

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

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| ITA No.987/Hyd/2018 | | |
| Assessment Year: 2012-13 | | |
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| Agila Specialities Private Limited, (Now merged with Mylan Laboratories Limited) Plot No. 564/A/22, Road No. 92, Jubilee Hills, Hyderabad, Telangana-34. PAN: AAACQ 1091 Q | Vs. | ACIT, Circle-16(2), 2 nd Floor, B-Block, Income Tax Towers, Masabtank, Hyderabad – 004. |
| (Appellant) | | (Respondent) |
| | | |
| Assessee by: | Sri Sharath Rao | |
| Revenue by: | Smt. Nivedita Biswas-DR | |
| | | |
| Date of hearing: | 03/09/2019 | |
| Date of pronouncement: | 30/10/2019 | |

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. Pr. CIT-4, Hyderabad dated 27/02/2018 passed U/s. 263 of the Act for the Asst. Year 2012-13.

2. The assessee has raised several grounds in its appeal however, the crux of the issue is that the Ld. CIT (A) has erred by invoking his powers U/s. section 263 of the Act on the ground that the order passed

by the Ld. AO is prejudicial to the interest of the Revenue because, disallowance made U/s. 14A of the Act was not added back to the book profit while computing the MAT U/s. 115JB of the Act.

3. Brief facts of the case are that the assessee was a Private Limited Company now merged with M/s. Mylan Laboratories Limited. The assessee-company was engaged in the business of developing, manufacturing and supply of pharmaceuticals filed its return of income for the AY 2012-13 on 30/11/2012 admitting NIL income under normal provisions and Rs. 63,58,53,266/- under the MAT provisions. Initially, the return was processed U/s. 143(1) of the Act and subsequently the case was taken up for scrutiny and assessment was completed on 31/3/2016 wherein the Ld. AO made addition towards disallowance U/s. 14A of the Act amounting to Rs. 12,91,23,973/- and U/s. 36(1)(va) of the Act for Rs. 6,18,366/-. Subsequently, the Ld. Pr. CIT on perusing the order of the Ld. AO observed that the disallowance made U/s. 14A of the Act was not added back to the income of the assessee while computing the profit under MAT provisions. Therefore, he invoked the provisions U/s. 263 of the Act and directed the Ld. AO to re-do the assessment based on his observation.

4. At the outset, Ld. AR submitted before us that while computing the profit under MAT provisions of the Act which is a provision with

fiction, another provision with fiction cannot be superimposed. The Ld. AR further relied on the decision of the co-ordinate bench of the Chennai Bench of the Tribunal in the case of Beach Minerals Company (P) Ltd vs. ACIT reported in [2015] 64 taxmann.com 218 (Chennai – Trib.) order dated 06th August, 2015 wherein similar view was taken on the issue. The ld. DR could not controvert to the submission of the Ld. AR however argued in support of the order of the Ld. Pr. CIT.

5. We have heard the rival submissions and carefully perused the materials on record. We find merit in the submissions of the Ld. AR because it is a well settled principle that while interpreting fiscal statutes a provision with fiction cannot be superimposed on another provision with fiction. Further, as pointed out by the Ld. AR, the issue was decided in favour of the assessee by the co-ordinate Bench of the Chennai Tribunal following the decision of the Co-ordinate Bench of the Mumbai Tribunal. The relevant portion of the order of the Chennai Bench of the Tribunal is reproduced hereunder for ready reference:

“8.1.1 The Ld. Assessing Officer while computing the tax as per provisions of section 115JB of the Act made additions to the book profit with respect to the disallowance made U/s. 14A of the Act read with Rules-8D of the Income Tax Rules. On appeal, the Ld. CIT (A) citing the provisions of clause (f) of Explanation-1 to Section-115JB, confirmed the order of the Ld. Assessing Officer. The relevant portion of the order of the Ld. CIT (A) is reproduced herein below for reference:—

"10.2 I have gone through the facts and circumstances of the case. The Assessing Officer has taxed the income U/s. 115JB since the tax on book profits is more than the tax under normal computation. While

doing so, she made disallowance of the amount relatable to exempt income on the basis of the amount worked out U/s. 14A r.w. Rule 8D under normal computation. The provisions of clause (f) of Explanation-1 to s. 115JB makes it abundantly clear that the amount of expenditure 'relatable to' any exempt income, other than s.10(38), is liable to be added back to the amount of net profit as shown in the P&L A/c. Reliance is placed on the latest decision of the ITAT Mumbai in the case of Dabur India Ltd., 37 taxmann.com 289. Reliance is also placed on the latest decision of the ITAT Mumbai in the case of RBK Share Broking P. Ltd. in ITA No. 6678 & 7546/Mum/2011 dated 24.7.2013 wherein it was held that the amount disallowable U/s. 14A can be added back while computing book profit under Explanation-1 to s. 115JB(para 6). Respectfully following the above decisions, I uphold the addition made by the Assessing Officer. This ground is dismissed."

However, on perusing the Explanation-1(f) of Section-115JB(2) of the Act, we do not find merit in the contention of the Ld. CIT (A). The relevant provision of the Act is extracted herein below for reference:—

"Section. 115JB

Explanation-[1] - For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section(2), as increased by —

(a) To (e)

(f) the amount or amounts of expenditure relatable to any income to which [Section-10 (other than the provisions contained in clause (38) thereof] or section 11 or section 12 apply;

(g) To (j)"

From the above it is apparent that the aforesaid provision of the Act does not refer to any disallowance made U/s. 14A of the Act while arriving at the Book Profit for the purpose of Section-115JB(2) of the Act. Further Section 14A of the Act is a provision with fiction disallowing the deemed expenditure attributable to exempt income viz., dividend income U/s. 10 of the Act and Section 115JB of the Act is also a provision with fiction for payment of tax in respect of deemed income. Therefore while computing the profit for the purpose of Section 115JB of the Act another provision with fiction cannot be superimposed. Hence the question of increasing the 'Book Profit' due to the disallowance U/s. 14A of the Act will not arise. However, in the instant case of the assessee, since we have already deleted the addition made U/s. 14A, increasing the book profit will not arise. Further the decision of Hon'ble Apex Court cited by the assessee in the case Apollo Tyres Ltd. v. CIT [\[2002\] 255 ITR 273/122 Taxman 562](#) is also squarely applicable to the case of the assessee. The gist of the same is reproduced herein below for reference:—

"The Assessing Officer, while computing the book profits of a company under section 115J of the Income-tax Act, 1961, has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer, thereafter,

has the limited power of making increases and reductions as provided for in the Explanation to section 115J. The Assessing Officer does not have the jurisdiction to go behind the net profits shown in the profit and loss account except to the extent provided in the Explanation. The use of the words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" in section 115J was made for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, the Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by that Act and the same to be scrutinised and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company."

From the above decision it is clear that while computing the "Book Profit" of the company under the provisions of section 115JB of the Act; any disallowance made under the normal provisions of the Act also cannot be given effect to for arriving at the "Book Profit" for the purpose of Section 115JB of the Act. Accordingly, this ground raised by the assessee is allowed in its favour."

6. Since, it is already decided by the Chennai and Mumbai Bench of the Tribunal that disallowance made U/s. 14A of the Act while computing the profit under the normal provisions of the Act, need not be added back to the book profit while computing MAT U/s. 115JB of the Act, we do not find the order of the Ld. AO to be prejudicial to the interest of the Revenue. Therefore, we are of the considered view that the powers invoked by the Ld. Pr. CIT U/s. 263 of the Act is erroneous. Hence, we hereby quash the order passed by the Ld.Pr. CIT U/s.263 of the Act. It is ordered accordingly.

7. In the result, appeal filed by the assessee is allowed.

Pronounced in the open Court on 30th October, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated:30th October, 2019

OKK

Copy to:-

- 1) Agila Specialities Private Limited, (Now merged with Mylan Laboratories Limited) Plot No. 564/A/22, Road No. 92, Jubilee Hills, Hyderabad, Telangana-34.
- 2) ACIT, Circle-16(2), 2nd Floor, B-Block, Income Tax Towers, Masabtank, Hyderabad – 004
- 3) The Addl CIT, Range-16, Hyderabad
- 4) The Pr. CIT-4, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File