

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F': NEW DELHI**

**BEFORE,
SHRI G. S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.7388/Del/2017
(ASSESSMENT YEAR-2014-15)**

M/s Pawan Hans Ltd. Corporate Office, Safdarjung Airport, New Delhi. PAN-AAACP 1561A (Appellant)	Vs.	Dy. CIT, Circle-19(2), New Delhi. (Respondent)
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Appellant By	Sh. Ved Jain, CA
Respondent by	Sh. Sandeep Kumar, Sr. DR
Date of Hearing	21.12.2020
Date of Pronouncement	18.03.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 18.09.2017 passed by the Learned Commissioner of Income Tax (Appeals)-7, New Delhi {CIT(A)} for Assessment Year 2014-15.

2.0 The brief facts of the case are that the assessee is a Public Sector Undertaking. For the year under consideration, the

return of income was filed declaring a loss of Rs.1,89,90,55,165/- under the normal provisions of Income Tax Act, 1961 (hereinafter called 'the Act'). The assessee company paid taxes under the provisions of Minimum Alternate Tax (MAT) on declared book profit of Rs.66,18,51,561/-. The case of the assessee was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee has created a provision for Corporate Social Responsibility (CSR) in the books of account. The AO was of the view that the said provision was an unascertained liability as the assessee had only created the provision but where the amount was to be spent was unascertained. It was the assessee's contention that the provision had been created on the basis of the guidelines issued by the Department of Public Enterprises which the assessee was bound to follow. However, the AO did not accept the assessee's contention and disallowed the provision of CSR u/s 115JB of the Act considering it as an unascertained liability.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority. The Ld. CIT (A), while holding the disallowance to be justified, noted that the guidelines issued by the Department of Public Enterprises were not determinative factor to decide the allowability of the provisions.

2.2 Now, the assessee has approached this Tribunal challenging the order of the Ld. CIT (A) by raising the following grounds of appeal:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT (A)] is bad, both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law, in confirming addition of an amount of Rs.35,09,480/- made by AO on account of provision for Corporate Social Responsibility for the purpose of computation of book profit under section 115JB of the Act.

3. That the addition has been confirmed rejecting the contention of the assessee that the provision being an

ascertained liability the same is allowable for computing book profit under section 115JB of the Act.

4. The appellant craves leave to add, amend or alter any of the grounds of appeal.”

3.0 The Ld. Authorized Representative (AR) submitted that the assessee was a company incorporated under the provisions of Indian Companies Act, 1956 and was bound to incur expenditure towards Corporate Social Responsibility. It was submitted that it being a Public Sector Entity, the assessee company was also governed by the guidelines laid down by the Department of Public Enterprises. It was submitted that accordingly the assessee had created the impugned provision of Rs.35,09,480/- on account of Corporate Social Responsibility Expenditure. It was further submitted that the amount was calculated as laid down by the Indian Companies Act, 1956 read with the guidelines laid down by the Department of Public Enterprises and, that the assessee could not have deviated from the calculation so prescribed by the Act. The AR also submitted that the scope of additions to the 'Net Profit' is prescribed in Explanation-1 to Section 115JB of the Act and the

scope of such addition cannot be go beyond the specified items and, therefore, the scope of addition u/s 115JB is very limited. The AR reiterated that there was no provision in the law to add back the amount of CSR expenditure which had been duly debited in the profit and loss account and, therefore, in absence of any such provision to disallow the CSR expenditure for computing the book profit u/s 115JB, any expenditure provided for on CSR activities cannot be added back to the net profit. The Ld. AR placed reliance on the judgment of the Hon'ble Apex Court in the case of *Rotork Controls India (P.) Ltd. vs. CIT reported in [2009] 223 CTR 425 (SC)* and argued that the impugned provision was squarely covered in favour of the assessee by the aforesaid judgment of the Hon'ble Apex Court in as much as CSR is a present and mandatory obligation on the assessee arising from the Indian Companies Act, 1956 and the guidelines issued by the Department of Public Enterprises. It was further submitted that it involves a mandatory out flow of resources and since the provision is created on the basis of fixed percentage provided by the guidelines issued by the Department of Public Enterprises, it can be reasonably estimated.

Reliance was also placed on the various decisions which are as follows:

- (i) Apollo Tyres Ltd. vs. CIT [2002] 122 Taxman 562 (SC)
- (ii) Bharat Earth Movers vs. CIT, Civil Appeal No.9271 of 1995 (SC)
- (iii) Tata Communications Ltd. vs. JCIT, ITA No.3438/Mum/2003
- (iv) DCIT vs. Central Coal Fields Limited, ITA No.235/Ran/2016
- (v) Housing And Urban Development Corporation Ltd. vs. Add. CIT, ITA 541/2019, (Delhi HC)
- (vi) PCIT vs. NHPC Ltd., ITA 356, 2015, P&H High Court
- (v) DCIT vs. Inox Leisure Ltd., 351 ITR 314, Gujarat HC
- (vi) Bharat Earth Movers vs. CIT, 245 ITR 428 (SC),
- (vii) CIT v. Echjay Forgings (P) Ltd., 251 ITR 15, Bombay HC
- (viii) M/s. Rotork Controls India (P.) Ltd. v. CIT, 314 ITR 62 (SC)
- (ix) Ircon International Limited, v. Add. CIT, ITA Nos. 1825/Del/2005, ITAT DELHI
- (x) Asahi India Glass Limited v. DCIT, ITA No.1637/Del/2014, ITAT DELHI
- (xi) M/s. Hil Lifecare Limited vs. ACIT in ITA No.ITA No.123/Coch/2017, 11.06.2018.
- (xii) The National Small Industries Corp Ltd. vs. Add. CIT., ITA No.1367/Del/2016, 25.02.2020.

3.1 The Ld. AR submitted that, therefore, the disallowance u/s 115JB of the Act was violative of the provisions of the Act.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) submitted that the assessee had added back the impugned provision in the regular computation of income but had not added the same to the book profit for the purposes of Section 115JB of the Act. It was submitted that in terms of Clause-(c) of Explanation-1 to 115JB, the net profit is to be adjusted by any amount or amounts set aside to provision made for meeting liabilities, other than ascertained liabilities for arriving at the book profit in terms of Section 115JB of the Act. The Ld. Sr. DR also submitted that the fact of the matter remained that in the present case the provision for CSR was not an ascertained liability in as much as it was not known as to what was the nature of the provision for CSR.

5.0 We have heard the rival submissions and have also perused the material on record. The essential question before us is as to whether the provision for CSR as made by the assessee

amounting to Rs.35,09,480/- can be considered as an ascertained liability or not. In terms of Clause-(c) of Explanation-1 to 115JB, the net profit is to be adjusted by any amount or amounts set aside to provision made for meeting liabilities, other than ascertained liabilities for arriving at the book profit in terms of Section 115JB of the Act. It is seen that, admittedly, the assessee has made the impugned provision in terms of the calculation provided by the guidelines issued by the Department of Public Enterprises. However, although, the amount to be provided towards meeting the liability of the CSR expenditure has been quantified in accordance with the guidelines provided by the Department of Enterprises, how the amount is to be spent has neither been determined nor has been specified by the assessee. Thus, although the assessee has set-aside an amount ear-marked for spending towards the CSR obligation, how the ear-marked amount will be finally spent has not been determined. As per the Cambridge Advanced Learner's Dictionary, the meaning of the word "*ascertained*" is "*to make certain*". In dictionary.com, the word "*ascertain*" has been described as "*to make certain, clear or definitely known*" In the present case,

how the amount ear-marked for spending towards the CSR obligation will be spent is “not certain”, “clear” or “definitely known”. At best, it is just an amount which has been set aside for being spent towards Corporate Social Responsibility but without any further certainty of its end-use. Thus, in our considered opinion, it cannot be said that the liability is an ascertained liability. Although, the Ld. AR has placed reliance on numerous judicial precedents, the same are distinguishable on facts as in those cases the nature/mode of expenditure ear-marked for Corporate Social Responsibility spending was very much determined and specified i.e. the nature/mode of expenditure was “ascertained”. Therefore, on the peculiar facts of this case we are unable to agree to the contention of the Ld. AR that the impugned disallowance u/s 115JB was an ascertained liability. We dismiss the grounds raised by the assessee.

6. In the final result, the appeal of the assessee stands dismissed.

Order pronounced on 18.03.2021.

Sd/-
(G.S.PANNU)
VICE PRESIDENT

Dated:18/03/2021

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI