

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

<b>ITA No.</b>	<b>A.Y.</b>	<b>APPELLANT</b>	<b>RESPONDENT</b>
674/Hyd/2016	2011-12	Electronics Corporation of India Ltd., HYDERABAD	Dy. Commissioner of Income Tax, Circle-2(2), HYDERABAD
957/Hyd/2018	2011-12	[PAN: AAACE4809L]	Asst. Commissioner of Income Tax, Circle-17(1), HYDERABAD

For Assessee : Shri C.Subramanyam, AR  
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 02-03-2020

Date of Pronouncement : 22-07-2020

**ORDER**

**PER A. MOHAN ALANKAMONY, A.M. :**

The assessee has filed these appeals against the order passed by the Ld.CIT U/s. 263 of the Act dated 10/03/2016 and the Order passed by the Ld.CIT(A) in ITA No. 0465/2016-17/CIT(A)/5, dated 13/3/2018 U/s 250(6) r.w.s 143(3) & 147 of the Act consequent to the order passed by the Ld. CIT U/s. 263 of the Act dated 10/3/2016.

2. For the sake of convenience, initially we hereby take up for consideration the order passed by the Ld. CIT U/s. 263 of the Act dated 10/03/2016. The assessee has raised six grounds in its appeal against the order passed by the Ld. CIT U/s. 263 of the Act, however, the crux of the issue is that:-

*“the Ld. CIT has erred in invoking his powers U/s. 263 of the Act on the premises that the Ld. AO has passed order U/s. 143(3) of the Act dated 7/3/2014 as it is erroneous in so far as it is prejudicial to the interest of the Revenue because the order was passed without making inquiries or verification with respect to the claim of deduction towards gratuity of Rs.107,19,50,486/- which is not debited to the P & L Account of the assessee and the amount debited towards provision for warranty of Rs.3,31,14,993/-, while arriving at the book profit of the assessee company under the provisions of section 115JB of the Act”.*

3. Brief facts of the case are that the assessee is a Central Public Sector Undertaking engaged in manufacturing and sale of Electronic Components. Originally the Ld AO had completed the assessment of the assessee U/s. 143(3) of the Act on 27/3/2011 wherein the Ld. AO had made certain additions. Thereafter, the Ld CIT opined that the order passed by the Ld. AO is erroneous in so far as it is prejudicial to the interests of the Revenue because he has passed the order without making enquiries or verification with respect to the claim of deduction towards gratuity for Rs. 107,19,50,486/- which was not debited to P & L Account of the assessee company and also claimed deduction towards provision for warranty of Rs. 3,31,14,993/- while arriving at the book profit U/s. 115JB of the Act.

4. With respect to the claim of deduction towards expenditure incurred in relation to gratuity of Rs. 107,19,50,486/- which was not debited to P & L Account of the assessee, the Ld. AR had made the following submission before the Ld. CIT :

(i) The assessee company was covered under the payment of Gratuity Act, 1972. The Act was amended during the previous year 2010-11 wherein the gratuity eligibility to its employees was enhanced from Rs. 5 lakhs to Rs. 10 lakhs.

(ii) Since the assessee company is also covered by the provisions of Companies Act, 1956, the accounting standards issued by the Institute of Chartered Accountants of India is mandatory while drawing the statement of affairs of the assessee company.

(iii) The Accounting Standard-15 dealing with provision for gratuity mandates the assessee company to provide for the liability arising out of gratuity based on actuarial valuation in the Balance Sheet as well as the Profit & Loss Account of the Company.

(iv) As per the actuarial valuation, the assessee company had determined the liability towards gratuity as Rs 133,99,37,863/- which is to be charged off in the P & L account during the relevant Assessment Year.

(v) However, the management of the assessee company was of the opinion that such huge liability cannot be absorbed in a single year and hence decided to write off only 20% of the amount of Rs.

133,99,37,863/- which works out to Rs. 26,79,87,573/- in the Balance Sheet and Profit & Loss statement of the Company. Thus, the amount of Rs. 107,19,50,290/- was omitted to be written off during the relevant assessment year which is in violation of the Companies Act.

(vi) However, the provisions of Companies Act flouted by the assessee company were qualified by the Statutory Auditors by stating that the assessee company had not provided for the balance gratuity liability of Rs. 107,19,50,290/- in the P & L Account.

(vii) Section 36(1)(v) r.w.s 43B of the Act allows deduction to the assessee Company towards the Statutory expenditure incurred on account of gratuity only on actual payment.

(viii) However, as far as the Companies Act is concerned the assessee is Statutorily bound to debit in its P & L Account the statutory liability incurred by it on account of gratuity even if such amount is not paid during the relevant Financial Year.

(ix) In order to compute the tax complying with the provisions of section 115JB of the Act, the assessee company had redrawn its statement of affairs in accordance with schedule-VI of the Companies Act, 1956 by debiting the balance amount of Rs. 107,19,50,290/- which was omitted.

(x) Since, there was no column provided in ITR-VI to reduce the profit before tax for this specific issue, the same was reflected in Item No.5(f) of Schedule-MAT and accordingly the book profit subjected to MAT became negative and there is no MAT liability for the relevant Assessment Year.

(xi) Reliance was placed on the decision of the case Malabar Industrial Co. Ltd., vs. CIT reported in 243 ITR 83 (SC) wherein the Hon'ble Apex Court held that the Commissioner has to be satisfied of twin conditions namely (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the Revenue, only then he can take recourse U/s. 263 of the Act.

5. With respect to the sum of Rs. 3,31,14,993/- debited towards provision for doubtful debts it was submitted by the Ld. AR that the same have to be added back as per clause-(i) to Explanation-1 of section 115JB of the Act. Hence, there is no error committed by the assessee in the return of income resulting in prejudicial to the interest of the Revenue.

For the above stated reasons, the Ld.AR submitted before the Ld. CIT that invoking of provisions of Section 263 of the Act is not warranted in the case of the assessee.

6. However, the Ld.CIT rejected the submission of the Ld.AR and observed as under:-

- (i) The Ld. AO has failed to compute the book profit / loss of the assessee U/s. 115JB of the Act and had only computed the income under the normal provisions of the IT Act.
- (ii) As per the provisions of the Act the Ld. AO has to ascertain the book profit of the assessee as per the Companies Act, 1956 and compared with the profit under the normal provisions of the Income Tax Act, 1961 and higher of the same has to be adopted for the purpose of computing tax under the provisions of section 115JB of the Act. Since, the book profit as per the provisions of Companies Act was not computed, such comparison was not possible.
- (iii) From the communication between the assessee and the Ld. AO during the course of scrutiny assessment proceedings, it was apparent that there was no discussion with respect to the book profit of the assessee.
- (iv) Even in the order sheet notings, no reference to book profit was mentioned.
- (v) The submission of the Ld. AR that he had offered explanation regarding the above issues does not have merits because those explanations were submitted within 15 days of filing of the return on line and not during the course of assessment proceedings.

(vi) The assessee itself had admitted that the provision made for doubtful debts amounting to Rs. 3,31,14,993/- ought to have been added back while computing the book profit.

(vii) Further, it was contended in the written submission that the provision for warranty of Rs. 7.56 Crs was ascertained liability and therefore need not be added back to arrive at the book profit.

6.1. With the above observation, the Ld.CIT (A) held that the order passed by the Ld. AO U/s. 143(3) of the Act dated 27/3/2014 is erroneous in so far as it is prejudicial to the interest of the Revenue and thereby invoked his powers U/s. 263 of the Act. Reliance was placed in the decision of the cases (i) *Gee Vee Enterprises vs. Addl. CIT* (1975) reported in 099 ITR 0375 (Del-HC), (ii) *CIT vs. Seshasayee Paper & Boards Ltd* (2000) 242 ITR 0490 (Mad-HC) and (iii) *Indian Textiles vs. CIT* (1986) reported in 157 ITR 0112 (Mad-HC).

7. Before us, the Ld.AR submitted that the assessee had recast its statement of affairs as per the provisions of the Companies Act because in the statement of affairs finalised by the assessee company there were certain deviations for better presentation of the balance sheet and Profit & Loss Account. Since the provisions of section 115JB of the Act mandates that the book profit of the assessee company shall be prepared in accordance with the provisions of the Companies Act the assessee company had redrafted its statement of affairs complying with the provisions of

the Companies Act by taking into account of the qualification made by the Statutory Auditors in their report. The Ld. AR further submitted that the above facts were brought to the notice of the Ld. AO immediately after filing of the return of income. During the course of scrutiny assessment proceedings, the Ld. AO after considering the same had passed orders. It was therefore argued that there was no error committed by the Ld. AO which is prejudicial to the interests of the Revenue. Hence it was pleaded that the order of the ld. CIT invoking the provisions of section 263 is erroneous and may be quashed. The Ld.DR on the other hand vehemently argued in support of the order of the Ld. CIT and prayed for sustaining the same.

8. We have heard the rival submissions and carefully perused the materials available on record. As pointed out by the Ld. AR it is apparent that the book profit of the assessee company has to be mandatorily drawn as per the provisions of the Companies Act. When the assessee has failed to do so, the Ld. AO has every right to compute the book profit of the assessee company as per the provisions of the Companies Act in order to arrive at the correct book profit of the assessee. The Ld. AR relied on the decision of the Mumbai Bench of the Tribunal in the case of M/s. Sumer Builders Private Limited vs. DCIT order dated 13/1/2012 in ITA No. 2512, 2513 & 2514/Mum/2009 wherein the above stated ratio was laid down. We find merit in the submission of the Ld. AR. In the case of the assessee the assessee itself has recast its P & L Account and Balance sheet in accordance with the provisions of the

Companies Act. Companies Act recognises the Accounting Standards issued by the Institute of Chartered Accountants of India which stipulates that the financial statements ought to be free from material misstatements and faithfully represent the financial performance and position of the entity. Therefore, all the material facts have to be taken into account in order to arrive at the correct profit earned by the entity during the relevant financial year. Hence, in the case of the assessee it had rightly redrawn the P & L Account disclosing the actual loss accrued to it during the relevant AY by way of making provision towards gratuity, bad debts and warranty which is in accordance with the provisions of the Companies Act. It is pertinent to mention that it is not a method adopted by the assessee to understate the book profit of the company in order to avoid tax as per the MAT provisions of the Act. In fact, it depicts the correct state of affairs of the assessee company based on the qualified audit report of the Statutory Auditors of the assessee company. Since these facts were brought to the notice of the Ld. AO subsequent to the filing of the return of income it appears that the Ld. AO had accepted the same while passing orders U/s. 143(3) of the Act. This action of the Ld. AO has not resulted in any error in so far as it is prejudicial to the interest of the Revenue. Therefore, we do not find any merit in the order of the Ld. CIT for invoking his powers U/s. 263 of the Act. Hence, we hereby quash the orders passed by the Ld. CIT invoking his powers U/s.263 of the Act.

8.1. Since the order passed by the Ld.CIT U/s. 263 is quashed by our order herein above, the consequential order passed by the Ld. AO U/s.143(3) r.w.s 263 of the Act dated 8/12/2016 which appears to be Orders passed under the influence of the Order passed by the Ld.CIT U/s.263 of the Act, and the subsequent order of the Ld. CIT (A) passed U/s.250(6), r.w.s 263, 147 & 143(3) of the Act dated 13/3/2018, does not survive. Accordingly, the appeal of the assessee in ITA No. 957/Hyd/2018 has become infructuous.

9. Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal, which is though against the usual norms, we find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, we have relied on the decision of the Mumbai Bench of the Tribunal in the case of DCIT Vs. JSW Ltd., in ITA Nos.6264/M/2018 and 6103/M/2018 for AY.2013-14, order dated 14<sup>th</sup> May, 2020.

10. In the result, appeal of the assessee in ITA No. 674/Hyd/2016 is allowed and the appeal of the assessee in ITA No. 957/Hyd/2018 is dismissed as infructuous.

*Order pronounced in the open court on 22<sup>nd</sup> July, 2020*

Sd/-  
**( P. MADHAVI DEVI )**  
**JUDICIAL MEMBER**

Sd/-  
**( A. MOHAN ALANKAMONY )**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 22<sup>nd</sup> July, 2020

Copy to :

1. *Electronics Corporation of India Ltd., ECIL Post, Moula Ali, Hyderabad.*
2. *Electronics Corporation of India Ltd., Sr.DGM(Accounts), Finance and Accounts Group, Administrative Building, ECIL Post, Cherlapally, Hyderabad.*
3. *Dy.Commissioner of Income Tax, Circle-2(2), Hyderabad.*
4. *Asst.Commissioner of Income Tax, Circle-17(1), Hyderabad.*
5. *The CIT(Appeals)-5, Hyderabad.*
6. *The Pr.CIT-5, Hyderabad.*
7. *D.R. ITAT, Hyderabad.*
8. *Guard File.*