

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
and
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

ITA No.1708/Bang/2013
(Assessment year: 2010-11)

Deputy Commissioner of Income-tax,
Circle 11(3),
Bangalore.

... Appellant

Vs.

M/s. Golden Gate Properties Ltd.
No.820, Golden House,
80 Feet Road, 8th Block,
Koramangala,
Bangalore-560095.
PAN: AAACG 5284 H

... Respondent

Appellant by: Shri Sanjay Kumar, CIT(DR).
Respondent by: Shri V.Narendra Sharma, Advocate.

Date of hearing : 19/11/2015.
Date of pronouncement: 29/12/2015.

O R D E R

Per VIJAY PAL RAO, JM:

This appeal by the revenue is directed against the order dated 30/09/2013 of the CIT(A) for the assessment year 2010-11.

2. The revenue has raised the following grounds:
- 1) The order of the Learned CIT (Appeals) is opposed to law and the facts and circumstances of the case.
 - 2) The CIT(A) erred in holding that the assessee is eligible to adjust the prior period expenses while computing the book profit u/s 115JB by relying on the decision in the case of Tamil Nadu Cement Corporation Ltd. vs JCIT(Special Range)(2012)349 ITR 58(Madras) and CIT vs Khaitan Chemicals and fertilizers Ltd [2008] 307 ITR 150(Delhi) without appreciating the fact that not only the prior period expenses is not an item which is specified in Clause (i) to (viii) of Explanation 1 to Section 115JB(l) but also that the amount of prior period expenses of Rs.14,37,10,403 had not been debited to the P&L account and the SC in the case of Apollo Tyres vs CIT 255 ITR 253 had held that once the account has been certified by the auditors to have been prepared in accordance with the provisions of the company act then there is no jurisdiction to go behind the net profit in the P&L account except to the extent provided the *Explanation* to Section 115JB.
 - 3) The CIT(A) erred in holding that the assessee is eligible to adjust the prior period expenses while computing the book profit u/s 115J by relying on the decision in the case of Tamil Nadu Cement Corporation Ltd. vs JCIT(Special Range)(2012)349 ITR 58(Madras) and CIT vs Khaitan Chemicals and fertilizers Ltd [2008] 307 ITR 150(Delhi) without appreciating the fact that the prior period expenses of Rs. 14,37,10,403 were directly deducted in the opening reserves and that the decisions relied upon by the CIT(A) are yet to reach finality.
 - 4) For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) be reversed and that of the Assessing Officer be restored.
 - 5) The appellate craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

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2. The assessee is a public limited company and engaged in the business of real estate project for the year under consideration. The assessee has filed its return of income on 14/10/2010 declaring loss of Rs.4,21,81,982/-. Subsequently, assessee has filed a revised return on 02/02/2011 declaring income after claiming deduction u/s 80-IA of the Income-tax Act,1961 [hereinafter referred to as 'the Act' for short]. While completing assessment u/s 143(3), the AO, apart from making disallowances and additions in normal computation of income, also computed book profit under section 115JB by adding back an amount of Rs.14,37,10,403/- being prior period expenses adjusted in the opening reserve.

3. The assessee challenged the action of the AO before the CIT(A) and submitted that the assessee has computed book profit as per Explanation 1 and 2 to second proviso to section 115JB by reducing the aforesaid sum of Rs.14,37,10,403/- as shown in the notes to accounts forming part of the financial statements. The assessee contended that net profit has not been defined under the provisions of the Act and the provisions of section 115JB of the Act refer to computation of book profit from Profit & Loss Account for relevant financial year. It was further contended that profit refers to Profit & Loss Account prepared for relevant period with reference to notes to accounts forming part of the financial statement of the assessee. The provisions of sec.211(2) of the Companies Act mandate compliance of Part II of Schedule VI in

