आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT.ANNAPURNA GUPTA, AM

आयकर अपील सं./ITA No. 4/CHD/2019

निर्धारण वर्ष / Assessment Year : 2011-12

M/s Gee City Builders (P) Ltd. # 1464, Ground Floor, Sector 43-B, Chandigarh.	बनाम VS	The DCIT, Central Circle 1, Ludhiana.
स्थायी लेखा सं./PAN /TAN No: AACCG0887A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Nikhil Goyal, CA

राजस्व की ओर से/ Revenue by : Shri Chandrajeet Singh, CIT-DR

सुनवाई की तारीख/Date of Hearing : 30.07.2019

उदघोषणा की तारीख/Date of Pronouncement : 14.08.2019

आदेश/ORDER

PER DIVA SINGH

The present appeal has been filed by the assessee wherein the correctness of the order dated 22.10.2018 of CIT(A)-5, Ludhiana pertaining to 2011-12 assessment year is assailed on the following grounds :

1. *On the facts & in the circumstances of the case and in law, the Id. Commissioner of Income Tax (Appeals) has erred in upholding the levy of Minimum Alternative Tax (MAT) under section* 115JB *of the Income Tax Act whereas as per sub section* (6) *of section* 115JB *of the Income Tax Act, the provisions of Minimum Alternative Tax are not applicable to the assessee appellant.*
2. *That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed of.*

2. Apart from the original grounds, the ld. AR inviting attention to the record, submitted that the assessee has also raised the following additional ground in the present appeal :

> *"That the Ld. Assessing Officer has erred in charging the interest u/s 234B & 234C and the same is not chargeable as provisions of section 234B & 234C are not applicable where the income of the company is computed by invoking of provisions of section 115J as per the binding judgment of Hon'ble Supreme Court in the case of Kwality Biscuits Ltd. As reported in 284 ITR 0434."*

2.1 Relying upon the decision of the Apex Court in the case of M/s NTPC Vs CIT 229 ITR 383 (S.C), it was his prayer that the said ground being legal in nature requires no verification on facts, hence it may be admitted.

3. The ld. CIT-DR on a perusal of the additional ground raised submitted that the ground is a legal ground and he has no objection to admission of the same.

4. Accordingly, in the light of the submissions of the parties and considering the legal position on the issue addressed by way of the additional ground by the assessee in the present appeal, the ground is admitted. The parties were required to address their position accordingly as to whether they were ready to argue the appeal or needed some time. Both the parties agreed that they were ready to argue.

5. Inviting attention to the original grounds raised, the ld. AR submitted that the issue has been decided by the ITAT in assessee's own case and has been decided against the

assessee. Accordingly, it was his prayer that the ground may be considered to have been argued as the assessee places reliance upon the arguments advanced before the CIT(A). However, conceded in all fairness that no distinguishing facts or position of law was being referred to for consideration of the Bench.

6. The ld. CIT-DR in the light of the arguments advanced on behalf of the assessee placed reliance upon the impugned order and stated that the issue is fully covered in favour of the Revenue.

7. We have heard the rival submissions and perused the material available on record. A perusal of record shows that the issue has been decided by the CIT(A) relying upon the decision of the ITAT in 2008-09 and 2009-10 assessment years. The relevant facts with respect thereto as discussed in the order read as under:

> *3.2 Ground of Appeal No. 2 pertains to levy of tax under Section 115JB (i.e. tax under MAT). The AO has assessed the total income for assessment year under consideration at Rs. 8,02,43,860/- with tax calculated under section 115JB at Rs. 2,92,01,760/-. The AO has derived strength from the Hon'ble ITAT, Chandigarh order in ITA No. 422 & 423/Chd/2016 for A.Y. 2008-09 & 2009-10 respectively in assessee's own case.*
>
> *The facts of the case, the charging of MAT u/s 115JB by the A.O. and the submissions/arguments of the AR during the appellate proceedings have been considered. It is seen that the issue has been decided against the assessee by the Hon'ble ITAT, Chandigarh vide its order dated **01.06.2016 in ITA Nos. 422 & 423/Chd/2016 for the assessment years 2008-09** & 2009-10. The relevant para of the Hon'ble ITAT order are reproduced below:-*

"4. The Ld. CIT (Appeals), considering submissions of the assessee and material on record, dismissed both the appeals of the assessee. The findings of Ld. CIT (Appeals) in para 5 of the impugned order read as under:

5. The facts of the case, the charging of MAT u/s 115BJ by the A.O. and the submissions/arguments of the AR during the appellate proceedings have been considered. It is to note that the provisions of sub section (6) in section 115JB have been inserted by the Special Economic Zones Act, 2005 w.e.f. 10.02.2006. Under that Act "Unit" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after commencement of this Act. and "Special Economic Zone" means each special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) or section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone, Further, the Developer has been defined as "developer"'means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a co-developer; and " means a person who has been granted a letter of approval by the Commissioner under sub-section (9) of section 15.

5.1 It is seen that the AR's reliance upon the exception carved out u/s 115JB(6) misplaced as it is quite apparent that the exception are in respect of concern entrepreneur or developer as defined under the SEZ Act) situated in a Unit or Special Economic Zone, (also defined under the SEZ Act) as the case may be. The assessee is not situated in a Unit or Specific Economic Zone (which are defined under SEZ Act, 2005). Therefore, the case of the assess does not fall under u/s 115JB(6). The interpretation given on behalf of the assessee defies the logic of enacting the amended provisions of section 115JB . The exception cannot be as large as the main provision so such so to nullify the legislative intent of imposing tax on specified companies u/s 115JB. In the circumstances, there is no merit in AR's claim on the issue. Hence the action of the A.O. in charging the MAT in this case is sustained.

Accordingly, this ground of appeal is dismissed."

5. I have heard Id. Representatives of both the parties and perused the material on- record. The Ld. Counsel for the assessee reiterated the submissions made before authorities below. The Ld. Counsel for the assessee admitted that assessee is a company .having business income as developer. The Id. counsel for the assessee also admitted that assessee does not exist in Special Economic Zone and no business has been carried out in any Special Economic Zone. The Ld. Counsel for the assessee also admitted that assessee being a company is liable to pay tax under the provisions of Section 115JB (MAT). The Ld. Counsel for the assessee also submitted that computation of deduction under section 80IB(10) of the Act is not in dispute and computation under MAT provisions are also not in dispute. The Ld. Counsel for the assessee merely submitted that assessee carried on the business "in a unit". The Ld. Counsel I for the assessee, however, could not establish from any evidence or material on record as to how the assessee has carried on business as a Developer in any unit.

6. The Ld. CIT(Appeals) considered the submissions of the assessee and noted that provisions of sub-section (6) of Section 115JB have been inserted by the Special Economic Zones Act, 2005 and reproduced the definition of 'unit' from same Act which means the 'Unit' set up by an entrepreneur in a Special Economic Zone. No other definition of 'unit' under any Central Act has been provided by the Ld. Counsel for the assessee and even no case law on this issue have been cited. The Ld. Counsel for the assessee has given a dictionary meaning of the word Unit' and submitted that the word 'Unit' not restricted to the units in Special Economic Zone Act, 2005 but is applicable to units at any place. The contention of Ld. counsel for the assessee has no merit because these are the special provisions provided for exemption to the builders etc. who have raised the construction of units in Special Economic Zone only. Since the assessee has not carried on any business as a Developer in a unit established in Special Economic Zone or Special Economic Zone, therefore, provisions of Section 115JB(6) will not apply in the case of the assessee. The Id. CIT (Appeals) gave a specific finding of fact that the-assessee is not situated in a unit or Special Economic Zone, therefore, the case of the assessee does not fall under section 115JB(6) of the Income Tax Act. Finding of *fact recorded by Ld. CIT (Appeals) has not been rebutted through any 'knee or material on record.*

7. In the absence of any evidence or material on record to rebut the finding of fact recorded by the authorities below, I am not inclined to interfere with the order of Id. CIT (Appeals) in rejecting the claim of the assessee. The appeals of the assessee have no merit, same are accordingly, dismissed.

8. In the result, appeals of the assessee are dismissed. "

The facts for the year under consideration are identical to the facts of the years decided by the Hon'ble ITAT, Chandigarh vide its order mentioned above and hence respectfully following the order of the Hon'ble ITAT and for the reasons mentioned in the appellate order dated 10.02.2016 for assessment years 2008-09 & 2009-10, the ground of appeal raised by the assessee is not found sustainable and the action of the AO in applying the provisions of section 115JB of the Act and calculating the tax at Rs. 2,92,01,760/- at the income of Rs. 8,02,43,860/-, is found as per law and hence upheld.

Accordingly, this ground of appeal is dismissed."

7.1. Our attention has also been invited to the consolidated order dated 30.04.2019 in ITA 422,423,780/CHD/2016 pertaining to A.Y. 2008-09 to 2010-11, ITA 781/CHD/2016 A.Y. 2012-13 and ITA 765/CHD/2016 A.Y. 2012-13. A perusal of the same shows that the ITAT was seized of the issues once again in view of the remand back of the order of the ITAT by the decision of the jurisdictional High Court dated 26.04.2017

in ITA 417 & 418 of 2016 (O&M). This fact is emerging from paras 1 and 2 of the aforesaid order dated 30.04.2019 of the ITAT :

> *"The above captioned appeals and cross appeal relate to the same assessee and have been filed against separate orders passed by the Ld. Commissioner of Income Tax(Appeals) -5, Ludhiana,(in short referred to as CIT(A), u/s 250(6) of the Income Tax Act, 1961,(hereinafter referred to as "Act") pertaining to assessment years (A.Y) 2008-09, 2009-10, 2010-11 & 2012-13 respectively. While the assesses appeal for A.Y 2008-09 & 2009-10 is against consolidated order of the Ld.CIT(A) dated 10.02.2016,the appeal for A.Y 2010-11 & the cross appeals for A.Y 2012-13 are against separate orders of the Ld.CIT(A) both dated 18.03.2016.*
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> *2. The assessee's appeals in ITA 422 and 423/CHD/2016 have been restored back by the Hon'ble High Court vide its order in ITA 417 & 418 of 2016(O&M) dated 26.04.2017, setting aside the earlier order passed by a Single Member of the Tribunal ,holding that the appeal should be heard by a Division Bench. Accordingly, the impugned appeals were fixed before us."*

7.1.1 The Co-ordinate Bench, it is seen has considered the relevant facts and the issues in the following manner :

> *3. It was common ground that the issue involved in all the appeals was identical, relating to whether the assessee was liable to pay minimum alternate tax (MAT) under the provisions of Section 115JB of the Act. They were therefore heard together and are being disposed of by way of this common consolidated order.*
>
> *4. For the sake of convenience, we shall be dealing with the facts in the case of ITA No. 422/CHD/2016 relating to assessment year 2008-09 and our decision rendered therein would apply mutatis-mutandis to the rest of the appeals.*
>
> *5. The brief facts relating to the case are that the assessee is a Private Limited company dealing in the business of development of housing project units. It filed its return of income for the impugned assessment year i.e. A.Y 2008-09 on 04.03.2009 declaring income of Rs. 2,20,013/-. The Assessing Officer (AO) framed assessment u/s 153A read with Section l43(3) of the Act and assessed the total income at Rs. 12,74,720/- and the tax payable under MAT was determined at Rs. 96,28,336/-. The Tax computed under MAT being higher than that under the normal provisions, the same was determined as payable by the assessee. Aggrieved by the levy of tax under MAT, the assessee filed appeal before the Ld.CIT(A), contending that it was exempt from paying tax under MAT, as per section 115JB(6) of the Act. The Ld.CIT(A) , dismissed the contention of the assessee and upheld the order of the AO."*

7.1.2 The submissions of the parties before the Bench have been encapsulated in the following paras:

> *7. Before us, primarily two alternate contentions were raised by the Id. counsel for the assessee against the levy of tax u/s 115JB of the Act :*
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> *i) That it qualified for exemption from payment of MAT as per Section 115JB(6) of the Act; and alternately*
>
> *ii) That deduction u/s 80IB(10) was to be allowed while computing book profits for the purpose of payment of tax under MAT.*

7.1.3 After hearing both the parties and the relevant provisions, the Co-ordinate Bench summed up the respective arguments advanced on behalf of the assessee and the revenue in paras 18-19 of the order as under :

> *18. Before us, the Ld. Counsel for the assessee has referred and relied upon sub-section (6) of section 115JB of the Act, claiming that it is exempt from payment of MAT as per the said sub-section, since it is carrying on the business as a Developer in a unit.*
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> *19. The Id. D.R., on the other hand, has contended that subsection (6) exempts only the incomes of units in SEZ or Developers of SEZ and not any other entity and the assessee being neither, is not exempt from the payment of MAT.*

7.1.4 The departmental submissions were agreed to holding that "*the exemption from MAT is provided only for business, as specified, carried on by the persons who have, got approvals under the SEZ Act and which are carried on in SEZ or units therein.*" As a result thereof, the assessee's stand that sub-section (6) was to be interpreted independently thereby making the assessee eligible for exemption from payment of MAT since it was developer of housing projects, were dismissed. The relevant reasoning set out in paras 20 to 28 following the principle of law as considered in the decision of the Apex Court in the case of Surana Steels Pvt. Ltd. Vs DCIT 237 ITR 777 (S.C) and in order dated 30.09.2016 in ITO Vs

Forever Precious Jewellery & Diamonds Ltd. ITA 2329/A/2008

is extracted hereunder for the sake of completeness :

20. We are in agreement with the contention of the ld. D.R. The reasons are as follows.

Sub-section (6) to section 115JB of the Act was inserted by the Special Economic Zone Act, 2005 (hereinafter referred to as "SEZ Act"), which was enacted to provide for the establishment, development and management of Special Economic Zones for the promotion of exports and for matters connected therewith or incidental thereto. The Act is a complete code in itself dealing with all aspects relating to SEZ's, making necessary amendments in other Acts, as required. The applicability of the Income tax Act,1961 and modifications thereto for the purposes of the SEZ Act ,have been made by section 27 of the said Act , and the second schedule to the Act .Section 27 of the SEZ Act reads as under:-

> *"27. The provisions of the Income-tax Act, 1961, as in force for the time being, shall apply to, or in relation to, the Developer or entrepreneur for carrying on the authorised operations in a Special Economic Zone or Unit subject to the modifications specified in the Second Schedule."*

21. The second Schedule to the SEZ Act ,listing modifications to the Income Tax Act,1961, inserts sub-section (6) to section 115JB of the Act, by way of clause (h) which reads as under:-

> *(h) in section 115JB, after sub-section (5), the following subsection shall be inserted, namely:-*
>
> *"(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be. ITA Nos.422,423,780,781 & 765 CHD/2018 Page 16 of 31*

22. Reading section 27 of the SEZ Act along with the second schedule thereto, it is clear, that the SEZ Act made the provisions of the Income Tax Act, 1961, applicable to developers and entrepreneurs carrying out authorized activities in SEZ's and Units and the SEZ Act modified the provisions of the Income Tax Act by exempting developers and entrepreneurs from payment of MAT by inserting sub section (6) to section 115JB.Thus the SEZ Act is the main Act which has brought about the impugned amendment to the Income Tax Act. The harmonious interpretation of the sub section (6) to section 115JB, therefore requires it to be read in conformity and in sync with the main Act, i.e the SEZ Act. The words used in the sub section ,as a consequence, necessarily derive their meaning from the SEZ Act and an independent interpretation thereto would defeat the object with which it was brought on statute and would be against all the established rules of interpretation of statutes.

The Hon'ble apex court in the case of Surana Steels vs DCIT, reported in 237 ITR 777(SC), has held that when a single section of an Act of Parliament is introduced into another Act, it must be read in the sense it bore in the original Act from which it was

taken, and consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section means. Dealing with the interpretation of the term "loss" used in clause (iv) of the explanation to section 115J, the Hon'ble Court held that in the said clause the provisions of section 205 of the companies Act stood bodily lifted and incorporated and therefore it has to be read in the sense it bore in the original Act. The Hon'ble apex court held as under:

> *6.Sec. 115J, Expln. cl. (iv), is a piece of legislation by incorporation. Dealing with the subject, Justice G.P. Singh states in Principles of Statutory Interpretation (7th Edn., 1999)—*
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> *"Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the ITA Nos.422,423,780,781 & 765 CHD/2018 Page 17 of 31 provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been 'bodily transposed into it'. The effect of incorporation is admirably stated by Lord Esher, M.R. : 'If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it'. (p. 233) :*
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> *"Even though only particular sections of an earlier Act are incorporated into later, in construing the incorporated sections it may be at times necessary and permissible to refer to other parts of the earlier statute which are not incorporated. As was stated by Lord Blackburn: 'When a single section of an Act of Parliament is introduced into another Act, I think it must be read in the sense it bore in the original Act from which it was taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act" (p. 244).*
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> > *Once we have ascertained the object behind the legislation and held that the provisions of s. 205 quoted hereinabove stand bodily lifted and incorporated into the body of s. 115J of the IT Act, all that we have to do is to read the provisions plainly and apply rules of interpretation if any ambiguity survives. Sec. 205(1), proviso cl. (b), of the Companies Act brings out the unabsorbed portion of the amount of depreciation already provided for computing the loss for the year. The words "the amount provided for depreciation" and "arrived at in both cases after providing for depreciation" made it abundantly clear that in this clause 'loss' refers to the amount of loss arrived at after taking into account the amount of depreciation provided in the P&L a/c."*

24. We find that the ITAT Mumbai Bench had an occasion to deal with the question whether Special Economic Zone Act, 2005 and Special Economic Zone Rules could be invoked to decide the benefits admissible to the assessee under the Income Tax Act, in the case of ITO, Ward 4(3), Ahmedabad vs. Forever Precious Jewellery & Diamonds Ltd. in ITA No.2329/A/2008 and ITA No.1142/A/2010, dt 30-09-16 (speaking through one of us i.e. the ld. Judicial

Member). The issue in the said case related to claim of exemption of profits of units located in SEZ's u/s 10AA of the Act, which section was also introduced by the SEZ Act, 2005. The claim of the assessee had been denied by the AO on finding that the assessee was not carrying out any manufacturing activity but was in fact outsourcing it to third parties. The ITAT, in the said case, ITA Nos.422,423,780,781 & 765 CHD/2018 Page 18 of 31 noted that the SEZ Act,2005, was the main Act providing certain incentives to Special Economic Zone units and through this Act corresponding amendments were made in the relevant provisions of the various related Acts which also included the Income Tax Act. Thereafter, referring to section 27 of the Special Economic Zone Act read along with section 57, it was held that to avail the benefits under the Income Tax Act, the provisions of the Special Economic Zone Act and Rules have to be invoked. The relevant findings at pages 13 and 14 and thereafter at page 20 are, as under:-

> *'The above reproduced approval letter read with section 15(9) of the SEZ Act 2005 and Rule 19 of the SEZ Rules 2006 reveals that the facilities and privileges as admissible to the units situated in SEZ have been granted to the assessee for the manufacture of plain gold jewellery upto 500 kg on the basis of maximum utilization of plant and machinery. The assessee has also been granted facilities and privileges as admissible for trading activity in gold and polished diamonds as noted above. It is pertinent to note here that the Development Commissioner has to particularly specify as to what activities or authorized operation are allowed to be carried out in an SEZ unit for the claim of privileges and benefits under SEZ Act. Now the question comes whether the above provisions of the SEZ Act and SEZ Rules can be invoked to decide the benefits admissible to an assessee under the Income Tax Act. Section 57 of the SEZ Act is relevant in this respect which read as under:*
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> *"57. With effect from such date as the Central Government may by notification appoint, the enactments specified in the Third Schedule shall be amended in the manner specified therein: Provided that different dates may be appointed on which the amendments specified in the Third Schedule shall apply to a particular Special Economic Zone or a class of Special Economic Zones or all Special Economic Zones."*
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> *After going through the relevant provisions of the above statutes, we find that the SEZ Act is the main Act under provides to give certain incentives to the SEZ units. To give ITA Nos.422,423,780,781 & 765 CHD/2018 Page 19 of 31 effect to the provisions of the SEZ Act, corresponding amendments have been made in the relevant provisions of various related Acts as mentioned in the Third Schedule to the Act, relaxing the conditions or providing for incentives or deductions to the SEZ units. It is to be mentioned here that Income Tax Act 1961 inter alia is also included in the Third Schedule and it has also been provided as to what amendments are made into the provisions of the Income Tax Act to give effect to the provisions of the SEZ Act 2005. Further sections 27 and 57 of the SEZ Act are also relevant in this respect which read as under: "*

27. The provisions of the Income-tax Act, 1961, as in force for the time being, shall apply to, or in relation to, the Developer or entrepreneur for carrying on the authorised operations in a Special Economic Zone or Unit subject to the modifications specified in the Second Schedule."

"51. (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

So a perusal of the relevant provisions reveal beyond doubt that to get the income tax benefits under the Act there must be some manufacture or production of a thing or providing of services by a unit situated in SEZ and having approval of the competent authority in this respect. The manufacturing activity or services activity should be provided by the unit situated in the SEZ. The location of the unit in the SEZ and the required approvals of the competent authority to carry out the operations are very much necessary. Hence as per the provisions of section 10AA of the Income Tax Act 1961, the assessee is entitled to deduction on the manufacturing activity only as approved in the above reproduced approval letter of the Development Commissioner of the SEZ. The assessee's unit has not been approved for providing of any services. . . ITA Nos.422,423,780,781 & 765 CHD/2018 Page 20 of 31 . .

20. We find that the claim of the assessee is required to be examined in the light of the provisions of SEZ Act/ SEZ Rules and also the provisions as envisaged in SEZ scheme 2007 to 2009 as referred to in the approval letter of the Development Commissioner dated 21.09.2005."

25. Moreover the Explanatory Note to the Finance Act, 2011, withdrawing the exemption granted from payment of MAT u/s 115JB(6) of the Act, further clarifies the legislative intent ,by clearly referring to Special Economic Zones, in the heading of the Note explaining the provision withdrawing the exemption, as pointed out by the Ld.DR before us.

Thus, we have no hesitation in holding that the terms used in sub section (6) of 115JB, derive their meaning from the SEZ Act, 2005.

Having said so, the definition of the different terms used in sub section (6) of 115JB, in section 2 of the SEZ Act, we find is as under:-

"(g) "Developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 and includes an Authority and a Co-Developer."

(z) 'services' means such tradable services which,-

(i) are covered under the General Agreement on Trade in Services annexed as IB to the Agreement establishing the World Trade Organisation concluded at Marrakes on the 15' day of April, 1994;

(ii) may be prescribed by the Central Government for the purposes of this Act; and

(i) earn foreign exchange; ITA Nos.422,423,780,781 & 765 CHD/2018 Page 21 of 31

(j) "entrepreneur" means a person who has been granted a letter of approval by the Development Commissioner under sub-section (9) of section 15."

(zc) "Unit" means a Unit set up by an entrepreneur in a Special Economic Zone and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after commencement of this Act;

(za) "Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (7) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;

26. Reading section 115JB(6) of the Act with the definition provided of the terms used in the SEZ Act as above, we find that the exemption from the payment of MAT is provided only to the units set up in a SEZ or Offshore banking unit or in an International Finance Service Centre in relation to the business or tradable services as eligible under the SEZ Act by the persons, who have been granted Letter of Approvals under the said Act.

27. Therefore, for all purposes, the benefit of exemption from MAT is provided only for business, as specified, carried on by the persons who have got approvals under the SEZ Act and which are carried on in SEZ or units therein.

28. In view of the above we do not find any merit in the contention of the Ld. Counsel for the assessee that sub-section (6) is to be interpreted independently, thus making the assessee eligible for exemption from payment of MAT also, since it is a developer of housing projects, and dismiss all arguments made by the Ld. Counsel for the assessee in this regard.

We, therefore, hold that the assessee is not eligible for exemption from payment of MAT as per the provisions of section 115JB(6) of ITA Nos.422,423,780,781 & 765 CHD/2018 Page 22 of 31 the Act, since, admittedly, it does not qualify as a business or services rendered by an entrepreneur or developer in a unit or SEZ as per definition of the said terms in the SEZ Act".

7.1.5 The alternate contention of the assessee that profits eligible for deduction under section 80IB(10) of the Act were to be reduced for arriving at the book profits of the assessee were also dismissed relying on the decision of the Hon'ble Uttarakhand High Court in the case of SIDCUL Industrial

Association Vs State of Uttarakhand 241 CTR 156. The relevant extract of the decision is reproduced hereunder for the sake of completeness :

> *29. Taking up the alternate contention of the assessee that profits eligible for deduction under section 80IB(10) of the Act were to be reduced for arriving at the book profits of the assessee also, we find that the Ld. Counsel for the assessee for this purpose has relied heavily on the provisions of section 115JB(5) of the Act, pointing out that as per the said sub-section, all other provisions of the Act would apply to the assessee and, therefore, the provisions of section 80IB(10) of the Act would also apply to it requiring it to be deducted /reduced for arriving at the taxable book profits.*
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> *30. We do not find any merit in this contention of the Ld. Counsel for the assessee also. The reasoning is as follows.*
>
> *Section 115JB of the Act is a charging section for collecting minimum taxes from corporates, which though are apparently prosperous showing profits in their Profit and Loss account and paying dividends, yet not paying taxes as per the Income Tax Act. Under the section, taxes at a specified rate are levied on the Book Profits of the corporate where they exceed the tax payable on its total income as computed under the Income Tax Act after availing various concessions and deductions. Being a charging section, the exemption, concession or benefits should come from within the provision itself, which we find are incorporated in the section by way of Explanation 1 to sub section 2 of section 115JB of the Act, which outlines all the adjustments to be made to the profits as shown in the Profit and Loss account prepared in accordance with the Companies Act, to arrive at the Book Profits on which taxes are to be levied under MAT.A perusal of the Explanation reveals that it provides for reduction from the Profits of assesses, the incomes exempt from tax under section 10 of the Act, as also profits eligible for deduction u/s 80HHC,80HHE & 80HHF of the Act, under clause (ii),(iv),(v),&(vi) of the Explanation. Deduction u/s 80IB or for that matter any other section under chapter VI-A of the Act is not allowed adjustment. With the adjustments to the profits so specifically provided for, adjustments by way of a general clause, as contended by the Ld. Counsel for the assessee, cannot be read into the section. The same would only result in making the provision otiose and ineffective since MAT is sought to be levied only in respect of companies which by availing various concessions given in chapter VI –A of the Act, which includes section 80IB, are liable to show either Nil taxable income or much reduced taxable income.*
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> *32. Moreover the deduction under section 80IB(10) of the Act is provided against the "gross total income" of an assessee, while section 115JB of the Act levies taxes on the" book profits". Both the sections clearly operate in different spheres. Therefore sub-section (5) of section 115JB of the Act, cannot be interpreted so as to provide deduction under section 80IB(10) of the Act from the "book profits" of the assessee.*

The Hon'ble High Court of Uttarakhand ruled out the allowability of deduction u/s 80IC for the purposes of paying tax u/s 115JB of the Act, in the case of SIDCUL Industrial Association vs State of Uttarakhand & Others reported in 241 CTR 156 holding as under:

> *"17. Sec. 80-IC deals with a matter totally alien to s. 115JB and, accordingly, there cannot be any question that both cannot be read harmoniously. Sec. 80-IC allows deduction. Sec. 115JB says that if allowing such deduction, income-tax payable is less than what has been mentioned in s. 115JB, the assessee, if it is a company, will be liable to pay income-tax to be ascertained in the manner and to the extent prescribed in s. 115JB. Since these two sections deal with two different situations, they play their role in two different situations and, accordingly, should be read to ascertain the purpose thereof as depicted by the clear words mentioned therein. Whereas s. 80- IC grants deduction to all assessees and, accordingly, a company is also entitled to such deduction, s. 115JB applies only to a company and comes into play only when, after such deduction, income-tax payable by it is less than what has been mentioned therein and thereupon fastens a totally new incometax liability to the extent mentioned therein.*
>
> *18. It is true that when s. 115JB was inserted, there was no contemplation that, in future, s. 80-IC would be inserted. Therefore, at the time when s. 115JB was inserted, it was not intended to control s. 80-IC. However, a look at s. 115JB would make it amply clear that, from the day one, s. 115JB controlled income-tax payable on the total income as computed under the Act and, in the matter of computing income-tax on the total income, after insertion of s. 80-IC, all assessees, including a company, became entitled to deductions prescribed in s. 80-IC. Therefore, even after insertion of s. 80-IC, when the total income, as computed after taking into consideration all deductions, including the deductions available under s. 80-IC of the Act, is less than what has been mentioned in s. 115JB, it would be the obligation of the assessee company to pay such tax as mentioned in s. 115JB.*
>
> *19. Had the legislature exempted an assessee from paying income-tax, the matter would have been different. But that has not been done. The legislature allowed a deduction. If, after such deduction, income-tax payable is less than what has been mentioned in s. 115JB, by reason of the plain words used in s. 115JB, an assessee, being a company, is liable to pay such tax as mentioned in s. 115JB. In the circumstances, I am of the view that if by virtue of s. 80-IC, no income-tax is payable by an assessee, being a company, it would be liable to pay income-tax to the extent as mentioned in s. 115JB and that was and still is the very object of inserting s. 115JB in the Act."*
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> *Further the Hon'ble High Court of Karnataka also reiterated the above proposition with respect to allowability of deduction u/s 80IB for the purposes of paying tax under MAT in the case of Sakhla Polymers (P) Ltd. Vs Income Tax Officer reported in 257 CTR 185 holding as under:-*

"Section 115JB is in the nature of a special provision, a charging provision, and creating liability in respect of an ITA Nos.422,423,780,781 & 765 CHD/2018 Page 25 of 31 assessee which is a company and whose taxes as determined on the returns filed in the normal manner falls short of the stipulated amount and a charge is created for making the difference i.e. the object of the legislation is to ensure a minimum tax of 7½ percent on the book profit as ascertained under Section 115JB is levied and collected from the companies whose payment of tax always without the application of this provision falls short of this amount of tax.

27. Though Sri Shankar, learned counsel for the appellant has called in aid not only the budget speech but also the circular issued by the board and the principles of promissory estoppel and legitimate expectation etc., we are afraid none of these principles are attracted for the simple reason that a budget speech being only an introductory to the bill in the Parliament and that in itself is not an end.

28. Though many decisions are roped in for interpreting this, we find there is no scope for interpretation in the present situation, as the provision of the statute should be given effect to, as it occurs and if there is only any ambiguity in understanding the statute then only the tool of interpretation should be called in aid. We do not find any competing or derogatory provision in Section 115JB vis-a-vis Section 80-IB of the Act is concerned.

29. Section 80-IB operates in a particular sphere and Section 115JB is operative in a totally different sphere. It is not the case of the appellant-assessee that Section 80- IB is not operated or given effect to. Grievance of the assessee is that because of the operation of Section 115-JB, the benefit of Section 80-IB is taken away. Section 115JB occurring in a taxing statute is in the nature of a charging section and that too a special charging section, exemption or concession or another benefit sought should come from within the provisions of Section 115JB itself, which occurs in Chapter XII-B of the Act. Section 80-IB is a provision which occurs in Chapter VI-A of the Act and a chapter which contains certain incentives and concessions given to an assessee on fulfilling the requirement specified in each section mentioned therein.

30. Section 80-IB in the first instance is not an exemption provision and it is only a provision providing certain concessions or benefit to an assessee and it does factor while computing the total taxable income of the assessee, as charged under Section 4 of the Act.

31. While this is not in any way denied to an assessee, Section 115JB is a special charging section for regulating tax liability of companies in general and made applicable in particular and is confined to the assessee companies whose tax liability, when computed in the normal manner falls short of the liability as computed under this provision. Therefore, we are of the view that there is absolutely no question of Section 80-IB having any bearing or effect or control over the

provisions of Section 115JB of the Act. It is to be noticed that Section 80-IB concession is in respect of those assessees who qualify for that and Section 115JB levy is confined to companies and such companies which are roped in within the scope of this section. It is because of this position, we are of the view that there is no occasion for the interpretation or examination of the principles of promissory estoppel or doctrine of legitimate expectation. The benefit under Section 80-IB is not denied, it works as it is. It is only because the assessee happens to be a company to which the provisions of Section 115JB is also attracted, levy as indicated therein becomes operative. Therefore, we do not find the applicability of the decisions relied upon by the learned counsel for the appellant-assessee on this aspect of the matter, in the present situation.

32. In so far as the reliance placed on the judgment of this court in the case of M/s United Breweries Ltd [supra] is concerned, while that was with reference to the provisions of Section 115JA and we are now examining the liability under Section 115JB of the Act. The scheme of charging under Section 115JB being totally different and not with reference to general rate, but with reference to a specified rate as indicated in Section 115JB itself i.e. 7½ percent of deemed income for the purpose of Section 115JB, we are afraid the judgment will not advance the case of the assessee in the present situation.

33. A budgetary speech while will have some significance for understanding a provision if there is any ambiguity, in the wake of clear language of the Section 115JB, in the first instance there is no ambiguity, in the second instance, the ambiguity sought to be introduced on certain premise which is not apparent and is only on a limited reading of the budget speech, at any rate a budget speech in itself cannot regulate or control the statutory provision, more so a charging section in a revenue yielding statute, we are of the clear opinion that the provisions of Section 115JB should be given full effect to without being influenced or guided or regulated by the budget speech of the finance minister. The board circular being in the context of the earlier provisions, but, never the less more by way of extraction of the budget speech, that by itself cannot have any special significance, as the board circular does not in any way seeks to clarify the levy and rate of levy as provided in Section 115JB of the Act. Levy and rate of tax alone is what matters for the purpose of Section 115.JB of the Act.

34. Arguments are advanced by Sri Shankar, learned counsel for appellant-assessee based on principle of interpretation that Section 115JB should be so interpreted or understood as to ensure that the benefit given to the appellant-assessee under Section 80-IB of the Act is not taken away and the interpretation suggested by Sri Shankar fails for more than one reason even on applying the principle of interpretation. Though there is no need for interpreting the provision and examination can only be m the context of understanding the scope of Section 115JB of the Act, nevertheless, if it is sought to be interpreted as contended by Sri Shankar in the backdrop of Section 80-IB of the Act, the principle of

harmonious construction of a statute will have to be kept in mind. It is a well settled principle that no provision of an enactment should be so interpreted or understood as to render otiose or ineffective any other provision of the same enactment. Therefore, Section 80-IB cannot be interpreted so as to render the provision of Section 115JB of the Act nugatory or otiose or ineffective or does not achieve the purpose for which it is enacted.

35. Section 115JB, in fact, in no way either denies the benefit given under Section 80-IB or reduces the same. While the appellant-assessee can claim the benefit under Section 80-IB of the Act and it is not denied per se to the appellant-assessee, in the given ca.se, the provisions of Section 115JB may be attracted or may not be attracted, depending upon the nature or legal composition of the assessee.

36. In fact, the minimum alternate tax is sought to be levied earlier under Section 115JA and now under Section 115JB of the Act,, only in respect of such companies which, by availing various concessions given in Chapter VI-A of the Act, are able to show either a nil taxable income or much reduced taxable income. Concession given under Section 80-IB is also one such and therefore no exception can be taken. Only in respect of the availability of a concession under Section 80-IB and to make it immune from the applicability of the provisions of 115JB of the Act. Both provisions operate in their own respective spheres and have to be given effect.

37. Secondly and more importantly, no provision of a statute can be so interpreted as to render it unconstitutional. If the argument of Sri Shankar, learned counsel for the appellant, is to be accepted, then it will result in a discrimination against such assessee-companies who have to pay tax under Section 115JB of the Act, but have no concession available under Section 80-IB, whereas the tax liability of the person under Section 115JB of the Act, who can claim concession under Section 80-IB of the Act gets reduced for the purpose of Section 115JB of the Act. It is, therefore, to avoid Section 115JB being rendered discriminatory and unconstitutional being violative of Article 14 of the Constitution of India, the contention of Sri Shankar for leading down or reading up the provisions of Section 115-JB of the Act, particularly by adding to different situations mentioned in the explanation, to be expanded by including reference to Section 80-IB of the Act cannot be accepted. A statutory provision cannot be so read down to render it unconstitutional, but reading down a statutory provision is to make it constitutional and not otherwise. Therefore, the arguments fail."

33. In view of the above, we dismiss the contentions of the Ld. Counsel for the assessee that deduction provided under section 80IB(10) of the Act is to be made from the book profits of the assessee for the purpose of payment of MAT. The decision of the ITAT, Mumbai Bench, relied upon by the Ld. Counsel for the assessee in the case of Neha Builders(supra) is of no assistance to the assessee in view of the decisions of High Courts taken note of above by us."

No other contentions were raised by the Ld. Counsel for the assessee before us and, therefore, we hold that the assessee was liable to pay tax on its profits as per provisions of section 115JB of the Act. We, therefore, uphold the order of the Ld. CIT(A) and dismiss the appeal filed by the assessee. In effect, the appeal of the assessee in ITA No.422/CHD/2016 is dismissed."

8. Accordingly, in the aforementioned peculiar facts, we find that Ground No. 1 raised by the assessee is devoid of merit. Accordingly, for the reasons given hereinabove, it is dismissed.

9. Addressing the additional ground, ld. AR relies on the position of law as settled by the Apex Court.

10. The ld. CIT-DR submitted that in the face of the decision of the Apex Court, he would have nothing further to say.

11. We have heard the rival submissions and perused the material available on record. It is seen that the Apex Court in CIT Vs Kwality Biscuits Ltd. 284 ITR 434 (S.C) has unambiguously held that interest under sections 234B and 234C of the Income-tax Act, 1961 cannot be levied on a company whose income is computed u/s 115J. Accordingly, in the face of the clear legal position as settled in the aforesaid decision, there cannot be any ambiguity. The relevant extract is reproduced hereunder for ready reference :

"From the decision of the Karnataka High Court to the effect, inter alia, that interest is not leviable under sections 234B and 234C of the Income-tax Act, 1961 in the case of an assessment of a company on the basis of blunder section 115], since the entire exercise of computing income under Section 115} can only be done at the end of the financial year, and the provisions of sections 207,208,209 and 210

cannot be made applicable until arid the accounts are audited and the balance-sheet prepared (see [2000] 243 ITR 519), *the Department preferred appeals to the Supreme Court Supreme Court dismissed the appeals."*

12. Accordingly, we hold that the additional ground raised is to be decided in favour of the assessee.

13. Accordingly, ground No. 1 raised by the assessee is dismissed and additional ground of appeal is allowed.

14. In the result, appeal of the assessee is dismissed.

Order pronounced in the Open Court on 14th Aug.,2019.

Sd/- Sd/-

(अन्नपूर्णा गुप्ता)
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

(दिवा सिंह)
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member

"पूनम"

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant – 2.प्रत्यर्थी/ The Respondent -3.आयकर आयुक्त/ CIT 4 .आयकर आयुक्त (अपील)/ The CIT(A) 5.विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6.गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar