

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “B”, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.2294/Mum/2012 (Assessment Year- 2004-05)**

M/s Bombay Diamonds Co. Pvt. Ltd. Su-Raj house, 73-C, Cross Road, Marol, MIDC, Andheri (E), Mumbai-400093 PAN: AAACB0495K	Vs.	D.C.I.T.-CC-I, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Rajesh P. Shah (AR)
Revenue by : Shri N.P. Singh (DR)
Date of hearing : 02.05.2017
Date of Pronouncement : 17.05.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee u/s 253 of the Income-tax Act (the Act) is directed against the order of Id. CIT(A)-36, Mumbai dated 15.02.2012 for Assessment Year (AY) 2004-05. The assessee has raised the following grounds of appeal:

“On the facts and under the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of AO of considering the profit on sale of capital assets of Rs. 10.38 crores for the purpose of calculating book profit u/s 115JB without appreciating that such profit is not taxable under the provision of Income Tax Act and same needs to be ignored for computing book profit u/s 115JB.”

2. Brief facts of the case are that a search and survey action u/s 132(1) and 133A was conducted in case of Su-Raj Diamond Group and its associate group on 22.08.2008. Consequent upon the assessee was served notice u/s 153C of the Act on 28.07.2009. In response to the notice, the assessee-company filed return of income on 27.08.2009 declaring loss of Rs. 1,12,64,969/-. The assessee in its regular return of income filed on 01.11.2004 u/s 139 also declared the similar loss/income. The assessment was completed u/s 143(3) of the Act on 30.11.2006.

While framing the assessment order u/s 143(3) r.w.s. 153C of the Act, the Assessing Officer (AO) observed that in the assessment completed u/s 143(3) of the Act dated 30.11.2006. The AO worked out the book profit u/s 115JB at Rs.7,61,36,507/- against which the assessee filed appeal before the Id. CIT(A)-25, Mumbai. The Id CIT(A) decided it in favour of assessee vide order dated 29.09.2007. Aggrieved by the order of Id. CIT(A), the Revenue filed appeal before the Tribunal vide ITA No. 7488/Mum/2007 vide order dated 30.11.2009 decided in favour of Revenue. Hence, while passing assessment order u/s 143(3) r.w.s. 153C of the Act dated 14.12.2010, the AO made the addition of book profit of Rs. 7,61,36,507/-. Aggrieved by the assessment order, the assessee filed appeal before the Id. CIT(A)-36, Mumbai. The Id. CIT(A) following the decision of Tribunal in ITA No. 7488/Mum/2007 dated 30.11.2009 decided the appeal against the assessee. Thus, further aggrieved by the order of Id. CIT(A), the present appeal is filed before us.

3. We have heard the Id. Authorized Representative (AR) of assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. At the outset of the proceeding, the Id. AR of the assessee argued that against the order of Tribunal in ITA No. 7488/Mum/2007 dated 30.11.2009, the assessee has filed appeal before the jurisdictional High Court and the same has been admitted. The Id. DR for the Revenue not disputed the finding on appeal before the Hon'ble High Court.
4. We have considered the rival contention of the parties and gone through the order of authorities below. We have seen that search and seizure was conducted on 22.08.2008, when the notice u/s 153C dated 28.07.2009 was served; the assessment u/s 143(3) of the Act was already completed on 30.11.2006. Thus the assessment order completed on 30.11.2006 was not abated. Considering the pendency of appeal before the Hon'ble jurisdictional High Court, arising out of the order passed u/s 143(3) for same assessment year , we set-aside the order of AO and direct the AO to wait for the outcome of appeal filed by assessee before the

Hon'ble High Court and decide the ground of appeal in terms of the order so passed in the appeal.

5. With these directions, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 17th day of May 2017.

Sd/-

Sd/-

(SHAMIM YAHYA)

(PAWAN SINGH)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Mumbai; Dated 17/05/2017

S.K.PS

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai