

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**
[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member]

I.T.A. No. 345/Kol/2018
Assessment Year: 2014-15

Kamsco Industries Pvt. Ltd.....Appellant
2, Minto Park
Kolkata - 700 027
[PAN : AABCK 3918 P]

Deputy Commissioner of Income Tax, Central Circle-1(3), Kolkata.....Respondent

Appearances by:

Shri J.P. Khaitan, Senior Counsel & Sri Arvind Agarwal, A/R, appeared on behalf of the assessee.
Shri A.K. Singh, CIT D/R, appearing on behalf of the Revenue.

Date of concluding the hearing : April 1st, 2019

Date of pronouncing the order : April 23rd, 2019

O R D E R

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 4, Kolkata, (Id. CIT(A)) passed u/s. 250 of the Income Tax Act, 1961, (the 'Act'), dt. 16/01/2018, for the Assessment Year 2014-15.

2. The Hon'ble Jurisdictional High Court in an appeal filed by the assessee in ITAT No. 1 of 2019, G.A. No. 76 of 2019, in the case of *Kamsco Industries Pvt. Ltd. vs. CIT*, dt. 22/01/2019, held as follows:-

"We appreciate the valuable assistance provided by Mr. Ghoshal, learned senior advocate for the revenue in cutting short the hearing of this matter. We also appreciate his fairness.

Mr. Khaitan learned senior advocate for the appellant pointed out, very correctly that the tribunal has failed to determine the basic issues that were before it, namely:

Whether the long term capital gain credited to the profit and loss account and included in the computation of the book profit under section 115JB of the Income Tax Act, 1961 can be added a second time to such book profit?

Secondly, whether section 115JB of the Income Tax Act, 1961 authorised the assessing officer to add back to the book profit the sum of Rs. 273,97,17,182/- written off as irrecoverable by the debit of the profit and loss account?

There is no point in admitting the appeal on these questions for the reasons that there is absence of finding by the tribunal and if the High Court discharges the functions of the tribunal, the parties would lose one forum.

In those circumstances, the entire matter as discussed above is remanded back to the tribunal by setting aside its impugned order dated 3rd August, 2018 and to make a fresh determination in accordance with law by a reasoned order upon hearing the parties.

This appeal (ITAT No. 1 of 2019) is accordingly disposed of.

The application for admission/stay (GA No. 76 of 2019) is also disposed of by this order."

3. We have heard Shri J.P. Khaitan, Senior Counsel & Sri Arvind Agarwal, A/R on behalf of the assessee and Shri A.K. Singh, CIT D/R on behalf of the revenue. Both the parties submitted that only those two questions framed by the Hon'ble High Court need to be answered and that no other issue need be gone into in this appeal. Accordingly, we deal with only these two questions.

On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4. The first question of law framed by the Hon'ble High Court for our adjudication is "*Whether the long term capital gain credited to the profit and loss account and included in the computation of the book profit under section 115JB of the Income Tax Act, 1961 can be added a second time to such book profit?*"

4.1. We find that the Assessing Officer in his order u/s 143(3) of the Act, dt. 06/10/2016 has determined the book profits u/s 115JB of the Act in the following manner:-

<i>Book Profit u/s 115JB as per return of income</i>	<i>: Nil</i>
<i>Add: Long Term Capital Gain</i>	<i>:Rs.2,67,24,88,906/-</i>
<i>Book Profit</i>	<i>:Rs.2,67,24,88,906/-</i>
<i>Tax @ 18.5%</i>	<i>:Rs.49,44,10,448/-</i>
<i>Add: Education Cess</i>	<i>:Rs.1,48,32,313/-</i>
<i>Tax payable on MAT</i>	<i>:Rs.50,92,42,761/-</i>

Normal tax or MAT whichever is higher, here tax payable on MAT of Rs.50,92,42,761/-

5. At page 2 of the assessment order, the statement of profit and loss account for the year ended 31/03/2014, has been extracted which is as follows:-

	Note No.	For the year ended March 31, 2014	
		Rs.	Rs.
I. Revenue from operations	8		-
II. Other income	9		<u>6850666</u>
III. Total revenue (I+II)			<u>6850666</u>
IV. Expenses			
(a) Finance Cost	10		-
(b) Other expenses	11		<u>226084</u>
Total expenses			<u>226084</u>
V. profit before exceptional item and tax(III-IV)			6624582
VI. Exceptional item:	12		
Profit on sale of Pledge securities		2672488906	
Less: Amount not recovered written off		<u>2739717182</u>	(67228276)
VII Loss/ Profit before tax			<u>(60603694)</u>
VIII Tax Expenses			
(a) Current tax		-	-
(b) Deferred Tax		-	-
IX Loss/ Profit for the year			<u>(60603694)</u>
X Earning per equity Share, Basic/Diluted Earnings Per Share (Before exceptional item)			220.82
Basic/Diluted Earnings Per Share (after exceptional item)			(2020.12)
Significant Accounting policies	13		

6. A perusal of the above demonstrates that the loss for the year (serial no. X in the above table) is Rs.6,06,03,694/-. This figure of loss has been arrived at after taking the profit on sale of the pledged securities into account. This amount was Rs.267,24,88,906/-. This clearly shows that the loss of Rs.6,06,03,694/- under the

Companies' Act, 1956, has been arrived at after taking into account the profit on sale of pledged securities. The loss of Rs.6,06,03,694/- should be the starting point for determining the book profits u/s 115JB of the Act. The claim of the assessee that the profit on sale of pledge securities have already been offered as income , profit and loss account for the year ended 31/03/2014 drawn up as per the Companies' Act and hence adding the amount of profit on sale of pledged securities of Rs.267,24,88,906/-, once again is a double addition, appears to be *prima facie* correct. The Id. D/R requested that he issue may be restored to the file of the Assessing Officer for fresh verification as to whether it is a double addition. Mr. J. P. Khaitan, the Id. Sr. Advocate had no objections. As agreed by both the parties, we set aside this issue to the file of the assessing officer with a specific direction to examine the claim of the assessee that, the addition made in the determination of book profit u/s 115JB of the Act, of the profit on sale of pledged securities is nothing but double addition, as the assessee has already included this profit in its profit and loss account for the year ended 31/03/2014 drawn up under the Companies Act, 1956. If the assessee had already included this profit from long-term capital gain in the profit and loss account for the year ended 31/03/2014, drawn up under the Companies Act, 1956, no separate addition can be made, once again under Explanation (1) of Section 115JB of the Act. With these directions we set aside this issue to the file of the Assessing Officer. Hence this ground is allowed for statistical purposes.

7. The second question of law framed by the Hon'ble High Court for our adjudication is as follows:- "*Secondly, whether section 115JB of the Income Tax Act, 1961 authorised the assessing officer to add back to the book profit the sum of Rs. 273,97,17,182/- written off as irrecoverable by the debit of the profit and loss account?*"

8. A perusal of the assessment order demonstrates that, while determining book profit under section 115 JB of the Act, the assessing officer has not separately added a sum of Rs.273,97,17,182/-, which was written off as irrecoverable by the assessee, by way of a debit to the profit and loss account. Both the parties agreed that no such adjustment was made by the assessing officer while determining the

book profits u/s 115JB of the Act. What was added was profit on sale of pledged securities of Rs.267,24,88,906/-.

8.1. The Sr. Advocate, Shri J.P. Khaitan, for the assessee, submitted that there was discussion on this issue in the body of the assessment order but while making the computation of book profit under section 115 JB of the Act, there is no addition/deletion of this amount of bad debts written off by the Assessing Officer. When there is no addition, then there is no grievance for the assessee. The question stated above does not arise out of this assessment order. In our view it is out of the purview of this Tribunal to answer an academic question. Thus, this ground raised by the assessee is dismissed as not arising out of the assessment order.

9. In the result, appeal of the assessee is allowed in part.

Kolkata, the 23rd day of April, 2019.

Sd/-
[S.S. Godara]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 23.04.2019
{SC SPS}

Copy of the order forwarded to:

1. Kamsco Industries Pvt. Ltd
2, Minto Park
Kolkata – 700 027

2. Deputy Commissioner of Income Tax, Central Circle-1(3), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy
By order

Assistant Registrar
ITAT, Kolkata Benches