

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'A' CHANDIGARH**

BEFORE Ms.SUSHMA CHOWLA, JUDICIAL MEMBER
AND SHRI MEHAR SINGH, ACCOUNTANT MEMBER

ITA No. 1185/CHD/2011

Assessment Year: 2008-09

JCIT (OSD), Circle 1, V M/s Shreyans Industries Ltd.,
Ludhiana. Village Bholapur,
Chandigarh Road,
Ludhiana.

PAN: AACCS-4634H

(Appellant)

(Respondent)

Department by: Smt. Jyoti Kumari
Assessee by : Shri Sudhir Sehgal

Date of Hearing : 22.03.2012

Date of Pronouncement : 04.05.2012

ORDER

PER MEHAR SINGH, AM

The present appeal filed by the Revenue is directed against the order dated 16.09.2011 passed by the ld. CIT(A) u/s 250 of the Income-tax Act,1961 (in short 'the Act').

2. In this appeal, the Revenue has raised the following Grounds of Appeal:

"1. That the Ld. CIT(A) has erred in law in deleting the addition of Rs.34,05,937/- made by the AO in the book profit u/s 115JB as the claim of interest capitalized in earlier years written off during the current year and added back to the book profit for computation of tax under MAT in order to prevent double deduction.

2. That the Ld. CIT (A) has erred in law in deleting the addition of Rs.2,11,33,889/- made in the book profit u/s 115JB by the A.O. as the creation of provision for employee benefits amounting to Rs.2,11,33,889/- has resulted in increasing the

value of current liabilities equivalent to the diminution of the value of current assets with reference to retrospective amendment made by Finance Act 2009 applicable w.e.f. 1.4.2001 according to which the amount of provision for diminution in the value of assets is to be added back to the book profits of the company.

3. The order of the Ld. CIT(A) be set aside and that of A.O. be restored.

4. That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.”

3. In Ground No.1, the revenue challenged the deletion of addition of Rs.34,05,937/- made by the AO in the book profit u/s 115JB as the claim of interest capitalized in earlier years written off during the current year and added back to the book profit for computation of tax under MAT in order to prevent double deduction.

4. We have heard the rival submissions and carefully perused the relevant available records. The AO disallowed the claim of interest amounting to Rs.34,05,937/- in the calculation of book profit u/s 115JB. While making this disallowance, AO observed that the said amount has been described as “interest capitalized”, in earlier years written off during the current year and the assessee, on being confronted, agreed to the disallowance on the ground that the said amount had been claimed on year to year basis and had been debited to the books of account in compliance to the accounting standard. The AO further proceeded to disallow

this amount u/s 115JB on the ground that it would prevent double deduction. The AO has not elaborated the basis of such observations on the basis of which disallowance was made.

5. Before the CIT(A), it was contended by the company that it had already claimed the interest amount on year to year basis for the purpose of income tax, no benefit was required to be claimed in this year. Consequently, the company itself, in the course of assessment proceedings, asked the AO to disallow the said amount while computing income of the appellate company. The AO, in doing so also, added same amount to the book profits for the computation of tax u/s 115JB of the Act. Ld. 'AR' contended that Section 115JB(2) is a code in itself. The said Section requires that the company shall, for the purpose of Section, prepare its profit and loss account for the relevant year, in accordance with the provisions of Part II and III Schedule VI to the Companies Act. The assessee, has also referred to the Explanation to the abovesaid Section. The assessee further placed reliance on the decision of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. V CIT-II 252 ITR 273 (S.C). The assessee, further submitted before the CIT(A) that, on the basis of various decisions of the Hon'ble High Courts and Tribunals, that the AO is not competent to take different figure from the net profit, as shown in the Profit & Loss Account, for the purpose of computing book profit, except to the extent permitted under Explanation 1 to Section 115JB(2) of the Act. Ld. CIT(A), on

consideration of the submissions and the case-laws, deleted the impugned additions.

6. Having regard to the legal and factual position of the case, the AO is not competent to make an addition to the book profits for an amount of Rs.34,05,937/- as the net profit had already been computed as per provisions of the Companies Act. The said amount does not fall u/s 115JB and Explanation (i) thereunder. The findings of the CIT(A) are recorded in para 4, which are in consonance with legal and factual position of the issue in question. The same are reproduced hereunder :

“4. I have considered the basis of disallowance made by the AO and the arguments of the AR on the issue. It is clear that the annual accounts comprising of balance sheet and profit and loss account have been prepared in accordance with the provisions of schedule-VI of the Companies Act 1956 and such accounts have been adopted by the company in its annual general meeting. It is also fact that the interest expenditure of Rs. 34,06,000/- does not fall under any of the specific items given in clause (a) to (i) of explanation (1) to section 115JB of the Act., which can be added back to the book profits for the purposes of taxation. As such the disallowance made by the AO is deleted.”

7. In view of the above discussions, ground of appeal raised by the revenue is dismissed.

8. In Ground No.2, revenue contended that CIT(A) erred in law in deleting the addition of Rs.2,11,33,889/- made in the book profit u/s 115JB by the A.O. as the creation of provision for employee benefits amounting to Rs.2,11,33,889/- has resulted in increasing the value of current liabilities equivalent

to the diminution of the value of current assets with reference to retrospective amendment made by Finance Act 2009 applicable w.e.f. 1.4.2001 according to which the amount of provision for diminution in the value of assets is to be added back to the book profits of the company.

9. The brief facts of the case are that the assessee company has debited a sum of Rs.2,11,33,889/- to its Profit & Loss Account on account of provision for gratuity, made on actuarial basis and the same was done in the year under consideration on account of adoption of revised Accounting Standard- 15. The said amount was purely reflected in the Profit & Loss Account and proper disclosure had been made in the Schedule-18 to the balance sheet. The said amount was duly added back to the total income in the computation of income under the normal of the Act, being covered u/s 43B of the Act. However, AO, while framing the assessment, held that the impugned amount provided as provision of gratuity in accordance with accounting Standard-15, should also be added back while computing book profit, u/s 115JB of the Act and for this purpose, the AO concluded that creating a provision for gratuity, results in diminution of value of an asset and he placed reliance on the decision of the Delhi High Court in the case of CIT V ILPEA Paramount (P) Ltd. 192 Taxman 65 (Del).

10. Having regard to the provisions of Section 115JB(2) and Explanation thereunder, including the decision of the Hon'ble Supreme Court in the case of Bharat Earthmovers V CIT (2000) 245 ITR 428 (S.C) and CIT V Insilco Ltd. (2010) 320 ITR 322

(Del) and decision of the jurisdictional High Court in the case of CIT V National Hydroelectric Power Corporation Ltd. 45 DTR 117 (P&H). The CIT(A) deleted the impugned addition.

11. Ld. CIT(A) also considered other decisions in the matter, which are enlisted in para 5.4 of his order.

12. Section 115JB of the Act was amended by Finance Act (2009) by insertion of clause (1) w.e.f. 1.4.2001 to specifically include any amount, set aside as provision for diminution in the value of any asset. Prior to this amendment, the issue relating to the provision for bad and doubtful debt, was covered in favour of the assessee, by the decision in the case of CIT V HCL Comnet Systems & Services Ltd. 305 ITR 409. It was submitted before the CIT(A) that if the view taken by the AO taken as correct, then it would make the exclusion given in clause (c) of the said Explanation redundant and that cannot be the intention of the legislature. Findings of the CIT(A) are contained in para 6 of the order passed by him, which are reproduced hereunder :

“6. I have considered basis of disallowance made by the AO and the arguments of the AR on the issue. The AO has based his disallowance on the ground that creation of the impugned provision has led to the decrease in the value of assets of the company, though no specific diminution has been pointed out and neither it is possible to point out as there has not been any specific dilution in the value of a particular asset. The assessee had to increase the current liability because of the creation of this provision as there was no amount in the general/revenue reserves as on the required date and therefore same can not be held to be fault on the part of the assessee as the provision had to be created because of adoption of accounting standard 15 meant increase in the liability of the assessee company. However, important thing to appreciate here is that the provision created is on account of ascertained liability and the same should logically be excluded out of the calculation of book profits Clause (c) of Explanation (1) of Section 115JB. If the argument of the AO is accepted then every creation of provision will lead to

dilution/reduction in the value of assets as a general class and therefore would not be deductible from book profit. This would mean that the deduction available for ascertained liabilities as per clause (c) would have no meaning. The judgement quoted by the AO is in fact in favour of the appellant as the Hon'ble Court has clearly held that the provision for gratuity being ascertainable liability on actuarial valuation is deductible while computing book profits and the provision for doubtful debts result in the diminution of value of debtors and the same was liable to be added back. Therefore, I do not see any logic in AO's view on this issue. The addition made is therefore deleted."

13. Having regard to the above factual and legal matrix of the case, as also case laws relied upon by the assessee, we do not find any infirmity in the findings of the CIT(A), hence, the same are upheld and this ground of appeal is dismissed.

14. Ground Nos. 3 and 4 are general in nature, hence, need no separate adjudication. Accordingly, these grounds of appeal are dismissed.

15. In the result, appeal of the revenue is dismissed.

Order pronounced in the Open Court on 4th May,2012.

Sd/-

Sd/-

(SUSHMA CHOWLA)
JUDICIAL MEMBER

(MEHAR SINGH)
ACCOUNTANT MEMBER

Dated: 4th May,2012.

'Poonam'

Copy to:

The Appellant, The Respondent, The CIT(A), The CIT,DR

Assistant Registrar, ITAT
Chandigarh

