



ITA No.1172 &1173/M/2014

TCFC Finance Limited

Assessment Years-2005-06 & 2006-07

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।

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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

**BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.1172 /Mum/2014

&

आयकर अपील सं./I.T.A. No.1173 /Mum/2014

(निर्धारण वर्ष / Assessment Years: 2005-06 & 2006-07)

TCFC Finance Limited 502, Raheja Chambers, Nariman Point Mumbai – 400 021	बनाम/ Vs.	Income Tax Officer Ward 3(3)(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACR-2710-H		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Sanjiv M. Shah & Shri Jay Bhansali, Ld. ARs
प्रत्यर्थी की ओर से/ Respondent by	:	Dr. A.K. Nayak, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	27/04/2017
घोषणा की तारीख / Date of Pronouncement	:	28/04/2017



आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are two appeals by assessee for Assessment Years [AY] 2005-06 & 2006-07 which assails separate order of Ld. Commissioner of Income Tax (Appeals)-7, [CIT(A)], Mumbai and since the same are by one assessee for two different AYs, we dispose-off the same by way of this common order for the sake of convenience and brevity. First, we take up ITA No. 1173/M12 for AY 2006-07 which assails order of Ld. CIT(A) *qua* mistake in computation of book profit u/s 115JB.
2. Briefly stated, the assessee, being resident corporate assessee, was subjected to an assessment u/s 143(3) of the Income Tax Act, 1961 for impugned AY vide Assessing Officer [AO] order dated 18/11/2008 wherein the total income of the assessee was determined at Rs.24,73,570/- under normal provisions and Rs.6,87,01,534/- u/s 115JB after certain adjustments and disallowances as against returned income of Rs.*Nil* filed by the assessee on 29/11/2006. The assessee is aggrieved by mistake made by him in computation of book profit u/s 115JB in view of the fact that while arriving at the book profit, it added back the provision for taxation in the figures of Profit as per Profit & Loss Account, which in fact, was before provision for taxation and hence the same has resulted into erroneous increase in Book Profits to the extent of provision for taxation. The AO also took the book profits as per assessee's computation. Aggrieved, the assessee, *inter-alia*, contested the same before Ld. CIT(A) who rejected the same on the premises that it was assessee's own mistake and did not spring out of the AO's order appealed against. Aggrieved, the assessee is in appeal before us.



3. The Ld. Counsel for assessee [AR], while drawing our attention to documents placed in the *paper book*, has contended that there is no dispute as to fact that an erroneous calculations have occurred in the computation of book profits and the justice demands that correct book profits as per law are computed. The assessee made effort to get the mistake rectified by filing rectification application u/s 154 vide letters dated 27/12/2008 and reminders dated 22/02/2010 & 23/04/2010, the copies of which were placed before us. However, the same were not disposed-off by the revenue till date. The Ld. DR contended that the assessee himself made a mistake in computation of income and therefore, the proper remedy for the same was to peruse his rectification applications.

4. We have heard the rival contentions and perused computation of income and financial statements of the assessee placed in the paper book. A quick glance at the calculation of book profits lends supports to the contentions of the assessee that an error has certainly crept into the computation of book profits as the assessee has added provision for taxation of Rs.54.73 Lacs in the figures of Profit, which in fact, were already before taxation and the error has resulted into overstatement of book profit to the extent of Rs.54.73 Lacs. The assessee rightly filed the rectification applications as way back as in the year 2008 but we regret to note that the same has not been disposed-off till date. It is legally well settled principle that the revenue should not obtain undue / unfair advantage of assessee's mistake / ignorance. Therefore, while allowing the assessee's appeal for statistical purposes, we direct the revenue to dispose-off the cited rectification applications filed by the assessee within a period of 30 days from the date of this order.



5. Now, we take up ITA No. 1172/M/2014 which is appeal for AY 2005-06 where the assessee is aggrieved by certain disallowances and mistakes. Facts *qua* the first ground are that the assessee has been assessed at Rs.14,89,774/- u/s 143(3) after disallowance, *inter-alia*, of *advances written off* as bad debts for Rs.31.00 Lacs. The same was contested before Ld. CIT(A) on the premises that the assessee was in money lending business and therefore, the same was allowable to the assessee. However, Ld.CIT(A) rejected the same on the ground that the assessee failed to prove that the said debt was part of assessee's income in any previous year as per section 36(2). The Ld. AR, by placing additional evidences in the *paper book* contended that the assessee was an non-banking financial company [NBFC] registered entity and money lending was the business of the assessee and therefore, advances written off were in the ordinary course of assessee's business and hence, allowable. The Ld. AR further contended that the assessee had sufficient evidences in his possession to substantiate his claim in this regard and in the interest of justice, the matter be restored back to Ld. AO. The Ld. DR raised no objection to the same and therefore, without delving much deeper into the matter, we restore the Ground no. 1 of assessee's appeal to the file of AO for fresh adjudication. The ground stands allowed for statistical purposes.

6. Similar contentions have been raised for Ground No 2 which is related with computation of Long Term Capital Loss [LTCL] incurred by the assessee. During the course of assessment proceedings, the assessee filed a revised calculation of LTCL on account of sale of certain shares which resulted into increase in Long Term Capital Loss by Rs.37,20,693/-. However, the Ld. AO, relying upon the decision in *Goetz India Ltd. [284 ITR 323]* rejected the same, it being a new claim. The Ld. CIT(A) confirmed the same on the same analogy



and aggrieved, the assessee is in appeal before us by way of Ground No.2. The assessee placed reliance on various judicial pronouncement to contend that the assessee made a mistake in computation of Long Term Capital loss in the return of income, nevertheless, the same could be entertained by the Tribunal and therefore, in the interest of justice, the same may be allowed in favor of the assessee, subject to due verification. The Ld. DR contested that same on the ground that the same could be admitted only by way of filing revised return of income. However, taking same view, we deem it fit to restore the matter back to the file of AO to re-adjudicate the same with a direction to the assessee to substantiate his claim forthwith in this regard. Accordingly, this ground stands allowed for statistical purposes.

7. Ground No. 3 is related with computation of book profit u/s 115JB. The assessee is aggrieved by non-adjudication of additional grounds of appeal raised by assessee before Ld. CIT(A) who rejected the same on the erroneous premises that the same was consequential in nature and further the same did not emanate from AO's order. The Ld. AR, while drawing our attention to the additional ground of appeal, contended that the assessee raised additional ground of appeal regarding computation of book profit u/s 115Jb vis-à-vis amount withdrawn from provision made in earlier years and credited to Profit & Loss Account as per Explanation-1. However, the Ld. CIT(A) rejected the same by erroneously concluding that the same was consequential in nature in relation to Ground No. 6 and did not emanate from the orders of Ld. AO. A *prima facie* perusal of Ground No.6 raised by the assessee before Ld. CIT(A) reveals that the same was related with diminution in value of shares which, in fact, was not, connected with additional ground of appeals raised by the assessee. Therefore, this issue is also restored back to



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the file of AO for re-adjudication. This ground of assessee's appeal also stands allowed for statistical purposes.

8. In nutshell, both the assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open court on 28th April, 2017.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 28.04.2017

Sr.PS:- Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

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

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