

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

**ITA No. 910/Hyd/2017
Assessment Year: 2013-14**

**Balaji Energy Private
Limited,
Hyderabad.**

PAN: AABCB 4680 K

(Appellant)

**Vs. DCIT,
Circle-1(2),
Hyderabad.**

(Respondent)

Assessee by: Sri A.V. Raghuram

Revenue by: Smt. Esther Minghauvung, DR

Date of hearing: 27.08.2018

Date of pronouncement: 31.08.2018

ORDER

PER INTURI RAMA RAO, A.M.:

This appeal filed by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-1, Hyderabad dated 15.02.2017 for the assessment year 2013-2014. The appellant raised the following grounds of appeal:-

- "1. The order of the Ld. CIT(A) is erroneous both on facts and in law to the extent it is prejudicial to the assessee.*
- 2. The Ld. CIT(A) erred in confirming the disallowance of interest of Rs. 1,05,82,283/- under normal provisions in spite of the fact that the advances were made from out of own funds that is accepted in the earlier year and that no disallowance was made in the earlier years on this issue.*

3. *The Learned CIT(A) erred in confirming the addition of Rs. 1,05,82,283/- made to the book profit as adjustment u/s 115JB though there is no such provision to make such adjustment and though there is no finding that the accounts are not prepared in accordance with the company law and ignoring the decision of the Supreme Court in the case of Apollo Tyres.*
4. *The Ld. CIT(A) erred in confirming the addition of Rs. 4,22,72,073/- made by the A.O. under normal provisions and also as adjustment under the provisions of section 115JB though there is no such provision to make such adjustment and though there is no finding that the accounts are not prepared in accordance with the company law and ignoring the decision of the Supreme Court in the case of Apollo Tyres.”*

2. Briefly stated the facts of the case are that the assessee is a company duly incorporated under the provisions of Companies Act, 1956. It is engaged in the business of generation of hydel power. The return of income for the A.Y. 2013-14 was filed on 28.09.2013 disclosing the total income of Rs. Nil under the normal provisions and Rs. 95,73,254/- under the provisions of section 115JB of the Act. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 09.12.2015 passed u/s 143(3) of the Act at a total income of Rs. 59,88,352/- under the normal provisions and book profit of Rs. 6,24,27,610/- u/s 115JB of the Act. While doing so, the Assessing Officer made addition of Rs. 4,22,72,073/- on account of alleged income accrued on account of difference in tariff power supplied by the appellant to Government agencies and also an addition of Rs. 1,05,82,283/- was made by alleging that the borrowed funds have been diverted towards advances in non-business purposes. The Assessing Officer also made addition of all the two items to books profits for the purpose of computing the tax liability u/s 115JB of the Act.

3. Being aggrieved, the appellant had filed an appeal before the Ld. CIT(A), who vide the impugned order confirmed the addition. Being aggrieved, the appellant is in appeal before us in the present appeal.

4. During the course of hearing of the appeal, Learned Counsel for the Assessee submitted that the Ld. CIT(A) was not justified in confirming the addition of Rs. 4,22,72,073/- as the amount had not accrued to the appellant inasmuch as, the order of the appellate authority are under challenge before higher forums and the matter had not attained finality. As regard to the disallowance of interest of Rs. 1,05,82,283/- it was submitted that the advances are made to the sister concerns out of business expediency and therefore no disallowance should have been made. The Learned Counsel for the Assessee also submitted that the CIT(A) was not justified in confirming the additions to book profit of the items disallowed under normal provisions of the Act for the purpose of computing tax liability u/s 115JB of the Act, inasmuch as, there was no qualification by the Statutory auditors to the effect that the financial statements of the company were not drawn in accordance with the Schedule-3 of the Companies Act, 2013. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Apollo Tyres [255 ITR 273] (SC) in support of the contention that the Assessing Officer had no power to disturb the book profits as disclosed by P & L Account in the absence of finding that the P & L Account and balance sheet were not drawn in accordance with the Accounting Standards or in terms of the provisions of Schedule-3 of the Companies Act, 2013.

5. On the other hand, Learned Departmental Representative placed reliance on the orders of the lowers authorities.

6. We have heard the rival submissions and perused the material on record. The first grounds of appeal (Ground no.2) relates to the disallowance of interest of Rs. 1,05,82,283/-. Assessing Officer has disallowed the interest claimed u/s 36 (i) (iii) of the Act on the ground

that the appellant company made the investment in the sister concerns of the appellant, the details of which are as follows:-

(a)	Chaitanya Properties Pvt Ltd	-	Rs. 3,50,00,000/-
(b)	Pinaki Agro Farms Pvt Ltd	-	Rs. 4,50,00,000/-
(c)	Shreda Real Estates Pvt Ltd	-	<u>Rs. 4,50,00,000/-</u>
	Total interest free advances	-	<u>Rs.12,50,00,000/-</u>

The Assessing Officer was of the opinion that the borrowed funds have been diverted for the purpose of making advances to the above companies in which the appellant company is interested and therefore he inferred that advances were not for business purposes. When the appellant was called upon to explain the business expediency it was submitted that the advances have been made out of surplus funds of the assessee and out of the business expediency. Even before us, the same contentions were reiterated. However, no evidence was adduced in support of the contentions. Therefore, we are unable to accept the arguments of the appellant and thus the Ground No.2 raised by the assessee is dismissed.

7. As regards the Grounds No. 3 and 4 challenge the addition of items disallowed under normal provisions to book profits for the purpose of computing the tax liability u/s 115JB of the Act. Admittedly, there are no qualification in the audit report of the appellant company. In the light of the decision of the Hon'ble Supreme Court in the case of Apollo Tyres [255 ITR 273] (SC), the Assessing Officer has not supposed to disturb the book profits, wherein it was held as under:

"The use of the words "in accordance with the provisions of Parts II and III of Sch. VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an AO under the IT Act has to accept

the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, it is difficult to accept the argument of the Revenue that it is still open to the AO to re-scrutinise this account and satisfy himself that these accounts have been maintained in accordance with the provisions of Companies Act. Reliance placed by the Revenue on sub-s. (1A) of s. 115J in support of the above contention is misplaced. Sub-s. (1A) of s. 115J does not empower the AO to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, the said sub-section does not empower the authority under the IT Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of s. 115J, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income-tax both maintained under the same Act. If the legislature intended the AO to reassess the company's income, then it would have stated in s. 115J that "income of the company as accepted by the AO". In the absence of the same and on the language of s. 115J, it will have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal. Therefore, the AO while computing the income under s. 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the AO does not have the jurisdiction to go behind the net profit shown in the P&L a/c except to the extent provided in the Explanation to s. 115J.—CIT vs. Apollo Tyres Ltd. (1998) 149 CTR (Ker) 538 : (1999) 237 ITR 706 (Ker) : TC S24.2490 set aside”.

8. In the light of the decision of the Hon'ble Supreme Court (supra), we are of the considered opinion that the Assessing Officer was not justified in making an addition of Rs. 6.24 Crs to book profits and therefore we direct the A.O. to

delete these two items for the purpose of computing the tax liability u/s 115JB of the Act and thus the Grounds No.3 and 4 stand allowed.

9. In the result, appeal filed by the assessee is partly allowed.

Pronounced in the open Court on 31st August, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st August, 2018

OKK

Copy to:-

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- 2) DCIT, Circle-1(2), Hyderabad.
- 3) The CIT(A)-1, Hyderabad
- 4) The Pr. CIT-1, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File