

IN THE INCOME-TAX APPELLATE TRIBUNAL “G” BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, JUDICIAL MEMBER AND
SHRI PAWAN SINGH, ACCOUNTANT MEMBER

ITA No. 3124/Mum/2017 (Assessment Year 2011-12)

Dy.CIT Circle- 4(3)(2) Room No. 649, 6 th Floor, Aayakar Bhavan, Mumbai-400020.	Vs.	M/s Wellknown Synthetics Pvt. Ltd. 145C, 4 th Floor, Sangam, Dr. Viegas Street, Kalabdevi, Mumbai-400002. PAN: AAACW2898M
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Appellant

Respondent

Appellant by : Shri Milind Patil (DR)
Respondent by : Shri Rakesh Joshi (AR)

Date of Hearing : 06.09.2018
Date of Pronouncement : 06.09.2018

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by Revenue under Section 253 of Income-tax Act is directed against the order of Id. CIT(A)-9, Mumbai dated 11.10.2017 for Assessment Year 2011-12. The Revenue has raised the following grounds of appeal:

1. “On the facts and in circumstances of the case and in Law, the Ld. CIT(A) has erred in directing to AO to delete the addition made of Rs. 14,110/- u/s. 2(24)(x) r.w.s. 36(1)(va).”

2. “On the facts and in circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting an addition of Rs. 7,48,43,856/- on account of Premium on Preference Share Redemption Reserve to the Book Profit u/s. 115JB,”.

2. Brief facts of the case are that the assessee-company is engaged in the business of Manufacturing of Texturised, Fully Drawn Yarn and Twisted Yarn, filed its return of income for Assessment Year 2011-12 on

20.09.2011 declaring total income at Rs. 2,96,71,720/-. The assessment was completed under section 143(3) on 25.03.2014/-. The Assessing Officer while passing the assessment order made the disallowance under section 2(24(x) r.w.s. section 36(1)(va) of Rs. 14,100/- and addition of Rs. 7,48,43,856/- on account of Premium on Preference Share Redemption Reserve to the Book Profit u/s. 115JB. On appeal before the Id. CIT(A), both the addition were deleted. Aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.

3. At the outset of hearing the Id. Authorized Representative (AR) of the assessee submits that both the grounds of appeal raised by Revenue are covered in favour of assessee and against the Revenue. Ground No.1 which relates to addition under section 2(24(x) r.w.s. 36(1)(va) is covered by the decision of jurisdictional High Court in case of CIT vs. Hindustan Organics Chemicals Ltd. ITA No. 399 of 2012 dated 11.07.2014. The Id. AR further submits that contribution of ESI and PF has been paid before due date of filing of return of income. The Id. DR for the Revenue after going through the order of Id. CIT(A) conceded that ground no.1 of the appeal is covered in favour of assessee and against the Revenue.
4. We have considered the submission of both the parties and have gone through the orders of authorities below. The Hon'ble jurisdictional High Court in case of Hindustan Organics Chemicals Ltd. (supra) held that when the assessee company made payment of employees contribution

towards provident fund, assessee's claim could not be disallowed on account of delayed payment in view of amendment to section 43B. We have noted that Id. CIT(A) granted the relief to the assessee by following the decision of jurisdictional High Court, therefore, we do not find any reason to interfere with the finding of Id. CIT(A). Hence, ground no.1 of the appeal is dismissed.

5. Ground No.2 relates to deleting an addition of Rs. 7,48,43,856/- on account of Premium on Preference Share Redemption Reserve to the Book Profit u/s. 115JB. The Id. AR of the assessee submits that this ground of appeal is also covered in favour of assessee by the decision of Tribunal in assessee's own case for AY 2010-11 in ITA No. 2691 & 2692/Mum/2015 dated 22.11.2016. The Id. AR submits that the Id. CIT(A) allowed the relief to the assessee by following the decision of Tribunal. On going through the order of Id. CIT(A) and the order of Tribunal in assessee's own case for AY 2010-11 in ITA No. 2691 & 2692/Mum/2015 dated 22.11.2016, the Id. DR accepted the contention of Id. AR of the assessee.
6. We have considered the submission of Id. representative of parties and have gone through the orders of authorities below. We have noted that the assessee has raised similar ground of appeal in appeal for AY. 2010-11. The Tribunal in ITA No. 2691 & 2692/Mum/2015 dated 22.11.2016 passed the following order:

"15. We have considered this aspect of the argument also. But, we do not find force in his contention of Ld. DR. It is well settled law that under the income tax law, taxability of an amount or otherwise is determined on the basis of intrinsic nature of a transaction and not necessarily on the basis of its nomenclature or the manner in which same is reflected in its accounts by an assessee. As discussed in detail above, the impugned amount has been debited in the Profit & Loss account of the assessee because of mandate of law. As discussed above in detail, [section 80](#) of the Companies Act, 1956, stipulate that premium payable on the redemption on preference shares is to be provided for out of the 'profits' of the company or out of Company's Security Premium account. Thus, if this amount is not provided for from the security premium account, then, it has to be compulsorily provided for out of the 'profits' of the company. Under these circumstances, if this amount is debited in the P & L A/c, then it partakes the character akin to a 'charge' on the profits. Thus, the impugned amount debited in the profit and loss account is a ITA No. 5526, 5815, 5814, 5852, 5853/ Mum/2016 'charge' on the profits and cannot be said to 'appropriation' out of profits. Hence in order to arrive at and compute the book profit u/s 115JB, this amount has also to be adjusted from the profits of the year which has been rightly done by the assessee. Further, if an amount is actually of the nature of a 'charge', it shall not become an item of 'appropriation', merely because it has been inadvertently shown by the assessee in its P & L A/c along with the other amounts of 'appropriation'. Thus, the AO could not have denied the benefit of this amount of 'charge' by notionally adding this amount to the amount of profits of the year for the purpose of computing book profit u/s 115JB.

17. Accordingly, we hold that the reasons assigned by the authorities below for making addition for book profit of Rs.39,82,190/- on account of preference share redemption reserve cannot be upheld and Assessing Officer is directed to allow the same and the amount should be reduced from the working of the book profit u/s 115JB. Accordingly, ground No.1 as raised by the assessee is allowed."

7. Considering the decision of Tribunal in assessee's own case we do not find any infirmity and illegality in the order passed by Id. CIT(A). Hence, this ground of appeal is also dismissed.
8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 06/09/2018.

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 06.09.2018

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "G" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai