

Birla Jute and Industries Ltd. Vs. Deputy Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Feb-28-2002

Reported in : (2003)85ITD400Cal

Judge : P Kumar, C Sethi

Appellant : Birla Jute and Industries Ltd.

Respondent : Deputy Commissioner of

Judgement :

1. This appeal, filed by the assessee, is directed against the order dated 25th May, 1995 passed by the learned CIT(A) -Central II, Calcutta, in the matter of order under Section 143(3) for the assessment year 1989-90.

2. In ground Nos. 1 and 2, assessee is aggrieved of CIT(A)'s 'not excluding Rs. 1,96,28,861 transferred from - Reserve to Profit & Loss Account for the purpose of computation of book profit under Section 115J' of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. This ground of appeal relates to assessee's claim that, in computation of book profit under Section 115J of the Act, a sum of Rs. 9,99,68,529, which has been credited to the profit and loss account, out of transfer from reserve created on revaluation of fixed assets, is required to be excluded from the computation of book profit. The break up of this transfer from reserve is as follows :(i) Reserve on account of valuation of fixed assets made in earlier years Rs. 8,03,39,668(ii) Reserve on account of valuation of fixed assets made in the current year Rs. 1,96,28,861 ----- During the assessment proceedings, Assessing Officer noted that the amount transferred from reserve consists of two parts - one from a reserve created prior to the beginning of current previous year (i.e., prior to 1-4-1988) and the other out of reserve created during the current previous year (i.e., ended 31st March, 1989). While the Assessing Officer excluded Rs. 8,03,39,668, from computation of book profit for Section 115J, on the ground that such amount was covered by Explanation (i) to Sub-section (1A) of Section 115J which provides that "the amount withdrawn from reserves [(other than the reserves specified in Section 80HHD)] or provisions, if any such amount is credited to the profit and loss account" is required to be excluded from such computation. As regards the balance amount of Rs. 1,96,28,861, which is amount in dispute before us, the Assessing Officer noted that this amount is out of the revaluation reserve created in the related previous year itself but the same was not added to the book profit, on account of the same. The Assessing Officer then referred to proviso to the aforesaid explanation which states that "Provided that, where this section is applicable to an assessee in any previous year (including the relevant 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, 1988 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". It was in this background that he came to the conclusion that unless the entire reserve created during the year is added to book profit, transfers out of such reserves cannot be excluded from computation of book profits. He thus declined the adjustment, for the purpose of computing book profits under Section 115J, on account of transfer of Rs. 1,96,28,861 from capital reserve to the profit and loss account. In first appeal, CIT(A) has confirmed the action of the Assessing Officer. Still

aggrieved, assessee is in further appeal before us.

4. We have conscientiously heard Shri R.N. Bajoria, learned Senior Advocate for the assessee, and Shri D.K. Ghosh, learned Departmental Representative. We have also carefully perused the orders of the Assessing Officer and the CIT(A), and duly deliberated upon the authorities cited at the bar. The thrust of learned counsel's argument is that the intention behind incorporating the proviso, to the effect that the amount credited to profit and loss account by transfer from capital reserves shall be excluded only "if the reserves have been created or provisions have been made after 1st day of April, 1988, and have gone to increase the book profits in any year when the provisions of Section 115J of the Income-tax Act were applicable", was to take care of a situation in which, on one hand assessee reduced the book profit by creating the reserves, but not adding the same to the net profit figure, and on the other hand credited the amounts withdrawn from such reserves to the profit and loss account, to enhance the net profit, but claim deduction for same in computation of book profit by resorting to adjustment under proviso to paragraph (i). In plain words, while no adjustment to net profit is made for creation of reserve, even though net profits are affected by such a creation of reserve, transfer from such reserves to the profit and loss account, which results in increase of net profit, are neutralised by the adjustment to book profit under Explanation (z) to Section 115J(1A). These are the cases, according to learned counsel, which resulted in amendment in question.

Learned counsel has further stated, using the phraseology employed in the memorandum explaining the amendment, that it is this "undue lowering" of the profits, used as a "tax avoidance device", which admittedly is the mischief sought to be remedied by this amendment. It is then submitted that, unlike a revenue reserve, 'revaluation reserve' is not made by appropriating profits from the profit and loss account, and, therefore, creation of revaluation reserve inherently cannot result in 'undue lowering' of the profits. It is submitted that since revaluation reserve is essentially in the nature of an adjustment entry to balance both the sides of balance sheet, there cannot be any question of taking the same to the profit and loss account and since it cannot be taken to the profit and loss account, there is no question of adjusting the book profit on account of creation of revaluation reserve account. It is then argued that since book profit, in this situation, could not have been increased at the time of creation of revaluation reserve, revenue is not justified in declining the adjustment, on account of transfers from such reserves, only on the account that book profit was not increased at the time of creation of reserve. Reliance is placed on the observations of a co-ordinate Bench of this Tribunal, in the case of SRF Ltd. v. Asstt. CIT [1993] 47 ITD 504 (Delhi) wherein our distinguished colleagues have inter alia observed that "If, it is proceeded as if the reference to the net profit as per profit & loss account, is that figure all adjustment on Account of transfers to and from the reserves, then, since the revaluation reserve was not created by any debit to the profit & loss account, in the previous year relevant to the assessment year under appeal, then by virtue of the explanation rendered at the time of amendment, as reproduced earlier, then, the amount withdrawn from the revaluation reserve account, is to be, reduced to give the figure of book profit. This is obvious because, all adjustments as are provided in Section 115J, has to be necessarily to be given effect to". We are thus urged to hold that the authorities below erred in not excluding the amount of Rs. 1,96,28,861 which represented transfer from revaluation reserve created during the relevant previous year itself. Shri Ghosh, on the other hand, submitted that the language of the Act does not admit any controversy at all and once an amount, in respect of the reserve created by the assessee after 1-4-1988, is not added to the book profit, no adjustment, for computing book profit under Section 115J, in respect of transfer from such reserve can be made. It is also stated that when words are clear and unambiguous, there is no need to look at the intent of the Legislature.

Revenue has thus urged us to confirm the orders of the authorities below.

5. It may be useful to reproduce the relevant legal provision before we come to certain fine points in connection with the same. Sub-section (1 A) of Section 115J provides as follows : (1A) Every assessee, being a company, shall, for the purposes of this section, repair its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956) Explanation : 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 (1A), as increased by- (a) the amount of income-tax paid or payable, and the provision therefor; or (b) the amounts carried to any reserves (other than the reserves specified in Section 80HHD), [or Sub-section (1) of Section 33AC] by whatever name called; or (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or (d) the amount by way of provision for losses of subsidiary companies; or (f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies; or (g) the amount withdrawn from the reserve account under Section 80HHD, where it has been utilised for any purpose other than those referred to in Sub-section (4) of that section; or (h) the amount credited to the reserve account under Section 80HHD, to the extent that amount has not been utilised within the period specified in Sub-section (4) of that section; (ha) the amount deemed to be the profits under Sub-section (3) of Section 33AC : if any amount referred to in Clauses (a) to (i) is debited or, as the case may be, the amount referred to in Clauses (g) and (h) is not credited to the profit and loss account, and as reduced by,- (i) the amount withdrawn from reserves (other than the reserves specified in Section 80HHD) or provisions, 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 (including the relevant 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, 1988 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 (ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or (iii) the amounts [as arrived at after increasing the net profit by the amounts referred to in Clauses (a) to (i) and reducing the net profit by the amounts referred to in Clauses (i) and (ii)] attributable to the business, the profits from which are eligible for deduction under Section 80HHC or Section 80HHD; so, however, that such amounts are computed in the manner specified in Sub-section (3) or Sub-section (3A) of Section 80HHC or Sub-section (3) of Section 80HHD, as the case may be; or (iv) the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of Clause (b) of the first proviso to Sub-section (1) of Section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

The controversy before us is relating to interpretation of proviso to paragraph (i) of Explanation to Section 115J(1A). To place due emphasis thereon, we have underlined relevant portion.

6. We find that in the relevant previous year, assessee had, by transfer from revaluation reserve account, credited a sum of Rs. 1,96,28,861 to the profit and loss account while admittedly, on account of creation of related revaluation reserve - which also took place within the relevant previous year itself, the book profit was not increased. If we look at the plain words of the statute, when the book profit was not increased on account of creation of reserve, the book profit can also not be decreased on account of transfer from such a reserve to the profit and loss account. Shri Bajoria's thought provoking arguments, however, urge us to take a deeper look.

7. We may first refer to the memorandum explaining the amendment to the relevant proviso, [176ITR (St.) at 128] which explains the backdrop of this provision and which had been relied upon by the assessee : Under the existing provisions certain adjustments are made to the net profit as shown in the profit & loss account. One such adjustment stipulates that the net profit is to be reduced by the amount withdrawn from the reserves or provisions, if any, such amount is credited to the profit & loss account. Some companies have taken advantage of this provision by reducing their net profit by the amount withdrawn from the reserve created or provision made in the same year itself, though the reserve when created was not added to the book profit. Such adjustment led to undue lowering of profit and consequently the quantum of tax payable gets reduced. With a view counteract such a tax avoidance device, it is proposed to reduce the 'book profit' by the amount withdrawn from reserves or provisions only in two situations, namely:- (i) if the reserves have been created or provisions have been made before 1st day of April, 1988; or (ii) if the reserves have been created or provisions have been made after 1st day of April, 1988, and have gone to increase the book profits

in any year when the provisions of Section 115J of the Income-tax Act were applicable.

8. In the case of SRF Ltd. (supra), a co-ordinate bench of this Tribunal has observed that, "There is no denial that, but for the charge of depreciation on the revalued cost of assets, to the profit & loss account in the previous year relevant to the assessment year under appeal, the profit of the year would have been higher because of depreciation on the historical cost would be lower, because historical cost is lower than the revalued cost. But, the charge of depreciation on the revalued cost is not the same thing as creation of the reserve, because, creation of the reserve means debit to the profit & loss account by an amount and giving credit to the reserve by an equivalent amount." However, according to the assessee, in such a case there is no impact on net profit due to creation of revaluation reserve per se, because there is nothing to the debit to the profit and loss account, so far as the creation of revaluation reserve is concerned. With the help of this reasoning, in substance, it is submitted that the present case is outside the scope of mischief sought to be remedied by the legal provision in question.

9. The assessee's case is that even in terms of Section 115J(1 A), increase in book profit, on account of reserve made during the year, can only be made when the reserve is created by way of debit to the profit and loss account. It specifically provides that, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under Sub-section (1 A), as increased by inter alia the amounts carried to any reserves, other than the reserves specified in Section 80HHD or Sub-section (1) of Section 33AC - by whatever name called, if the same is debited to the profit and loss account (emphasis supplied). In other words, according to the assessee, when the reserve is not created by debiting the profit and loss account, there cannot be an occasion to add the same to the book profit. In this regard, reliance was placed on certain observations of a co-ordinate bench of this Tribunal, in the case of SRF Ltd. (supra).

We may, however, mention that as far as assessee's reliance on the case of SRF Ltd. (supra) is concerned, the revaluation reserve in this case was admittedly created before 1st April, 1988. The case is therefore not directly applicable on the facts of this case.

10. Let us now come back to the facts of this case and key question which requires adjudication by us. There is no dispute that, as far as transfer of Rs. 1,96,28,861 is concerned, when related revaluation reserve was created during the relevant previous year itself, no addition in respect of the same was made to the book profit. We are also conscious to the fact that the reserve was not created by debit to the profit and loss account but then, had it been created by debit to profit and loss account, the Assessing Officer would have had no choice but to make an adjustment under item (b) of Explanation to Section 115J(1 A). We also find that as far as reserves created, with or without debit to profit and loss account before 1st April, 1988, are concerned, there is no dispute that amounts transferred from these reserves to the profit and loss account are liable to be excluded for computation of book profit. There cannot also be any difficulty about adjustments for reserves created, by way of debit to profit and loss account after 1st April, 1988, so far as corresponding adjustment in book profit is concerned. Therefore, if we are to proceed on the basis that the proviso refers to only such creation of reserves, as will end up reducing the book profit due to related debit in the profit and loss account, this proviso will end up being redundant. As far as reserves created by way of debit to profit and loss account, after 1-4-1988, are concerned, the mandatory adjustment will have to be made by the Assessing Officer under item (b) of Explanation to Section 115J(1A), and, as far as reserves created, after 1-4-1988, without debit to the profit and loss account are concerned, the same will have to be treated, if we are to accept the interpretation put by the assessee, as outside the scope of the proviso. In that case, to our understanding, there cannot be a situation in which this provision can be invoked.

11. It is one of the basic principles of the interpretation of statutes that a legal provision should not be interpreted in such a manner so as to make the provision infructuous or redundant. Hon'ble jurisdictional High Court, in the case of CIT v. Jayashree Charity Trust [1986] 159 ITR 280 (Cal.) has observed that, "To resolve...(the) controversy, regard must be had to the language that has been employed and also to the object of the statute. It is well settled that, if possible, the words of a statute must be construed so as to give a

sensible meaning to them. The words ought to be construed ut res magis valeat quam pereat. "This latin maxim, i.e. ut res magis valeat quam pereat, means that the words of the statute should be given a sensible meaning so as to make them effective rather than making them redundant.

As observed by Hon'ble Supreme Court, in the case of CIT v. Teja Singh [1959] 35 ITR 408, at page 414 'a statute is designed', observed Lord Dunedin in Whitney v. IRC [1925] 10 Tax Cas. 88 'to be workable, the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.'" 12. We must, therefore, confine ourselves to plain and unambiguous meaning of the words employed in the statute and resist the temptation of resorting to creative interpretation canvassed by the learned counsel. Accordingly, we reject the same.

13. We have also noticed that in the present case admittedly revaluation reserve has been created directly by way of debit to the revalued assets, and not through the profit and loss account. However, if it is a bona fide revaluation, it does result in capital profits and, according to the scheme of Schedule VI of the Companies Act, Capital profits are also required to be reflected in the profit and loss account. Part II of Schedule VI, dealing with requirements as to the profit and loss account, inter alia states as follows : (a) shall be so made out as clearly to disclose the result of working of the company during the period covered by the account; and (b) shall disclose every material feature, including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of exceptional nature.

We are, therefore, of the considered view that, according to the scheme of the Schedule VI to the Companies Act, profit on revaluation of assets is first required to be taken to the profit and loss account and, only thereafter, the question of transfer to reserve comes up. In our considered view, every material feature, including capital profits or credits on capital account, are required to be reflected in the profit and loss account prepared in accordance with Schedule VI to the Companies Act.

14. While introducing the Section 115J, Hon'ble Finance Minister, on the floor of the House, inter alia stated that: I now purpose 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 per cent of its book profit. In other words a domestic widely held company will pay tax of at least 15 per cent of its book profit.(165 ITR St. 1 at page 14) Earlier, in the identical context, his predecessor had observed that "Hon'ble Members must be aware of the phenomenon of companies which are flourishing but are paying no tax at all only nominal tax. This is largely due to these companies availing of the tax" incentives and concession available under the provisions of the Income-tax Act. It has been a matter of concern to us that under our tax system several highly profitable companies are able to refuse their tax liability to zero even though they continue to pay high dividends. It seems reasonable that profitable and prosperous companies should contribute at least small portion of their profits to the national exchequer at a time when other and less better off section of society are bearing a burden.

15. When we consider the facts of this case, in the light of the above discussions, we find that the assessee's taking the profit on revaluation of assets directly to the revaluation reserve, without routing the same through the profit and loss account, does indeed unduly lower the book profits. The thrust of Section 115J is on 'book profits' and, unlike 'revenue profits' which are relevant for levy of taxation. Viewed from this perspective, book profit is affected by creation of revaluation reserve directly be debit to the revalued assets, because profit on revaluation has not been brought to the profit and loss account at all whereas, according to the scheme of the Schedule VI of the Companies Act, such a profit should have been reflected in the profit and loss account. Whether an amount is not credited to the profit and loss account, which should have been so credited, or the amount is debited to the profit and loss account, has the same impact and purpose. We are, therefore, of the considered view that even in case of revaluation of assets, profits on revaluation of assets are first required to be credited to the profit and loss account and the assessee not having done so, book profits of the assessee stand unduly lowered. In this view of the matter also, we do not think that the interpretation being given by the learned counsel is an acceptable interpretation. For this reason also, we

must confine ourselves to the plain and unambiguous expression in the statute.

16. In the light of these discussions also, we agree with the authorities below that when the book profit was not increased on account of creation of reserve, the book profit can also not be decreased on account of transfer of Rs. 1,96,28,861 from such a reserve to the profit and loss account. Accordingly, we support the conclusions arrived at by the authorities below and decline to interfere in the matter.

18. In ground No. 3, assessee is aggrieved that the learned CIT(A) erred in holding that cash subsidy received was deductible from the cost of diesel generating asset under Section 43(1) of the Act.

19. Both the parties agree that this issue is covered, in favour of the assessee, by Hon'ble Supreme Court's judgment in the case of CIT v.P.J. Chemicals Ltd. [1994] 210 ITR 8301 wherein Their Lordships have held that subsidy is not to be excluded from the cost of the asset for computing admissible depreciation. Respectfully following the aforesaid judgment, we decide the matter in favour of the assessee and thereby allow this ground of appeal.

21. In ground No. 4, the assessee is aggrieved that the CIT(A) was not justified in not allowing the assessee's claim for proportionate deduction of Rs. 15,60,714 on account of premium of Rs. 1,09,25,000 payable on redemption of 15 per cent non-convertible debentures issued by the company during the assessment year 1985-86. In ground No. 5, assessee is aggrieved that CIT(A) was not justified in not allowing the assessee's claim for proportionate deduction of Rs. 4,64,286 on account of premium of Rs. 32,50,000 payable on redemption of 15 per cent non-convertible debentures issued by the company during the assessment year 1984-85.

22. Having heard the rival contentions and having perused the orders of the authorities below, as indeed the documents filed before us, we find that this issue is also covered, in favour of the assessee, by various orders (in assessee's own case for the assessment years 1987-88, 1988-89 and 1990-91) by the co-ordinate benches which have, following Hon'ble Supreme Court's judgment in the case of Madras Industrial Investment Corporation Ltd. v. CIT[1997] 225 ITR 8021 upheld the assessee's contentions. We see no reasons to take any contrary view.

Accordingly, we direct the Assessing Officer to give necessary relief in the matter. Ground Nos. 4 and 5 are, thus, allowed.

23. In ground No. 6, assessee is aggrieved that the CIT(A) erred in not allowing the depreciation on tubewell and generator, installed at registered office of the company.

24. We find that this issue is also covered, in favour of the assessee, by various orders (in assessee's own case for the assessment years 1987-88, 1988-89 and 1990-91) by the co-ordinate benches which have upheld the assessee's contentions. We see no reasons to take any contrary view.

Accordingly, we direct the Assessing Officer to give necessary relief in the matter. Ground No. 6 is, thus, allowed.

25. In ground No. 7, assessee is aggrieved that the learned CIT(A) erred in not allowing the deduction of Rs. 2,90,423 being the prospecting expenses incurred for Spong Iron and Hydrogen Peroxide Projects.

26. We find that this issue is also covered, this time against the assessee though, by order dated 31-1-2000 passed by a co-ordinate bench, in assessee's own case for the assessment year 1988-89.

Respectfully following the aforesaid order, we decline to interfere in the matter and dismiss the ground No. 7.

27. In ground No. 8, assessee is aggrieved that the CIT(A) erred in not allowing the deduction for Rs. 99,801 in respect of investment in shares of M/s. Associate Jute Bleachers & Printers Ltd., written off as the said company had gone into liquidation.

