MAJESTY LEGAL
Advocates & Solicitors

AO CANNOT REEXAMINE NET PROFIT BEYOND SCOPE OF SECTION 115J: BOMBAY HIGH COURT

"M/S. MAHINDRA & MAHINDRA LTD. V. COMMISSIONER OF INCOME-TAX"

Hon'ble Bombay High Court in case of ***M/s. Mahindra & Mahindra Ltd. v. Commissioner of Income-tax***[1], ruled that Assessing Officer does not have jurisdiction to go behind the net profit shown in profit and loss account except to the extent provided in Explanation to Section 115J of Income Tax Act, 1961. In the case at hand, the assessee contended that the AO's role under Section 115J is restricted and does not extend to a fresh scrutiny of the company's income. The AO is only empowered to verify whether the accounts have been duly certified by the authorities under the Companies Act and maintained as per the statutory requirements.

Agreeing with this view, Hon'ble Court observed that if the legislature had intended for the AO to re-evaluate the company's income, it would have clearly stated so in Section 115J. The absence of such a provision implies that the AO must accept the net profit shown in the profit and loss account, subject only to the adjustments mentioned in the Explanation to the section.

Accordingly, Hon'ble Court ruled in favour of the assessee, answering the substantial question of law in their favour.

TEAM MAJESTY LEGAL[2]

OFFICE : B-87, Alaknanda Apartment, G-1, Ganesh Marg/Moti Marg, Bapu Nagar, Jaipur,Rajasthan-302015.
https://maps.app.goo.gl/BsUvY9RWyvUt6JcB9?g_st=iw
CHAMBER : 204, E-Block, Rajasthan High Court, Jaipur.
MOBILE No. : 9785461395
E-MAIL : mahi@majestylegal.in
WEBSITE : www.majestylegal.in

[1] INCOME TAX APPEAL NO. 416 OF 2003

[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 416 OF 2003

M/s. Mahindra & Mahindra Ltd.
Gateway Building,
Apollo Bunder,
Mumbai – 400 039 .. Appellant

Versus

Commissioner of Income-tax,
City -II, Aayakar Bhavan,
M. K. Road, Mumbai 400 020. .. Respondent

Mr. J. D. Mistri, Senior Advocate a/w Mr. B. V. Jhaveri and Ms. Bhargavi Raval for the appellant.

Mr. N. C. Mohanty a/w Sanaita Choure for respondent.

CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.

RESERVED ON : APRIL 24, 2025
PRONOUNCED ON : MAY 2, 2025

JUDGMENT (PER : CHIEF JUSTICE)

1. This appeal under Section 260A of the Income Tax Act, 1961 (**1961 Act**) has been filed by the assessee. The subject matter of the appeal pertains to Assessment Year 1990-91. The appeal was admitted on the following substantial questions of law:

> *"(i) Whether, on the facts and in circumstances of the case as well as in law, the Tribunal was right in disallowing write-off of the deposits and interest thereon as the business loss of Rs.200.47 lakhs incurred by the appellant company u/s.28 of the Act in the course of its business?*

(ii) Whether the Assessing Officer, while determining the book profit under section 115J of the Act, can question the correctness of the profit and loss account prepared and certified by the statutory auditors of the appellant company as having been prepared in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act, 1956?"

2. Thereafter, during the course of hearing, following additional substantial question of law was framed:

Additional substantial question of law:

Whether the Tribunal committed an error of law in not allowing miscellaneous expenses of Rs.49,18,786/- (Rupees forty-nine lac eighteen thousand seven hundred eighty-six only) incurred by the appellant for MMC under Section 37 of the 1961 Act on the ground of commercial expediency as well as on the ground of the expenses where so incurred in order to preserve the reputation of estate and business of the assessee?

(I) FACTS:

3. Facts leading to filing of this appeal, briefly stated, are that the assessee is a public limited company and is engaged in the manufacture of Jeeps, Tractors, Implements and other products. The assessee filed the return of income for the period from 1st April 1989 to 31st March 1990 (Assessment Year 1990-91) declaring a total income of Rs.3,50,20,837/- (Rupees three crores fifty lac twenty thousand eight hundred thirty-seven only). The Assessing Officer, by an order of assessment dated 26th March 1993, *inter alia;* held that the assessee had placed deposits with certain concerns, who have declined to pay the deposits and interest on the ground that the deposits are linked to the amounts provided to M/s. Machinery Manufacturers

Corporation Ltd. **(MMC)** by them, which have now become irrecoverable as MMC was directed to be wound-up by this Court by an order passed on 16th April 1989. It was further held that amount of deposit and interest due to the assessee has been adjusted by various concerns against loan given by them to MMC. Therefore, the assessee cannot claim to have not recovered its dues. It was also held that the assessee had liquidated the liability of MMC which act is for consideration other than business. The Assessing Officer, therefore, disallowed a sum of Rs.49,18,786/- (Rupees forty-nine lac eighteen thousand seven hundred eighty-six only) claimed under the head miscellaneous expenses as well as a sum of Rs.200.47 lac claimed by the assessee on account of deduction of write-off of deposits and interest.

4. The assessee filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 8th December 1994, *inter alia;* held that the assessee did not incur the expenditure to carry on the business and the business of the MMC was not the business carried out by the assessee. Therefore, the expenses incurred by the assessee are not admissible under Section 37(1) of the 1961 Act. The Commissioner of Income Tax (Appeals), while computing the book profit under Section 115J of the 1961 Act, disallowed the following three deductions: (a) provision for warranties claim Rs.87,02,000/- (b) provision for past service gratuity liability Rs.2,42,14,000/- and (c) write-off certain deposits and interest thereon Rs. 2,47,00,000/-. The Commissioner of Income Tax (Appeals) further held that the provision for warranties made by

the assessee cannot be allowed. The appeal preferred by the assessee was partly allowed.

5. Being aggrieved by the aforesaid order, the assessee preferred an appeal before the Income Tax Appellate Tribunal (**Tribunal**). The Tribunal, by an order dated 25th February 2003 confirmed the following disallowance: (a) Deposits – Rs.142.50 lac and (b) Interest – Rs.57.97 lac. The Tribunal, *inter alia;* held that insofar as challenge to confirmation and not deleting the disallowance in respect of sum of Rs.49,18,786/- (Rupees forty-nine lac eighteen thousand seven hundred eighty-six only) as well as a sum of Rs.200.47 lac is concerned, the said claim cannot be allowed in view of the order passed by the Tribunal in assessee's own case being ITA No.6886/Bom/92 for the Assessment year 1989-90. The Tribunal further held that the provision for warranties made by the assessee on the estimated basis in view of the past experience cannot be termed as an ascertained liability. It was also held that a provision for past services liability in respect of retirement gratuity for an amount of Rs.242.14 lac has be to added back. It was also held that the amount was debited in the profit and loss account below the line and hence, it cannot be said that the profit and loss account was prepared as per Part II and III of Schedule VI to the Companies Act and cannot be disturbed. In the aforesaid factual background, this appeal arises for our consideration.

(II) SUBMISSIONS ON BEHALF OF THE ASSESSEE:

6. Learned senior counsel for the appellant has submitted that the first substantial question of law has been answered in favour

of the assessee in its own case in ***MAHINDRA & MAHINDRA LTD. VS. COMMISSIONER OF INCOME TAX***[1]. It is further submitted that the revenue has accepted the aforesaid decision and has not challenged the same. Therefore, the first substantial question of law deserves to be answered in favour of the assessee. It is further submitted that Section 115J(1A) of the 1961 Act does not empower the Assessing Officer to embark on fresh inquiry with regard to the entries made in the books of account of the company. It is contended that it is not open for the Assessing Officer to re-scrutinize the company's income and as the Assessing Officer, while computing the income under Section 115J of the 1961 Act, has limited power to examine whether the books of account are certified by the authorities under the Companies Act and having been properly maintained in accordance with the Companies Act.

7. Learned senior counsel further contended that as Schedule VI of the Companies Act does not prescribe any form for preparation of profit and loss account, a concept of 'below the line' is unknown to law. A copy of the profit and loss account of the assessee has also been produced. In support of his submission, learned senior counsel has placed reliance on ***APOLLO TYRES LTD. VS. COMMISSIONER OF INCOME TAX***[2], ***ROTORK CONTROLS INDIA P. LTD. VS. COMMISSIONER OF INCOME TAX***[3], ***BHARAT EARTH MOVERS VS. COMMISSIONER OF INCOME TAX***[4] and

[1] ***[2023] 456 ITR 723 (Bom)***
[2] ***[2002] 255 ITR 273 (SC)***
[3] ***[2009] 314 ITR 62 (SC)***
[4] ***[2000] 245 ITR 428 (SC)***

COMMISSIONER OF INCOME TAX VS. KHAITAN CHEMICALS AND FERTILIZERS LTD.[5]

(III) SUBMISSIONS ON BEHALF OF THE REVENUE:

8. On the other hand, learned counsel for the revenue submits that the decision in the assessee's own case in respect of the previous assessment year does not apply to the facts of the case, as in the assessment year in question, loss has not been caused to the assessee in the course of business but is a capital loss. Our attention has been invited to the findings recorded by the authorities under the Act. It is contended that the amount was shown to be debited in the profit and loss account below the line and therefore, it cannot be said that the profit and loss account was prepared as per part II and III of Schedule VI of the Companies Act and therefore, it was not open for the authorities to interfere with the same. In support of his submissions, reliance has been placed on the supreme court judgment in the case of ***PRINCIPAL COMMISSIONER OF INCOME TAX-6 VS KHYATI REALTORS PVT. LTD.***[6]

(IV) CONSIDERATION:

9. We have considered the submissions made by both the sides and have perused the record. The first substantial question of law and the additional substantial question of law are inter-linked. Therefore, we propose to deal with the same, analogously. The Supreme Court, in ***CIT VS DELHI SAFE***

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[5] ***[2008] 307 ITR 150 (Delhi)***

[6] ***AIR 2022 SC 4030***

DEPOSIT CO. LTD.[7] examined the question, whether an expenditure incurred on account of commercial expediency is admissible as deduction under Section 37 of the 1961 Act. The Supreme Court held that the expenditure incurred was a deductible expenditure. The relevant paragraph reads as under:

> *"The first question which needs to be examined is whether the amount in question can be treated as an expenditure laid out or expended wholly and exclusively for the purposes of the business of the assessee which is admissible as a deduction under section 37 of the Act. It is no doubt true that the solution to a question of this nature sometimes is difficult to arrive at. But, however difficult the task may be, a decision on that question should be given having regard to the decisions bearing on the question and ordinary principles of commercial trading and of commercial expediency. The facts found in the present case are that the assessee was carrying on business as a partner of the managing agency firm and it also had other businesses. The managing agency agreement with the managed company was a profitable source of income and that the assessee had continuously earned income from that source. But on account of the negligence on the part of one of its partners, there arose a serious dispute which could have ordinarily resulted in a long drawn out litigation between the managing agency firm and the managed company affecting seriously the reputation of the assessee in addition to any pecuniary loss which the assessee as a partner was liable to bear on account of the joint and several liability arising under the law of partnership. The settlement arrived at between the parties prevented effectively the hazards involved in any litigation and also helped the assessee in continuing to enjoy the benefit of the managing agency which was a sound business proposition. It also assisted the assessee in retaining the business reputation unsullied which it had built up over a number of years. It is also material to notice here that it was not shown that the settlement was a gratuitous*

[7] ***[1982] 133 ITR 756 (SC)***

arrangement entered into by the assessee to benefit the defaulting partner exclusively even though he might have been benefitted to some extent. It is no doubt true that it was voluntary in character but on the facts and in the circumstances of the case whether it would make any difference at all is the point for consideration."

10. In the instant case, the claim of the assessee for the expenditure of 42.89 lac and the deduction of write-off Rs.622.01 lac being the amount lent to MMC including interest due and advances for purchase of machinery given in the course of dealing with MMC was disallowed by the authorities under the Act for the preceding year i.e. the year 1989-90. The assessee filed an appeal viz. ITXA No.626 of 2002 which was decided by a Division Bench of this Court vide order dated 9th June 2023 in ***MAHINDRA & MAHINDRA LTD. VS. COMMISSIONER OF INCOME TAX (SUPRA).*** In the aforesaid appeal, the following substantial question was formulated:

"Whether on the facts and in the circumstances of the case as well as in law the Tribunal was right in not allowing expenses of Rs.42.89 lakhs incurred by the appellant-company for MMC and not allowing deduction of write-off of Rs.622.01 lakhs (not Rs.578.09 lakhs as originally put) under section 28 of the Act being the amount lent to MMC including interest due thereon and advances for purchase of machinery given in the course of business dealing with MMC?"

11. The Division Bench of this Court allowed the appeal preferred by the assessee. The relevant extract of the judgment of the Division Bench reads as under:

"17. Admittedly, MMC was a subsidiary of appellant. Admittedly there was reference by IDBI to BIFR to

formulate a scheme of rehabilitation of MMC. As per the scheme and as per the copy of the order dated 23rd September 1988 passed by BIFR available on record, it was just and equitable to wind up MMC. In the said order of BIFR, there is also a reference that appellant had already invested money to revive MMC. In fact it is also recorded that appellant was directed to amalgamate MMC with itself which appellant refused to because that would make appellant itself a sick company. It is also recorded in the order that appellant felt it would not be prudent to give blanket guarantee in respect of MMC because that was not viable. It is, therefore, certain that appellant had incurred the expenses of Rs.42,89,185/- for MMC and also had debts recoverable from MMC. The issue is whether appellant could claim these expenses and deductions under Section 28 of the Act.

22. Let us examine whether the expenditure incurred or the deduction claimed arose in carrying on business of appellant or incidental to it. As noted earlier and at the cost of repetition, MMC was a group company of appellant and appellant held almost 27% of the equity share capital in MMC. It cannot be disputed that MMC was part of appellant group because the order of BIFR also confirms that. The order of BIFR passed on 23rd September 1988 also records that. Order of BIFR also mentions that appellant had spent substantial money to keep MMC afloat and revive MMC. The Chairman of appellant and the Deputy Managing Director of appellant also attended the hearings before BIFR. MMC also had public shareholders. Therefore, the fact that commercial expediency required appellant to incur expenditure or give advances or give ICDs cannot be dismissed lightly.

24. In the case at hand also appellant had (a) incurred expenditure of Rs.42,89,185/- towards salary of staff and officers of MMC; (b)(i) an amount of Rs.43.92 lakhs was due from MMC; (ii) advances against purchases of machines from MMC, and those machines were not received, amounting to Rs.108 lakhs; (iii) unpaid interest due from MMC on ICDs was Rs.17.59 lakhs; (iv) rehabilitation assistance of Rs.212 lakhs was given to MMC;

(v) there were liabilities against guarantees given by the assessee to IDBI in respect of IDBI loans to MMC amounting to Rs.247.29 lakhs etc. which total to Rs.622.01 lakhs after giving credit of Rs.6.79 lakhs towards miscellaneous head.

25. One can understand the Assessing Officer had disallowed these amounts after arriving at a conclusion that the decision to incur the expenses mentioned above or the debts mentioned above was not bona fide. That is not the case. Whether to treat the debt as bad debt or as business loss/deduction under Section 28 of the Act is a commercial or business decision of the assessee based on the relevant material in possession of the assessee. Once the assessee records the amounts as business loss/ deductions in his books of account that would prima facie establish that it was not recoverable loss unless the Assessing Officer for good reasons holds otherwise. The burden would be on the Assessing Officer to make out cogent reasons, which is not so in the case here. It is also not in dispute that the amounts spent were against/recoverable from group company MMC. It is quite obvious for reasons mentioned above that the amounts in question were incurred by appellant for the business expediency of the group company. It is not disputed that there existed a nexus between appellant and MMC. Such expenditure/debt should be treated as having been incurred for the purpose of business and directly relatable to the business of appellant and thus eligible for deduction as business expenditure in their return of business income. Otherwise it would not reflect the true profit and gain of appellant. A sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on the business, may yet be expended wholly and exclusively for the purposes of the trade as held in British Insulated and Helsby Cables Ltd. V/s. Atherton [1926] AC 205."

27. In the case at hand also the expenditure incurred were wholly incurred for the purpose of commercial

expediency because MMC was a group company of appellant and appellant was, as could be seen from the orders passed by BIFR, keen in the preservation of MMC and to keep it as a going concern. The nexus between appellant and MMC is also not disputed. The Assessing Officer failed to appreciate the claim in the proper perspective. Appellant participated in the rehabilitation scheme of MMC and lent rehabilitation assistance by paying amounts to MMC as well as by converting its existing ICDs with MMC into rehabilitation assistance. Appellant also provided a guarantee of Rs.200 lakhs to IDBI for the rehabilitation assistance disbursed by IDBI to MMC. If there was no commercial expediency, there was no reason for appellant to incur these amounts or participate in the rehabilitation scheme of MMC. Appellant was also the managing agents of MMC and MMC was also a Mahindra Group Company. It is certainly not necessary for the name of Mahindra and Mahindra to be used in the name of MMC to prove it was a group company. These expenditure/debts should be treated as having been incurred for the purpose of business and directly relatable to the business of the assessee and thus eligible for deduction as business expenditure/loss in assessee's return of business income. The expenditure incurred by appellant or the debts that were recoverable from MMC, in our view, therefore, would certainly be deductible expenditure under Section 28 of the Act.

28. In the circumstances, we answer the substantial question of law in negative. The ITAT was not right in not allowing the claims of assessee. Appeal is allowed and accordingly disposed of."

12. It is relevant here to mention that the claim of the assessee in so far as it pertains to not allowing the deduction of 42.89 lacs and 622.01, has been dealt with in the following manner in the impugned order dated 25th February 2003 by the Tribunal.

"5. Grounds of appeal No.4 & 5 are raised as under:

4. The CIT(A) was wrong in confirming and not deleting the expenditure of Rs.49,18,786/- incurred by the Appellant in respect of Machinery Manufactures Corporation Limited.

5. The CIT(A) was in error in confirming and not deleting the disallowance of the following amounts, which were due to it from certain concerns:-

Deposits Rs.142.50 lakhs
Interest Rs. 57.97 lakhs

Total Rs.200.47 lakhs
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5.1 The learned counsel for the assessee fairly conceded that the above two grounds stand covered against the assessee by the decision of the Tribunal in the assessee's own case in ITA No.6886/Bom/92 for the Assessment Year 1989-90. Respectfully following the precedent established in the assessee's own case for the immediately preceding assessment year, we dismiss both the above grounds of appeal".

13. Thus, it is evident that the revenue, while negating the claim of the assessee for allowing the expenses, has relied upon the order passed by it in ITA No.6886/Bom/92 for the Assessment Year 1989-90. The aforesaid order passed by the Tribunal was set aside by a Division Bench of this Court in ***MAHINDRA & MAHINDRA LTD. VS. COMMISSIONER OF INCOME TAX (SUPRA)***. The order passed by the Division Bench of this Court has been accepted by the revenue and it has not filed any SLP against the judgment of the Division Bench of this Court. We are in consonance with the view taken by Division Bench of this Court in assessee's own case in ***MAHINDRA & MAHINDRA LTD. VS. COMMISSIONER OF INCOME TAX***

(SUPRA) for the following reasons. Admittedly, MMC is a subsidiary of the assessee and assessee holds 27% equity capital of MMC since its incorporation. The assessee promoted the MMC on 15th May 1946. From the date of incorporation of the assessee, it was the managing agent of the MMC and the assessee has acted as a managing agent till 1974 when the Companies Act, 1974 abolished the Managing Agency System. However, due to severe recession in the textile industry, MMC started making losses. Thereupon, the MMC was wound-up. The assessee, in its board meeting held on 27th March 1989 agreed to incur expenditure for maintenance of MMC. Thereafter on 10th July 1990 the Board of Directors of the assessee agreed to resolve the dispute to meet the expenditure till the affairs of MMC were wound-up. The Board of Directors approved the expenditure of Rs.49,19,000/- (Rupees Forty-nine lac nineteen thousand only) made by the assessee in the previous relevant Assessment Year 1990-91. The assessee held substantial portion of equity capital of MMC and MMC was regarded in public and official circles as a Mahindra Company. The assessee, in order to protect and preserve the assets and to protect the value of goodwill attached to the assessee by various sections of the society and on the ground of commercial expediency, incurred expenditure, which is permissible as deduction.

14. The contention urged on behalf of the revenue in opposition to the aforesaid claim has already been dealt with by a Division Bench of this Court. Therefore, even otherwise, the assessee is entitled to deduction of sum of Rs.49,18,786/- (Rupees forty-nine lac eighteen thousand seven hundred eighty-

six only) as well as a sum of Rs.200.47 lac. For the reasons assigned by us supra, we agree with the view taken in assessee's own case in ***MAHINDRA & MAHINDRA LTD. VS. COMMISSIONER OF INCOME TAX (SUPRA)*** in respect of the previous assessment year, which even otherwise squarely applies in respect of the first and additional substantial question of law. We, therefore, find force in the submissions made by the learned senior counsel for the assessee that the first substantial question of law as well as additional substantial question of law deserves to be answered in favour of the assessee.

15. Now, we advert to second substantial question of law. The levy of minimum income tax was came into force w.e.f. 1st April 1984 by the Finance Act, 1983. The said Finance Act introduced a new Chapter VI-B in the Act of 1961. Chapter VI-B consisting Section 80VVA was omitted by Finance Act, 1987 w.e.f. 1st April 1988 and a new provision viz. Section 115J was introduced in the Statute w.e.f. Assessment Year 1988-89. The relevant extract of Section 115J of the Act 1961 is extracted below for facility of reference:

> *"**115J**(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company (other than a company engaged in the business of generation or distribution of electricity), 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, 1988 but before the 1st day of April, 1991 (hereafter in this section referred to as the relevant previous year), is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.*

(1A) 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).

***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

(e) the amount or amounts of dividends paid or proposed; 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; or

(ha) the amount deemed to be the profits under sub-section (3) of section 33AC,

if any amount referred to in clauses (a) to (f) 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 (f) 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."

16. Thus, Section 115J of the 1961 Act mandates that in case of a company whose total income as computed under the provisions of the Act 1961 is less than 30% of the book profit, the total income chargeable to tax will be 30% of the book profit, as shown in the profit and loss account prepared in accordance with the provisions of Part II and III of Schedule VI of the Companies Act 1956, after certain adjustments. Explanation to Section 115J (1A) provides that net profit so computed is to be increased by certain amounts and it is to be reduced by certain amounts which are mentioned therein. The provision does not contain any reference to concept of 'above the line' or 'below the line'.

17. The Supreme Court, in ***APOLLO TYRES LTD. VS. COMMISSIONER OF INCOME TAX (SUPRA)*** dealt with the issue whether the Assessing Officer can question the correctness of profit and loss account prepared by the assessee and certified by the statutory auditors of the Company as having been prepared in accordance with the requirements of part II and III of Schedule VI to the Companies Act. It was held that sub section (1A) of Section 115J mandates the company to maintain its accounts in accordance with the requirements of Companies Act and is bodily lifted from the Companies Act into the Act of 1961 for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. It was also held that the provision does not

empower the authority under the Act to probe into the account accepted by the authorities under the Companies Act. It was also held that if the legislature intended the Assessing Officer to reassess the company's income, then it would have stated in Section 115-J that "income of the company is accepted by the Assessing Officer". The aforesaid principle was reiterated by the Supreme Court in **MALAYALA MANORAMA COMPANY LIMITED VS. COMMISSIONER OF INCOME TAX, TRIVANDRUM.**[8] Thus, from the aforesaid enunciation of law by the Supreme Court, it is evident that the Assessing Officer does not have jurisdiction to go behind the net profit shown in profit and loss account except to the extent provided in Explanation to Section 115J. For the aforementioned reasons the second substantial question of law also deserves to be answered in favour of the assessee.

(V) CONCLUSION:

18. In view of the preceding analysis, the substantial questions of law are answered in favour of the assessee. The order dated 25th February 2003 passed by the Tribunal in ITA No.3101/M/95 is quashed and set aside.

19. In the result, the appeal is allowed.

(M.S.KARNIK, J.) **(CHIEF JUSTICE)**

[8] ***[2008] 300 ITR 251***