IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7518 OF 2010
(Arising out of SLP(C) No. 22397 of 2009)

Ajanta Pharma Ltd. .... Appellant(s)

Versus

Commissioner of Income Tax-9, Mumbai ....Respondent(s)

J U D G M E N T

S.H. KAPADIA, CJI

Leave granted.

2. Assessee was a MAT company at the relevant time. On 30.10.2001, it filed its return of income for assessment year 2001-02. The said return was accompanied by statutory audit report claiming deduction under Section 80HHC of the Income-tax Act, 1961 (for short, "the 1961 Act"). While computing the "book profits" under Section 115-JB of the 1961 Act, the assessee claimed reduction, under clause (iv) of Explanation to Section 115JB, of **100%** export profits. Vide assessment order dated 27.2.2004 the AO allowed only 80% of the export profits in terms of Section 80HHC(1B), as being allowed for reduction of "book profits" under clause (iv) of Explanation to Section 115JB of the 1961 Act. Being aggrieved by the assessment order, assessee moved before the CIT(A). Vide order dated 30.7.2004, the CIT(A) held that 100% export profits earned by the assessee as

computed under Section 80HHC(3) was eligible for reduction under clause (iv) of Explanation to Section 115JB. This order of CIT(A) was upheld by the Tribunal which took the view that the amount of profit eligible for deduction would not be governed by Section 80HHC(1B) since there is no reference to the said sub-section in clause (iv) of the Explanation to Section 115JB. Against the concurrent finding the Department carried the matter in appeal to the Bombay High Court. By the impugned decision dated 7.5.2009 the Department's appeal under Section 260A of the 1961 Act stood allowed. Hence this civil appeal.

3. The question of law raised in this civil appeal is : whether for determining the "book profits" in terms of Section 115JB, the net profits as shown in the P&L Account have to be reduced by the amount of profits eligible for deduction under Section 80HHC **or** by the amount of deduction under Section 80HHC?

4. To answer the above question we need to quote hereinbelow Section 115-JB as inserted by Finance Act, 2000, w.e.f. 1.4.2001 which reads as follows:

> "**115-JB**. (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 to the Companies Act, 1956 (1 of 1956).

Provided …

Provided further …

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 (2), as increased by –

(a) to (f) …

If any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by –

(i) to (iii) …

(iv) the amount of profits eligible for deduction under Section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section."

(emphasis supplied)

5. We also quote hereinbelow Section 80HHC as inserted by the Finance Act, 1983 w.e.f. 1.4.83. Sub-section (1B) thereof was inserted by Finance Act, 2000, w.e.f. 1.4.2001, the relevant portion of the said provisions reads as follows:

"**80HHC**. (1) Where an assessee, being an Indian company or a person (other than a company) resident in India, is engaged in the business of export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B) derived by the assessee from the export of such goods or merchandise:

Provided ...

(1A) ...

(1B) For the purposes of sub-sections (1) and (1A), the extent of deduction of the profits shall be an amount equal to –

(i) eighty per cent thereof for an assessment year beginning on the 1st Day of April, 2001;

(ii) seventy per cent thereof for an assessment year beginning on the 1st day of April, 2002;

(iii) fifty per cent thereof for an assessment year beginning on the 1st day of April, 2003;

(iv) thirty per cent thereof for an assessment year beginning on the 1st day of April, 2004,

and no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and any subsequent assessment year."

(emphasis supplied)

6. **Sub-section (1B) was inserted by Finance Act, 2000 w.e.f. 1.4.2001 i.e., the same Act which inserted Section 115JA.**

7. In recent times, the number of zero-tax companies and companies paying marginal tax has grown, hence, vide the Finance (No.2) Act, 1996, levy of minimum tax on companies having "book profits" stood introduced. The scheme envisaged payment of minimum tax by deeming 30% of the book profits computed under the Companies Act, as taxable income, in a case where the total income as computed under the provisions of the 1961 Act, is less than 30% of the book profit. The word "book profit" has been defined in Section 115JA(2) read with the Explanation thereto to mean the net profit as shown in the Profit and Loss Account, as increased by the amount(s) mentioned in clauses (a) to (f), and as reduced by amount(s) covered by clauses (i) to (ix) of the Explanation. These may be called for the sake of brevity as "Upward and Downward Adjustments". From the above it is clear that Section 115JA is a self-contained Code and will apply notwithstanding any provisions in the 1961 Act. In this case, we are concerned with Downward Adjustment, particularly clause (viii) which refers to the amount(s) of profits eligible for deduction under Section 80HHC, computed under Section 80HHC(3) but subject to conditions specified in Sections 80HHC(4) and 80HHC(4A).

8. By the Finance Act, 2000, Section 115JB was inserted w.e.f. 1.4.2001 providing for levy of MAT on certain companies. Section 115JB, though structured differently, stood inserted to provide for payment of advance tax by MAT companies. Section 115JB is the

successor section to Section 115JA. In essence, it is the same except that Section 115JA provided for MAT on companies, so far as it does not deem the book profit as total income. Under Section 115JB, however, clause (viii) of Section 115JA is re-numbered as clause (iv). Section 115JB continues to remain a self-contained Code.

9. On the other hand, Section 80HHC(1) inter alia states that where an assessee, who is the Indian resident, is engaged in the business of exports out of India of any goods earns convertible foreign exchange then in computing the total income, a deduction of the profits derived from such exports would be admissible. Thus, Section 80HHC provides for tax incentives. Section 80HHC(1) at one point of time laid down that an amount equal to the amount of deduction claimed should be debited to the P&L Account of the previous year in respect of which deduction is to be allowed and credited to the reserve account to be utilized for the business purpose. Section 80HHC(1) concerns eligibility whereas Section 80HHC(3) concerns computation of the quantum of deduction/tax relief. At one point of time prior to the Finance Act, 2000, exporters were allowed 100% deduction in respect of profits derived from export of goods. However, that has now been reduced in a phase-wise manner under Section 80HHC(1B). It may be noted that all assessable entities are not eligible for deduction under Section 80HHC. Similarly, only eligible goods are entitled to such special deduction under Section 80HHC(1). A bare reading of Section 80AB shows that

computation of deduction is geared to the amount of income, but Section 80HHC(3), which refers to quantification of deduction is geared to the exports turnover and not to the income. On the other hand, Section 115JB refers to levy of MAT on the deemed income. The above discussion is only to show that Sections 80HHC and 115JB operate in different spheres. Thus, two essential conditions for invoking Section 80HHC(1) are that assessee must be in the business of export and secondly that sale proceeds of such exports should be receivable in India in convertible foreign exchange. Hence, Section 80HHC(1) refers to "eligibility" whereas Section 80HHC(3) refers to computation of tax incentive. Coming to Section 80HHC(1B) it is clear that after Finance Act, 2000 w.e.f. assessment year 2001-02 exporters would not get 100% deduction in respect of profits derived from exports but that they would get deduction of 80% in the assessment year 2001-02, 70% in the assessment year 2002-03 and so on. Thus, Section 80HHC(1B) deals not with "eligibility" but with the "extent of deduction". As earlier stated, Section 115JB is a self-contained Code. It taxes deemed income. It begins with a non-obstante clause. Section 115JB refers to computation of "book profits" which have to be computed by making Upward and Downward Adjustments. In the Downward Adjustment, vide clause (iv) it seeks to exclude "eligible" profits derived from exports. On the other hand, under Section 80HHC(1B) it is the extent of deduction which matters. The word "thereof" in each of the items

under Section 80HHC(1B) is important. Thus, if an assessee earns Rs.100 crores then for the assessment year 2001-02, the extent of deduction is 80% thereof and so on which means that the principle of proportionality is brought in to scale down the tax incentive in a phased manner. However, for the purposes of computation of book profits which computation is different from normal computation under the 1961 Act/computation under Chapter VIA. We need to keep in mind the Upward and Downward Adjustments and if so read it becomes clear that clause (iv) covers full export profits of 100% as "eligible profits" and that the same cannot be reduced to 80% by relying on Section 80HHC(1B). Thus, for computing "book profits" the Downward Adjustment, in the above example, would be Rs.100 crores and not Rs.90 crores. The idea being to exclude "export profits" from computation of book profits under Section 115JB which imposes MAT on deemed income. The above reasoning also gets support from the Memorandum of Explanation to the Finance Bill, 2000.

10. One of the contentions raised on behalf of the Department was that if clause (iv) of Explanation to Section 115JB is read in entirety including the last line thereof (which reads as "subject to the conditions specified in that section"), it becomes clear that the amount of profits eligible for deduction under Section 80HHC, computed under clause (a) or clause (b) or clause (c) of sub-section (3) or sub-section (3A), as the case may be, is subject to the conditions specified in that Section.

According to the Department, the assessee herein is trying to read the various provisions of Section 80HHC in isolation whereas as per clause (iv) of Explanation to Section 115JB, it is clear that book profit shall be reduced by the amount of profits eligible for deduction under Section 80HHC as computed under clause(a) or clause(b) or clause(c) of sub-section (3) or sub-section (3A), as the case may be, of that Section and subject to the conditions specified in that Section, thereby meaning that the deduction allowable would be only to the extent of deduction computed in accordance with the provisions of Section 80HHC. Thus, according to the Department, both "eligibility" as well as "deductibility" of the profit have got to be considered together for working out the deduction as mentioned in clause (iv) of Explanation to Section 115JB. We find no merit in this argument. If the dichotomy between "eligibility" of profit and "deductibility" of profit is not kept in mind then Section 115JB will cease to be a self-contained code. In Section 115JB, as in Section 115JA, it has been clearly stated that the relief will be computed under Section 80HHC(3)/(3A), subject to the conditions under sub-clauses (4) and (4A) of that Section. The conditions are only that the relief should be certified by the Chartered Accountant. Such condition is not a qualifying condition but it is a compliance condition. Therefore, one cannot rely upon the last sentence in clause (iv) of Explanation to Section 115JB (subject to the conditions specified in sub-clauses (4) and (4A) of that Section) to obliterate the difference

between “eligibility” and “deductibility” of profits as contended on behalf of the Department.

11. For the above reasons, we set aside the impugned judgment of the High Court and restore the judgment of the Tribunal. Accordingly, the civil appeal of the assessee is allowed with no order as to costs.

.....CJI
(S. H. Kapadia)

.....J.
(K.S. Radhakrishnan)

New Delhi;
September 9, 2010