

* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.599 of 2007

% Judgment reserved on: 4th January, 2008
Judgment delivered on: 11th January, 2008

COMMISSIONER OF INCOME TAX
DELHI -IV, NEW DELHI

..... Appellant

Through: Ms. Prem Lata Bansal,
Advocate

Vs.

E. I. DUPONT INDIA LTD.
DLF CYBER GREENS, TOWER-C,
7TH FLOOR, SECTOR-25A, DLF CITY PH-3
GURGAON

..... Respondent

Through: Mr. Satyen Sethi and
Mr. Johnson Bara, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B. GUPTA, J.

The Revenue being aggrieved against an order dated
22nd September, 2006 passed by the Income Tax Appellate

Tribunal, Bench C, Delhi ('ITAT' in short) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short 'the Act') in Case ITA No. 3962(Del)/2002 for the assessment year 1999-2000 vide which ITAT deleted addition of Rs.4,00,178/- being provision for doubtful debts and addition of Rs.41, 73,107 being provision for damaged stock made by the Assessing Officer to the book profits holding that both the provisions were related to the assets and not any liability and therefore, there was no question of these amounts representing any unascertained liability.

2. Brief facts of this case are that the Assessee filed return of income declaring loss at Rs.5,21,75,080/- though declaring income at Rs.2, 62,30,750/- under Section 115JA of the Act. During the assessment proceedings, it was noticed by the Assessing Officer that while computing book profits under Section 115JA of the Act, the Assessee had not added back provisions relating to bad and doubtful debts (Rs.4,00,178/-) and provision for damaged stock (Rs.41,73,107/-) to the profit which were clearly to be added back as per Explanation (c) of Section 115JA (2), which contemplates that "the amount or amounts set aside

to provisions made for meeting liabilities, other than the ascertained liabilities” Accordingly, the Assessing Officer added these provisions to the net profit and computed book profits at Rs.3,36,82,201/- as against Rs. 2,62,13,750/- as declared by the Assessee.

3. Against the order of Assessing Officer, the Assessee filed an appeal before the Commissioner of Income Tax Act (Appeals) (in short CIT(A)) who deleted the addition holding that in view of the judgment of the Apex Court in the case of ***Apollo Tyres Ltd. vs. Commissioner of Income-Tax (2002) 255 ITR 273***, the Assessing Officer is not empowered to make any adjustment, if the accounts are prepared in accordance with Part-II and III of the Schedule-VI of the Companies Act unless the same are provided in the Explanation. The CIT(A) further held that the provisions for these amounts were ascertained liabilities. Provision for damaged stock was made on account of leakage of stock during transportation and storages and for obsolete/useless stock. As such, the CIT(A) directed the Assessing Officer to work out the book profit as shown by the Assessee.

4. The Revenue filed appeal against the order of CIT(A) before the ITAT and the ITAT deleted addition of Rs.4,00,171/- being provision for doubtful debts and addition of Rs.41,73,107/- being provision for damaged stock made by the Assessing Officer to the book profits holding that both the provisions were related to the assets and not any liability and, therefore, there was no question of these amounts representing any unascertained liability.

5. In this appeal, it is the case of the Revenue that the Assessee could not determine the amount of expired stock before it being expired and the Assessee had not explained as to on what basis provision for bad and doubtful debt was created. The provision for bad and doubtful debt could not be allowed to the Assessee unless the amount is actually written off and the Assessee had not shown as to which specific debt had actually become bad and irrecoverable and, therefore, had written off in the book accounts.

6. In support of her contentions, learned counsel for the Revenue has cited decisions of this Court reported as ***Commissioner of Income Tax vs. Eicher Ltd (2006) 287 ITR 170*** and that of the Apex Court in ***State Bank of***
ITA No.599 of 2007

***Patiala vs. Commissioner of Income Tax (1996) 219
ITR 706.***

7. As per the order of CIT(A), the Assessee company is engaged mainly in the manufacture/formulation of various types of agricultural chemicals namely insecticides and pesticides etc. The formulation and sale of the products are governed by the Insecticides Act and the Central Insecticides Board Act as Regulatory Authority. The said Act and Board have prescribed detailed guidelines on the purchase, storage, formulation and distribution of insecticides and pesticides to which the Assessee company is bound to adhere. The stock written off during the year amounting to Rs.41,73,107/- consists of stocks of these agricultural chemicals which have become obsolete/useless. There are three reasons for writing off such stocks namely shortage of receipt of goods as reported by the distributors when compared to actual quantities sold to them, leakage of stock during transportation and storage being a common occurrence in the industry given the nature of the products and thirdly the stock which has exceeded their expiry date as

prescribed by the Central Insecticides Board and remain unsold as such. These stocks cannot be sold to the distributors after expiry date and have to be incinerated. The details of stock expired, leaked and received as a shortage which has to be written off have been filed and gone through. These amounts have been written off in the books of accounts which have been prepared as per Part-II and III of Schedule-VI of the Computation of book profit under Section 115JA of the Act and, therefore, the same are to be reduced from the computation under Section 115JA of the Act.

8. The ITAT in the impugned order has held that the Assessing Officer has simply added back these amounts as they were described as provision and in the opinion of the Assessing Officer, the same were required to be added back as per Clause (c) of the Explanation to Section 115 JA(2) and thus, the Assessing Officer has proceeded on an entirely incorrect basis because, both the provisions related to the assets and not any liabilities incurred by the Assessee. Therefore, there is no question of these amounts representing any unascertained liability. It was further

held by the ITAT that the Assessing Officer other wise did not enquire into the matter and there is no material to hold that these amounts have been arbitrarily provided for by the Assessee.

9. Admittedly, the Assessee was engaged in the business of insecticides and these products have a limited self life. The provision of Rs. 41,73,107/- comprised of useless/obsolete stock and besides there were certain shortages on account of leakage of stock during the transportation and storage. Under these circumstances, these amounts related to ascertained liability and moreover the accounts of the Assessee have been prepared in accordance with Part-II and III of Schedule-VI of the Companies Act, as envisaged under Section 115JA of the Act.

10. Hence, we do not find any illegality or infirmity in the order passed by the Tribunal and the case law cited by the learned counsel for the Revenue, are not applicable to the facts of the present case.

11. Under these circumstances, no substantial question of law arises for our consideration and the present appeal

filed by the Revenue is not maintainable and the same is hereby dismissed with cost of Rs.5,000/-.

12. The Revenue is directed to deposit the cost with the Delhi High Court Legal Services Committee within one month from today.

13. List the matter on 15.2.2008 for compliance.

(V. B. GUPTA)
JUDGE

January 11, 2008
raj

(MADAN B. LOKUR)
JUDGE