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preparation of financial statement of a company. It was further contended that the provisions of sec. 211(3A) of the Companies Act mandates compliance with accounting standards notified by the Institute of Chartered Accountants of India (ICAI). The provisions of sec.211(6) of the Companies Act further states that any reference to balance sheet or Profit & Loss Account shall include any notes thereon or documents annexed thereto to be given in the form of such notes or documents. Prior period expenditure in the instant case forms part of the financial statement in compliance with accounting standard 5 notified by the ICAI. Thus, assessee contended that prior period expenditure in question which has been disclosed in the notes of accounts forming part of financial statement in compliance with provisions of Companies Act as well as accounting standard and therefore, for the purpose of sec.115JB net profit shall be net profit as per Profit & Loss Account after giving effect to expenditure disclosed in the notes forming part of such financial statement for such period. In support of it's contention, the assessee relied upon the decision of the Hon'ble Delhi High Court in case of *CIT vs. Khaitan Chemicals & Fertilisers Ltd.*(307 ITR 150) as well as in case of *CIT vs. Sain Processing & Weaving Mills P. Ltd.* (325 ITR 565).

4. The CIT(A) accepted the contention of the assessee and following the judgments as relied upon by assessee in the case of *Khaitan Chemicals & Fertilisers Ltd.*(supra) and *Sain Processing &*

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Weaving Mills P. Ltd. (supra) and the judgment of the Hon'ble Madras High Court in case of *Tamilnadu Cement Corporation Ltd., vs. JCIT* (349 ITR 58) held that the assessee is eligible to deduct prior period expenditure to compute the book profit u/s 115JB of the Act irrespective of whether such prior period expenditure are shown separately in the Profit & Loss Account or not.

5. Aggrieved by the finding of the CIT(A) in allowing claim of the assessee, revenue has filed the present appeal.

6. Before us, learned Departmental Representative has contended that the assessee has not debited this amount of Rs.14,37,10,403/- to the Profit & Loss Account. Therefore, the said amount cannot be further adjusted from profit shown in the Profit & Loss Account while computing book profit u/s 115JB. Learned Departmental Representative has further contended that this amount of prior period expenditure also does not fall in any of the clauses of Explanation to section 115JB for making such adjustment. He has referred to notes on accounts and submitted that even in notes on accounts, the auditor of the assessee has explained that this amount has been adjusted against opening reserve and surplus and in other words, it has been reduced from earlier year's profit. Thus, learned Departmental Representative has submitted that disclosure in the notes to accounts does not lead to any inference that this amount of prior period expenditure will be forming part of the Profit & Loss Account and consequently

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it can be adjusted while computing book profit u/s 115JB. Learned Departmental Representative has pointed out that the CIT(A) has committed an error in allowing the claim without appreciating fact that not only prior period expenditure is not an item which is specified in any of the clauses of Explanation to section 115JB but also the said amount of prior period expenditure has not been debited to Profit & Loss Account even by virtue of notes to accounts. He has relied upon the judgment of the Hon'ble Supreme Court in the case of *Apollo Tyres vs. CIT* (255 ITR 273) and submitted that once accounts of the assessee are certified by the Auditor, as has been prepared in accordance with provisions of Schedule VI of Companies Act then there is no jurisdiction of the AO to go behind net profit shown in Profit & Loss Account except to the extent provided in Explanation to sec. 115JB. The decisions relied on by the assessee and followed by the CIT(A) are not applicable in the case of the assessee. Hence, learned Departmental Representative has supported the order of the AO.

7. On the other hand, learned AR of the assessee has reiterated his contentions as raised before the CIT(A) and submitted that when this amount has been disclosed in the notes to accounts and explained that the assessee has accounted prior period expenditure in the current year, then the same would be treated as disclosure of the amount in Profit & Loss Account. Thus, learned AR of the assessee has submitted that when notes

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to accounts are forming part of the financial statements and to be considered as part of Profit & Loss Account then the amount which is disclosed in the notes to accounts as accounted for the current year shall be considered as accounted in the Profit & Loss Account and therefore, while computing book profit, net profit has to be considered after adjustment and giving effect to the amount disclosed in the notes to accounts. In support of this contention, he has relied upon the decisions of the Hon'ble Delhi High Court in case of *Khaitan Chemicals & Fertilisers Ltd.*(supra) and *Sain Processing & Weaving Mills P. Ltd.*(supra) as relied upon before the CIT(A) and decision of Pune bench of the Tribunal in *K.K.Nag Ltd. vs. Addl.CIT* (52 SOT 381). Thus, learned AR of the assessee has submitted that net profit as per Profit & Loss Account is required to be treated after giving effect to and making adjustment of prior period expenditure disclosed in the notes to accounts. He has supported the order of the CIT(A).

8. We have considered the rival submissions as well as relevant material on record. The dispute before us is regarding deduction of Rs.14,37,10,403/- on account of prior period expenditure from net profit shown in Profit & Loss Account for the purpose of computing book profit u/s 115JB. There is no dispute that the assessee has not debited this amount to the Profit & Loss Account. However, the said amount has been disclosed by the assessee in the notes to accounts. Learned AR of the assessee has placed reliance on various judgments as referred above. It is

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pertinent to note that the ratio of judgments relied upon by learned AR of the assessee is that if an item of income or expenditure is required as per Part II of Schedule VI of the Companies Act to be part of Profit & Loss Account but the same was not disclosed in the Profit & Loss Account and has been disclosed in the notes forming part of financial accounts, then said disclosure in the notes to accounts would be treated as disclosure of that particular item of income or expenditure as case may be in Profit & Loss Account for the purpose of computation of book profit u/s 115JB. In case in hand, assessee has claimed to have prepared financial statement and Profit & Loss Account as per Schedule VI of the Companies Act. However, it is not clear whether this amount of prior period expenditure was required to be part of Profit & Loss Account as per Schedule VI of the Companies Act or as per accounting standard relevant on this point. Only in case when this amount is required to be debited to Profit & Loss Account as per Schedule VI of the Companies Act but was not so disclosed then any disclosure in the notes to accounts would be relevant and will be considered as a disclosure of this expenditure in the profit and loss account. On the other hand, if this amount of prior period expenditure is not required to be part of Profit & Loss Account as per part II of Schedule VI of the Companies Act read with accounting standard, then disclosure in the notes to accounts would not amount any change in the Profit & Loss Account already prepared as per Schedule VI of the

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Companies Act. Therefore, only in cases where a particular item of income or expenditure is required to be disclosed in the Profit & Loss Account but was disclosed in the notes to accounts, then such item of income or expenditure will be treated as part of Profit & Loss Account for the purposes of computing profit u/s 115JB. Assessee has not brought on record anything to show as to how this amount was required to be part of Profit & Loss Account prepared in accordance with part II of Schedule VI of the Companies Act. We further note that the CIT(A) has allowed the claim of the assessee on the premise that once assessee has disclosed this amount in notes to accounts, then the same will be treated as disclosed in Profit & Loss Account and consequently has to be adjusted for computation of book profit u/s 115JB. The CIT(A) has not gone into this aspect of the issue whether this prior period expenditure was required to be part of Profit & Loss Account as per Schedule VI of Companies Act or not. Therefore, if this amount was not required to be part of Profit & Loss Account prepared as per Schedule VI of the Companies Act, then undisputedly this amount not being part of any of the clauses of Explanation to sec. 115JB cannot be excluded from net profit for the purposes of computing book profit u/s 115JB. Since neither the revenue nor the assessee has furnished any record in support of their respective claims, whether this amount of prior period expenditure was required to be part of Profit & Loss Account prepared as per provisions of Schedule VI of the Companies Act,

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therefore, in the facts and circumstances of the case, we set aside this issue to the record of the CIT(A) to re-examine the issue in light of the relevant provisions of Schedule VI of the Companies Act as well as the relevant accounting standard applicable on this item of expenditure and then give a finding whether this amount of prior period expenditure is required to be part of profit and loss account or not. Accordingly, the issue is required to be adjudicated as per law and after giving an opportunity of hearing to the assessee.

9. In the result, the appeal of the revenue allowed for statistical purposes.

Pronounced in the open court on 29th December, 2015.

sd/-
(Abraham P George)
ACCOUNTANT MEMBER

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

eksrinivasulu

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore