

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.2025 & 2026/KOL/2017
(ASSESSMENT YEAR-2009-10 & 2011-12)**

DCIT/ACIT, Circle-6(2), Kolkata.	vs	M/s. Emami Limited, 687, Emami Tower, Anandpur, E.M.Bypass, Kolkata-700107. PAN-AAACH7412G
(Appellant)		(Respondent)
Appellant by		Sh. Sankar Halder, JCIT, Sr.DR
Respondent by		Sh.S.K.Agarwal, FCA
Date of Hearing		22.11.2018
Date of Pronouncement		08.02.2019

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

Both these appeals filed by the Revenue against the order dated 28.07.2017 passed by CIT(A)-22, Kolkata u/s 143(3) of the Income Tax Act, 1961 (in short "Act") for AYs 2009-10 & 2011-12.

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2. Heard both parties and perused the material available on record. It is noted that the AO initially completed the assessment u/s 143(3) of the Act determining the gross total income of Rs.35,19,13,334/- and allowed the deduction u/s 80IC of the Act. Thereafter, according to AO, the said gross total income is inclusive of upward adjustment as recommended by the TPO in respect of international transaction and passed an order u/s 154 of the Act by holding that the assessee is eligible for deduction of Rs.33,80,38,919/- only (35,19,13,334/- - Rs.1,38,74,418/-) u/s 80IC of the Act and added the said upward adjustment in respect of international

transaction to the book profit of the assessee u/s 115JB of the Act. The CIT(A) held that upward adjustment is not specified under any of the clauses in Explanation (1) section 115JB of the Act thereby, adjustment made by the AO is deleted.. The relevant finding of the CIT(A) is reproduced herein below:-

7. *“Similarly, on an identical issue the Hon'ble ITAT, Hyderabad "B"- Bench in the case of Berkadia Services India Ltd Vs Deputy Commissioner of Income Tax, Circle-1(3),Hyderabad by their order dated 19th September, 2014, reported in [2014] 50 taxmann.com 455 (Hyderabad - Trib.), adjudicated as follows:*

18. As regards the issue involved in ground No.10 relating to the addition made by the Assessing Officer on account of TP adjustments, while determining the book profit of the assessee company under S,115JB of the Act, it is observed that the income of the assessee having been finally assessed by the Assessing Officer as per the normal provisions of the Act, this issue is merely of academic nature. Nevertheless, as agreed by the learned representatives of both sides, this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. v. CIT [2002] 255 ITR 273/122 Taxman 562 wherein it is held that the Assessing Officer has limited power of making adjustments to the book profit as declared by the assessee, and the same is restricted only to the additions and reductions as provided in Explanation to S.115JB, Since the adjustments so provided in the Explanation to S.115JB do not include the addition on account of TP adjustments, we respectfully follow the decision of the Supreme Court in the case of Apollo Tyres Ltd. (supra) to hold that the addition made by the Assessing Officer on account of TP adjustment while determining the book profit of the assessee company under S.115JB of the Act is not sustainable. The same is therefore, deleted and ground No.10 of the assessee's appeal is allowed.

8. *Thus, after considering the interpretation of the relevant law as emanating from the ration load down by the Hon'ble apex Court as well as the other Hon'ble ITAT Benches, in my considered view of the matter I find that rectification order passed by the Ld. AO is not sustainable and the adjustment is thus deleted. The appellant gets relief and the Ground is allowed.”*

3. Before us, the Ld.AR supported the order of CIT(A) and referred to para 7 and argued that the AO has no jurisdiction to alter the book profit u/s 154 of the Act. Ld.DR supported the order of AO. On an examination of Explanation (1) to section 115JB of the Act, we find as rightly held by the

CIT(A) that there was no clause specified in respect of upward adjustment of international transaction.

4. Regarding the decision in *Berkadia Services India Pvt.Ltd. vs DCIT [2014] 50 taxmann.com 455 (Hyd.-Trib.)* as relied by the CIT(A) in its order that the CO-ordinate Bench of Hyderabad Tribunal held that when the income having been finally assessed by the AO as per the normal provisions of the Act, the issue in respect of TP adjustment would become academic in nature. We find that the CIT(A) rightly placed reliance on the order of CO-ordinate Bench of Hyderabad Tribunal and as we discussed above, the AO completed assessment under normal provisions of the Act and he has no jurisdiction to add upwards adjustment as recommended by the TPO to the book profit. Thus, we find no infirmity in the order of CIT(A) and it is justified. Ground Nos.1 & 2 raised by the Revenue in this regard are dismissed.

5. In the result, the appeal of the Revenue is dismissed.

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6. We find that the facts and circumstances in this case is also identical and similar to the facts and issue raised in ITA No.2025/Kol/2017. Therefore, grounds raised by the Revenue in this appeal are dismissed.

7. In the result, the appeal of the Revenue is dismissed.

8. In the final result, both appeals of the Revenue are dismissed.

Order pronounced in the open court on 08.02.2019.

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Sd/-

(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Date:-08.02.2019

Amit Kumar

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1. Appellant- DCIT/ACIT, Circle-6(2), Kolkata.
2. Respondent- M/s. Emami Limited, 687, Emami Tower, Anandpur, E.M.Bypass, Kolkata-700107.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

AR/H.O.O
ITAT, KOLKATA