

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.4056/Del/2018
Assessment Year: 2013-14

JMW India Pvt. Ltd.,
C-498, 1st Floor, Jojna vihar,
Delhi.

Vs DCIT,
Circle-13(2),
New Delhi.

PAN: AAACJ3260C

(Appellant)

(Respondent)

Assessee by	:	Shri C.S. Anand, Advocate & Shri Sankalp Anand, Advocate
Revenue by	:	Ms Anima Barnwal, Sr. DR
Date of Hearing	:	26.08.2021
Date of Pronouncement	:	24.09.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 8th March, 2018 of the CIT(A)-5, Delhi relating to assessment year 2013-14.

2. The grounds raised by the assessee are as under:-

õ1. That on the facts and in the circumstances of the case , the ld CIT(A) had erred in not allowing exclusion of Interest Subsidy amounting to Rs. 30,01,143/- and of Excise Duty Refund amounting to Rs. 4,98,49,144/-, being capital in nature, in computing book profit u/s 115JB .

2. That on the facts and in the circumstances of the case ,the book profit u/s 115JB ought to had been computed at a negative figure, as per the Revised Computation of Income filed by the assessee.ö

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of trading and manufacturing of copper products (i.e., copper wire rod, copper strips/paper covered strips/bare copper wire etc.). It filed its return of income on 30.11.2013 declaring total income at Rs.1,23,71,780/-. The Assessing Officer completed the assessment determining the total income at Rs.1,25,39,700/-. The assessee, in the instant case, had received an amount of Rs.30,01,143/- representing interest subsidy and an amount of Rs.4,98,49,144/- representing Excise Duty refund. The above two amounts totaling to Rs.5,28,50,287/- were credited to the P&L Account for the previous year relevant to the A.Y. 2013-14. Since the issue as to whether the interest subsidy and Excise Duty refund were capital receipt or not was pending before the Honøble Supreme Court, the assessee had not reduced the taxable income to the extent of Rs.5,28,50,287/-. However, after the judgment of the Honøble Supreme Court on 19th April, 2016 in the case of CIT, Jammu vs Shree Balaji Alloys & Others where it was held that subsidies including interest subsidy and Excise Duty refund were capital receipts, the assessee filed an appeal before the Id.CIT(A) wherein the assessee had sought reduction of assessable income to the extent of Rs.5,28,50,287/- apart from deletion of disallowances of MAT credits, TDS credits, etc.

4. In appeal, the Id.CIT(A), following his order for the immediately preceding assessment year, allowed the claim of the assessee regarding reduction of assessable income to the extent of Rs.5,28,50,287/-. This was accepted by the Revenue and no appeal has been filed. However, the assessee's claim that such amount of Rs.5,28,50,287/- be reduced from the book profit for the purpose of MAT as per the revised computation of income was not accepted by the CIT(A) by observing as under:-

¶4.5 It has been clearly stated that no adjustments other than those mentioned in the explanation can be made to the book profit. It is clear that the appellant company has included the aforesaid amounts as revenue receipts while computing book profits. The explanation does not provide for any reduction of an amount which is to be treated of a capital nature in accordance with the Income Tax Act for the purpose of computation of book profit. Therefore, the MAT credit allowability to the appellant may be required to be modified and reduced. This is due to the reason that the regular tax or the tax of normal income in the appellant's case will reduce on whereas the tax on book profit would not change. This ground of appeal is therefore dismissed the AO is directed to compute the reduced credit of MAT eligible to the appellant.ö

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. counsel for the assessee submitted that the issue stands squarely covered in favour of the assessee by the decision of the Honøble Calcutta High Court in the case of PCIT vs. Ankit Metal & Power Ltd., reported in 416 ITR 591 where it has been held that where receipt was not in the nature of income it could not be included in the book profits for the purpose of computation u/s 115JB. Therefore, the interest and the power subsidies received by the assessee under the

Government schemes would have to be excluded while computing the book profits u/s 115JB since these were capital receipts and did not fall within the definition of income u/s 2(24) of the Act. He accordingly submitted that this being a covered matter in favour of the assessee, the grounds raised by the assessee should be allowed.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A).

8. We have considered the rival arguments made by both the sides and perused the record. The only question to be decided in the instant appeal filed by the assessee is regarding the exclusion of interest subsidy of Rs.30,01,143/- and Excise Duty refund of Rs.4,98,49,144/- for the purpose of computing book profit u/s 115JB. We find, the issue stands squarely covered in favour of the assessee by the decision of the Honøble Calcutta High Court in the case of PCIT vs. Ankit Metal & Power Ltd., reported in 416 ITR 591 wherein it has been held as under:-

ø30. 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 115JB of the Income-tax Act, 1961 as contended by the Revenue by relying on the decision in the case of Apollo Tyres Ltd. v. CIT reported in [2002] 255 ITR 273 (SC).

31. In this case since we have already held that in the 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 the 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 Apollo 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 the 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 115JB of the Income-tax Act, 1961.

9. Since, in the instant case, the Revenue has accepted the order of the CIT(A) in holding that interest subsidy and Excise Duty refund are capital receipts, therefore, respectfully following the decision of the Honøble Calcutta High Court in the case of Ankit Metal & Power Ltd., cited (supra) and in absence of any contrary material brought to our notice, we hold that the above two receipts being not in the nature of income cannot be included for the purpose of computation u/s 115JB of the IT Act. We, therefore, set aside the order of the Id.CIT(A) on this issue and allow the grounds raised by the assessee.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 24.09.2021.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 24th September, 2021

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi