



IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI

BEFORE BEFORE SHRI MAHAVIR SINGH, JM

&

SHRI M.BALAGANESH, AM

ITA No.543/Mum/2017

(Assessment Year :2012-13)

M/s. Nowrosjee Wadia & Sons Ltd., Neville House, J.N.Heradia Marg Ballard Estate Mumbai – 400 001	Vs.	Asst. CIT – 2(2)(2) Mumbai
PAN/GIR No.AAACN1836A		
(Appellant)	..	(Respondent)

Assessee by	Shri Ronak G.Doshi & Shri Chaitanya D. Joshi
Revenue by	Shri B. Yadgiri
Date of Hearing	24/01/2019
Date of Pronouncement	30/01/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This is an appeal filed by the assessee directed against the order of CIT(A)-5, Mumbai dated 04/10/2016 for A.Y. 2012-13 in the matter of order passed u/s.143(3) of the I.T. Act, 1961.

2. The ground No.1 raised by the assessee is with regard to non-adjudication of ground by the Ld. CIT(A) on principles of natural justice which was said to be not pressed by the Ld. AR at the time of hearing. Accordingly Ground No.1 is dismissed as not pressed.

3. The only ground to be decided in this appeal is as to whether the Ld. CIT(A) was justified in not granting the reduction of reversal of provision for advances in the sum of Rs.1,39,65,000/- while computing book profits u/s.115JB of the Act in the facts and circumstances of the case.

4. The brief facts of this issue are that the assessee is engaged as the parent governing company of various other companies under 'Wadia Group'. The assessee company filed its return of income for A.Y.2012-13 on 29/09/2012 declaring total income of Rs.30,79,11,010/- under normal provisions of the Act. The return of income was revised on 28/03/2014 declaring total income of Rs.5,07,17,310/- under normal provisions of the Act. The assessee had also filed computation of book profits u/s.115JB of the Act alongwith return of income and paid taxes thereon. In the said computation of book profits u/s.115JB of the Act, the assessee reduced the following amounts on account of adjustment of provisions made earlier from reserve reduction of securities premium account:-

1.	Education match.com	-	Rs. 24,00,000/-
2.	Education Concepts and Options Pvt. Ltd.,	-	<u>Rs.1,15,65,000/-</u>
Total			Rs.1,39,65,000
=====			

5. The assessee had given advances to these two parties in earlier years. The assessee had made provision for these advances in the A.Y.2005-06 by debiting securities premium account instead of profit and

loss account pursuant to the order of Hon'ble High Court permitting the said action. During the A.Y.2012-13 i.e., the year under appeal, the assessee reversed the said provision by crediting it to profit and loss account and actually wrote off the said advances.

6. Since, this sum of Rs.1,39,65,000/- was credited in the profit and loss account, the Ld. AO did not allow the reduction of the said sum while computing book profits u/s.115JB of the Act and accordingly sought to tax the same u/s.115JB of the Act. The Ld. AO, however, did not give any finding in this regard in his assessment order for taxing the said sum u/s.115JB of the Act.

7. The assessee's plea is that this sum of Rs.1,39,65,000/- is eligible for reduction in terms of Clause (i) of Explanation 1 to Section 115JB of the Act for computation of book profits. It was pleaded before the Ld. CIT(A) by the assessee that when the aforesaid provision was made in A.Y.2005-06, the appellant had losses under normal provisions of the Act as well as book losses and therefore, the provisions of Section 115JB were not applicable in the year of creating the provision and resultantly, the applicability of proviso to Clause (i) of Explanation 1 to Section 115JB fails. Alternatively, the assessee also pleaded before the Ld. CIT(A) that even if the provisions of Section 115JB of the Act were applicable to the assessee in A.Y. 2005-06 when the provision was created and as a result, the proviso was applicable to the assessee, then the book profits of the assessee for A.Y.2005-06 would effectively stand increased by the

amount of provision so created and therefore, even it is held that the proviso is applicable to the assessee, the condition of increasing the book profits of the assessee in the year of creation of provision stands fulfilled and thereby making the assessee eligible for reducing the amount of provision written back from the book profits as per Clause (i) r.w.proviso to Clause(i) of Explanation 1 to Section 115JB of the Act.

8. The Ld. CIT(A) did not appreciate the contentions of the assessee and upheld the action of the Ld. AO. Aggrieved, the assessee is in appeal before us.

9. We have heard the rival submissions. Before us, the Ld. AR provided the tabulation stating that there would be no impact at all on the computation of book profits if an alternative argument of the assessee as stated above is considered. The entire contentions of the Ld. AR would be better appreciated from the following chart.

<u>PROVISION CREATED BY DEBITING PROFIT & LOSS ACCOUNT</u>	
MAT Computation	Rs.
Net profit before Provision for loans and advances	5745312
Less: Provision for loans and advances	13965000
Net Profit as per P&L A/c	- 8219688
Less : Exempt Dividend Income	8220485
Add/(Less): Adjustments as per S.115JB	13965000
BOOK PROFITS AS PER S.115JB	-2475173

Following is the effect showing chart when the assessee routed the write off through Securities Premium account in the AY 2005-06.	
<u>PROVISION CREATED BY DEBITING SECURITIES PREMIUM ACCOUNT</u>	
MAT Computation	Rs.
Net profit as per P&L A/c	5745312
Less : Exempt Dividend income	8220485
Add/(Less): Adjustments as per S.115JB	NIL
BOOK PROFITS AS PER S.115JB	-2475173

10. From the above chart, it could be seen that the book profit u/s.115JB remain the same figure and hence, it can be safely concluded that the book profits were not suppressed by the assessee by its action and debiting securities premium account in A.Y.2005-06 when the provision was created pursuant to order of Hon'ble High Court and writing off the same in A.Y.2012-13 by crediting the profit and loss account without having impact to Section 115JB computation. Accordingly, we dismiss the action of the Ld. CIT(A) upholding the action of the Ld. AO. Accordingly, ground No.2 raised by the assessee is allowed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 30/01/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/01/2019

Karuna Sr.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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai