

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
INCOM TAX APPELLATE TRIBUNAL SURAT-BENCH-SURAT
श्रीसी.एम.गर्ग,न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SHRI C .M. GARG,JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER

ITA Nos.1485 &1486/Ahd/2014/SRT
Assessment Years: 2007-08 & 2008-09

Dy. Commissioner of Income-tax, Circle-1, Surat.	Vs.	M/s.Ashok Finstock Pvt. Ltd., B-1, 402, Rudraksh Avenue, B/h, Nova Restaurant, Puna Kumbharia Road, Surat – 395 010. PAN: AADCA 7725J
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	None
राजस्वकीओरसे /Respondent by	Shri R.P.Rastogi, Sr. DR
सुनवाईकीतारीख/ Date of hearing:	21.03.2018
उद्घोषणाकीतारीख/Pronouncement date	23.03.2018

ORDER

PER O. P. MEENA, AM

These two appeals filed by the Revenue are directed against the common order of Id.Commissioner of Income Tax (appeals)-1, Surat dated 21.02.2014 for the assessment year 2007-08 and 2008-09.

2. Grounds of appeal for both the assessment year are common, hence, same are being considered together.
3. The sole ground of appeal states whether the CIT(A) was justified in allowing rebate u/s.88(e) of the Income Tax Act in calculating book profit u/s.115JB of the income Tax Act. The showed facts are that the assessment was made u/s.143(3) r.w.s. 147 of the Act for the assessment year 2007-08 on 31.10.2012 determining the total income at Rs.40,89,056/- u/s.115JB of the Income Tax Act.

4. According to the Assessing Officer, as per provisions of section 115JB in the case of a Company if income tax payable on the total income as computed is less than 10% of its book profit, such book profit shall be deemed to be the total income of the assessee and tax will be payable on such deemed income. The comparison between tax payable was to be made at the net amount of tax payable and not after deducting rebate claim. It is also supported by section 87(i), according to which the amount of Income Tax Act less deductions specified in sections of Chapter-VIII section 115JB comes after section 88 and hence rebate u/s.80(e)(e) available under normal provisions of the Act will not be available against the tax payable u/s.115JB. Further, though STT is not an allowable expense as per normal provisions of the Act, however, same cannot be added to book profit u/s.115JB as there is no such provision in that. Thus, STT is a allowable expenditure for the purpose of section 115JB. But STT is allowable either as expenditure or as rebate, but both cannot be allowed at the same time. Hence, the book profit of the assessee is taxed @ 10% as the normal income is less than the book profit.

5. Being aggrieved, the assessee filed an appeal before CIT(A). The CIT(A) after considering the submission of the assessee has held as under:

"5. I have considered the facts of the case and submissions of appellant. The AO, relying on the provisions of section 87(i), has opined that the rebate u/s.88E is available under the normal provisions of the Act only, not against the tax payable u/s.115JB. As per him, STT is an allowable expenditure for the purpose of section 115JB but the same is not allowable as rebate. However, on the same issue, Hon'ble High Court of Delhi in the case CIT V/s. MBL & Co. Ltd. Reported in 259 CTR 505 has taken a view as under:-

"There is no reason why the remission in tax which is available u/s.88E to an assessee be no available on tax as computed under the MAT scheme as both sec. 115JB as well as other provisions of the Act have been enacted to provide the machinery for computing total income of an assessee which is exigible to income-tax. The rebate u/s.8E provides for certain rebates available on the tax payable by an assessee. There would be no rationale to limit the plain words of sec. 88E and hold that the rebate in payment of the tax is only applicable to tax as determined under the normal provisions of the Act and not available with respect to MAT as computed u/s.115JB. The purpose of sec. 88E is to grant an assessee, to a limited extent, credit in tax on account of securities transaction tax already borne by him in respect of the business carried out by him in dealing in

securities. This rebate would be equally applicable to tax as computed u/s.115JB as under the normal provisions of the Act. Accordingly, the Tribunal was correct in holding that the provisions of sec. 87 and 88E apply to the total income computed u/s.115JB and the assessee would be entitled to a deduction to the extent of the securities transaction tax borne by it during the course of business in the relevant previous year."

Similar view has been taken by Hon'ble High Court of Karnataka in the case CIT V/s. Horizon Capital Ltd. Reported in 245 CTR 601 wherein it has been held that rebate u/s.88E in respect of payment of STT is to be allowed even if total income is assessed u/s.115JB of the Act. It is further held that when the total income is assessed and tax chargeable is computed, it is from that tax which is chargeable, the tax paid u/s.88E is given deduction by way of rebate u/s.87 of the Act. Therefore, the contention that this benefit is not available to the assessee whose total income is assessed u/s.115JB has no substance.

In view of above judgments of Hon'ble courts, it can be concluded that the AO is not justified in withdrawing the rebate u/s.88E of the Act even if income of appellant is computed u/s.115JB of the Act. Thus, in the case of appellant, his income is computed whether as per regular provisions of the Act or under the provisions of section 115JB, rebate u/s.88E is allowable to him. I, therefore, direct the AO to allow the rebate u/s.88E even if he has computed the income u/s.115JB of the Act. The grounds taken by appellant are allowed."

6. Being aggrieved, the Revenue has failed this appeal before us. The Id.Sr.DR submitted that the comparison between the tax payable was to be made at the such of net amount of tax payable and not after deducting rebate claim which is also supported by the section 87(i) according to such, the amount of Income Tax payable on the total income of the assessee is the amount of Income Tax less deduction specified in Chapter – VIII.

7. However, on a query raised by the Bench, the Id. Sr.DR could not controvert that how the decision of Hon'ble Karnataka High Court in the case of CIT vs. Horizon Capital Ltd. and CIT vs. MBL &Co of Delhi High Court (supra) are not applicable.

8. We have considered the facts and perused the material on record, we find that the issue is squarely covered by the decision of Hon'ble Karnataka High Court in the case of CIT vs. Horizon Capital Ltd. 245 CTR 601 (KARN). The

Hon'ble Delhi High Court in the case of CIT vs. MBL & Co. Ltd 259 CTR 505 (Del)

which wherein it was held as under:

"There is no reason why the remission in tax which is available u/s.88E to an assessee be no available on tax as computed under the MAT scheme as both sec. 115JB as well as other provisions of the Act have been enacted to provide the machinery for computing total income of an assessee which is exigible to income-tax. The rebate u/s.88E provides for certain rebates available on the tax payable by an assessee. There would be no rationale to limit the plain words of sec. 88E and hold that the rebate in payment of the tax is only applicable to tax as determined under the normal provisions of the Act and not available with respect to MAT as computed u/s.115JB. The purpose of sec. 88E is to grant an assessee, to a limited extent, credit in tax on account of securities transaction tax already borne by him in respect of the business carried out by him in dealing in securities. This rebate would be equally applicable to tax as computed u/s.115JB as under the normal provisions of the Act. Accordingly, the Tribunal was correct in holding that the provisions of sec. 87 and 88E apply to the total income computed u/s.115JB and the assessee would be entitled to a deduction to the extent of the securities transaction tax borne by it during the course of business in the relevant previous year."

9. Therefore, in the light of aforesaid decision, we are of the considered view that rebate u/s.80(E) in respect of payment of STT is to be allowed even if total income is assessed u/s.115JB of the Act.

10. In the light of the above judicial pronouncements, we do not find any reason to interfere with the findings recorded by the CIT(A), accordingly, same is upheld, Ex-consequenti this ground of appeal of the Revenue are dismissed for both the assessment year under appeal.

11. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open Court on 23-03-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

Sd/-

(ओ.पी.मीना/ O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 23rd March, 2018

S.Gangadhara Rao

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

// true copy //

Assistant Registrar, Surat