have, therefore, no hesitation in holding that if Sub-section (1) of Section 115J of the Act alone is considered, Shri Verma's arguments are to be accepted.

9. But the Legislature has taken care of the above situation and provided Sub-section (2) of Section 115J of the Act in the following terms: (2) Nothing contained in Sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to Fmisbe carried forward to the subsequent year or years under the provisions of Sub-section (2) of Section 32 or Sub-section (3) of Section 32A or clause (ii) of Sub-section (1) of Section 72 or Section 73 or Section 74 or Sub-section (3) of Section 74A or Sub-section (3) of Sections 80J. The intention of the Legislature as rightly contended by Mrs. Jhingran is manifestly clear and is reflected in unequivocal terms. The aforesaid sub-section saves application of Sub-section (1) of Section 115J of the Act to the provisions mentioned in the sub-section which includes Sub-section (1) of Section 72 providing for carry forward and set off of business losses. The deemed total income computed under Sub-section (1) is rendered inoperative regarding provisions mentioned in Sub-section (2). The provisions of Section 115J may be inequitable and unjust, but such policy matters being the exclusive domain of the Legislature can be considered by the Legislature alone. In case of doubt and ambiguity, a just and fair interpretation beneficial to the subject can be taken. But present is not such a case. Here legislative intent is clear and therefore the object of the provisions is to be effectuated and not defeated on equitable consideration. There is no equity about a tax. Now, the legal fiction under which 30% (thirty percent) of book profit is treated as "deemed total income" is created for a definite purpose mentioned in Sub-section (1) and has a limited scope. The legal fiction does not affect other provisions particularly saved under Sub-section (2). Thus, computation of set off and brought forward losses made under Section 72(1) is not disturbed by Section 115J of the Act.

10. In view of above discussion and clear language of Sub-section (2) of Section 115J of the Act, the brought forward loss has to be carried after adjustment and set off of Rs. 2,55,866.1 fully agree with the submissions advanced by Miss. Jhingran. The order of the CIT(A) is set aside and that of the A.O. is restored. Consequently, the Revenue's appeal is allowed.