

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.1437/Del/2017
Assessment Year: 2011-12

International Hospital Ltd., C/o- Escorts Heart Institute & Research Centre, Okhla Road, New Delhi	Vs.	DCIT, Circle-12(2), New Delhi
PAN :AAACI9792A		
(Appellant)		(Respondent)

Appellant by	Sh. R.M. Mehta, Adv.
Respondent by	Ms. Anima Barnwal, Sr. DR

Date of hearing	28.09.2021
Date of pronouncement	14.10.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against order dated 13/12/2016 passed by the learned Commissioner of Income-tax (Appeals)-19, New Delhi, for assessment year 2011-12, raising following grounds:

1. *That the impugned order dated 13.12.2016 passed by the CIT(A) is bad in law and wrong on facts.*
2. *That CIT(A) erred both on facts and in law in confirming the non-deduction of a sum of Rs.67,69,460/- on account of bad debts written off against provision created in earlier years, in*

- computation of book profits u/s 115JB of the Income Tax Act, 1961.*
3. *That CIT(A) has erred both on facts and in law in confirming the non-deduction of a sum of Rs.67,69,460/- on the ground that the appellant is not permitted to make any adjustment to the book profit except which has been specifically provided therein, without realizing that these bad debts written off were adjusted during the year against provision for doubtful debts created in earlier years and have been adjusted in computation of book profits under clause (i) of Explanation 1 of section 115JB.*
 4. *The appellant reserves to itself, the right to add, alter, amend, substitute, withdraw and/or any Ground(s) of Appeal at or before the date of hearing.*

2. Briefly stated facts of the case are that the assessee company is engaged in the business of running a multispecialty hospital under the brand name of “Fortis Hospital”. The assessee filed its return of income for the year under consideration on 29/11/2011, declaring nil income. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices were issued and complied with. The Assessing Officer in his assessment order dated 23/03/2015 assessed income under regular provisions of the Income-tax Act,1961 (in short ‘the Act’) as well as under section 115JB of the Act after making addition of disallowance under section 14A of ₹ 13,65,85,862/- and disallowance of bad debt of ₹ 67,69,460/-. In this manner, total income under regular provisions was assessed at ₹ 14,33,55,322/- and under the provisions of section 115JB assessed at ₹ 41,58,21,022/-.

2.1 Aggrieved, the assessee filed appeal before the Ld. CIT(A), who partly allowed the appeal of the assessee, however, the addition of bad debt amounting to ₹ 67,69,460/- under section 115JB was retained. Aggrieved with said finding of the Ld. CIT(A),

the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility. The assessee filed a paper-book containing pages 1 to 96.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The only dispute raised by the assessee is with regard to amount of the provision for bad and doubtful debt to be taken for the purpose of computing book profit under section 115JB of the Act. The contention of the assessee is that in the year under consideration provision of doubtful debt amounting to ₹ 1,47,98,850/- was created, but out of that bad debt written off amounting to ₹ 67,49,460/- was reduced and balance amount of ₹ 80,49,390/- was added back both for the purpose of computation of income under regular provisions of the Act as well as under the provisions of 115JB of the Act. The Assessing Officer rejected the contention of the claim of bad debt on the ground that assessee had not placed anything on record to substantiate its claim. The Ld. CIT(A), however, allowed the claim of bad debt written off under regular provisions of the Act following the decision of the Hon'ble Supreme Court in the case of TRF Ltd (supra) observing as under:

"11. Ground of appeal No. 5 is in respect of disallowance of bad debts amounting to Rs.67,69,460/-. The appellant during the year had made a provision of Rs.1,47,98,850/- in respect of provision for bad & doubtful debts. However, in the computation of income, the appellant had added only a sum of Rs.80,49,390/-. The Assessing Officer did not find the reply of the appellant as satisfactory and added back this differential amount to the total income. The appellant in its submissions has explained that appellant has been preparing a provision for doubtful debts and the same is being added to the total income.' During the year, debtors to the extent of

Rs. 67,69,460/- actually became bad and the same were written off in the books of accounts. However, since the provisions already existed in respect of the same, they were not written off in the Profit & Loss Account but adjusted from the provision account and the debtors were actually written off. Since no deduction had been allowed in respect of provision in the earlier years, expenditure in respect of actual bad debts which have been written off during the year has been claimed.

12. I have gone through the various details. The appellant has also provided a copy of provision for bad debts account since Assessment Year 2008-09 which shows the various entries in respect of provisions made, the bad debts written off, and further provision made in the ensuing year. The appellant has show that provision for doubtful debts has been disallowed in the earlier years and deduction is being claimed only in respect of actual bad debts. However, the amount does not appear in the Profit & Loss Account since it is squared off from the provision account. The deduction is claimed when the debtors are actually written off.

13. During the year under consideration, instead of claiming a separate deduction in the computation of income, the appellant 'had netted off this amount against the provision created during the year and only the net amount has been added back. There would not have been any confusion had the entire amount of provision made during the year been added to the income and deduction claimed in respect of actual bad debts of Rs. 69,69,460/-. In view of above discussion, bad debts claimed are allowed under section 336(1)(vii) of the Act in accordance with the decision of Hon'ble Supreme Court in the case of TRF Limited (323 ITR 397)."

4.1 However, as regard to claim of bad debt written off under section 115JB for computation of the book profit was rejected by the learned CIT(A). The detailed finding of the learned CIT(A) in Para 18 to Para 22 after considering the submission of the assessee is reproduced as under:

"18. As far as the provision for doubtful debts is concerned, the appellant in his computation of income has added back a sum of Rs. 80,49,390/-. The Profit & Loss Account of the appellant, however, shows that appellant had made a provision of Rs. 1,47,98,850/- in the Profit & Loss Account. The same was, therefore, required to be added and not Rs. 80,49,390/-. In this regard, the appellant in its submissions has explained as under:-

Following accounting entries are passed relating to Provision for Doubtful Debts and Advances:

- (A) *Provision for doubtful debts & advances: Dr.(Profit & Loss item)*
 (B) *Provision for doubtful debts & advances: Cr. (Balance Sheet item)*

Note:

- (A) *is disclosed/included under the account head "Selling, General & Administrative Expenses " in the Profit and loss account.*
 (B) *is disclosed as netting off item in the balance sheet from the respective debtors/advances*

Provision for doubtful debts & advances - Profit 41 Loss item is offered for tax in the computation of income.

Accounting Entries Passed for Bad Debts written off - Following entries are passed relating to Bad Debts written off:

Entry No. – 1

- | | |
|--|---------------|
| (A) <i>Bad Debts Written off (Profit & Loss item): Dr.</i> | <i>Rs.100</i> |
| (B) <i>To Sundry Debtors: Cr.</i> | <i>Rs.100</i> |

Entry No. – 2

- | | |
|---|-----------------|
| (C) <i>Provision for doubtful debts & advances: Dr. (Balance Sheet item)</i> | <i>: Rs.100</i> |
| (D) <i>To Provision for doubtful debts and advances: Cr. (Profit & Loss item)</i> | <i>: Rs.100</i> |

The above entries are passed in order to reverse Provision for Doubtful Debts & Advances made in earlier years and to write off the Bad debts, out of provisions made in earlier years.

Thus, in the year of write off Profit & Loss account does not disclose any expenses. Such balances which have been written off during the year (as per entry 1 above) are separately claimed in the tax computation. The same are allowable in view of section 36(l)(vii) as such debt has been written off in the books of account during the year.

Accounting Entries Passed for Provision for Doubtful Debts and Advances

Following accounting entries are passed relating to Provision for Doubtful Debts and Advances:

Entry No. 1 –

- (E) Provision for doubtful debts & advances: Dr 1,47,98.850/-
(Refer Schedule 20 of the Balance Sheet)
(F) To Provision for doubtful debts & advances: Cr. 1,47,98,850/-
(Included in Rs.2,40,64,755/- appearing
in Schedule 9 of the Balance Sheet)

Note:

- (A) is disclosed/included under the account head "Selling, General & Administrative Expenses " in the Profit and loss account.
(B) is disclosed as netting off item in the balance sheet from the respective debtors/advances

Provision for doubtful debts & advances - Pro fit & Loss item is offered for tax in the computation of income.

Accounting Entries Passed for Bad Debts written off

Following entries are passed relating to Bad Debts written off:

Entry No. - 2

- (C) Bad Debts Written off (Profit & Loss item): Dr.67,49,460/-
(D) To Sundry Debtors: Cr.67,49,460/-
(Refer to the movement of provision for
doubtful debts attached)

The above entries are passed to write off bad debts, out of provisions made in earlier years.

Thus, in the year of write off Profit & Loss account does not disclose any expenses on account of bad debts. Accordingly, since such bad debts written off during the year have been adjusted against provision for doubtful debts created during the earlier years, no separate expense is appearing during the year. Such balances which have been written off during the year (as per entry 2 above) are separately claimed in the tax computation. The same are allowable in view of section 36(i)(vii) as such debt has been written off in the books of account during the year.

19. They have accepted the fact that write off of bad debts from which the provision figure has been netted, does not appear in the Profit & Loss Account. They were confronted with the fact that under section 115JB, the profit has to be taken only as per the books of accounts and no other adjustment except those mentioned under Explanation I can be carried out. The appellant vide their letter dated 30.11.2016 as mentioned as under:-

This has reference to the on-going appellate proceedings. During the course of last hearing, your good self have asked to further explain the claim of provision of doubtful debts written back in the Book Profit computed u/s 115JB of the I. T. Act.

In this connection, your kind reference is invited to sub-section (2) of Explanation (I) to Section 115JB being reproduced as under:

"Explanation [1] - For the purposes of this section, 'book profit' means (the net profit as shown in the profit and loss account for the relevant previous year prepared under subsection (2) as increased by -

(a).....

(b).....

(c).....

(d).....

(e).....

(f).....

(g).....

(h).....

(i) the amount or amounts set aside as provision for diminution in the value of any asset

(k).....

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by -

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit & loss account), if any such amount is credited to the profit and loss account"

In view of the above, Provision for doubtful debts created in earlier years, written back and credited to Profit & loss account during the year under reference amounting to Rs. 67,49,460/- is to be reduced from the Book Profit determined under the provisions of Section 115JB of the I. T. Act.

Your honour will appreciate that during the year under reference, the appellant assessee has created further Provision for doubtful debts and advances amounting to Rs. 1,47,98,850/-, which has duly been added to for arriving at the Book Profit in view of provision made in Section 115JB of the Income Tax Act. Provision for doubtful debts and advances amounting to Rs.67,49,460/- have also been written back and credited to Profit and Loss account during the previous year and tax has been paid under MAT.

Pertinent to mention that such Write back/ withdrawal of the amount from arty provision is to be reduced from Book Profit as per clause (i) to Explanation 1 to sub-section (2) of section 115JB of the Income tax Act.

The appellant assessee has however, netted of the above amounts of Rs.1,47,98,850/- and Rs.67,49,460/- and has added the resultant amount of Rs. 80,49,390/- in the Computation of Book Profit.

A fresh computation tax payable under provisions of MAT in view of the above submissions is enclosed for your kind reference. It may please be noted that there is no difference in the amount of Book Profit returned and the disclosure being produced now.

20. I have gone through the submissions of the appellant in this regard. The Hon'ble Supreme Court in the case of Apollo Tyres Ltd (255 ITR 273). had mentioned as under:-

The object of introducing section 115J can be deduced from the Budget Speech of Finance Minister made in Parliament while introducing the said section.

The Speech shows that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that section 115J was introduced in the Income-tax Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own accounts. For the said purpose, section 115J makes the income reflected in the companies ' hooks of account as deemed income for the purpose of assessing the fax. If one examines the said provision in the above background, one notices that the use of the words in for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the Income-tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinized and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, it is difficult to accept the

argument of the revenue that it is still open to the Assessing Officer to re-scrutinized the accounts and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. Reliance placed by the revenue on sub-section (I A) of section 115J in support of the above contention was misplaced. Sub-section (I A) of section 115.1 does not empower the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate is bodily lifted from the Companies Act into the income-tax Act for the limited purpose of making the said accounts so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, the said sub-section does not empower the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115J, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of Income-tax Act. If the Legislature intended the Assessing Officer to reassess the company's income, then it would have stated in section 115 J that 'income of the company as accepted by the Assessing Officer. In the absence of the same and on the language of section 115.1, the view taken by the Tribunal was correct and the High Court had erred in reversing the said view of Tribunal.

Therefore, the Assessing Officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has limited power of making additions and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J.

21. *Although the decision was rendered under section 115J of the Income Tax Act, 1961, however, the provisions of section 115J and 115JB are similar, therefore, the ratio of the case will equally apply to section 115JB as well. Even subsequently in the case of Malyalam Manorama, the Supreme Court has re-affirmed the view taken in the case of Apollo Tyres Ltd. It is, now, therefore, beyond doubt that neither the appellant nor the Assessing Officer is permitted to make any adjustment to the book profits except which has been specifically provided therein. Therefore, the appellant was required to add back only the provision which had been provided in*

the books of accounts. Since the claim of bad debts actually incurred during the year did not appear in the Profit & Loss Account, the same could not be added back since the same is not covered under Explanation I. The appellant vide its letter dated 30th November, 2016, has stated that amount claimed as bad debt during the year will be covered under clause (i) to Explanation I. The clause (i) of this. Explanation reads as under:-

" Explanation [1] - For the purposes of this section. 'book profit' means the net profit as shown in the profit and loss account for the relevant previous year prepared under subsection (2) as increased by -

- (a)*
- (b).....*
- (c)*
- (d)*
- (e)*
- (f)*
- (g)*
- (h)*

(i) the amount or amounts set aside as provision for diminution in the value of any asset

(k).....

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by -

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit, and loss account. "

22. This clause clearly mentions that book profit shall be reduced only where the / amount withdrawn from reserves is credited to the Profit & Loss Account. The appellant has not credited the amount in relation to bad debts in the Profit & Loss Account. The credit has been provided only to the accounts of debtors which have been written off. The case of the appellant as far as the provision of MAT is concerned, therefore, fails. If the appellant was required to claim the deduction, it should have debited the Profit & Loss Account with amount of bad debts. In the present case, neither the appellant, nor the Assessing Officer is permitted to make any changes to the book profit shown in the books of account and claim of the appellant in respect of bad debts does not fall within the four corners of section 115JB. In view of the same, the addition of Rs.67,69,460/- under section 115JB is sustained."

4.2 Before us, the Learned Counsel of the assessee referred to paper-book and submitted that assessee is following regular practice of adding the provision for doubtful debts created during the year to the opening balance and after reducing bad debts written off closing balance is taken to next financial year. The Learned Counsel referred to pages 8, 26, 43 and 60 for showing computation of net amount of provision of doubtful debt. Under the provisions of the Act book profit is computed after making adjustment mentioned in the section 115JB of the Act. In view of the settled position in the case of Apollo Tyres Ltd. (supra) and Malyalam Manorama (supra), the assessee or the Assessing Officer is not permitted to make any adjustment to the book profit except which has been specifically provided therein and, therefore, the assessee was required to add back provision which has been provided in the books of accounts.

4.3 The Ld. CIT(A) has held that claim of bad debt actually incurred during the year did not appear in the profit and loss account and, therefore, same could not be added back since the same is not covered under Explanation 1 below section 115JB of the Act. Thus, as per the Learned CIT(A), the Assessee has not credited the amount in relation to the bad debt in the profit and loss account made on the basis of the books of account, whereas claim of the assessee is that effect of the bad debt written off has been taken into consideration in books of accounts. In our opinion, this is a matter of the verification with the books of account of the assessee. From the details filed before us prima facie it appears that the amount of bad debt written off has been reduced while computing the income as per provision of Act and,

therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer for deciding after verification of the books of account and financial statement prepared thereon for the year under consideration. The Assessing Officer has to verify the amount of provision for doubtful debt in the books of accounts and book profit has to computed as per Explanation 1 below the section 115 JB of the Act. It is Needless to mention that the assessee shall be afforded adequate opportunity of being heard. The grounds of the appeal of the assessee are accordingly allowed for statistical purposes.

5. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 14th October, 2021

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 14th October, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi