IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ITA No.74 of 2017
Date of decision: 25.04.2018

Pr. Commissioner of Income Tax ..Appellant

Versus

M/s Jai Prakash Power Ventures Ltd . Respondent

Coram:
The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice
The Hon'ble Mr. Justice Sandeep Sharma, Judge
Whether approved for reporting?

For the appellant: Mr.Vinay Kuthiala, Senior Advocate, with Mr.Diwan Singh Negi, Advocate.

For the respondent: Mr.Vishal Mohan, Advocate.

Sanjay Karol, Acting Chief Justice (oral)

Primarily, six substantial questions of law arise for consideration in the present appeal.

(i) Whether the Hon'ble ITAT is right in law in holding that the A.O. was not right in making adjustments for working the book profit under Section 115JB of the Income Tax Act, 1961 by adding the AAD to the book profit?

(ii) Whether the Hon'ble ITAT is right in law in holding that there was no diminution in the assets on account of Advance Against Depreciation (AAD) and thus was not required to be added back to the book

profit under clause (i) of Explanation (1) to section 115 JB of the Income Tax Act, 1961?

(iii) Whether the Hon’ble ITAT is right in law in holding that the provision for leave encashment is an ascertained liability and hence not to be included to book profit?

(iv) Whether the Hon’ble ITAT is right in law in treating excess provisions for bonus and sundry balance written back as income derived from the eligible business of generation of power and hence eligible for claiming deduction u/s 80IA of the Income Tax Act, 1961?

(v) Whether the Hon’ble ITAT is right in law in treating the interest income earned by the assessee from HPSEB as income from generation of power and hence eligible income for allowance of deduction u/s 8-IA of the Income Tax Act, 1961?

(vi) Whether the Hon’ble ITAT is right in law in holding that reimbursement of tariff application fee was income derived from the eligible business of generation of power and hence eligible for claiming deduction u/s 80IA of the Income Tax Act, 1961?

2. Insofar as substantial questions of law No.(i) and (ii), are concerned, we are of the considered view, which fact is not disputed, that the same are squarely covered by the judgment rendered by the Apex Court in ***National Hydroelectric Power Corporation Ltd. vs. Commissioner of Income Tax***, (2010) 320 ITR 374 (SC).

3. Insofar as substantial question of law No.(iii) is concerned, we are of the considered view, which fact is not disputed, that the matter is squarely covered by the judgment rendered in Commissioner, Income tax vs. H.P. Tourism Development Corporation Ltd., passed by this Court in ITA Nos.28 & 29 of 2012, decided on 16th May, 2013.

4. Insofar as substantial question of law No.(iv) is concerned, the same does not arise for consideration for the reason that the matter has been remanded back by the appellate authority to the Assessing Officer. As such, as mutually agreed on this limited question, the matter be considered by the appropriate authority now dealing with the issue pursuant to an order of remand.

5. Insofar as substantial question of law No.(v) is concerned, we are of the considered view, which fact is not disputed, that the matter is squarely covered by the

judgment rendered in Commissioner of Income tax vs. Jai Prakash Hydro Power Ventures Ltd., passed by this Court in ITA Nos.1 of 2014, 4015 of 2013 and 3 of 2014, decided on 15th May, 2017

6. It is not in dispute that insofar as substantial question of law No.(vi) is concerned, the Tribunal has not adverted to the same in any manner and as such, as mutually agreed on this limited question, the matter is remanded back to the Tribunal to consider and decide the same. Parties undertake to fully cooperate and appear before the Tribunal on the date fixed by the Tribunal on 24th May, 2018.

Substantial questions of law are answered accordingly. Appeal stands disposed of, so also, pending application(s), if any.

(Sanjay Karol)
Acting Chief Justice

April 25, 2018
(vt)

(Sandeep Sharma)
Judge