

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 679/MUM/2011  
Assessment Year: 2004-05**

Mukand Limited, Bajaj Bhavan, 3 <sup>rd</sup> Floor, 226 Nariman Point, Mumbai - 400021 PAN: AAACM5008R	<b>Vs.</b>	The Income Tax Officer 3(2)(2), Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Gajendra Jain (AR)  
Revenue by : Ms. Nilu Jaggi (DR)

Date of Hearing: 13/12/2019  
Date of Pronouncement: 15/01/2020

**ORDER**

**PER RAM LAL NEGI, JM**

The captioned appeal was decided by the 'B' Bench of the Mumbai Tribunal vide order dated 05.12.2018. The assessee had filed the said appeal against the order dated 04.11.2010 passed by the Ld. CIT (A)-7, Mumbai pertaining to the assessment year 2004-05 by raising the following effective grounds.

*"1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not excluding waiver of principal and interest under one time settlement with lenders amounting to Rs. 1,623,033,516/- while computing the book profit under section 115JB of the Act.*

*2. On the facts and in the circumstances of the case and in law, the Commissioner of Income tax (Appeals) erred in rejecting the claim of the appellant in respect of deduction of interest paid to the income tax department amounting to Rs. 6,223,304.*

3. *On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not granting deduction of an amount of Rs. 111,810,595/- in respect of prior period adjustment (net) while computing the book profits under section 115JB of the Act.*

2. Vide order dated 05.12.2018, the coordinate Bench decided Ground No. 1 and 2 in favour of the assessee and decided the Ground No. 3 against assessee. The assessee filed miscellaneous application for rectification of mistake apparent in the said order on the ground that during the course of arguments the assessee relied upon the various judicial pronouncement, however, the Tribunal did not consider the same while deciding ground No 3 of the appeal. As per the Ld. counsel the assessee relied upon the following cases to substantiate its contention:

1. *CIT vs. M/s Bajaj Hindustan Ltd. ITA No. 198 of 2009 dated 15.04.2009 (Bom)*
2. *Gulf Oil Corporation Ltd. vs. ACIT 2008 111 ITD 124 (Hyd);*
3. *CIT vs. Khetan Chemicals Fertilizers Ltd. 2019 221 CTR 501 (Del)*
4. *TamilNadu Cements Corporation Ltd. JCIT 2012 349 ITR 58 (Mad)*
5. *DCIT vs. Farmson Pharmaceuticals Gujarat Ltd..*

3. The coordinate Bench after hearing both the sides allowed the MA and recalled the order dated 05.12.2018 for the limited purpose of re-adjudicating ground No. 3 after considering two judgments i.e. *CIT vs. M/s Bajaj Hindustan Ltd. ITA No. 198 of 2009 dated 15.04.2009 (Bom)* *Gulf Oil Corporation Ltd. vs. ACIT 2008 111 ITD 124 (Hyd)* relied upon by the assessee during the course of arguments. Accordingly, this case was fixed for hearing afresh on ground No 3 of the appeal on 13. 12.2019.

4. Before us, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has wrongly confirmed the action of not granting the deduction of prior period adjustments amounting to Rs. 11,18,10,595/- while computing the book profits u/s 115JB of the Act. The Ld counsel submitted that the starting point of computation of book profit under section 115JB should be the as per the profit and loss account after making all provisions, transfer to various reserves,

appropriations and transfers from various reserves. The Ld. further submitted that since no adjustment/modification has been prescribed for prior period adjustments, the Ld. CIT(A) ought to have set aside the AO's action of not allowing deduction of the prior period adjustments amounting to Rs. 11,18,10,595/-. The Ld. counsel further pointed out that this issue is covered in favour of the assessee by the judgment of the Hon'ble Bombay High Court, in the case of *CIT vs. Bajaj Hindustan Ltd* (supra) and the decision of the ITAT Hyderabad in the case of *Gulf Oil Corporation Ltd. vs. ACIT* (supra). Since, the findings of the Ld. CIT (A) are not in accordance with the law laid down by the Hon'ble High Court of Bombay, the same is liable to set aside.

5. On the other hand, the Ld. Departmental Representative (DR) strongly supported the concurrent findings of the authorities below.

6. We have heard the rival submissions of the parties and perused the material on record in the light of the rival contentions. As pointed out by the Ld. counsel, this issue is covered in favour of the assessee by the order passed by the ITAT, Hyderabad rendered in the case of *Gulf Oil Corporation Ltd. vs. ACIT* (supra). The operative part of the order reads as under:-

*"6. We have duly considered the rival submissions and material on record. Sub-s. (2) of s. 115JB provides that every assessee company shall prepare its P&L a/c in accordance with the provisions of Part II and Part III of Sch. VI to the Companies Act 1956. The said Sch. VI does not make any distinction between P & L a/c and P&L appropriation account. In fact, the Schedule does not speak of the appropriation account at all. It is only as a matter of presentation that most of the companies segregate to reflect as to what has been appropriated where out of the profits earned by them. Otherwise, sub-cl. (a) and (b) of cl. (viii) of Note II in para 3 of Part II of Sch. VI specifically provide that the aggregate amounts set aside or proposed to be set aside to reserves should be distinctly shown in the P&L a/c. Similarly, sub-cl. (b) and sub-cl. (a) and (b) of cls. (xii) and (xiii) respectively in Note II of Part II of Sch. VI provide that profits or losses in respect of transactions not usually undertaken or undertaken in exceptional circumstances or which are of non-recurring nature should be shown in the P&L a/c. The aggregate amount of*

*dividends paid and proposed is also to be shown in the P&L a/c. The point we are trying to drive home is that all the items which are generally classified in the appropriation account are in fact to be included in the P&L a/c prepared as per Parts II and III of Sch. VI. Therefore, we are in agreement with the argument of the learned counsel that the starting point for computation of book profits for the purposes of s. 115JB should be Rs. 660.81 lakhs which is the final balance in the P&L a/c carried to balance sheet. It may same has to be increased by the items specified in cls. (a) to (f) and has to be reduced by the items specified in cls. (i) to (vii) given in the Explanation. No other adjustment is permitted by law and also as laid down by the Supreme Court in the case of Apollo Tyres (supra). None of the clauses given in the Explanation provides for the increase or decrease of the book profits by extraordinary items. The reference to AS-5 by the learned Departmental Representative does not in any manner advance the case of the Revenue. It merely says that prior period and extraordinary items should be separately disclosed along with their nature so that their impact on the operating results can be perceived. It does not say that they are not part of the P&L ac./ Similarly, the Guidance Note issued by the ICAI also does not help the Revenue as it merely says that sometimes, appropriation account is included as a separate section of the P&L ac./ But, as we have seen earlier, Part II and III of Sch. VI to the Companies Act do not speak of appropriation account at all. In the light of this discussion, we are convinced that it was in accordance with law for the assessee to have taken Rs. 978.55 lakhs as the base figure to compute the book profits for the purposes of s. 115JB.”*

7. In the case of *CIT vs. M/s Bajaj Hindustan Ltd.* (supra), the question before the Hon'ble Bombay High Court was whether in the facts and circumstances of the case and in law the ITAT was right in allowing deduction in respect of prior period expenses in computation of Book profit for the purpose of section 115JB? The Hon'ble Court decline to interfere with the findings of the ITAT, holding that since the issue is covered by the judgment of the Hon'ble Supreme Court in the case of *Apollo Tyres Ltd. vs. CIT* reported in

255 ITR 273, it cannot be hardly said to be substantial question of law warranting adjudication.

8. As pointed out by the Ld. counsel, this issue is covered in favour of the assessee by the decision of the ITAT, Hyderabad rendered in the case of *Gulf Oil Corporation Ltd. vs. ACIT* (supra). Further, the Hon'ble Bombay High Court has upheld the findings of the Tribunal allowing deduction in respect of prior period expenses in computation of Book profit for the purpose of section 115JB in the case of *CIT vs. M/s Bajaj Hindustan Ltd.* (supra). Since the findings of the Ld CIT(A) are not in accordance with the decision of the Hyderabad ITAT and the judgment of the Hon'ble High Court in the cases discussed above, we allow this ground of appeal of the assessee and direct the AO to allow deduction of an amount of Rs. 111,810,595/- in respect of prior period adjustment (net) while computing the book profits under section 115JB of the Act.

In the result, ground No 3 of the appeal filed by the assessee for assessment year 2004-2005 is allowed.

This order may be read as part of the order dated 05.12.2018 passed by the 'B' Bench of the Tribunal.

Order pronounced in the open court on 15<sup>th</sup> January, 2020.

Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 15/01/2020

Alindra, PS

**आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**