

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

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 7170 to 7173/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2007-08 to 2009-10 & 2011-12)

Global Transgenes Ltd. Nath House, Nath Road, Aurangabad, Maharashtra-431005	बनाम/ Vs.	ITO 1(1)(4), Mumbai 400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AABCG2177N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Himanshu Gandhi, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ Date of Hearing	:	20.01.2020
घोषणाकीतारीख / Date of Pronouncement	:	31.01.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present four (4) Appeals have been filed by the
assessee against the order of Commissioner of Income Tax

(Appeals)-2, Mumbai, in short 'Ld. CIT(A)' dated 27.09.2018 for AY 2007-08 to 2009-10 & 2011-12 respectively.

2. Since the issues raised in all the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 7170Mum/2018 for AY 2007-08 filed by the assessee.

3. The brief facts of the case are, the current assessment in this case was completed u/s 143(3) of the Act on 31.12.09 assessing the total income of Rs. 77,190/- as against returned income of Rs. NIL. It is relevant to note at this point that the assessment for AY 2010-11 was taken up for scrutiny and in that assessment year, AO noticed that assessee has claimed deduction u/s 80IB of the Act in the regular income tax calculation and the same was adjusted in the book profit u/s 115JB also. In that AY, AO brought to the tax book profit u/s 115JB and calculated the charge of interest u/s 234B and 234C by passing an order in that effect u/s 143(3) of the Act dated 15.03.13.

3. Consequent to the above orders for AY 2010-11, AO rectified the order u/s 154 of the Act for AYs 2007-08 to 2009-10 & 2011-12. Before passing the order u/s 154, AO issued notice u/s 154 on 19.04.13 and duly served on the assessee. In response, AR of the assessee submitted that assessee filed an appeal before Ld. CIT(A) against the order for AY 2010-11 and requested the AO to keep rectification order u/s 154 in abeyance until respective order from Ld. CIT(A) are not received. The AO rejected the contentions of the assessee and passed rectification order on 01.07.13. However, we notice that assessee waited for the outcome of the appeal filed before Ld. CIT(A) for the AY 2010-11 and Ld. CIT(A) passed the respective orders on 16.03.17 rejecting the contentions of the assessee with regard to section 115JB. However, Ld. CIT(A) gave the relief on charging of interest u/s 234B and 234C of the Act with the finding that when the assessee's income was disputed by invoking provisions of sections 115JB, interest u/s 234B and 234C would not be leviable.

4. Since, assessee filed appeal before Ld. CIT(A) against the order u/s 154 of the Act on 16.05.17 with a delay of 2 & ½ years to 3 & ½ years and Ld. CIT(A) after considering the submission of the assessee, refused to condone the delay by taking enormous delay in filing the appeal.

5. Aggrieved with the above, assessee is in appeal before us raising following grounds of appeal:-

1. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that appeal filing get delayed due to wrong advise and taking other remedial option. Therefore, we request your honour to kindly condone the delay in filing before CIT(A).

2. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that provision of section 154 can be apply on mistake apparent from record and not on debatable issue, whereas the issue involve in rectification under dispute is related to overriding effect of section 80IB over 115JB and levy of MAT on deduction u/s 80IB are highly debatable issued.

Hence, proceeding u/s 154 cannot for issue in dispute.

3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming levy of minimum alternate tax (MAT) under section 115JB of the Income-Tax Act, 1961 (the Act) for the AY 2007-08 amount of Rs. 17,43,515/-.

4. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not correctly appreciating the provisions of section 115JB(5), according to which, save as otherwise provided in that section, all other provisions of the Act, shall apply to every assessee, being a company and accordingly, the amount of Rs.1,51,71,038/-, being deduction allowable under section 80-IB(8A) of the Act, was required to be reduced from the net profit for the purpose of computation of book profit.

5. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to appreciate that even as per Circular No. 13 of 2001, dt.9.11.2001, it has been clearly pointed out that in view of section 115JB(5), all the provisions of the Act, including the provision relating to charge, definitions, recoveries, payment,

assessment, etc, would apply in respect of the provisions of section 115JB of the Act.

Without Prejudice to earlier ground no.2 to 5, regarding charge of interest under sections 234B and 234C

6. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming levy of interest under sections 234B (Rs. 10,50,182/-) and 234C (Rs. 82,865/-)of the Act, when the tax is computed under MAT provision, because appellant is not liable for payment of MAT in advance tax form.

7. The appellant craves leave to add, alter, amend, modify or delete any or all the aforesaid grounds of appeal.

6. Before us Ld. AR on behalf of the assessee submitted that due to improper advice and relying heavily on the outcome of appeal for AY 2010-11, assessee failed to file the appeal on time before Ld. CIT(A). Even though assessee has merit in its favour and assessee has filed the appeals for all the assessment years with necessary documents. Further, he submitted that the order passed by the AO u/s 154 is debatable issue since various courts

have held in favour of the assessee that deduction u/s 80IB can be reduced from the book profit u/s 115JB. For that proposition, he relied on the decision of Coordinated Bench of ITAT in the case of **Neha Home Builders Pvt. Ltd. Vrs. CIT (2018) 92 taxmann.com 102 (Mum-Trib)**. He further submitted that interest cannot be charged on the tax due on 115JB calculation. He further submitted that Ld. CIT(A) has refused to condone the delay and he prayed that this matter may be remitted back to the file of Ld. CIT(A) for proper adjudication.

7. On the other hand, Ld DR relied on the order passed by the revenue authorities and submitted that the delay in filing the appeal before Ld. CIT(A) is enormous and cannot be condoned.

8. Considered the rival submissions and material placed on record. We notice from the record that AO completed the assessment for AYs 2007-08 to 2009-10 & 2011-12, however in AY 2010-11, he found that assessee has not offered to tax based on provision of Sec. 115JB, even though assessee has taxable book Profit. Since it was in bonafide belief that assessee is eligible to claim

deduction u/s 80IB against the book profit and filed an appeal before Ld. CIT(A) for the AY 2010-11 and believed that it will get favourable decision. However, the issue was debatable and assessee was in bonafide belief that the rectification u/s 154 of the Act cannot be made. However, AO has passed the rectification order u/s 154 of the Act without following the submission of assessee. Assessee was in bonafide belief that Ld. CIT(A) will pass favourable order and with improper guidance from its counsels, failed to file the appeal before Ld. CIT(A) for all those AYs on time.

9. Considering the overall situations and assessee has a debatable issue on merits and for the sake of justice, we are remitting this issue back to the file of Ld. CIT(A) to condone the delay in filing the appeal for all those assessment years and decide the issue on merits on issue of Sec 115JB as well as chargeability of interest u/s 234B and 234C. Accordingly grounds raised by

the assessee for this assessment year is **allowed for statistical purposes.**

10 In view of the above, since the grounds of other appeals are similar to this assessment year, therefore the grounds of other appeals are also **allowed for statistical purposes.**

11. In the net result, all the appeals filed by the assessee are **allowed for statistical purposes.**

Order pronounced in the open court on 31st Jan 2020.

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai;दिनांकDated : Sr.PS. Dhananjay	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 31.01.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai