

**IN THE INCOME TAX APPELLATE TRIBUNAL "K", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.2635/Mum/2013
(Assessment Year : 2007-08)**

M/s. L'Oreal India Pvt. Ltd. A-Wing, 8 th Floor Marathon Futurex N.M. Joshi Marg Lower Parel Mumbai – 400 013	Vs.	The Commissioner of Income Tax-6 Aayakar Bhavan M.K.Road Mumbai – 400 020
PAN/GIR No.AAACL0738K		
(Appellant)	..	(Respondent)

Assessee by	Shri Nimesh Vora
Revenue by	Shri Jayant Kumar & Shri Kiran P Unavekar
Date of Hearing	23/09/2019
Date of Pronouncement	11/12/2019

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.2635/Mum/2013 for A.Y.2007-08 preferred by the order against the revision order of the Commissioner of Income Tax-6, Mumbai u/s.263 of the Act dated 06/02/2013 for the A.Y.2007-08.

2. We find that the assessee has raised several grounds challenging the validity of action of Id. CIT in invoking revisionary jurisdiction u/s.263 of the Act as well as the issue adjudicated therein on merits.

3. We have heard rival submissions. We find that the brief facts of this appeal are that the return of income for the A.Y.2007-08 was filed by the assessee on 30/10/2007 declaring total income of Rs.Nil under the normal provisions of the Act and book profit of Rs.25,02,24,129/- computing u/s. 115JB of the Act. The taxes payable u/s. 115JB of the Act were duly paid by the assessee. The assessment was completed u/s.143(3) of the Act on 30/12/2010 determining the total income at Rs.Nil under normal provisions of the Act and book profit of Rs.25,02,24,129/- u/s.115JB of the Act. In the income determined under normal provisions of the Act, the Id. AO made transfer pricing adjustment of Rs.5,72,99,914/- and disallowance u/s.145A of the Act to the tune of Rs.1,28,74,878/- and consequently adjusted the brought forward business loss to that extent. This assessment was sought to be revised by the Id. CIT by issuing show-cause notice u/s.263 of the Act on the following grounds:-

A. The Id. AO while computing income under normal provisions of the Act failed to consider the fact that an amount of Rs.31,25,000/- which had been written off in the profit and loss account was towards capital work in progress and hence, the same would be a capital loss, which has been erroneously allowed deduction by the Id. AO.

B. The Id. CIT also observed that the Id. AO while accepting the book profit u/s.115JB of the Act of the assessee had failed to take into account the following items which ought to have been added back u/s.115JB of the Act:-

- | | | | |
|-----|---------------------------------|---|------------------|
| i) | Provision for doubtful debts | - | Rs.16,07,149/- |
| ii) | Provision for slow moving stock | - | Rs.3,42,82,000/- |

3.1. The Id. CIT observed that both these amounts tantamount to amounts set aside as provision for diminution in value of asset and accordingly, required to be added back while computing the book profits u/s. 115JB of the Act. Next para to this effect, the Id. CIT also passed an order u/s.263 of the Act dated 06/02/2013 and accordingly, set aside the assessment order of the Id. AO.

3.2. We find that the Id. AR made a preliminary argument that the Id. CIT nowhere in his order had mentioned that the order of the Id. AO was erroneous and prejudicial to the interest of the revenue. With this preliminary objection, he argued that the Id. CIT ought not to have invoked the revisionary jurisdiction u/s.263 of the Act. But we find that the Id. CIT had given detailed finding by stating that the Id. AO had failed to conduct necessary enquiries with regard to the above mentioned items while framing the assessment u/s.143(3) of the Act and there is also a categorical finding by the Id. CIT that in view of the non-enquiry of the above mentioned items by the Id. AO, the assessment order is erroneous and prejudicial to the interest of the revenue. We find that the Id. AR categorically agreed before us that although the details in respect of issues that are the subject matter of adjudication for revision order u/s.263 of the Act were not called for by the Id. AO at the time of assessment proceedings and therefore, the same were not filed by the assessee before the Id. AO, the requisite details were indeed submitted by the assessee before the Id. CIT at the time of Section 263 proceedings. He argued that nothing prevented the Id. CIT to verify the same and analyse the contentions raised by the assessee.

3.3. In these circumstances, it would be necessary for us to look into the submissions made by the assessee on merits in respect of each of the issues.

Write-Off of capital work in progress of Rs.31,25,000/- claimed as deduction by the assessee while computing income under normal provisions of the Act:-

4. We find that assessee is engaged in the business of manufacturing and trading of cosmetic / Fast Moving Consumer Goods (FMCG) such as hair colours, shampoos, creams etc. The Id. AR stated before us that in view of the cut throat competition in the FMCG Sector, it would be imperative for the assessee to come out with new and better advertisement ideas on continuous basis to attract / retain customers. Accordingly, we find that assessee had proposed to set up an advertisement counter for display and sale of Lancome beauty products range – skin care, fragrance and make-up in beauty saloons / shopping malls etc. It was submitted that this advertisement counter was specially designed and was to be set up as per uniform global standards to attract customers and create awareness of the new and different range of Lancome products. It was submitted that since the company does not engage in any direct retail, this counter would be placed under any retailer selling the products of the assessee company. We find that towards the said advertisement counter, the assessee company imported various items comprising of in-built furniture (knock down condition) and accessories and incurred various other costs like customs duty etc., No complete fixed assets in direct usable formed part of these imported components. The assessee debited capital work in progress account while purchasing these items. It was submitted that due to change in campaign

plan, the proposed advertisement counter plan was totally dropped by the assessee company. Accordingly, all the expenditure incurred relating to import in counter components were written-off by debiting to profit and loss account and crediting capital work in progress in the books of accounts of the assessee company. Accordingly, deduction was claimed for the same in the return of income under normal provisions of the Act. We find that the details of expenditure incurred on the said advertisement counter by the assessee is enclosed in page 38 of the paper book are as under:-

Details of items for advertising; counter

Date	Description	Amount (Rs.)
30.08.2006	Lancome Furniture Custom Duty for Lancome	330,997
30.08.2006	Furniture & Fixture package cost for Lancome	122,832
04.09.2006		84,278
04.09.2006	Furniture & Fixture for Lancome	9,33,410
06.10.2006	Advance payment on appointment	75,000
06.10.2006	Layout charges	50,000
06.10.2006	Supervision fees during execution	75,000
06.10.2006	Travel expense	40,000
06.10.2006	On submission of detailed drawing	100,000
10.10.2006	Ticket, insurance and visa charges	41,300
18.10.2006	Sterlizer for Lancome Boutique	17,405
18.10.2006	Freight Cost	7,375
27.10.2006	Custom duty	375,556
27.10.2006	Freight charges	86,432
29.11.2006	M/UBar	187,987
29.11.2006	Hanging Mirror	97,698
29.11.2006	S/C Bar	112,515

29.11.2006	Furniture and fixture packing cost	112,120
04.12.2006	Bar Maquillage Grand Modele Asia	141,928
04.12.2006	Bar Soin Grand model for the boutique	133,610
Total		3,125,442

4.1. From the aforesaid list, it could be seen that the majority of the items comprises of cost of furniture and fixtures, its customs duty, its freight charges, drawing and design of the counter etc., among others. From the list of expenses incurred above, it could be seen that some items would certainly carry enduring benefit to the assessee in the capital field in as much as those items could be certainly utilised by the assessee in its regular course of business or in the alternative would have clear saleable value thereon. Hence, it cannot be said that since the advertisement campaign plan was dropped by the assessee after import of certain items as listed above, the items do not have any value at all for the assessee company warranting its write-off. But at the same time some of the items listed hereinabove would also have to be absorbed as revenue expenditure as one time cost in respect of abandoned project which requires to be charged off as revenue. Hence, we hold that the finding of the Id. CIT that the entire expenditure would be treated as capital loss is incorrect. We hold that some part of these expenses would be capital in nature and part would be revenue in nature. Since the Id. AO has been directed to frame the assessment afresh pursuant to the directions of the 263 order by the Id. CIT, the assessee would be at liberty to make out its case before the Id. AO in the light of the aforesaid directions. In case if the giving effect order has already been passed by the Id. AO, even then the doors of the assessee are left open that these items can be adjudicated on merits even in appellate proceedings. With

these observations, the action of the Id. CIT in invoking revisionary jurisdiction is partly allowed.

Provision for Doubtful Debts: Rs.16,07,149/-

5. We find that the Id. CIT was of the opinion that this sum need to be added back to book profits computed u/s.115JB of the Act as in the opinion of the Id. CIT, the same represents amounts set aside as provision for diminution in value of any asset. We find that the assessee had made a categorical statement before the Id. CIT that this sum of Rs.16,07,149/- represents amounts debited to the profit and loss account towards doubtful debts and simultaneously the same amount has been reduced from the value of debtors on the asset side of the balance sheet and hence, such provision needs to be construed as write-off of an actual debt.

5.1. We find from the schedule-14 of the financial statements as on 31/03/2007 of the assessee company, which is enclosed in page 8 of the paper book, the assessee has debited a sum of Rs. 16,07,000/- towards provision for doubtful debts (net) and sum of Rs.4,70,000/- towards bad debts and advances written off. This clearly goes to prove that a sum of Rs.16,07,149/- purely represents only provision for doubtful debts and not write-off of bad debts in the books of accounts of the assessee by corresponding credit to concerned debtor's account. We also find that the very same sum (i.e provision for doubtful debts) has already been added back by the assessee voluntarily in the return of income while computing income under normal provisions of the Act which goes to strengthen our finding that this sum represents only provision for doubtful debts and not bad debts actually written off in the books. Hence, the applicability of

provision of Clause (i) of Explanation – 1 to Section 115JB(2) of the Act would directly come into operation wherein this amount requires to be added back while computing book profits u/s.115JB of the Act. Hence, we do not find any infirmity in the action of the Id. CIT invoking revisionary jurisdiction in respect of this issue.

**Provision for obsolescence / Slow Moving Stock –
Rs.3,42,82,000/-**

6. We find that the assessee as per Accounting Standard – 2(AS-2) issued by the Institute of Chartered Accountants of India (ICAI) on “Valuation of Inventories”, valued the closing stock of inventories at the lower of cost or net realisation value. It was pleaded by the assessee that the valuation method followed by it was in accordance with provisions of Section 145 of the Act and also the decisions of Hon’ble Supreme Court in the case of Hindustan Zinc Ltd. reported in 291 ITR 391 and British Paints India Ltd., reported in 188 ITR 44. It was pleaded that the concept of market price / net realizable value also envisages reducing the cost of inventories appropriately in cases where they are damaged, or if they have become wholly or partially obsolete, or if their selling prices have declined or they are non-moving. The assessee in this regard placed reliance on the decision of the Hon’ble Delhi High Court in the case of Hotline Teletube and Components Limited reported in 175 Taxman. 286. We find that assessee had reduced the value of inventories by using the accounting terminology “provision towards obsolescence / slow moving stock”. In other words, we find that the value of closing stock of inventories had been duly reduced by the provision amount of obsolescence / slow moving stock to the extent of Rs.3,42,82,000/- in the books itself. It is not mere provision for obsolescence as understood by the Id. CIT. It is

effectively reducing the value of stock which tantamount to write off of the same. Hence, the same would not fall within the ambit of Clause (i) of Explanation -1 to Section 115JB(2) of the Act. It is also pertinent to note that very same sum of Rs.3,42,82,000/- has been allowed as deduction i.e in the form of reduced value of closing stock of inventories by the Id. AO while computing income under normal provisions of the Act. Hence, the action of the Id. CIT in invoking revisionary jurisdiction u/s.263 of the Act in respect of this issue is dismissed.

7. The grounds raised by the assessee are disposed off as above.

8. In the result, appeal of the assessee is partially allowed.

Order pronounced in the open court on this 11/12/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 11/12/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai