

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4081/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2015-16)

Joint Commissioner of Income tax (OSD)-CC-7(4) Room No.659, Aaykar Bhavan, M. K. Road, Mumbai-400020.	बनाम/ Vs.	M/s. Wellknown Polyester Ltd. 18 th Floor, Nirmal Building, Nariman Point, Mumabi- 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACW1018K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri T. S. Khalsa (DR)	
Assessee by:	Shri Gaurav Kabra (AR)	

सुनवाई की तारीख / Date of Hearing: 16/02/2021
घोषणा की तारीख /Date of Pronouncement: 07/04/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 13.03.2019 passed by the Commissioner of Income Tax (Appeals) -49 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2015-16.

2. The revenue has raised the following grounds: -

- "1. *Whether on the facts and circumstances of the case and in law the CIT(A) was justified in deleting the addition of disallowance of reduction on account of provision made for redemption of preference shares of Rs.41,04,51,435/- while computing the book profit u/s 115JB of the Act, as the assessee never credited the amount of reserves to the profit and loss account and*



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thereafter reduce the reserve for Rs.41,04,51,435/- used for redemption of preference shares from net profit."

3. The brief facts of the case are that the assessee filed its return of income on 30.11.2015 declaring a total income to the tune of Rs.1,26,87,75,440/-. The case of the assessee was reopened. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is in the business of Manufacturing of Polyesters Yarn. The assessee credited the provision for Redemption of Preference Share in sum of Rs.41,04,51,435/-. The same was not found revenue in nature, therefore, the AO disallowed the Provision for preference share redemption reserve in sum of Rs.41,04,51,435/- and added to the income of the assessee and also assessed in view of the provision of Section 115JB of the Act. The total income of the assessee was assessed in sum of Rs.1,26,84,80,240/-. The book profit was assessed in sum of Rs.225,83,93,090/- u/s 115JB of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(Appeals) who allowed the claim of the assessee but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

ISSUE No. 1

4. Under this issue the Revenue has challenged the allowance of the claim of the provision made for redemption of preference shares of Rs.41,04,51,435/- while computing the book profit u/s 115JB of the Act. The Ld. Representative of the revenue has argued that the said provision was wrongly allowed, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by



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the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.: -

“7.2 The submissions of the Learned Counsel have been carefully considered. This is a recurring issue in the assessee's own case for preceding and succeeding AYs which has been decided by the Hon'ble ITAT. The Hon'ble ITAT in the appellant's own case for AYs 2012-13 to 2014-15 vide order dated 13.06.2018 has decided the issue in favour of the assessee. The Hon'ble ITAT held as under:

"19. In fact, another aspect which was before the Hon'ble Delhi High Court was in relation to the transfer of an amount to Debt Redemption Reserve for which also it negated the stand of the assessee and held it to be a Reserve falling within the scope of clause (b) of Explanation-I to Sec. 11JB of the Act. In coming to such a decision, in paras 22 and 23, the Hon'ble High Court specifically noted that the assessee therein had failed to explain the nature and character of the debt and went on to hold that in the absence of such explanation, the said sum would not be liable to be accepted as an ascertained liability in terms of clause (c) of Explanation-I to Sec. 115JB of the Act. In fact, in the case before us, and which has also been noted in detail by our co-ordinate Bench in the earlier year, the Provision is for premium payable on redemption of Preference shares and the additional Premium/return payable on such redemption. There is a complete explanation which reflects the nature and character of the Provision and it clearly underlines the obligation or the liability to pay over and above the face value of the Preference shares at the time of redemption. Therefore, in our view, no fault can be found with the conclusion that the impugned Provision was indeed an 'ascertained liability of the nature referred to in clause (c) of Explanation-I to Sec. 115JB of the Act. We may also add here that there is nothing to distract from applying the ratio of the judgment of the Hon'ble Bombay High Court in the case of Raymond Ltd. (supra) to conclude that the impugned amount is to be understood as a known liability and not as a Reserve.

23. In the result, we hereby allow the stand of the assessee following the precedent in assessee own case dated 22.11.2016 (supra)."



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7.3 In view of the above, as the same issue on identical set of facts has been decided by the Hon'ble ITAT in the appellant's own case in its favour, these grounds of appeal are allowed."

5. On appraisal of the above mentioned finding, we noticed that the claim of the assessee was allowed on the basis of the decision of Hon'ble ITAT in the assessee's own case for the A.Y.2012-13 to 2014-15 vide order dated 13.06.2018. The relevant finding has been reproduced by the CIT(A) in his order, therefore, there is no need to repeat the same. There is nothing on record to which it can be assumed that the said order has been set aside/varied/changed. Since the issue has fully covered in favour of the assessee in his own case for the A.Y.2012-13 to 2014-15 vide order dated 13.06.2018, therefore, we are of the view that the finding of the CIT(A) is quite justifiable which is not liable to be interfere with at this appellate stage. Accordingly, we decide this issue in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 07/04/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/04/2021

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की 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**