IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai

Before Shri Pramod Kumar, Vice President
and Shri Ravish Sood, Judicial Member

ITA Nos. 4252 to 4254/Mum/2011
(Assessment Years: 2005-06 to 2007-08)

M/s Caprihans India Ltd. Block-D, Shivsagar Estate, Dr. A.B.Road, Worli, Mumbai – 400 018	Vs.	Dy. CIT Central Circl-36 Mumbai.
PAN – AAACC1646F		
(Appellant)		**(Respondent)**

ITA No. 4573/Mum/2011
(Assessment Year: 2005-06)

The Asstt. Commissioner of Income-tax, Central Circle-36, Room No.11, Aayakar Bhavan, M.K. Marg, Mumbai – 400 020	Vs.	M/s Caprihans India Ltd. Block-D, Shivsagar Estate Dr. Annie Besant Road,Worli, Mumbai- 400 018
PAN – AAACC1646F		
(Appellant)		**(Respondent)**

Appellant by:	Shri R. Murlidhar, A.R
Respondent by:	Shri Awungshi Gimson, D.R
Date of Hearing:	01.10.2019
Date of Pronouncement:	23.12.2019

O R D E R

PER RAVISH SOOD, JM

The assessee and the revenue being aggrieved with the order passed by the CIT(A)-41, Mumbai, dated 31.12.2009 for A.Y. 2005-06 have preferred cross-appeals before us. Also, the assessee is in appeal against the respective orders of the CIT(A)-41 for A.Y. 2006-07 and A.Y. 2007-08, both dated 31.12.2009. As certain common issues are involved in the captioned

appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y. 2005-06. The assessee has assailed the impugned order on the following revised grounds of appeal before us:

"1. The learned CIT(A) erred in holding that the notice issued u/s 153C was valid without appreciating that no incriminating document belonging to the appellant was found in the course of search of M/s Kalpataru Properties Pvt. Ltd. and others and therefore, there was no reason to issue the notice u/s 153C.

2. The learned CIT(A) erred in holding that the interest received of Rs.1,22,77,025/- is taxable as income from other sources as against business income claimed by the assessee.

3. Without prejudice to the above grounds, the learned CIT(A) erred in not allowing netting off of the interest paid against the interest received and only the net interest should have been taxed as income from other sources.

4. The learned CIT(A) erred in confirming the disallowance of depreciation in respect of block of asset of residential building, of Rs.1,43,629/- without appreciating that the same was allowable as per law.

5. The learned CIT(A) erred in not appreciating that the provision for leave encashment of Rs.15,30,070/- was not to be added back to the book profit for computation u/s. 115JB as it is an ascertained liability determined on actuarial basis.

6. The learned CIT(A) erred in not accepting the method of computing the brought forward loss and depreciation for the purposes of section 115JB adopted by the assessee without appreciating that the said method followed by the assessee company was correct as per law.

7. The learned CIT(A) further erred in holding that the provision for wealth tax was not to be reduced from book profit to be computed u/s. 115JB.

8. The learned CIT(A) erred in holding that the claim made by the assessee company that the amount of Rs.3,80,75,339/- being the difference between the payment of net present value of Rs.3,07,23,725/- as against future liability of Rs.6,87,99,064/- relating to deferred sales tax was not taxable since it was a capital receipt could not entertained since the said amount was offered to tax in the return by the assessee and since no revised return was filed, the claim could not be allowed in view of the Supreme Court decision in the case of Goetze India Ltd. [284 ITR 323].

9. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

2. Briefly stated, the assessee company which is engaged in the business of development/construction activity and manufacturing of rigid and flexible PVC films etc., had filed its return of income for A.Y 2005-06 on 16.10.2006, declaring its total income at Rs.7,15,310/-. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act.

3. Search and seizure action was conducted under Sec. 132 on Kalpataru group of cases on 22.03.2007. In the course of the search proceedings certain incriminating documents belonging to the assessee relating to its non-core assets and arbitration proceedings with M/s Hindustan Spinning and Weaving Mills were seized. Consequently, a survey was also

conducted at the assesse's premises and certain documents were impounded. Notice under Sec.153C was served upon the assessee. In compliance, the assessee filed its return of income on 24.01.2008, declaring a total income of Rs.nil. In its return of income, the assessee while computing the 'book profit' under Sec. 115JB had added back the amount of the wealth tax provision. Subsequently, notice under Sec.143(2) r.w.s. 153C was served upon the assessee.

4. The A.O while framing the assessment inter alia made the following additions /disallowances :

Sr. No.	Particulars	Amount
1.	Addition of provision for leave encashment for the purpose of computing the 'book profit' under Sec.115JB	Rs. 15,30,070/-
2.	Addition of the provision for doubtful doubts written back for the purpose of computing the 'book profit' under Sec.115JB	Rs. 23,74,772/-
3.	Addition under the normal provision of the difference between the payment of net present value against future liability relating to deferred sales tax.	Rs.3,80,75,339/-
4.	Addition on account of compensation for land acquisition.	Rs. 6,59,327/-
5.	Addition of the amount collected by the assessee from the Flat purchasers towards the maintenance of the society.	Rs. 73,07,137/-.
6.	Addition under Sec.41(i) of the provision written back during the year	Rs. 23,74,772/-.
7.	Addition of the amount received by the assessee from M/s Durable Trading Company Pvt. Ltd. as its undisclosed income.	Rs. 3,18,000/-
8.	Addition of the amount receivable by the assessee in terms of its agreement with M/s Kalpatru Homes Ltd.	Rs.2,09,73,640/-

After making the aforesaid additions/disallowances the A.O assessed the income of the assessee company under the normal provision at Rs. 12,65,65,070/-. The 'book Profit' under Sec.115JB was reworked out at Rs. 9,61,86,460/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). After deliberating at length on the contentions advanced by the assessee, the CIT(A) partly allowed the appeal, vide his order dated 16.03.2011.

6. Being aggrieved with the order of the CIT(A), both the assessee and the revenue have carried the matter in appeal before us. We shall first advert to the appeal of the assessee. At the very outset of the hearing of the appeal, the ld. Authorized Representative (for short 'A.R') for the assessee submitted that as per instructions the 'Grounds of appeal Nos. 1 to 4' and 'Ground of appeal No. 6' are not being pressed by him. On the basis of the aforesaid

concession of the ld. A.R, the aforesaid **'Grounds of appeal Nos. 1 to 4'** and **'Ground of appeal No. 6'** are dismissed as not pressed.

7. We shall now advert to the additions/disallowances which had been assailed by the assessee before us:

(A) Addition of provision for leave encashment for computing 'book profit' under <u>Sec.115JB: Rs.15,30,070/-:</u>

<u>Facts</u>:

(i) On a perusal of the assessment order, we find, that the A.O for the purpose of computing the 'book profit' under Sec. 115JB had added the provision for leave encashment of Rs.15,30,070/- to the 'net profit' of the assessee. Refuting the aforesaid action of the A.O, it was the claim of the assessee that as the said provision was not for an unascertained liability, therefore, the same was not liable to be added for the purpose of computing the 'book profit' under Sec.115JB of the Act. However, the A.O was not inclined to accept the aforesaid claim of the assessee and rejected the same. It was observed by the A.O that as the liabilities pertaining to leave encashment were not ascertained by the end of the financial year, therefore, the assessee had made a provision for the same. On appeal, the CIT(A) finding no infirmity in the view taken by the A.O upheld the same.

(ii) The ld. Authorized Representative (for short 'A.R') for the assessee assailed the addition of the provision for leave encashment for the purpose of computing the 'book profit' under Sec. 115JB of the Act. It was claimed by the ld. A.R, that as the aforesaid provision for leave encashment was made in the books on actuarial basis, therefore, the same could not be held to be in the nature of a provision for an unascertained liability. In support of his contention the ld. A.R had relied on the judgment of the **Hon'ble High Court of Punjab & Haryana** in the case of **CIT Vs. National Hydro Electric Power corporation Ltd. (2010) 45 DTR 117 (P&H)**.

(iii). Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was the claim of the ld. D.R, that as the provision for leave encashment was in the nature of an unascertained liability, therefore, the lower authorities had rightly

concluded that the same was liable to be added for the purpose of computing the 'book profit' under Sec. 115JB of the Act.

Decision :

(i). We have heard the authorized representatives for both the parties in context of the aforesaid issue, and also the perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. In our considered view, if a business liability had definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Bharat Earth Movers Vs. CIT (2000) 245 ITR 428 (SC)**. In the said case, it was observed by the Hon'ble Apex Court that what should be certain is the incurring of the liability and the fact that the same is capable of being estimated with reasonable certainty, although the actual quantification may not be possible. As therein observed, if the aforesaid requirements were satisfied, then the liability could not be held as a contingent liability. Also, it was observed by the Hon'ble Apex Court, that although the liability is in praesenti though it is to be discharged at a future date, it would not make any difference if the future date on which the liability is to be discharged is not certain. In the backdrop of its aforesaid observations, the Hon'ble Supreme Court had concluded that the provision made by an assessee for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by the employees of the company, inclusive of the officers and the staff, subject to the ceiling of accumulation as applicable on the relevant date would be entitled to deduction out of the gross receipts for the accounting year during which the provision is made for the said liability. Accordingly, the Hon'ble Apex Court reversing the view taken by the High Court, had observed, that the provision for meeting the liability for encashment of earned leave by the employees is not a contingent liability and is admissible as a deduction. On the basis of our aforesaid observations, we are of the considered view, that as the provision for leave encashment had been made by the assessee on actuarial basis, therefore, the same being in the nature of an ascertained liability could not have been added by the A.O for the purpose of determining the 'book profit' under Sec. 115JB of the Act. As such, the **Ground of appeal No. 5** raised by the assessee is allowed.

(B) Addition of the provision for Wealth Tax for computing the 'Book Profit' under Sec. 115JB:

Facts :

(i) As observed hereinabove, the assessee while computing the 'book profit' under Sec. 115JB had added back the amount of the wealth tax provision. On appeal, the assessee by way of a specific ground had assailed the addition of the provision for wealth tax while computing the 'book profit' under Sec. 115JB of the Act. However, the CIT(A) declined to accept the aforesaid claim of the assessee. Observing, that the said provision was covered under Sec. 115JB of the Act, the CIT(A) had upheld the view taken by the A.O.

(ii) Aggrieved, the assessee has assailed the addition of the provision on account of wealth tax payable to the 'net profit' while computing its 'book profit' under Sec. 115JB of the Act. It was submitted by the ld. A.R, that as provision for wealth tax does not fall within any of the items of the 'Explanation' to Sec. 115JB, therefore, the same could not be added back while computing the 'book profit' under the said statutory provision. In support of his aforesaid contention the ld. A.R had relied on the order of the **ITAT, Kolkata, Special Bench** in the case of **JCIT Vs. Usha Martin Industries Ltd. (2007) 104 ITD 249 (SB)**.

(iii). Per contra, the ld. D.R has relied on the orders of the lower authorities.

Decision :

(i). We have heard the authorized representatives for both parties in context of the aforesaid issue, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. On a perusal of Sec. 115JB of the Act, we find, that an addition to the 'book profit' which during the period relevant to the year under consideration was computed as per Part II of Schedule VI of the companies Act, 1956 could be made only if the same was permissible as per Item No. (a) to (k) of the Explanation to Sec.115JB. As contemplated in clause (a) of the 'Explanation' to Sec. 115JB *"the amount of Income tax paid or payable, and the provision therefor"* was liable to be added for computing the 'book profit' under Sec.115JB of the Act. However, as there was no such provision for making the addition with regard to wealth tax, therefore, the A.O could not have

added the same for computing the 'book profit' of the assessee company under Sec.115JB of the Act. Our aforesaid view is fortified by the order of the **ITAT, Kolkata, Special Bench** in the case of **JCIT Vs. Usha Martin Industries Ltd. (2007) 104 ITD 249 (SB).** As such, not being in agreement with the view taken by the lower authorities, we direct the A.O to rework the 'book profit' under Sec. 115JB after deleting the provision for wealth tax. The **Ground of appeal No. 7** is allowed.

(C) Addition of the difference between the payment of net present value as against the future liability relating to deferred Sales Tax : Rs.3,80,75,339/-:

Facts :

(i) On a perusal of the records, we find, that the assessee had credited in its 'profit and loss account' an amount of Rs.3,80,75,339/- i.e the difference between the payment of 'net present value' of Rs.3,07,23,725/- and the 'future liability' of Rs. 6,87,99,064/- of the deferred sales tax liability. As the aforesaid amount of Rs.3,80,75,339/- was reflected by the assessee as an amount of profit/gain chargeable to tax under Sec. 41 in its tax audit report that was filed in 'Form 3CD' under Sec.44AB of the Act, and formed part of its 'profit and loss account', therefore, the same was taxed by the A.O.

(ii) Briefly stated, the assessee company was entitled to sales tax deferral benefit, as per which it was allowed to collect the sales tax from the customers and deposit the same with the Government after some time. The future value of the liability for payment of sales tax as on 01.04.2004 was Rs. 6,87,99,064/-. Subsequently, the sales tax department came up with a scheme, as per which, the eligible units were allowed to pay the net present value of the future liability, and therein obtain a discharge of their entire deferred sales tax liability. Opting for the said scheme, the assessee company paid the net present value of Rs. 3,07,23,725/-(as against its future liability of Rs.6,87,99,064/-) of its deferred sales tax liability. As the assessee by paying the net present value of Rs. 3,07,23,725/- had obtained a discharge of its entire future liability of deferred sales tax liability of Rs. 6,87,99,064/-, therefore, it had credited the balance amount of Rs.3,80,75,339/- [Rs. 6,87,99,064/- (-) Rs. 3,07,23,725/-] in its 'profit and loss account' for the year under consideration. In its return of income, the assessee did not claim that the aforesaid amount of Rs.3,80,75,339/- credited in its 'profit & loss account' was not

taxable. In fact, even in the course of the assessment proceedings the assessee did not claim that the profit/gain on payment of the sales tax liability was not taxable. However, it was only in the course of the proceedings before the CIT(A) that the assessee by way of an additional ground of appeal, for the first time claimed that the profit/gain of Rs. 3,80,75,339/- was not taxable. Although, the CIT(A) admitted the aforesaid additional ground of appeal that was raised by the assessee, but then observing that no such claim was raised either in the original return or the revised return of income, he held a conviction that the said fresh claim of the assessee could not be admitted in light of the judgment of the **Hon'ble Supreme Court** in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC).**

(iii) Aggrieved, the assessee has assailed the order of the CIT(A) in context of the aforesaid issue in appeal before us. It was averred by the ld. A.R, that the CIT(A) was not justified in declining to entertain the aforesaid claim of the assessee as regards the non-taxability of the profit/gain of Rs.3,80,75,339/-, which had arisen on account of difference between the net present value and the future sales tax deferred liability. It was the claim of the ld. A.R, that as the aforesaid issue was purely a legal issue that was required to be adjudicated on the basis of the facts available on record, therefore, the CIT(A) was in error in declining to entertain the said claim of the assessee. In support of his aforesaid contention the ld. A.R relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Brokers and Shareholders Pvt. ltd. (2012) 349 ITR 336 (Bom)**. It was submitted by the ld. A.R that in the aforesaid order the Hon'ble High Court of Bombay had observed that an assessee can raise a claim before an appellate authority, despite the fact that the same was not made in its return of income. It was also submitted by the ld. A.R that the Hon'ble High Court while concluding as hereinabove had considered the judgment of the **Hon'ble Supreme Court** in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC)**. On merits, it was submitted by the ld. A.R, that as the difference between the payment of net present value and the future sales tax deferred liability was not a remission or cessation of a liability, therefore, the same was not taxable under Sec. 41(1) of the Act. In support of his aforesaid contention the ld. A.R had relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Sulzer India ltd. (2014) 369 ITR 717 (Bom).**

(iv) Per contra, the ld. D.R had relied on the orders of the lower authorities. It was submitted by the ld. D.R that as the assessee had not raised the aforesaid claim either in its return of income or in the course of the assessment proceeding, therefore, the CIT(A) had rightly declined to admit the same.

Decision :

(i). We have heard the authorized representatives for both the parties in context of the aforesaid issue, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the assessee company was entitled to sales tax deferral benefit, as per which, it was allowed to collect the sales tax from the customers and pay the amount to the Government after sometime. As observed by us hereinabove, the sales tax department had thereafter introduced a scheme, as per which, the eligible units were allowed to pay the net present value of the future liability, and by making such payment obtain a discharge for the entire sales tax deferred liability. As the assessee had opted for the aforesaid scheme and paid the net present value of Rs.3,07,23,725/- (as against the future liability of Rs.6,87,99,064/-), therefore, it had credited the balance amount of Rs.3,80,75,339/- in its 'profit and loss account'. Admittedly, the assessee had neither in its return of income nor in the course of the assessment proceedings claimed that the aforesaid profit/gain on payment of sales tax liability was not exigible for tax. On a perusal of the order of the CIT(A), we find, that the assessee had for the very first time claimed before him that the profit/gain of Rs. 3,80,75,339/- on premature discharge of the future sales tax deferred liability that was credited in its 'profit and loss account' was not liable for tax. Observing, that no such claim of deduction was raised by the assessee either in its original return or the revised return of income, the CIT(A) holding a conviction that the said claim could not be admitted in light of the judgment of the **Hon'ble Supreme Court** in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC)**, had thus declined to allow the said fresh claim of the assessee.

(ii). We have given a thoughtful consideration to the aforesaid issue, and are unable to persuade ourselves to subscribe to the view taken by the CIT(A). As is discernible from the order of the CIT(A), we find, that he had declined to admit the aforesaid claim of the assessee,

for the reason, that the same was neither raised in the original return of income nor in the revised return. Although, we are in agreement with the view taken by the CIT(A) that as observed by the Hon'ble Supreme Court in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC),** an assessee cannot be permitted to raise a fresh claim before the A.O, except by way of filing a revised return of income. However, we find, that the same would not be applicable where such a claim is raised by the assessee before an appellate authority. Our aforesaid view is fortified by the Judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Brokers and Shareholders Pvt. ltd. (2012) 349 ITR 336 (Bom)**. As observed by us hereinabove, in the aforesaid case, the Hon'ble High Court had observed that an assessee can raise a claim before an appellate authority despite the fact that the same was not made by him in its return of income. Also, it would be relevant to point out that the Hon'ble High Court while concluding as hereinabove had duly considered the judgement of the **Hon'ble Supreme Court** in the case of **Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC)**. As such, in terms of our aforesaid observations, we are not in agreement with the refusal on the part of the CIT(A) to allow the aforesaid claim of the assessee.

(iii). We shall now advert to the merits of the aforesaid claim of the assessee. As observed by us hereinabove, it is the claim of the assessee that the difference of Rs. 3,80,75,339/- between the amount of the 'net present value' of the deferred sales tax liability and the 'future value' of the same was not exigible to tax in its hands. We have given a thoughtful consideration to the aforesaid claim of the assessee and find substantial force in the same. In our considered view, the first requirement of Sec. 41(1) is that an allowance or deduction is made in respect of the loss, expenditure or a trading liability incurred by the assessee. Apart from that, the other requirement is that the assessee should have specifically obtained a benefit in respect of such trading liability by way of a remission or cessation thereof. As observed by us hereinabove, the aforesaid scheme under which the sales tax liability of the assessee was deferred, therein enabled the assessee to remit the sales tax collected from the customers to the government, though not immediately, but after certain period. Although, the amount of sales tax collected by the assessee was not to be immediately paid to the government upon collection and was to be remitted later on in the terms of the scheme, the same relieved the assessee of its obligation only for the time being. However, the same in no way could be

construed as being in the nature of a remission of the said liability. As a matter of fact, under the aforesaid scheme the worth of the amount which had to be remitted by the assessee to the government had been determined prematurely. Accordingly, if that was the value of the money which the state government was entitled to receive after a specified time period, then it can safely be concluded that the requisite conditions for invoking sub-section (1) of Sec.41 had not been fulfilled. In sum and substance, the obligation of the assessee to remit to the government the sales tax amount already recovered and collected from the customers was in no way wiped out or diluted. In fact, the obligation of the assessee remained as such. As observed by us hereinabove, as per the scheme introduced by the sales tax department all that had happened was that the assessee was given an option to make a premature payment and obtain a discharge of its liability by paying the amount at its net present value. As such, it can safely be concluded that the assessee had not benefitted within the meaning of Sec.41(1) of the Act. In our considered view though the government may have received a higher sum after certain years, however, receipt of the said payment from the assessee prematurely can in no way be construed or characterized as a remission or cessation of the liability of the assessee towards the State Government. Our aforesaid view that the difference between the payment of 'net present value' as against the 'future liability' under the sales tax deferred scheme of the government cannot be brought to tax under Sec.41(1) of the Act, is supported by the judgement of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Sulzer India Ltd. (2014) 369 ITR 717 (Bom)**. Accordingly, on the basis of our aforesaid observations, we 'set aside' the order of the CIT(A) and vacate the addition of Rs.3,80,75,339/- made by the A.O. The **Ground of appeal No. 8** is allowed.

8. The **Ground of appeal No. 9** being general in nature is dismissed as not pressed.

9. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

ITA No. 4573/Mum/2011
A.Y. 2005-006

10. We shall now advert to the appeal filed by the revenue for A.Y. 2005-06. The revenue has assailed the impugned order on the following revised grounds of appeal:

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.6,59,327/- made on account of compensation for land acquisition.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.73,07,137/- and holding it as assessee's liability.

3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the assessee to reduce an amount of Rs.23,74,772/- from the total income as being provision written back during the year.

4. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.3,18,000/ - without appreciating the fact that the income pertains to A.Y. 2005-06.

5. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.2,09,73,640/- when this income has accrued to the assessee in the year under consideration and holding it as assessee's liability.

6. Whether on the facts and in circumstances of the case and in law the, Ld.CIT(A) is justified in allowing the deduction of Rs.23,74,772/- for arriving at book profit without appreciating the fact that provisions cannot be reduced while computing income u/s 115JB."

11. The respective additions/disallowances made by the A.O, which thereafter had been deleted by the CIT(A), had been assailed by the revenue before us, as under:

(A) Deletion of addition made on account of compensation for land acquisition: Rs. 6,59,327/- :

Facts :

(i) In the course of the assessment proceedings, it was observed by the A.O that apart from the sales receipts, the bank statements of the assessee also reflected certain entries in the nature of miscellaneous receipts. It was inter alia observed by the A.O, that an amount of Rs.6,59,327/- was reflected as compensation received from the Special Land Acquisition Officer in the bank statement of the assessee. The A.O called upon the assessee to explain the 'nature' and 'source' of the aforesaid amount of Rs. 6,59,327/- credited in its bank account. In the absence of any reply from the assessee, the A.O was constrained to add the aforesaid amount to the returned income of the assessee.

(ii) On appeal, the assessee submitted before the CIT(A) that it owned certain land at Roha, Maharashtra, which was converted into stock-in-trade way back in the year relevant to A.Y. 1983-84. As the said land was acquired by the government, therefore, the assessee had received compensation of Rs.6,59,327/- in lieu thereof. It was the claim of the assessee

before the CIT(A) that as the aforesaid land formed part of its stock-in-trade, therefore, the amount of compensation that was received from the government was included in its sales in A.Y. 2005-06. It was submitted by the assessee that though the complete details of sales were furnished with the A.O, however, he had failed to appreciate the aforesaid factual position and had wrongly assessed the aforesaid amount as the undisclosed income of the assessee, which had resulted in double taxation of the said amount.

(iii) After necessary deliberations the CIT(A) was persuaded to accept the aforesaid claim of the assessee. It was noticed by the CIT(A) that the amount of compensation of Rs. 6,59,327/- that was received by the assessee on the acquisition of its land at Roha, Maharashtra, which formed part of its stock-in-trade, was duly accounted for in its sales for the year under consideration i.e A.Y. 2005-06. Observing, that the A.O had overlooked the aforesaid factual position, despite the fact that the complete details of sales were furnished by the assessee with him, the CIT(A) deleted the aforesaid addition.

Decision :

(i) We have heard the authorised representatives for both the parties in context of the issue under consideration, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As is discernible from the order of the CIT(A), the assessee company had duly accounted for the compensation of Rs.6,59,327/- that was received on the compulsory acquisition of its land at Roha, Maharashtra, which formed part of its stock-in-trade, in its sales for A.Y. 2005-06. Admittedly, as the A.O had overlooked the fact that the aforesaid compensation received by the assessee was duly accounted for and formed part of the sales of the assessee for the year under consideration, therefore, he had erroneously assessed the same as the undisclosed income/receipts in the hands of the assessee. Nothing has been brought to our notice by the ld. D.R, which could persuade us to conclude that the aforesaid observation of the CIT(A) suffered from any perversity. Accordingly, finding no infirmity in the view taken by the CIT(A), who in our considered view had rightly vacated the aforesaid addition of Rs.6,59,327/-, we uphold his order to the said extent.

(B) Deletion of the addition of the amount collected by the assessee from the flat purchasers towards maintenance of the society: Rs.73,07,137/- :

Facts :

(i) As is discernible from the orders of the lower authorities, the assessee, pending the formation of a Co-operative Housing Society of the various flat purchasers was maintaining the building viz. Kalpataru Height. Accordingly, the assessee had collected amounts from the flat purchasers for payment of municipal taxes, society maintenance expenses etc. Also, it had collected amounts for common area maintenance i.e the area which was used by the members for organising small functions etc. Further, the assessee had also received amounts from external sources for erection of a transmission tower on the building, part of which was to be paid over to the society. Also, the assessee had incurred various expenses, paid taxes etc. in respect of the building. On formation of the society of the various flat owners viz. M/s Kalpataru Heights Co-operative Housing Society Ltd., the assessee company had handed over the maintenance responsibility of the building to the said society. It was observed by the A.O, that though the maintenance work of the building was handed over by the assessee company to the society but only part of the money that was received by the assessee was handed over to the society as final settlement. On the basis of his aforesaid observations, the A.O called upon the assessee to explain as to why the maintenance charges which were received by it from the flat purchasers may not be assessed as its income. In reply, it was submitted by the assessee that the maintenance charges received by it was not its income, as the same to the extent the same had remained unutilized and lying with it were to be handed over to the society at the time of final settlement of accounts. However, the A.O declined to accept the aforesaid claim of the assessee and treated the entire amount of receipts of Rs.73,07,137/- as the income of the assessee from ‘Other sources’ and added back the same to its taxable income.

(ii) On appeal, it was observed by the CIT(A) that the accounts of the society had not been settled and an amount of Rs.30,34,526/- i.e to the extent the same had not been spent was shown as a liability by the assessee in its ‘books of accounts’. It was observed by the CIT(A) that the assessee had utilised part of the amounts which were collected from the flat purchasers for payment of municipal taxes, society maintenance charges, common area

maintenance expenses etc. It was observed by the CIT(A) that the balance unutilized amount of Rs.30,34,526/- which was available with the assessee was shown by it as a liability in its 'books of accounts'. Also, it was observed by the CIT(A) that the A.O while framing the assessment in the case of the assessee for A.Y. 2001-02 to A.Y. 2004-05, had observed, that the taxability of the aforesaid amount could only be considered at the time of the final settlement of the accounts of the society. On the basis of the aforesaid facts, the CIT(A) finding favour with the claim of the assessee, therein observed, that though the maintenance work was handed over by the assessee to the housing society during the year under consideration but the accounts were yet not finally settled. Accordingly, the CIT(A) observed that the unutilised amount of Rs.30,34,526/- was still lying with the assessee company pending final settlement of the accounts, which could not take place due to certain disputes. In the backdrop of his aforesaid deliberations, the CIT(A) was of the view that the amount of Rs.73,07,137/- that was received by the assessee company from the flat owners for the maintenance of the building and payment of taxes could not have been held as its income. As such, the CIT(A) deleted the addition of Rs.73,07,137/- made by the A.O.

Decision :

(i) We have heard the authorized representatives for both the parties in context of the aforesaid issue under consideration, perused the orders of the lower authorities and the material available on record. As observed by us hereinabove, the assessee company pending the formation of a cooperative housing society of the flat purchasers was maintaining the building viz. Kalpataru Heights. During the aforesaid period, the assessee had collected an amount aggregating to Rs.73,07,137/- from the flat purchasers for the purpose of maintaining the building. In the year under consideration, the assessee company had handed over the maintenance responsibility of the building to M/s Kalpatru Heights Cooperating Housing Society ltd. As there were certain disputes between the assessee and the aforesaid housing society, therefore, the final settlement of accounts could not be reached. As the accounts of the society could not be finally settled, therefore, the assessee company had shown the unutilised amount of Rs. 30,34,526/- as a liability in its 'books of accounts' for the year under consideration. As observed by us hereinabove, the A.O while framing the assessment in the case of the assessee for the preceding years i.e A.Y. 2001-

02 to A.Y. 2004-05 had observed that the taxability of the amount received by the assesse from the flat purchasers could only be considered at the time of final settlement of the accounts. On a perusal of the orders of the orders of the lower authorities, we find, that the assessee at the time of handing over the maintenance work of the building to the aforesaid housing society had parted with an amount of Rs.1,96,224/-, while for the balance unutilised amount of Rs.30,34,526/- that was still lying with it was acknowledged as an outstanding liability. In our considered view, part of the aforesaid amount which was collected by the assessee company from the flat owners was utilised for payment of taxes and maintenance of the building, while for the balance unutilised amount that was admittedly acknowledged by the assessee as an outstanding liability was ultimately to be handed over to the housing society at the time of final settlement of accounts. In fact, the assessee company had duly reflected the balance amount of Rs.30,34,526/- i.e the amount outstanding towards the housing society as a liability in its 'books of accounts'. In the backdrop of the aforesaid facts, we find ourselves to be in agreement with the view taken by the CIT(A) that the amount of Rs.73,07,137/- collected by the assessee company from the flat owners for the purpose of maintenance of the building and payment of taxes etc. could not have been assessed as its income for the year under consideration. Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold the same. The **Ground of appeal No. 2** is allowed.

(C). Deletion of the amount of provision written back by the assessee during the year: Rs.23,74,772/-.

Facts :

(i) On a perusal of the 'profit and loss account' of the assessee company, it was observed by the A.O, that the assessee had credited an amount of Rs.23,74,772/- as provisions that were no longer required. However, it was noticed by him that the assessee in its computation of income had claimed a deduction of the total provisions of Rs. 23,74,772/- which were credited by it. On the basis of the aforesaid facts, the A.O called upon the assessee to put forth an explanation as regards its aforesaid claim of deduction. In reply, it was submitted by the assessee that it had in its returns of income for the preceding years, added to its total income any provision that was made towards doubtful debts/advances and for diminution in value of investments. Accordingly, it was the claim of the assessee that it

had not claimed the provisions as a deduction in the earlier years. On the basis of the aforesaid claim, it was submitted by the assessee that any such provision which was not claimed as a deduction in the year in which it was made, thereafter, on being 'written back' could not be charged to tax under Sec. 41(1) of the Act. However, the A.O did not agree with the aforesaid claim of the assessee and declined the aforesaid claim of deduction of Rs. 23,74,772/- that was raised by it. In fact, the A.O while concluding as hereinabove, had observed, that the assessee despite specific direction had failed to prove that it had not claimed deduction of the provisions aggregating to Rs.23,74,772/- in the earlier years.

(ii) On appeal, the assessee submitted before the CIT(A) that it had in the course of the assessment proceedings furnished with the A.O the copies of the returns of income for the preceding years, from where it could safely be gathered that any provision made for doubtful debts and advances were added back to its total income. As such, it was the claim of the assessee that it had in the course of the assessment proceedings duly substantiated its claim that the provisions were never claimed as a deduction. On a perusal of the records, the CIT(A) observed that the amount of provisions had already added back by the assessee in its computation charts for the preceding years in which they were made. Accordingly, the CIT(A) was of the view that now when the assessee had added back the amount of the provisions while computing its income for the preceding years, the same on being 'written back' in the subsequent years could not be added to its income, as the same would otherwise lead to double addition in its hands. On the basis of his aforesaid observations the CIT(A) deleted the addition of Rs.23,74,772/-made by the A.O.

Decision :

(iii) We have given a thoughtful consideration to the aforesaid issue and are persuaded to subscribe to the view taken by the CIT(A). As is discernible from the orders of the lower authorities, the assessee in its returns of income for the preceding years had while computing its income added back any provision that would be made towards doubtful doubts/advances and for diminution in value of investments. In sum and substance, the aforesaid provisions were not claimed as a deduction by the assessee in the preceding years. We find that the aforesaid factual position as had been canvassed by the assessee

was verified by the CIT(A), and found to be correct. In fact, the said factual position has also not been disputed by the ld. D.R before us. We are in agreement with the view taken by the CIT(A) that now when the assessee had not claimed the provision made for doubtful debts and advances as a deduction in the preceding years, the same at the time of its being 'written back' in the subsequent year i.e the year before us, could not have been added to its total income. Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold the deletion of the addition of Rs.23,74,772/-. The **Ground of appeal No. 3** is dismissed.

(D). Deletion of an addition of Rs.3,18,000/- received by the assessee from M/s Durable Trading Company Pvt. Ltd.:

Facts :

(i) On a perusal of the orders of the lower authorities, we find, that the assessee company had entered into an 'agreement' with M/s Durable Trading Company Pvt. Ltd. for installation of Cell station in its building viz. "Kalpataru Heights". As per the 'agreement', the assessee had received an amount of Rs.3,18,000/-. Observing, that the assessee had not accounted for the aforesaid amount in its 'books of accounts', the A.O added the same to its returned income.

(ii) On appeal, it was observed by the CIT(A) that the assessee had duly accounted for the aforesaid amount of Rs.3,18,000/- in its 'books of accounts'. It was noticed by the CIT(A), that M/s Durable Trading Company Pvt. Ltd. was required to pay to the assessee 50% of the compensation or fees received from its franchise to whom the rights were given. Out of the compensation received the assessee company had to pay up to 80% to the flat owners association/housing society. It was observed by the CIT(A) that the assessee had duly accounted for all the entries viz. receipt of an amount of Rs.3,18,000/-, and also payment of 80% to the housing society as well as the expenditure that was incurred out of the aforesaid amount. Observing, that there was no lapse on the part of the assessee in accounting for the aforesaid receipt of Rs.3,18,000/-, the addition made by the A.O was deleted by the CIT(A).

Decision :

(i). We have heard the authorized representatives for both the parties in context of the aforesaid issue under consideration, perused the orders of the lower authorities and the material available on record. As is discernible from the order of the CIT(A), the assessee had duly accounted for the receipt of Rs.3,18,000/- in its 'books of accounts'. Apart from that, the payment of 80% of the fees received by the assessee company to the flat owners association/housing society had also been accounted for in its 'books of accounts'. Further, the expenditure incurred by the assessee out of the aforesaid amount is also borne out from its accounts. In our considered view, the CIT(A) has rightly observed that the A.O had overlooked the factual position and had on the basis of misconceived facts made the aforesaid addition of Rs.3,18,000/- in the hands of the assessee. Accordingly, finding no infirmity in the view taken by the CIT(A), who had rightly vacated the addition of Rs.3,18,000/-, we uphold his order to the said extent.

(E). Deletion of the amount receivable by the assessee from Kalpataru Homes Ltd: Rs.2,09,73,640/-:

Facts :

(i) On a perusal of the records, we find, that the assessee company had entered into an 'agreement' with M/s Kalpataru Homes Ltd. for the realisation of its non-core assets. Originally the realisation value of the assets was fixed at Rs.4,454 lacs. However, after negotiations the same was revised at Rs.4,109 lacs. As per the 'agreement' M/s Kalpataru Homes Ltd. was entitled to retain any excess amount realised for such non-core assets over and above the agreed consideration. The cut off date for realisation was pegged at 31.03.2000, which thereafter was extended after some negation.

(ii) In the course of the assessment proceedings, it was observed by the A.O that most of the assets were realised by A.Y. 2001-02. Only asset which remained to be realised was the Hindustan Mills Project. As agreed, the aforesaid parties had charged interest on late realisation. It was observed by the A.O that Hindustan Mills Project was also finally realised in the year under consideration. It was further noticed by the A.O, that there was a short realisation of an amount of Rs. 2,09,73,640/-. Also, it was observed by the A.O that the

amount by which the assets had been short realised was debited by M/s Kalpataru Homes Ltd. as a 'loss' in its books for the year under consideration. In the course of the assessment proceedings, the A.O obtained a letter from M/s Kalpataru Homes ltd. wherein the assessee had confirmed that an amount of Rs. 2,62,54,313/- was outstanding towards it from M/s Kalpataru Homes Ltd. as on 31.03.2006. On the basis of his aforesaid observations, the A.O held a conviction that as the assets had been sold at a value lower than the agreed realisable value by an amount of Rs.2,09,73,640/-, therefore, the said amount which was realisable by the assessee from M/s Kalpataru Homes ltd. was to be treated as its 'business income' for the year under consideration. Accordingly, the A.O included the short/deficit realisable amount of Rs.2,09,73,640/- to the total income of the assessee.

(iii) On appeal, it was observed by the CIT(A) that M/s Kalpataru Homes Ltd. had agreed to help the assessee company in liquidating and realising the assets of its non-core activities. It was noticed by the CIT(A) that as M/s Kalpataru Homes Ltd. had guaranteed realisation, therefore, on account of short/deficit realisation of the non-core assets of the assessee company amounting to Rs.2,09,73,640/-, it had rendered itself as liable for the said amount towards the assessee company. Also, it was observed by the CIT(A) that M/s Kalpataru Homes Ltd. had paid an interest of Rs.36lac for non-payment of Rs.2,09,73,640/-, which was offered by the assessee as its income for the year under consideration. As regards the view taken by the A.O that the short/deficit amount of Rs.2,09,73,640/- that was realisable by the assessee from M/s Kalpataru Homes Ltd. was to be assessed as the income of the assessee company, the same did not find favour with the CIT(A). It was observed by the CIT(A), that the receipt of the aforesaid amount was to be routed through the 'balance sheet' and not the 'profit and loss account' of the assessee company. In fact, it was observed by the CIT(A) that the assessee had shown a 'debtor' of Rs.2,09,73,640/- in its 'balance sheet' which had not been realised till date. As such, the CIT(A) was of the view that on the realisation of the aforesaid amount the same could not be held as the income of the assessee company. On the basis of his aforesaid observations, the CIT(A) was not persuaded to subscribe to the view taken by the A.O that as M/s Kalpataru Homes Ltd. had claimed the amount of Rs.2,09,73,640/- as a 'loss' during the year under consideration, the

same would thus automatically become the income of the assessee company for the said year. In the backdrop of his aforesaid deliberations the CIT(A) deleted the addition of Rs.2,09,73,640/- made by the A.O.

Decision :

(i). We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record in context of the issue under consideration. Admittedly, the assessee had entered into an 'agreement' with M/s Kalpataru Homes Ltd., as per which the latter had agreed to help the assessee company in liquidating and realising the assets of its non-core activity. As per the negotiations the realisation value of the assets was finally fixed at Rs. 4,109 lac. As per the terms of the 'agreement' M/s Kalpataru Homes Ltd. was entitled to retain any excess amount realized on the liquidation of the non-core assets i.e the amount received over and above the agreed consideration. Initially, the cut off date for realisation was fixed at 31.03.2000, which was subsequently extended after some negotiations. As per the details submitted by the assessee, it was observed by the A.O that most of the assets were realised by A.Y. 2001-02. Only asset which remained to be realised was the Hindustan Mills Project. Subsequently, the Hindustan Mills Project was also finally realised in the year under consideration. As observed by us hereinabove, the realisation of the non-core assets of the assessee company by M/s Kalpataru Homes Ltd. had fallen short by an amount of Rs.2,09,73,640/-, as against the agreed realisable value. As per the terms of the 'agreement' as M/s Kalpataru Homes Ltd. was liable to bear the aforesaid loss, therefore, it had booked the same in its 'profit and loss account' for the year under consideration. For the delay in making the payment of Rs.2,09,73,640/- to the assessee interest of Rs.36 lac was paid by M/s Kalpataru Homes Ltd. The aforesaid interest income of Rs.36 lac was offered by the assessee as its income for the year under consideration.

(ii). Observing, that the realisation of the non-core assets of the assessee company had fallen short by an amount of Rs.2,09,73,640/-, the A.O held a conviction that the said amount which M/s Kalpataru Homes Ltd. was liable to pay to the assessee i.e in excess of the net value of the non-core assets so realised was to be assessed as the income of the

assessee company. As observed by us hereinabove, the CIT(A) observing that there was a serious fallacy in the aforesaid view of the A.O had vacated the said addition.

(iv) We have given a thoughtful consideration to the aforesaid issue and are in agreement with the view taken by the CIT(A) that the amount of Rs.2,09,73,640/- could not have been held as the income of the assessee. As is discernible from the orders of the lower authorities, the aforesaid amount outstanding was on account of realisation of debtors. Accordingly, we are persuaded to subscribe to the view taken by the CIT(A), that as the aforesaid amount which was to be realised was generated over the years by the assesee and had been offered to tax, therefore, no addition as regards the same was called for in its hands. Accordingly, finding no infirmity in the view taken by the CIT(A) we uphold the deletion of the addition of Rs.2,09,73,640/-. The **Ground of appeal No. 5** is dismissed.

(F). Provision of doubtful debts written back (for determining 'book profit' under Sec.115JB): Rs.23,74,772 :

Facts :

(i). The assessee during the year had 'written back' the provision for doubtful debts of Rs. 23,74,772/- during the year under consideration. As observed by us hereinabove, it was the claim of the assessee that as it had not claimed the provision for doubtful debts as a deduction in the earlier years, therefore, the same on being 'written back' during the year, could not be assessed as its income under Sec.41(1) of the Act. On the basis of its aforesaid explanation the assessee had justified the reason for reducing the amount of provision for doubtful debts 'written back' during the year from its total income for the year under consideration. However, the A.O had declined the aforesaid claim of deduction of Rs. 23,74,772/- raised by the assessee. On appeal, the CIT(A) observed that as the amount of provision was already added back by the assessee in its computation charts for the preceding years, therefore, the same on being 'written back' in the subsequent years could not have been added to its income, thus deleted the aforesaid addition of Rs.23,74,772/-. As observed by us hereinabove, we had while disposing off the 'Ground of appeal No. 3' of the revenue found favour with the aforesaid view of the CIT(A), and had upheld the

reduction of provisions to the extent 'written back', for the purpose of computing the income of the assessee under the normal provisions.

(ii). As can be gathered from the orders of the lower authorities, the A.O while computing the 'book profit' under Sec. 115JB had included the amount of provision for doubtful debts to the extent the same had been 'written back' by the assessee. As observed by the CIT(A), since the assessee had already added back the provision in the earlier years and credited the same in the year under consideration, therefore, the same could not have been added for the purpose of computing the 'book profit' under Sec. 115JB of the Act. We do not find any infirmity in the aforesaid view of the CIT(A) and thus uphold the same. The **Ground of appeal No. 6** is dismissed.

ITA No. 4253/Mum/2011
A.Y. 2006-07

12. We shall now advert to the appeal of the assessee for A.Y. 2006-07. The assessee has assailed the impugner order on the following grounds of appeal before us:

> "1. The learned CIT(A) erred in holding that the notice issued u/s 153C was valid without appreciating that no incriminating document belonging to the appellant was Found in the course of search of M/s. Kalpataru Properties Pvt. Ltd. and others and therefore, there was no reason to issue the notice u/s 153C.
>
> 2. The learned CIT(A) erred in holding that the interest received of Rs.1,92,91,821/- is taxable as income from other sources as against business income claimed by the assessee.
>
> 3. Without prejudice to the above grounds, the learned CIT(A) erred in not allowing netting off of the interest paid against the interest received and only the net interest should have been taxed as income from other sources.
>
> 4. The learned CIT(A) erred in confirming the disallowance of depreciation in respect or block of asset of residential building, of Rs.1,36,448/- without appreciating that the same was allowable as per law.
>
> 5. The learned CIT(A) erred in holding that the provision for wealth tax was not to be reduced from the book profit to be computed u/s. 11 5JB
>
> 6. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

Facts :

13. Briefly stated, the assessee company had filed its return of income for A.Y. 2006-07 on 16.11.2006, declaring its total income at Rs.3,19,62,343/-. In its return of income, the assessee while computing the 'book profit' under Sec. 115JB had added back the amount of the wealth tax provision. Return of income filed by the assessee was processed as such

under Sec. 143(1) of the Act. On the basis of the assessment framed under Sec. 143(3) r.w.s 153C of the Act, the income of the assessee was assessed under the normal provisions at Rs. 7,62,58,750/-. The 'book profit' under Sec. 115JB was reworked out by the A.O at Rs.11,79,14,682/-. Observing, that the provision for doubtful debts was to be added while computing the 'book profit' under Sec.115JB, the A.O reworked out the 'book profit' of the assessee company under Sec.115JB at Rs.11,79,14,682/-.

14. On appeal, the assessee by way of a specific ground had assailed the addition of the provision for wealth tax while computing the 'book profit' under Sec.115JB of the Act. However, the CIT(A) declined to accept the aforesaid claim of the assessee. Observing, that the said provision was covered under Sec. 115JB of the Act, the CIT(A) rejected the claim of the assessee.

15. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

Decision :

16. The ld. A.R at the very outset of the hearing of the appeal submitted that as per instructions the 'Grounds of appeal Nos. 1 to 4' are not being pressed. Accordingly, on the basis of the aforesaid concession of the ld. A.R the **Grounds of appeal Nos. 1 to 4** are dismissed as not pressed.

17. We shall now advert to the sole surviving grievance of the assessee, wherein it has assailed the order of the CIT(A) to the extent he had observed that the provision for wealth tax was to be added while computing the 'book profit' under Sec.115JB of the Act. We find that the issue involved in the present appeal had been adjudicated by us while disposing off the 'Ground of appeal No. 7' in the appeal of the assessee for A.Y. 2005-06 in ITA No. 4252/Mum/2011. In our aforesaid order, we had after drawing support from the order of the **ITAT, Kolkata, Special Bench** in the case of **JCIT Vs. Usha Martin Industries Ltd. (2007) 104 ITD 249 (SB)**, had therein observed that the provision for wealth tax cannot be added while computing the 'book profit' under Sec.115JB of the Act. As the issue involved in the present appeal remains the same as was there before us in the assesses appeal for

A.Y. 2005-06 in ITA No.4252/Mum/2011, therefore, our observations and the view therein taken shall apply *mutatis mutandis* for the purpose of disposal of the present issue. The **Ground of appeal No. 5** is allowed in terms of our aforesaid observations.

18. The **Ground of appeal No.6** being general in nature is dismissed as not pressed.

19. The appeal of the assessee is allowed in terms of our aforesaid observations.

ITA No. 4254/Mum/2011
A.Y. 2007-08

20. We shall now advert to the appeal of the assessee for A.Y. 2007-08. The assessee has assailed the impugned order on the following grounds of appeal before us:

> "1. The learned CIT(A) erred in holding that the notice issued u/s 153C was valid without appreciating that no incriminating document belonging to the appellant was found in the course of search of M/s. Kalpataru Properties Pvt. Ltd. and others and therefore, there was no reason to issue the notice u/s 153C.
>
> 2. The learned CIT(A) erred in holding that the interest received of Rs.I,92,0I,615/- is taxable as income from other sources as against business income claimed by the assessee.
>
> 3. Without prejudice to the above grounds, the learned CIT(A) erred in not allowing netting off of the interest paid against the interest received and only the net interest should have been taxed as income from other sources.
>
> 4. The learned CIT(A) erred in directing the learned A.O. to re- compute the disallowance u/s 14A without appreciating that no such disallowance was warranted.
>
> 5. The learned CIT(A) erred in not appreciating that the provision for leave encashment of Rs.2,46,207/- was not to be added back to the book profit for computation u/s. 115JB as it is an ascertained liability determined on actuarial basis.
>
> 6. The learned CIT(A) further erred in holding that the provision for wealth tax was not to be reduced from the book profit to be computed u/s. 115JB.
>
> 7. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

Facts :

21. Briefly stated, the assessee company had e-filed its return of income for A.Y 2007-08 on 30.10.2007, declaring a total income of Rs.8,53,10,188/-. In its return of income the assessee while computing the 'book profit' under Sec. 115JB had added back the amount of the wealth tax provision. Return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the assessment was framed in the case of the assessee under Sec. 143(3), vide order dated 31.12.2009, and its income was determined under the

normal provisions at Rs. 3,48,15,235/-. The 'book profit' under Sec.115JB was determined at Rs.1,05,31,780/-.

22. In the course of the assessment proceedings the A.O inter alia observed that the provision for leave encashment was not to be allowed while computing the 'book profit' under Sec.115JB of the Act.

23. On appeal, the CIT(A) not finding favour with the contentions advanced by the assessee, therein upheld the view taken by the A.O that the provision for leave encashment was to be added while computing the 'book profit' under Sec.115JB of the Act. Also, the assessee by way of a specific ground had assailed the addition of the provision for wealth tax while computing the 'book profit' under Sec. 115JB of the Act. However, the CIT(A) declined to accept the aforesaid claim of the assessee and observed that the same was to be added under Sec. 115JB of the Act.

24. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. It was submitted by the ld. A.R that the provision for leave encashment was not to be added while computing the 'book profit' of the assessee under Sec. 115JB of the Act. Also, the ld. A.R had assailed the order of the CIT(A), wherein he had observed that the provision for wealth tax was to be added for computing the 'book profit' under Sec. 115JB of the Act.

25. Per contra, the ld. D.R had relied on the orders of the lower authorities.

Decision :

26. The ld. A.R at the very outset of the hearing of the appeal submitted that as per instructions the 'Grounds of appeal Nos. 1 to 4' are not being pressed. Accordingly, on the basis of the aforesaid concession of the ld. A.R the **Grounds of appeal Nos. 1 to 4** are dismissed as not pressed.

27. We find that the issue involved in the present appeal remains the same as was there before us in appeal of the assessee for A.Y. 2005-06 in ITA No. 4252/Mum/2011. We had while disposing off the 'Ground of appeal No. 5' raised by the assessee in its appeal for A.Y.2005-06 in ITA No. 4252/Mum/2011, therein concluded, that the provision for leave encashment being in

the nature of an ascertained liability was to be reduced while computing the 'book profit' under Sec.115JB of the Act. As the facts and the issue involved in context of the present issue remains the same as were there before us in the appeal of the assessee for A.Y. 2005-06 in ITA No. 4252/Mum/2011 in Ground of appeal No. 5, therefore, our order therein passed shall apply *mutatis mutandis* for the disposal of the same. The **Ground of appeal No. 5** is allowed in terms of our aforesaid observations.

28. Also, the order of the CIT(A) has been assailed before us, for the reason, that he had erred in concluding that the provision for wealth tax was to be added while computing the 'book profit' under Sec. 115JB of the Act. We find that the issue involved in the present appeal had been adjudicated by us while disposing off the 'Ground of appeal No. 7' in the appeal of the assessee for A.Y. 2005-06 in ITA No. 4252/Mum/2011. In our aforesaid order, we had after drawing support from the order of the **ITAT, Kolkata, Special Bench** in the case of **JCIT Vs. Usha Martin Industries Ltd. (2007) 104 ITD 249 (SB)**, had therein observed that the provision for wealth tax cannot be added while computing the 'book profit' under Sec.115JB of the Act. As the issue involved in the present appeal remains the same as was there before us in the assesses appeal for A.Y. 2005-06 in ITA No.4252/Mum/2011, therefore, our observations and the view therein taken shall apply *mutatis mutandis* for the purpose of disposal of the present issue. The **Ground of appeal No. 6** is allowed in terms of our aforesaid observations.

29. The **Ground of appeal No. 7** being general in nature is dismissed as not pressed. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

30. Resultantly, the appeals of the assessee viz. (i).A.Y 2005-06 [ITA No. 4252/Mum/2011]; (ii). A.Y.2006-07 [ITA No.4253/Mum/2011]; and (iii). A.Y 2007-08 [ITA No.4254/Mum/2011] are allowed in terms of our aforesaid observations. The appeal filed by the revenue for A.Y. 2005-06 [ITA No. 4573/Mum/2011] is dismissed.

Order pronounced in the open court on 23.12.2019

Sd/-	Sd/-
(Pramod Kumar)	(Ravish Sood)
VICE PRESIDENT	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 23.12.2019

PS. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**