

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

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3643/MUM/2017  
Assessment Year: 2011-12**

M/s Tarz Distribution India Private Limited, 201, 2 <sup>nd</sup> Floor, Ackruti Star, Central Road, MIDC, Andheri (East), Mumbai - 400093 PAN: AACCT7626A	<b>Vs.</b>	The Deputy Commissioner of Income Tax, Range 8(3), Income Tax Office, Maharshi Karve Road, New Marine Lines, Churchgate, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Naresh Kumar/Shreya Sejpal (ARs)

Revenue by : Shri V. Jenardhanan/Sunil Despande  
(DRs)

Date of Hearing: 11/12/2020  
Date of Pronouncement: 11/12/2020

**ORDER**

**PER RAM LAL NEGI, JM**

The Appellant/assessee has filed the present appeal against the order dated 06.02.2017 passed by the Commissioner of Income Tax (Appeals)-18 (for short 'the CIT(A), Mumbai, for the assessment year 2011-12, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. "Ground No. 1- Erroneous addition for stock written off of Rs. 26,176,959 under Section 115JB of the Income Tax Act, 1961 [the Act']

- 1.1 *On the facts and circumstances of the case and in law, the learned Deputy Commissioner of Income Tax ('DCIT') erred in concluding and the learned Commissioner of Income Tax (Appeal) ['CIT (A)'] erred in confirming the DCIT's conclusion that the Appellant has claimed double deduction of provision for stock obsolescence of Rs.26,176,959 i.e. once by debiting the same to the profit and loss account and second by reducing the value of the closing stock by an equivalent amount.*
- 1.2 *On the facts and circumstances of the case and in law the learned DCIT and CIT (A) erred in not considering the fact that such provision has been disallowed by the Appellant while computing the total income for the year under consideration and any further disallowance would lead to double disallowance.*
- 1.3 *On the facts and circumstances of the case and in law, the learned CIT (A) erred in concluding that the provision for stock obsolescence of Rs.26,176,959 is a mere book entry to reduce book profits under Section 1 15JB of the Act.*
- 1.4 *On the facts and in the circumstances of the case and in the law, the learned CIT has erred in contending that reducing the stock and making the provision in the Profit and Loss account is a circuitous route to avoid MAT liability without appreciating the fact that such provision has been duly disallowed by the Appellant while computing the liability under section 1 ISJB of the Act for the year under consideration and thus the provision does not impact the MAT liability in any manner.*
- 1.5 *On the facts and in the circumstances of the case and in the law the learned CIT (A) erred in failing to give effect to the mistake apparent from record as highlighted by the Appellant vide their rectification application dated 12 April 2017.*
- 1.6 *On the facts and circumstances of the case and in law, the learned CIT (A) erred in ignoring the fact that the learned DCIT had considered the disallowance relating to provision for stock obsolescence amounting to Rs.26,176,959 for the purpose of assessing the liability under normal provisions of the Act and no reference has been made by the learned DCIT to the computation of liability under Section 1 15JB of the Act. The learned CIT (A) erred in confirming the disallowance under Section 1 15JB of the Act whereas the learned DCIT had assessed such disallowance only under the normal*

*provisions of the Act.*

- 1.7 *The Appellant prays that the learned CIT (A)'s action of disallowance of Rs.26,176,959 under Section 15JB of the Act and the learned DCIT's action of disallowance of the same amount under the normal provisions of the Act is erroneous, unwarranted and be deleted.*
2. *Ground 2 - Addition on account of amounts not recoverable written off of Rs. 616,624*
  - 2.1 *On the facts and circumstances of the case and in law, the learned DCIT erred in disallowing and the learned CIT (A) erred in confirming the disallowance amounting to Rs.616,624 on account of amount not recoverable written off in the Profit and Loss account which constituted of security deposit of Rs.399,981 and employee dues amounting to Rs. 216,643.*
  - 2.2 *On the facts and circumstances of the case and in law, the learned CIT (A) erred in disallowing such expense alleging that the security deposit written off as not recoverable of Rs.399,981 was never offered as income in any earlier year and upholding the DCIT's contention that such expense did not fulfill the conditions prescribed for claiming bad debts. Also, the learned CIT (A) erred in upholding the disallowance of employee dues of Rs. 216,643 without providing any justification for the same.*
  - 2.3 *On the facts and circumstances of the case and in law the learned CIT (A) failed to appreciate the fact that such amount does not constitute profits and gains of any business or profession within the meaning of Section 28 and accordingly, cannot be offered as income.*
  - 2.4 *The Appellant prays that the amounts not recoverable and written off amounting to Rs. 616,624 be considered as business expenditure expended wholly and exclusively for the purpose of business under Section 37(1) of the Act and its disallowance be treated as erroneous, unwarranted and be deleted.*
3. *Ground 3 - Disallowance of prior period rent of Rs. 27,06,750*
  - 3.1 *On the facts and circumstances of the case and in law, the learned DCIT erred in disallowing the amount of Rs.27,06,750 considering the same as prior period rent.*

- 3.2 *On the facts and circumstances of the case and in law, the learned CIT (A) erred in confirming the disallowance by considering the same as a means to reduce the book profit under Section 115JB of the Act.*
- 3.3 *On the facts and circumstances of the case and in law, the learned DCIT and CIT (A) have failed to appreciate the fact that the liability of Rs.27,06,750 has been derived and crystallized in the period under consideration i.e. AY 2011-12 and that the said expenditure is revenue in nature and accordingly, should be allowed as business expenditure for AY 2011-12.*
- 3.4 *On the facts and circumstances of the case and in law, the learned DCIT and CIT(A) failed to appreciate the well settled principal that deduction for expenses can be claimed only in the year in which the liability was determined and crystalized.*
- 3.5 *The Appellant prays that CIT (A)'s contention of treating the amount paid of Rs.27,06,750 as a prior period expense claimed to reduce the book profits under Section 115JB of the Act is erroneous, unwarranted and be deleted.*
- 3.6 *Without prejudice to above, if the said amount is not allowed during the period under consideration, the Appellant requests the same be allowed as a deduction in the previous year i.e. Financial Year 2009-10 (the year of which the expense pertains).*
4. *Ground No. 4 - On the facts and under the circumstances of the case, the DCIT has erred both in law as well as on facts in initiating penalty proceedings under Section 271(1)(c) of the Act.”*

3. At the outset, the Ld. counsel for the appellant/assessee submitted that assessee has opted to settle the dispute under Vivad se Vishwas Act, 2020, therefore the appeal may be kept in abeyance.

4. The Ld. departmental representative did not oppose the aforesaid submissions made by the Ld. counsel. In the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT, TCA No 372 of 2020*, the Hon'ble Madras High Court has dismissed the appeal of the assessee as withdrawn in which the counsel had made the similar submissions before the Hon'ble Court. The observations of the Hon'ble High Court are as under:-

- “3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme (‘VVS Scheme’ for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No. I.
4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17<sup>th</sup> March 2020 and published in the Gazette of India on 17<sup>th</sup> March 2020.
5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) “disputed tax” has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.
6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.

8. In the light of the above, We direct the appellant / assessee to file the Form No.I on or before 20.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.”

5. In the light of the said judgment, the Ld. counsel further submitted that the present appeal may be disposed of in terms of the decision of the Hon'ble High Court. Hence, respectfully following the decision of the Hon'ble Madras High Court in the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT (supra)*, we dismiss the present appeal as withdrawn. However, the appellant/assessee is at liberty to file miscellaneous application for restoration of appeal as discussed by the Hon'ble Madras High Court in paragraph 7 of the judgment.

In the result, appeal filed by the assessee for assessment year 2011-2012 is dismissed.

Order pronounced on 11<sup>th</sup> December, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-  
(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 11/12/2020

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

**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**