

2. Substantive grievances of the assessee read as under:

"1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in affirming the book profits computed by AO in his order dated 25.09.2014 under Section 115JB of the Act at Rs. 9.00.26.660.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) in his order no. 532/14-15 dated 10.12.2015 has grossly erred on facts and in law in dismissing additional ground of appeal filed by the Appellant without providing opportunity of being heard and against the principle of natural justice.

3. That Ld. CIT(A) failed to appreciate that on the facts and circumstances of the case and in law, the subject matter of appeal is not a mistake apparent from record and outside the purview of Section 154 of Act and therefore the order passed under section 154/143(3) is bad in law, void ab-initio and liable to be quashed.

4. That Ld. AO has exceeded his jurisdiction by rectifying a mistake (i.e. disallowing Investment written off of Rs. 12,24.00.000) two times under Section 154 of the Act.

5. *That the Ld. CIT(A) failed to appreciate that the "Investment written off" of Rs. 12,24,00,000 is the actual investment written off and not in the nature of the "provision for investment written off" and therefore not disallowable for computing book profits under Section 115JB of the Act.*

6. *That Ld. AO has exceeded his jurisdiction by passing an order under Section 154 of the Act and making an addition of Rs. 12,24,00,000 claiming to be same as provision for investment written off. The Ld. CIT(A) erred in accepting the stand of Ld. AO."*

3. Briefly stated, the facts of the case are that the assessee filed return of income declaring income at NIL on 30.09.2009. The return was assessed at NIL income vide order dated 12.12.2011 framed u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. Thereafter, audit scrutiny revealed that the assessee has written off Rs. 12.24 crores being investment and charged the same to the profit and loss account. This being a factual error, notice u/s 154 of the Act was issued to the assessee to rectify the mistake. The assessee raised no objection and, accordingly, Rs. 12.24 crores were added back to the income of the assessee vide order dated 27.11.2013 framed u/s 154 of the Act.

4. Subsequently, notice u/s 154 of the Act dated 09.12.2013 was issued pointing out that while passing the order dated 27.11.2013, disallowance of investment written off amounting to Rs. 12.24 crores under normal provisions of the Act was added to the book profit of the assessee u/s 115JB of the Act.

5. The assessee strongly objected to this notice contending that the assessee has actually written off the investment and that cannot be added back in computation of book profit u/s 115JB of the Act. The contention of the assessee did not find any favour with the Assessing Officer who proceeded by computing book profit u/s 115JB of the Act by adding Rs. 12.24 crores being provision for investment written off.

6. Before the first appellate authority, an additional ground was raised by the assessee through letter dated 10.06.2015 which was signed by the authorized representative. The said additional ground was not entertained by the Id. CIT(A) on the ground that the same was raised by the Id. counsel for the assessee and as per Rule 45(2) of the Rules, it is not signed by the authorized representative.

7. In our considered opinion, additional ground raised by the assessee should not have been dismissed by the first appellate authority on such a technical ground when he could have asked the assessee to raise the additional ground through the authorized representative. Therefore, in the interest of justice, we are of the considered opinion that this issue should be decided by the first appellate authority and by not doing so, the order of the first appellate authority becomes erroneous. We, accordingly, restore this issue to the file of the Id. CIT(A). The assessee is directed to raise the additional ground through the authorized person and the Id. CIT(A) is directed to decide the issue afresh after giving reasonable opportunity of being heard to the assessee.

8. In the result, the appeal of the assessee in ITA No. 1371/DEL/2016 is allowed for statistical purposes.

Order pronounced in the open court on 20.02.2019.

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Date: 20.02.2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR, ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | |
| Date on which the fair order comes back to the Sr. PS/ PS | |
| Date on which the final order is uploaded on the website of ITAT | 11.01.2019 |
| Date on which the file goes to the Bench Clerk | |
| Date on which file goes to the Head Clerk. | |
| The date on which file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |