

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1244/JP/2019
निर्धारण वर्ष / Assessment Year :2016-17

D.C.I.T. Circle-6, Jaipur.	बनाम Vs.	M/s Rajasthan Financial Corporation, Udyog Bhawan, Tilak Marg, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCR 2385 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri A.S. Nehra (Addl.CIT)
निर्धारिती की ओर से / Assessee by: Shri Sanjiv Kumar Mathur, (CA) &
Shri Satish Ajmera (CA)

सुनवाई की तारीख / Date of Hearing : 09/03/2021
उदघोषणा की तारीख / Date of Pronouncement : 24/03/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal has been filed by the revenue against the order of the Id. CIT(A)-2, Jaipur dated 23/08/2019 for the A.Y. 2016-17.

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In this appeal, the revenue is basically aggrieved by the order of the Id. CIT(A) in denying the fact that provisions of Section 115JB of the Income Tax Act, 1961 (in short, the Act) are not applicable in the case of assessee and it is not to be subjected to MAT. In this regard, brief facts of the case

are that the assessee company is engaged in providing long term finance to the industrial units, being set up in the State of Rajasthan. The return of income was filed on 15/10/2016 declaring total income of Rs. 1,49,32,440/-. The case of the assessee was selected under compulsory manual scrutiny and notices were issued and duly served upon the assessee. The assessment order was passed by the A.O. on 02/11/2018 determining total income of Rs.1,83,94,440/- by making addition of Rs.34,62,000/-.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A) and the Id. CIT(A) had given relief to the assessee by holding that provisions of Section 115JB of the Act are not applicable in assessee's case and it is not to be subjected to MAT. Against the order of the Id. CIT(A), the Revenue is in further appeal before the ITAT.

5. At the outset, the Id. CIT-DR has vehemently supported the order of the A.O. and submitted that as per provisions of Income Tax Act, the amount of bad debt should be debited to the provision for bad debt. The assessee has not produced details of credit balance of provision of bad debt after set off of bad debt of relevant year.

6. On the contrary, the Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also submitted that in assessee's own case for the A.Y. 2006-07, 2010-11, 2011-

12 and 2012-14, similar issues were decided by the Tribunal in assessee's favour.

7. We have considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observe that the Id. CIT(A) has dealt with the issue in 2.3 to 2.3.2 of her order and the same is reproduced below:

"2.3 I have perused the facts of the case, the assessment order and the submissions of the appellant. In this case, it is seen that assessee's own case for A.Y. 2006-07, 2010-11, 2011-12 and 2012-13 in which similar issues were decided by Hon'ble ITAT, Jaipur. The same issues are also pertain to this year i.e. 2016-17 wherein Assessing Officer made disallowance under section 36(1)(vii)(a)(c) of Rs. 34,62,000/- on account of bad debts written off and applied provision of section 115JB of the Act.

2.3.1 In appellate proceedings, the Authorized Representative relied various decisions which support to assessee's own case. It is found that appellant did not appeal against disallowance made by the Assessing Officer on account of bad debts but appellant challenged the action of Assessing Officer for application of provision of section 115JB in appeal. In appeal no. 610/14-15 dated 30.09.2016, CIT(A) has decided this issue in favour of assessee. Against this, department prefer appeal before Hon'ble ITAT, Jaipur. The Hon'ble ITAT in ITA No. 1063/JP/2016 for A.Y. 2012-13, has decided the issue of applicability of provision of section 115JB in favour of assessee in view of decision of Hon'ble High Court in assessee's own case. The relevant portion of ITAT order is as under"-

"16. Ground No. 1 is regarding the addition made by the AO while computing the book profit under section 115JB of the Act which was deleted by the Id. CIT (A) by holding that MAT provisions are not applicable in the case of the financial corporations as the accounts are not maintained as per Schedule-VI of the Companies Act.

17. We have heard the Id. D/R as well as the Id. A/R of the assessee and considered the relevant material on record. At the outset, we note that an identical issue was decided by the Hon'ble Jurisdictional High Court in assessee's own case for the earlier assessment years vide decision dated 6th July, 2017 in DBIT Appeal Nos. 593/2008, 552/2009, 157/2010 and 261/2016. The Hon'ble High Court in assessee's own case after considering a series of decisions on this issue has held in para 9 to 11 as under :-

9. We have heard counsel for both the sides.

10. Before proceeding with the matter, the question of law which has been framed is very clear whether the respondent assessee will be reading as reproduced above and in view of forgoing conclusion and even as per statement of Mr. Mathur, it will not be covered. However, he has tried to take support of Section 43 which is misconceived. While interpreting the taxing statute, the Court has to rely upon the taxing statute and not any other provisions.

11. In that view of the matter, the issue is answered in favour of the assessee against the department."

Accordingly, in view of the decision of the Hon'ble Jurisdictional High Court in assessee's own case, we find no error or illegality in the order of Id. CIT (A) qua this issue."

2.3.2 Respectfully following decision, it is held that this issue is covered in favour of appellant. Therefore, provisions of section 115JB are not applicable in assessee's case and it is not to be subjected to MAT. This ground of appeal is allowed."

8. We also observed from perusal of the record that the Revenue has preferred appeals being DBIT No. 552/2009, 157/2010 and 261/2016 against the order of the Tribunal before the Hon'ble Jurisdictional High Court and the

Hon'ble High Court vide its order dated 06/07/2017 has dismissed the appeal filed by the Revenue by holding as under:

- "9. *We have heard counsel for both the sides.*
10. *Before proceeding with the matter, the question of law which has been framed is very clear whether the respondent assessee will be governed under Section 115 JA read with Section 2(18)(a). On a plain reading as reproduced above and in view of forgoing conclusion and even as per statement of Mr. Mathur, it will not be covered. However, he has tried to take support of Section 43 which is misconceived. While interpreting the taxing statute, the Court has to rely upon the taxing statute and not any other provisions.*
11. *In that view of the matter, the issue is answered in favour of the assessee against the department."*

The Id AR has drawn our attention towards the fact that against the order of the Hon'ble Rajasthan High Court, the Revenue has preferred SLPs before the Hon'ble Supreme Court but till date no order/judgment is being passed.

9. We also observed that the Id. CIT(A) has given relief to the assessee after relying on the decisions of the Coordinate Bench of this Tribunal in assessee's own case for the A.Y. 2006-07, 2010-11, 2011-12 and 2012-13 as well by following the decision of the Hon'ble Rajasthan High Court in assessee's own case. SLPs preferred against the order of the Hon'ble Jurisdictional High Court has not been decided by the Hon'ble Supreme Court till date. The Id. DR has not placed on record any new facts and judicial

pronouncements, therefore, considering the totality of facts and circumstances of the case as well as respectfully following the orders of the Coordinate Benches of this Tribunal as well as decision of the Hon'ble Jurisdictional High Court, we do not find any reason to interfere or deviate from the findings so recorded by the Id. CIT(A) and we uphold the same.

10. In the result, this appeal of the revenue stands dismissed.

Order pronounced in the open court on 24th March, 2021.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 24/03/2021
*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The D.C.I.T., Circle-6, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Rajasthan Financial Corporation, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1244/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar