IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' MUMBAI

BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER

&

SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No.6228/Mum/2017
(**Assessment Year :2013-14**)

M/s. Batliboi Limited Bharat House, 5th Floor, 101, Mumbai Samachar Marg Fort, Mumbai – 400 001	Vs.	Dy.CIT, Circle 2(1)(1) Mumbai Room No.575, 5th Floor 104, Mumbai Samachar Marg, Fort, Mumbai – 400 001
PAN/GIR No. AAACB4408L		
(Appellant)	..	**(Respondent**)

Assessee by	Shri Srinivasan Venkatraman
Revenue by	Shri Tharian Oommen
Date of Hearing	**09/03/2021**
Date of Pronouncement	**21/05/2021**

आदेश / O R D E R

PER M.BALAGANESH (AM):

This appeal in ITA No.6228/Mum/2017 for A.Y.2013-14 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-6, Mumbai, in appeal No.CIT(A)-6(IT-31/192/2016-17 dated 30.08.2017 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 10/03/2016 by the ld. Dy. Commissioner of Income Tax, Circle 2(1)(1), Mumbai (hereinafter referred to as ld. AO).

2. The assessee has raised the following grounds of appeal:-

> *1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner (Appeals) erred in confirming the addition made by the A.O. of Rs.4,76,25,000/-, being the amount received on sale of FSI, as 'income' in computing the income of the Assessee under normal provisions of the Income Tax Act, 1961.*
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> *2. On the facts and in the circumstances of the case and in law, Assessee company submits that the sum of Rs.4,76,25,000/- received on sale of FSI, is a capital receipt and hence is not 'income' exigible to tax in the hands of the Assessee company under the normal provisions of the Income Tax Act, 1961.*
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> *3. On the facts and in the circumstances of the case and in law, the Assessee Company submits that the sum of Rs.4,76,25,000/- received on sale of FSI being a capital receipt and hence not 'income' in the hands of the Assessee company, there is no tax payable by the Assessee company under the normal provisions of the Income Tax Act, 1961 and consequently, the charge under section 115JB of the Act on book profits fails and the Assessee company is hence not liable to tax under Section 115 JB of the Act.*
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> *4. The Assessee company may be permitted to add, alter, amend or delete the existing grounds or add further grounds at the time of hearing.*

2.1. Assessee has also raised an additional ground vide its letter dated 09/01/2019 as under:-

> *"On the facts and in the circumstances of the case and in law, the Assessee submits that if the amount of Rs.4,76,25,000/- received towards FSI is not taxable being a capital receipt, then the computation of income under normal provisions of the Income Tax Act, 1961 would result in a loss and since there would be no Income Tax payable on the total income computed under the normal provisions of the Act, the provisions of Section 115JB are not attracted and the Assessing Officer erred in invoking the same to tax the book profits under Section 115JB of the Act"*

2.2. The assessee has also raised another additional ground vide its letter dated 19/01/2021.

> *"On the facts and in the circumstances of the case and in law, the Assessee submits that the amount of Rs.4,76,25,000 received towards Additional FSI being a capital receipt and not forming part of the operating results of the assessee is hence not includible in computing the book profits of the assessee under section 115JB of the Income Tax Act, 1961 and the learned assessing officer may be directed to delete the same in arriving at the book profits."*

3. At the time of hearing, the ld. AR before us stated that the additional ground raised by the assessee vide its letter 09/01/2019 is not pressed as the same is already covered in original ground No.3. Accordingly, the additional ground raised vide letter dated 09/01/2019 is dismissed as not pressed.

4. The first issue to be decided in this appeal is as to whether the ld. CIT(A) was justified in confirming the addition made by the ld. AO by treating the sum of Rs.4,76,25,000/- received on sale of Floor Space Index (FSI) as income from Long Term Capital Gains while computing the income of the assessee under normal provisions of the Act. The inter-connected issue involved therein to be decided is whether such receipt of sum of Rs.4,76,25,000/- would be exigible to tax while computing book profit u/s.115JB of the Act, which was raised by way of additional ground by the assessee vide letter dated 19/01/2021.

5. We have heard rival submissions and perused the materials available on record. At the outset, we find that the additional ground raised by the assessee vide its letter dated 19/01/2021 reproduced supra goes to the root of the matter and does not involve verification of any facts as all the facts are already on record and that being a legal issue,

we are inclined to admit the said additional ground and take up for the purpose of adjudication alongwith other regular grounds raised by the assessee.

5.1. We find that the assessee company is engaged in the business of manufacturing machine tools, textile machines, air conditioning and refrigeration work, casting and job work for air conditioning and humidification, air control equipment and trading in engineering. The original return of income was filed by the assessee on 26/09/2013 and revised return was filed on 14/05/2014 declaring loss of Rs.4,65,01,710/- under the normal provisions of the Act and book profit of Rs.61,77,000/- u/s.115JB of the Act.

5.2. The brief facts of the case are that the assessee company owned a constructed building on a plot of land in the city of Coimbatore. The said land along with the super structure was acquired by the company vide sale deed dated 15.04.1967. During the Financial Year 2012-13 relevant to Asst Year 2013-14, the assessee company proposed to sell the said land along with its super structure and therefore entered into negotiations with various parties. During the negotiations, the company became aware of the fact that post acquisition of the land and the constructed building, the Development Control Regulations Rules (DCR) in the city of Coimbatore had undergone a change. Consequently, the company engaged the services of Dadbhawala Architects, Engineers and Valuers Pvt. Ltd., to examine the amendments in the DCR and furnish a report giving the fair market value of the land, the constructed building and the additional FSI, if any. In the meanwhile, the negotiations for sale of the immovable property in Coimbatore, culminated in an understanding on 15.09.2012 when the prospective purchasers visited the premises of the

company. A letter of understanding was executed on the said date by the purchasers. The purchasers agreed on a total consideration of Rs.11,14,00,000/-. Further, the said consideration based on discussions and negotiations was broken up as Rs.5,72,84,600/- for the land, Rs.64,90,400/- for the constructed building and Rs.4,76,25,000/- for the additional FSI. The valuers also submitted three reports giving the fair market value of the land constructed building and the additional FSI on 21.09.2012. As per the report submitted by the valuers, the company had obtained an additional benefit of 0.8 by way of additional FSI. The valuers arrived at a fair market value of Rs. 5,01,79,800/- in respect of additional FSI of 0.8 whereas, the company had arrived at a negotiated price with prospective purchasers' for the additional FSI of Rs.4,76,25,000/-. The company entered into a memorandum of agreement with the purchasers on 28.09.2012 and subsequently executed a Deed of Sale on 23.01.2013. While filing the return of income, the company excluded the sum of Rs.4,76,25,000/- received towards additional FSI from its total income computed under normal provisions of the Act, treating the same as a capital receipt. However, while computing its book profit u/s.115JB of the Act, the said sum of Rs.4,76,25,000/- was included in the book profit. The AO after confronting the issue of the assessee and considering their submission in this regard, observed that FSI attached to the land is neither separable from the said land nor could be treated independently; that the availability of increase in FSI is merely a value addition to the land provided by the Government; that any buyer, while purchasing the land will also take over the FSI and that the purchase price is determined by the benefits attached to the land. He further observed that the assessee has neither maintained the land with it and transferred the FSI to a third party nor has transferred the land and FSI to different people. He also observed that FSI is fastened to the land and is not separable

there from, except in circumstances where only the FSI is permitted to be sold out by maintaining the title of land with the owner. Accordingly, the AO brought the amount of Rs.4,76,25,000/- shown under the head 'transfer of FSI' to tax under the head long term capital gain.

5.3. The ld. AO while computing the book profits u/s.115JB of the Act included the sum of Rs.4,76,25,000/- as part of working results of the assessee company u/s.115JB of the Act, since it was already offered to tax voluntarily by the assessee in the return of income.

5.4. Before the ld. CIT(A), the assessee apart from appraising the aforesaid facts, vehemently pleaded that additional benefit by way of FSI had not costed the company any amount. It was contended that every receipt does not fall within the ambit of income and hence the sum of Rs.4,76,25,000/- received towards sale of additional FSI would only constitute capital receipt in the hands of the assessee not exigible to tax both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act. The assessee also placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Sambhaji Nagar Co-op Housing Society Ltd., reported in 370 ITR 325(Bom) in support of its contentions.

5.5. The ld. CIT(A) observed that assessee had sold the land, super structure situated in the said land and the FSI in lock, stock and barrel to only one purchaser for a total consideration of Rs.11,14,00,000/-. However, taking the help of the valuer, the same was broken into three parts and thereafter, sale consideration to the extent of Rs.4,76,25,000/- has been attributed on account of sale of additional FSI by the assessee. The ld. CIT(A) observed that the said additional FSI has not been sold

separately as TDR and there has been no separate document for the same. The inseparable FSI had been sold in one single deal by the assessee to the same party. The ld. CIT(A) distinguished the reliance placed on the decision of the Hon'ble Jurisdictional High Court in 370 ITR 325 supra by stating that in that case, the TDR was sold separately by the society after completion of construction as per the available FSI. Moreover, in that case, there was no sale of land, building and additional FSI in one single deal to one single purchaser. The ld. CIT(A) also observed that in that case, the land and building earlier in possession of the assessee continued to remain with it and even after the transfer of the right or additional FSI, the position did not undergo any change. Whereas, in the instant case, the land and building have been transferred together with additional FSI within a single deal to a single purchaser. With these observations, the ld. CIT(A) upheld the action of the ld. AO.

5.6. We find that the ld. AR before us apart from bringing the aforesaid facts vehemently placed reliance on the following decisions:-

a) Decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Sambhaji Nagar Co-op Housing Society Ltd., reported in 370 ITR 325 (Bom) dated 11/12/2014.

b) Decision of Hon'ble Supreme Court in the case of Union of India vs. Cadell Weaving Mill Co. Pvt. Ltd., reported in 273 ITR 1 (SC)

c) Decision of Hon'ble Supreme Court in the case of CIT vs. Srinivasa Setty (B.C.) reported in 128 ITR 294 (SC).

d) Decision of Hon'ble Jurisdictional High Court in the case of Commissioner of Income Tax vs. Kailash Jyoti No.2 CHS Ltd., in Income Tax Appeal No.1607 of 2013 ; Commissioner of Income Tax vs. Pushpendra J. Mehta & Ors. in Income Tax Appeal No.768 of 2009 ;

Commissioner of Income Tax vs. Shankar Mahal Premises CHS Ltd. in Income Tax Appeal No.2176 of 2009 ; Commissioner of Income Tax vs. Maheshwar Prakash 2 CHS Ltd., in Income Tax Appeal No.2346 of 2009 and Commissioner of Income Tax vs. Kailash Jyoti Premises No.1 CHS Ltd., in Income Tax Appeal No.2660 of 2011 dated 24/04/2015.

5.7. Per contra, the ld. DR vehemently supported the orders of the lower authorities by stating that the additional FSI is inseparable with land and building and hence, would partake the character of amount received towards land and building only.

5.8. At the outset, we find from the aforesaid narration of facts that the assessee has received total sum of Rs.11,14,00,000/- from single purchaser on sale of land (Rs.5,72,84,600/-), towards building (Rs.64,90,400/-) and sale of additional FSI (Rs.4,76,25,000/-). We find that the total sale consideration of Rs.11.14 Crores has not been doubted by the Revenue. Admittedly, the aforesaid break-up of consideration has been done by the assessee by relying on independent valuers report which is also not doubted by the Revenue. The said valuer had attributed a sum of Rs.4,76,25,000/- towards sale of additional FSI. Hence, the bifurcation of the total sale consideration into land, building and additional FSI is not in dispute. What is in dispute before us is only whether the said sum of Rs.4,76,25,000/- received by the assessee on sale of additional FSI could be treated as a capital receipt and thereby making it non-exigible to tax both under normal provisions as well as in the computation of book profits u/s.115JB of the Act. Admittedly, the assessee had sold land, building together with the additional FSI by way of single deal to a single purchaser. But what is relevant to be seen is whether the assessee had incurred any cost for obtaining such additional FSI. From the facts narrated above, it could be seen that assessee was able to get the

additional FSI only pursuant to the Development Control Regulation Rules in the city of Coimbatore undergoing a change. The land and building of the assessee is situated in the city of Coimbatore. In the instant case, we find that the Development Control Regulations in the city of Coimbatore had undergone a change which had admittedly conferred a benefit or by virtue of which the assessee got vested with additional benefit of 0.8 by way of additional FSI. Hence, the issue now boils down to the fact that when there is no cost incurred by the assessee for obtaining any additional benefit of 0.8 by way of additional FSI, then, whether any sum received by the assessee pursuant to a sale of such additional FSI could be brought to tax under the head 'income from capital gains'. We hold that assessee could not have pre-empted any change in the Development Control Regulation Rules in the city of Coimbatore at the time of purchase or before the sale. Admittedly no cost was incurred by the assessee for getting such benefit by way of additional FSI. Hence, it could be safely concluded that the additional benefit derived by the assessee by way of getting vested with additional FSI on the land and building owned by the assessee is only a wind fall gain by operation of law, and which had not costed the assessee any money. In this factual matrix of the case, what is to be seen is whether the sum received by the assessee on sale of additional FSI amounting to Rs.4,76,25,000/- could be taxed as long term capital gain in the hands of the assessee. We find that the entire issue in dispute is squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of Kailash Jyoti No.2 CHS Ltd and others dated 24/04/2015 cited supra , wherein the following substantial questions of law were raised by the Revenue before the Hon'ble High Court:-

> *"6.1 Whether on the facts and in the circumstance and in law the Hon'ble ITAT was justified in holding that the assessee had incurred no cost on acquisition of TDR of additional FSI ?*

6.2 Whether on the facts and in the circumstance, and in law the Hon'ble ITAT was justified in holding that there was no liability to assessee under the head 'Capital Gains' on transfer of TDR of FSI ?

6.3 Whether on the facts and in the circumstance, and in law the Hon'ble ITAT was justified in holding that the assessee transferred TDR for equivalent FSI ?"

5.9. The facts before the Hon'ble High Court and the decision rendered thereon are reproduced hereunder for the sake of convenience.

2. The respondent assessee is a Co-operative Housing Society which entered into an agreement dated 1st November, 2004 with one M/s.Mohta Capital Services Pvt. Ltd. for raising additional four floors upto 8th floor from 4th floor which formed part of the society's building. In terms of the agreement the developers agreed to pay a sum of Rs.700/- per sq. ft. for the additional FSI/TDR consumed for construction from 4th floor to 8th floor. The society received a sum of 1,62,60,756/-. The undisputed facts are that in respect of the additional FSI which the appellant society received in 1991, the society did not have to pay any amount towards acquisition of those rights and no part of the original cost of land vested in the society could be attributed to the FSI that was available. The assessing officer completed the assessment on 22nd December, 2009 assessed to income of Rs.1,62,63,428/-.

3. The assessee being aggrieved preferred an appeal to the Commissioner of Income Tax (Appeals) against the order of the Assessing Officer. The appeal was allowed. Being aggrieved the revenue preferred an appeal before the Tribunal and the Tribunal in its order dated 12.3.2010 concluded that the assessing officer's action for bringing the income under head of capital gains was not wrong and it was in accordance with the provisions of section 242 of the Income Tax Act, 1961 and Transfer of Property Act. It is in these circumstances that the present question has been referred to us.

4. We find that the issue at hand, is already decided by this Court in the matter of the Commissioner of Income Tax Vs. Sambhaji Nagar Co-operative Housing Society Ltd. vide judgment dated 11th December, 2014 to which one of us (Shri S.C. Dharmadhikari, J.) was a party. In that case, the society had acquired the land in question which was owned by the Assessee society and as a result of transfer of development rights and execution of the documents in favour of purchaser therein, the society received a sum of Rs.2,23,25,157 which was added by the Assessing Officer to the total income of the assessee to be chargeable to tax as income under the head "Long Term Capital Gains".

5. This Court observed that a similar attempt has been rejected in the case of Nalinikant Ambalal Mody v. S. A. L. Narayan Row, Commissioner of Income-tax

> *ITR 428 SC 432 and the conclusion of the Apex Court in the said judgment was followed which provided that only that which was capable of acquisition at a cost would be included within the provisions pertaining to the head "Capital gains" as opposed to assets in the acquisition of which there was no cost at all. In that case, as in the present case, the situation was that the FSI/TDR was generated by the plot itself. There was no cost of acquisition in any of the appeals before us. Accordingly, following the view taken in Sambhaji Nagar Co-operative Housing Society Ltd., we find that none of the questions proposed by the Appellant raise any substantial question of law. Accordingly, the appeals are dismissed. There will be no order as to costs.*

5.10. The ld. AR also pointed out that the Hon'ble Supreme Court decision referred in para 5 of the aforesaid judgement of the Hon'ble Bombay High Court has been erroneously mentioned and that the reference to the decision made thereon should be that of decision of Hon'ble Supreme Court in the case of Union of India vs. Cadell Weaving Mill Co. Pvt. Ltd., reported in 273 ITR 1 (SC).

5.11. Respectfully following the aforesaid decision, we hold that the sum received by the assessee in the sum of Rs.4,76,25,000/- on sale of additional FSI, is not exigible for long term capital gains and accordingly the same is hereby directed to be excluded under normal provisions of the Act.

6. Now, coming to the additional ground raised by the assessee vide letter dated 19/01/2021 with regard to taxability of same sum of Rs.4,76,25,000/- while computing book profit u/s.115JB of the Act. We find that assessee had admittedly offered the said receipt of Rs.4,76,25,000/- had admittedly offered the said receipt of Rs.4,76,25,000/- to tax while computing book profits u/s.115JB of the Act. There is absolutely no dispute that such receipt of Rs.4,76,25,000/- is indeed a capital receipt and that the same does not form part of operational working results of the assessee company. Even according to

the case of the Revenue, the said receipt is only inseparable from land, building and accordingly it only partakes the character of a capital receipt. We hold that merely because a particular receipt , which is in the capital field, had been offered to tax by the assessee voluntarily in the return of income while computing book profits u/s 115JB of the Act, it cannot be brought to tax merely on that ground. It is very well settled that there is no estoppel against the statute.

6.1. We find that the issue in dispute has already been considered by this Tribunal in assessee's own case in ITA No.5428/Mum/2015 for A.Y.2011-12 dated 17/12/2021 in para 5.2 and 5.3 which are reproduced hereunder for the sake of convenience:-

> *5.2. We also find that the issue regarding non-taxability of Rs.4,27,43,000/- by treating the same as capital receipt for the purpose of Section 115JB of the Act though not claimed before the lower authorities by the assessee, is being claimed for the first time before this Tribunal. We find that this is purely a legal issue and does not involve verification of any facts and hence, the same can be claimed for the first time before this Tribunal. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of NTPC Ltd., reported in 229 ITR 383 and CIT vs. Sinhgad Technical Education Society reported in 397 ITR 344 and the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Pruthvi Brokers and Shareholders Pvt Ltd., reported in 349 ITR 336 (Bom). We also find that the Hon'ble Calcutta High Court in the case of PCIT vs. Ankit Metal and Power Ltd., reported in 109 Taxmann.com 93 dated 09/07/2019 had specifically held that where the receipt is not in nature of income, it cannot be included in book profits u/s.115JB of the Act. The relevant portion of the said judgment is reproduced hereinabove.*
>
> > ***"26.** Now the second issue which requires adjudication is as to whether the aforesaid incentive subsidies received by the assessee from the Government of West Bengal under the schemes in question are to be included for the purpose of computation of book profit under Section 115 JB of the Income Tax Act, 1961 as contended by the revenue by relying on the decision in the case of Appollo Tyres Ltd. (supra).*
> >
> > ***27.** In this case since we have already held that in relevant assessment year 2010-11 the incentives 'Interest subsidy' and 'Power subsidy' is a 'capital receipt' and does not fall within the definition of 'Income' under Section 2(24) of Income Tax Act, 1961 and when a receipt is not on in the character of*

> *income it cannot form part of the book profit under Section 115JB of the Act, 1961. In the case of Appollo Tyres Ltd. (supra) the income in question was taxable but was exempt under a specific provision of the Act as such it was to be included as a part of the book profit. But where a receipt is not in the nature of income at all it cannot be included in book profit for the purpose of computation under Section 115JB of the Income Tax Act, 1961. For the aforesaid reason, we hold that the interest and power subsidy under the schemes in question would have to be excluded while computing book profit under Section 115 JB of the Income Tax Act, 1961."*

5.3. Respectfully following the Co-ordinate Bench decision of JSW Ltd., and the decision of the Hon'ble Calcutta High Court in the case of Ankit Metal and Power Ltd., referred to supra, we hold that the sum of Rs.4,27,43,000/- to be a capital receipt and not liable to tax while computing books profits u/s.115JB of the Act. Accordingly, the ground Nos. 2 & 3 raised by the assessee are allowed.

6.2. Respectfully following the said decision, we hold that the sum of Rs.4,76,25,000/- being a capital receipt from its inception, is to be excluded while computing book profits u/s.115JB of the Act and also on the ground that it does not form part of operational working results of the company. Accordingly, the additional ground raised by the assessee vide letter dated 19/01/2021 is allowed.

7. The last issue to be decided is ground No.3 raised by the assessee in the original grounds of appeal wherein the assessee had challenged the applicability of provisions of Section 115JB of the Act.

7.1. The ld. AR before us argued that this issue has been decided against the assessee in its own case by this Tribunal in ITA No.5428/Mum/2015 dated 17/02/2021 for A.Y.2011-12. However, the ld. AR argued that this Tribunal did not have the benefit of the decision of the Hon'ble Delhi High Court in the case of Modi Cement Ltd., vs. Union of India and others reported in 193 ITR 91 while addressing the said issue. Accordingly he argued that the provisions of Section 115 JB of the

Act per se cannot be made applicable to the assessee company herein as there was no tax payable by the assessee under normal provisions of the Act in view of loss thereon. He also argued that the provisions of Section 115J and 115JA of the Act use the word "total income" which would also include loss, whereas the provisions of Section 115JB of the Act uses the expression "tax payable on total income". Hence, he vehemently argued that unless there is tax payable by assessee under normal provisions of the Act, the provisions of Section 115 JB of the Act would not come into operation at all.

7.2. Per contra, the ld. DR vehemently relied on the order passed by this Tribunal in assessee's own case referred to supra in respect of this issue.

7.3. We have heard rival submissions and perused the materials available on record. We find that the decision relied upon by the ld AR was rendered in the context of section 143(1A) of the Act. The provisions of Section 115JB of the Act start with a non-obstante clause and is a self contained code by itself. By giving due weightage to the intention behind introduction of provisions of section 115J, 115JA and 115JB of the Act, we are not inclined to agree to the contentions of the ld AR. We find that this issue has already been addressed by this Tribunal elaborately in assessee's own case for the Asst Year 2011-12 referred to supra in para 4.3 thereon. It is reproduced for the sake of convenience:-

> *"4.3. We find that if the argument advanced by the ld. AR is to be accepted, then the entire intention behind introduction of provisions of Section 115J, 115JA, 115JB of the Act gets completely defeated and becomes redundant, as these provisions were admittedly introduced in the statute to collect tax as per their book profits when they had declared loss or liable to pay zero tax under the normal computation of income. Moreover all the companies in India are governed by the very same provisions wherein if they suffered nil taxes or zero*

> *taxes under the normal provisions of the Act or the tax payable under normal provisions is less than tax @18.5% of book profits, then the provisions of Section 115JB of the Act would be applicable to those companies and assessee company alone cannot be singled out or isolated from the same. Moreover, we have also seen that these provisions are in force from the year 1987 onwards commencing from Section 115J which had gradually migrated to Section 115JB of the Act without digressing from the true intention behind introduction of these provisions in the Act. Hence, the primary argument that Section 115JB of the Act is not applicable to the assessee company in the instant case is hereby rejected. Accordingly, the ground No.1 raised by the assessee is dismissed."*

7.4. We do not deem it fit to interfere in the said judgement of this Tribunal at this stage. Accordingly, the original ground No.3 raised by the assessee is dismissed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced on 21/05/2021 by way of proper mentioning in the notice board.

Sd/- **(RAVISH SOOD)** **JUDICIAL MEMBER**	**Sd/-** **(M.BALAGANESH)** **ACCOUNTANT MEMBER**

Mumbai; Dated 21/05/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai