

Issue not raised before Tribunal cannot be allowed and permitted to be discussed at High Court

Summary – The Delhi High Court in a recent case of Ester Industries (P.) Ltd., (the Assessee) held that Where assessee did not challenge manner of computation of book profit by Assessing Officer before Tribunal, it now in fourth appeal could not be allowed and permitted to raise contention that adjustments required for computing book profit under section 115JA had been wrongly made by Assessing Officer.

Facts

- For the assessment year 1997-98, the assessee-company declared the taxable income as Nil. It did not compute taxable income under MAT provisions, i.e., section 115JA and attached a specific note with the return that the said provisions were not applicable.
- The Assessing Officer passed regular assessment order on the assessee and calculated the tax payable under section 115JA at Rs.4.07 crores.
- Both the Commissioner (Appeals) and the Tribunal upheld the order of the Assessing Officer.
- On appeal to High Court, the assessee contended that adjustments required for computing book profit under section 115JA had been wrongly made by the Assessing Officer.

Held

- It is noticeable from the grounds of appeal raised before the Tribunal that the assessee never challenged the computation made under section 115JA or challenged or questioned the assessment order on the ground that adjustments had not been made as required and mandated by law. There is no discussion in the impugned order of the Tribunal on the question of adjustments, which should be permitted and allowed under section 115JA or computation of taxable book profit under section 115JA. It is apparent and crystal clear that this issue/question was not raised before the Tribunal.
- In view of the aforesaid position, the assessee now in the fourth appeal cannot be allowed and permitted to raise the contention with regard to computation of book profit under section 115JA and set the ball rolling back once again to the Assessing Officer after lapse of several years. Therefore, the appeal of the assessee was liable to be dismissed.