Note in respect of claim of depreciation as per I.T. Rules, for the computation of book profit for the purposes of MAT, under section 115JB of the I.T. Act, 1961.

Under the provisions of section 115JB of the Income-Tax Act, 1961 (the Act), where in the case of a company, the income-tax payable on the total income in respect of any assessment year (AY), is less than ten percent of its **book profit**, such book profit shall be deemed to be the total income of the assessee and tax payable by the assessee on such total income shall be the amount of income-tax at the rate of ten percent.

Besides, for the purpose of section 115JB, '*book profit'* means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), subject to adjustments, vide clauses (a) to (h) and clauses (i) to (viii) of Explanation 1 to section 115JB(2) of the Act.

Normally most of the companies debit their profit and loss account by depreciation, as provided under the Companies Act, 1956. However, the depreciation provided under Companies Act, 1956, is the minimum and there is no bar to claim higher depreciation for the purposes of section 115JB of the Act. The aforesaid view is supported by the following judgements of the Punjab and Haryana High Court and the Supreme Court, which are discussed as follows :

(i) *C.I.T. Vs. Sona Woollen Mills Pvt. Ltd. [2008] 300 ITR 202 (P&H).*

It was held in this case that for the purposes of computation of '*book profit'* under section 115J (presently section 115JB), claim of higher depreciation under the I.T. Rules is permissible.

The Head-Note of the aforesaid judgement on pages 202 and 203 of the Report, is as follows :

The words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956" in section 115J of the Income-Tax Act, 1961, were used for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. The Assessing Officer cannot re-scrutinize the accounts to see whether the accounts were in accordance with the provisions of the Companies Act. Income acceptable to the authorities under the Companies Act has to be treated as income for the purposes of section 115J. Only power of the Assessing Officer is to see that accounts are certified by the authorities under the Companies Act and there is no jurisdiction to go behind the net profit shown in the profit and loss account.

For the assessment year 1989-90, the assessee declared its income nil after claiming depreciation under the 1961 Act. The Assessing Officer rejected the claim on the ground that depreciation for purposes of section 115J was permissible under Schedule XIV to the 1956 Act. However, the Commissioner (Appeals) allowed the claim of the assessee holding that depreciation provided under the 1956 Act was minimum but there was no bar to claim higher depreciation for purposes of section 115J. The Commissioner (Appeals) allowed the depreciation actually debited. The Tribunal upheld the said view. On a reference :

Held, that the Tribunal was right in law in confirming the order of the Commissioner (Appeals) allowing the depreciation under the Income-Tax Rules, 1962, to the assessee for computing the quantum of income under section 115J primarily on the ground that the same was based on the view expressed by the then Chairman of the Central Board of Direct Taxes in a Departmental publication.

(ii) *Malayala Manorama Co. Ltd. Vs. C.I.T. [2008] 300 ITR 251 (SC)*

In this case, the company was consistently charging depreciation at the rates specified in the Income-Tax Rules, 1962 (the Rules). It was held that the AO does not have jurisdiction under section 115J (now section 115JB) of the Act, to rework the net profit by substituting depreciation at the rates prescribed in Schedule XIV to the Companies Act, 1956.

The Head-Note of the aforesaid judgement on pages 251 and 252 of the Report, is reproduced as follows :

In respect of a company consistently charging depreciation in its books of account at the rates prescribed in the Income-Tax Rules, the Assessing Officer does not have jurisdiction under section 115J of the Income-Tax Act, 1961, to rework the net profit by substituting depreciation at the rates prescribed in Schedule XIV to the Companies Act, 1956.

The purpose of introducing section 115J of the Income-Tax Act, 1961, providing for a minimum alternate tax was that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bringing the companies within the tax net that section 115J was introduced in the Income-Tax Act, 1961, with a deeming provision which makes such a company liable to pay tax on at least 30 per cent of its book profits as shown in its own accounts. The words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956," was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts, *an Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain the accounts in a manner provided by the Companies Act and the same to be scrutinized and certified by the statutory auditors and to be approved by the company in its general meting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with requirements of the Companies Act. It is, therefore, not open to the Assessing Officer to re-scrutinize the accounts and satisfy that these accounts have been maintained in accordance with the provisions of the Companies Act.*

While computing the income of a company under section 115J, the Assessing Officer has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to that section. The Assessing Officer does not have jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J.

In the light of the aforesaid legal precedents, the liability in respect of Minimum Alternate Tax (MAT) may be avoided or minimized. This can be done by charging depreciation in the profit and loss account at the rates specified under the I.T. Rules, 1962.

In this context, it must be understood that the rates of depreciation under the Companies Act, 1956, are the minimum and there is no bar to claim higher depreciation for the purposes of section 115J (now section 115JB) of the Act, as per the Rules specified under the I.T. Rules, 1962.

Place : Pune

Date : 19.6.2008 (S.K.Tyagi)

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