

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**Before Ms. Sushma Chowla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 609/Del./2017 : Asstt. Year : 2008-09**

Asstt. Commissioner of Income Tax, Circle-6(2), New Delhi	Vs	M/s Cooper Standard India Pvt. Ltd., (Formerly known as Metzeler Automotive Profiles India Ltd.), 301- 302, Tolstoy House, Tolstoy Marg, New Delhi-110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACW0019N</b>		

**CO No. 47/Del./2017 : Asstt. Year : 2008-09**

M/s Cooper Standard India Pvt. Ltd., (Formerly known as Metzeler Automotive Profiles India Ltd.), 301-302, Tolstoy House, Tolstoy Marg, New Delhi-110001	Vs	Asstt. Commissioner of Income Tax, Circle-6(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACW0019N</b>		

**Assessee by : Sh. A. K. Batra, CA**

**Revenue by : Ms. Ashima Neb, Sr. DR**

<b>Date of Hearing: 03.10.2019</b>
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<b>Date of Pronouncement: 30.10.2019</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of the Id. CIT(A)-6, Delhi dated 25.11.2016.

2. Following grounds have been raised by the revenue:

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in*

*holding that the provision of section 79 of the Act will not apply for the purpose of computation of book profit u/s 115JB in view of the fact that the provision of section 115JB(5) states that all other provisions of the Act shall apply."*

3. The Assessing Officer computed book profits as under:

*"..In consent to the observation made for the assessment year 2010-11 by my predecessor assessing officer, the benefit of unabsorbed business losses for the calculation of book profit is denied and book profit u/s 115JB is worked out as under:-*

<i>Profit as per P &amp; L Account</i>	<i>Rs. 6,74,35,132/-</i>
<b><i>Less: loss brought forward or unabsorbed Depreciation whichever is less</i></b>	<b><i>NIL</i></b>
<i>Book profit u/s 115JB</i>	<i>Rs. 6,74,35,132/- .."</i>

The Assessing Officer did not view the provision for brought forward or unabsorbed depreciation while computing the book profits under 115JB. Aggrieved the assessee filed appeal before the Ld. CIT(A) for not giving the benefit of brought forward or unabsorbed depreciation while computing the profits under section 115JB.

4. The Id. CIT (A) deleted the computation made by the Assessing Officer and held that while computing the profits u/s 115JB the brought forward losses or unabsorbed depreciation has to be taken into consideration and be deducted from the profits computed as per the P&L account. Aggrieved the Revenue filed appeal before the Tribunal.

5. Before us, during the arguments, the Id. AR reiterated the submissions taken up before the revenue authorities and relied on the submissions made before the Id. CIT (A) which are as under:

*"...Under section 115 JB only book profits are to be taken into account and not the profit or loss as per the Income Tax Act. The assessee brought to the notice of the Assessing Officer*

*that under section 79 it is clearly stated "Notwithstanding anything contained in this chapter" which clearly shows that the provisions of section 72 to 78 were applicable for the carry forward loss and unabsorbed depreciation under the Income Tax Act.*

*The assessee further submitted before the Assessing Officer that section 115 JB is a code itself which clearly states "Notwithstanding anything contained in any other provisions of this Act".*

*The assessee further pointed out that this clearly indicates that the provisions of section 115 JB are code by itself and overrides the provisions of section 79. This was noticed by the Assessing Officer while completing the assessment in the assessment year 2010-11 and did not allow the assessee to carry forward business loss but allowed only carry forward business loss and thus as the book profit was as according to him there was no business loss and only depreciation loss the same cannot be set off and on that basis the provisions of section 147 was applied.*

*In the assessment for 2010-11 the Id. Commissioner (A) held that the provisions of section 115 JB overrides the provisions of section 79 and for this purpose he has relied on the judgment of the Ahmadabad High Court in the case of Fascel Ltd. vs. ITO (2008) 305 ITR (368).*

*The provisions of section 115 JB mentions that it is the book profit/loss which has to be taken into account and not the profits as per Income Tax Act.*

*The Revenue is in appeal against the said judgment and the appeal is pending.*

*It is further submitted that under section 148 in the original assessment which was completed by the Assessing Officer had allowed the loss / unabsorbed depreciation to be carried forward. Therefore, it is submitted that it is a mere change of opinion and therefore, it is submitted that the provisions of section 147/148 are not applicable.*

*It is submitted that the provisions of section 115 JB is a code by itself and is not dependent on the other sections of the*

*Income Tax Act. This view has also been confirmed by the Supreme Court in the case of Ajanta Pharma Ltd. Vs. CIT 327 ITR 305 where the Hon'ble Supreme Court held that the provisions of section 115 JA is a self contained code. Section 115 JB is the successor section to section 115JA. Section 115 JB continues to remain a self contained code.*

*The above view is also confirmed by the CBDT in Circular no. 13 of 2001 dated 09.11.2001 where it is clearly mentioned "It may be emphasized that the new provisions of section 115JB is a self contained code. Sub section (1) lays down the manner in which the income tax is payable is to be computed.*

*In this connection we also invite your attention to the decision of the Supreme Court in the case of Apollo Tyres Ltd. Vs. CIT (2002) 255 ITR 273 where the Supreme Court in the case of Apollo Tyres Ltd. has clearly mentioned that "There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income tax both maintained under the same Act. If the legislature intended the assessing officer to reassess the company's income, then it would have stated in Section 115-J that "income of the company as accepted by the assessing officer". In the absence of the same and on the language of Section 115-J, it will have to held that view taken by the tribunal is correct.*

*Therefore, in the above background the Supreme Court further "in accordance with the provisions of Part II and III of Schedule VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an assessing officer under the Income Tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinized and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of*

*the Revenue that it is still open to the assessing officer to re-scrutinize this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. In our opinion, reliance placed by the Revenue on Sub-section (1A) of Section 115-J of the IT Act in support of the above contention is misplaced. Sub-section (1A) of Section 115-J does not empower the assessing officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the IT Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of Section 115-J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of income tax both maintained under the same Act. If the legislature intended the assessing officer to reassess the company's income, then it would have stated in Section 115-J that "income of the company as accepted by the assessing officer". In the absence of the same and on the language of Section 115-J, it will have to held that view taken by the tribunal is correct and the High Court has erred in reversing the said view of the tribunal.*

*Therefore, we are of the opinion, the assessing officer while computing the income under Section 115-J 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 the said section. To put it differently, the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115-J.*

*Therefore, the Assessing Officer is bound to compute the profits as per the Companies Act under section 115 JB it is the Book Profits and not the profits as per Income Tax Act.*

*In view of the above it is the submission of the assessee that since the book profit or loss as per computation the same should be taken into account as set off against the profits worked out under the Companies Act.."*

6. On the other hand, the Id. Sr. DR relied on the orders of the Assessing Officer.

7. Heard the arguments of both the parties and perused the material available on record. We have perused the judgment of the Ahmadabad High Court in the case of Fascel Ltd. vs. ITO (2008) 305 ITR (368) relied by the Id. CIT (A) while allowing the appeal of the assessee on this ground. The Hon'ble High Court held as under:

*"...This is a non-obstante Clause dealing with allowance of carry forward loss to an assessee. This is a provision applicable to an assessee while computing the normal income of the assessee and that is why the assessee itself has reduced the loss for assessment year 2000-01 and prior in computing its normal income. But in so far as minimum alternative tax is concerned, it is to be levied with reference to book profit and in arriving at the book profit, the lower of the amount at brought forward loss or unabsorbed depreciation which is appearing in the books of accounts of the assessee has to be allowed and as aforesaid, irrespective of the fact, whether, the same is allowable under the other provisions of the Act or not.*

*16. Sub-section (5) of Section 115JB of the Act, on first brush of reading, gives an impression that it is re-incorporation of the provisions of the Act to a company which are excluded by Sub-section (1) of Section 115JB. A closure look, however, makes it clear that it reincorporate only those provisions which are not otherwise provided in Section 115JB. Clause (iii) of the Explanation specifically provides for the allowance of loss brought forward or unabsorbed depreciation and, therefore, the other provisions of the Act relating to the earlier years'*

*loss or unabsorbed depreciation would not be applicable. Because Clause (iii) of the Explanation states that such loss or unabsorbed depreciation has to be as per the books of accounts and not as computed under Income Tax Act, therefore, in our opinion, Sub-section (5) is also of no help to the Revenue. In any case, as understood, vide CBDT Circular No. 13 of 2001 dated 9.11.2001, this Clause applies only for provisions other than computation and since the loss or unabsorbed depreciation is a part of the computation of book profit under Section 115JB itself, the provisions of Section 115JB(5) would not enrope other provisions of the Act."*

8. The Hon'ble High Court after examining the provisions of sub-section (5) of section 115JB and the clause (iii) held that, the loss or the unabsorbed depreciation is a part of computation of book profits and the provisions of section 115JB(5) would not enrope other provisions of the of the Act, we hereby hold that the assessee is eligible for deduction of carry forward brought forward loss or unabsorbed depreciation whichever is less while computing book profits u/s 115JB.

9. As, the appeal of the revenue is dismissed on merits, any adjudication on the technical ground taken up by the assessee would be infructuous and hence not resorted to.

10. In the result, the appeal of the Revenue is dismissed and CO of assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 30/10/2019.

Sd/-

**(Sushma Chowla)**  
**Judicial Member**

**Dated: 30/10/2019**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

4.CIT(Appeals)  
5.DR: ITAT

**ASSISTANT REGISTRAR**