



ITA No.1072/Mum/2013
M/s Silver Fabrics Private Limited
Assessment Year 2009-2010

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 1072/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-2010)

SILVER FABRICS PRIVATE LIMITED 30, Bhangwadi Shopping Centre Kalbadevi Road Mumbai 400 020	बनाम/ Vs.	DEPUTY VCOMMISSIONER OF INCOME TAX 4(3) Aaykar Bhawan M.K. Road Mumbai 400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCS-5156-R		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Paras Rakesh, AR
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Anupama Singla (DR)
सुनवाई की तारीख / Date of Hearing	:	24/01/2017
घोषणा की तारीख / Date of Pronouncement	:	27/01/2017



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आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year 2009-10 is directed against the order of Ld. Commissioner of Income Tax (Appeals)-8 [CIT(A)], Mumbai dated 03/01/2003 *qua* confirmation of levy of surcharge on Tax computed u/s 115JB.
2. Briefly stated, the assessee was resident corporate assessee engaged in the business of cloth trading whose income was determined at Rs.36,50,464/- under normal provisions and Rs. 2,95,63,955/- u/s 115JB in scrutiny assessment u/s 143(3) vide Assessing Officer [AO] order dated 30/11/2011. Accordingly, tax on Book Profit as per MAT provision was computed as follows:-

<i>No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	<i>Book Profit u/s 115JB</i>	<i>2,95,63,955/-</i>
2.	<i>Tax on Book Profit @10%</i>	<i>29,56,392/-</i>
3.	<i>Surcharge @10% on Tax</i>	<i>2,95,639/-</i>
	<i>Total Tax Payable</i>	<i>33,49,592/-</i>

The assessee contended that as income under normal provisions was below Rs.1 crore and hence surcharge could not be applied on its Tax computed u/s 115JB. The First Appellate Authority, after considering the deeming provisions of Section 115JB, concluded that the assessee was liable for surcharge as deemed total income exceeded Rs. 1 Crore. Aggrieved, the assessee is in appeal before us.

3. Before us, the Ld. Counsel for assessee [AR] contended that surcharge could be applied on Tax only if the total income as per normal provisions of the act exceeded Rs. 1 Crore and not otherwise and hence, the same has wrongly been levied by the lower authorities. Per *contra*, Ld. DR, by drawing our attention to the provisions of Section 115JB contended that this Section overrides all the provisions of the act and as per these provisions, where tax on total income as per normal provisions is less than prescribed percentage of the



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book profits, then such book profit is deemed to be the total income of the assessee and accordingly, tax is computed *qua* deemed total income. As the deemed total income of the assessee exceeded prescribed threshold of Rs.1 crore, surcharge has correctly been applied by the lower authorities.

4. We have heard the rival contentions and perused the relevant statutory provisions as contained in Section 115JB. This Section starts with *non-obstante* clause and override the Act. We also find that where total income of the assessee as computed under the normal provisions is less than the prescribed percentage of the book profits, then the total income of the assessee as computed get substituted by the book profits of the assessee and deemed to be the total income of the assessee for all purposes. These are deeming fiction and hence are to be applied strictly. Hence, we find strength in the argument of the Ld. DR and conclude that surcharge was rightly levied on the tax payable by the assessee as its total income, though arrived at by deeming fiction of Section 115JB, exceeded the prescribed limit. Therefore, we dismiss the appeal of the assessee.

5. In nutshell, the appeal of the assessee gets dismissed.

Order pronounced in the open court on 27th January, 2017

Sd/-
(Joginder Singh)

न्यायिक सदस्य / Judicial Member

Sd/-
(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 27.01.2017

PS:- Pooja K.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent



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3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**