

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.8200/Del./2018  
Assessment Year 2015-16

The ACIT, Circle – 19 (2), Room No.221, C.R. Building, I.P. Estate, New Delhi - 110002	vs.,	M/s. Pasupati Acrylon Limited, M-14, Connaught Circus, Middle Circle, New Delhi – 110 001.
(Appellant)		(Respondent)

For Revenue :	Shri Suresh Gupta, C.A.
For Assessee :	Shri Anil Gandhi, Sr. D.R.

Date of Hearing :	09.12.2021
Date of Pronouncement :	21.12.2021

**ORDER**

**PER R.K. PANDA, A.M.**

This appeal filed by the Revenue is directed against the order dated 24.10.2018 of the Ld. CIT(A)-7, New Delhi, relating to A.Y. 2015-16.

2. The only effective ground raised by the Revenue reads as under :

*“Whether on the facts and circumstances and in law, the Ld. CIT(A) has erred both on facts and in law in deleting the addition of Rs.3,47,10,830/- made by the AO to the book profits for the purpose of computation of tax liability u/s 115JB of the Income-tax Act, 1961, as ‘impairment of assets loss written off’ was nothing but provision for diminution in the value of assets and as per clause (i) of Explanation 1 to Sec 115JB(1), the amount or amounts set aside as provisions for diminution in the value of any asset needs to be added back to Book Profits”.*

3. Facts of the case, in brief are that the assessee company is in the business of manufacturing of Acrylic Fibre. It filed its return of income on 25.09.2015 declaring NIL income along with book profit of Rs.21,05,75,781/- under section 115JB of the I.T. Act, 1961. During the course of assessment proceedings, the A.O. noted that assessee has added back Rs.3,47,10,830/- in the profit (loss) as per audited profit and loss account for the F.Y.

2014-15 on account of 'Impairment of assets loss written-off'. However, the same was not added back by the assessee company in computation of income/book profit as per section 115JB of the I.T. Act, 1961. He further noted the following note 30(b) of accompanying notes to the financial statements of the assessee company as under :

*“In pursuance of Accounting Standard-28 on impairment of assets (AS-28) by the Institute of Chartered Accountants of India, the company has reviewed the future earnings of its cash generating units. Based on such review the company has accounted for the impairment loss on certain machinery having value of Rs.479.68 lacs due to change in technologies absence of reserves Rs.347.11 lacs impairment loss has been reflected under exceptional item.”*

3.1. Since the assessee company has not added back the same in its book profit, the A.O. asked the assessee company to explain as to why the impairment loss of

Rs.347.11 lacs should not be added for calculating the book profit as per Section 115JB of the I.T. Act, 1961. Rejecting the various explanations given by the assessee company, the A.O. held that impairment loss is nothing, but, provision for diminution in the value of assets and he added the amount of Rs.347.11 lacs by recording the following reasons:

*“Discussion :*

*The assessee company’s view that impairment is an actual loss and not a provision is not tenable considering the following :*

*(i) The assessee company has booked impairment loss on the basis of AS-28 issued by the Institute of Chartered Accountants of India (ICAI) which provides that when economic flow from such assets is less than the value at which the same is being carried on, then same needs to be write down.*

*But on the other hand, it also provides that whenever the position improves, then the same need to be write back and credited to P&L A/c. This implies that impairment loss recorded on the*

*basis of AS-28 is nothing but provision in which there is probability of writing back.*

*(ii) Equating bad & doubtful debts with impairment loss is not right in the sense that bad & doubtful debts are judged on the basis of past trend and on the other hand impairment loss is judged on the basis of future aspects. Further provision for bad & doubtful debts is created for a group of debtors as whole, whereas impairment loss is calculated in terms of AS-28 for every asset separately. Thus in case of impairment, there cannot be a situation of provision at all.*

*Thus can it be concluded that Clause (i) of Explanation 1 to Section 115JB is not applicable for AS-28. It is not so. If the said clause had been applicable for provision for bad & doubtful debts only and not to any other thing, then law makers were not prevented from drafting accordingly.*

*The impairment loss is nothing but provision only seeing the future aspects which cannot be 100% estimated correctly.*

*(iii) The assessee company is comparing impairment loss with provision for bad &*

*doubtful debts. Both, impairment loss and provision for bad & doubtful debts are not comparable in the sense that bad & doubtful debts or its provision is generally a result of act of a person i.e. debtor. It is result of financial position of debtor. The asset i.e. money receivable is in possession of other person, other than assessee company. On the other hand, in case of impairment loss, goods possession is with the assessee only, there is no involvement of second person.*

*(iv) The resultant loss on valuation is actually in the nature of a notional loss. In the Income Tax Act, Incurred losses are allowable and notional losses not allowable.*

*(v) It is established maxim of taxation that one cannot make profit out of himself. Consequently, one cannot make losses out of himself.*

*(vi) In any transaction, there has to be two parties for Profit or loss arises out of a transactions. There cannot be a transaction with oneself.*

*(vii) Assessee Company's contention that being second hands assets and further*

*obsolete of technology is again not tenable in the view that during the year Assessee Company has not sold any of the said assets during the year and no information has been provided of subsequent sale.*

*(viii) A particular loss/provision can be called to be a loss only when there is probability of other person which forces the assessee to forego something. Here it is not so. It is nothing but a notional loss calculated on the basis of future aspects.*

*(ix) It is also a well settled position that in case of conflict between accounting standards and express provisions of law, the latter will prevail over the former. The provision of disallowance of 'diminution in the value of asset' is very loud & clear under section 115JB of the Act.*

*(x) Regarding the use of word "provision" before impairment loss, does not any difference because it is the mandate of AS-28 to use which words, to describe impairment loss in what manner. The use of particular - does not change the nomenclature of the provision. What actually matters is the nature*

*of transaction.*

*(xi) A wrong claim being made year after year cannot be the basis of allowing the claim in this year also.*

*(xii) If a wrong accounting practice has been allowed in a year, the same cannot be allowed every year.*

*Decision :*

*Considering the above discussion, it is clear that Impairment loss is nothing but provision for diminution in the value of assets and hence Rs.3.47cr. are being added to the book-profits of the company.”*

4. Before the Ld. CIT(A), the assessee made elaborate submissions based on which the Ld. CIT(A) allowed the appeal of the assessee by holding that for calculating book profit for MAT purpose, such loss cannot be added back because profit means profit as per P & L A/c prepared in accordance with Accounting Standard issued by the ICAI. The relevant observations of the Ld. CIT(A) from para-4.2 onwards reads as under :

4.2. I have carefully considered the assessment order and written submissions furnished by the Ld. AR. The above ground seeks to challenge the action of the assessing officer in making additions of Rs.3,47,10,830/- to the book profit computed u/s 115 JB considering the write off of the part of the plant and machinery as provision made for Impairment/diminution of value of assets covered by sub clause (i) of Explanation 1 to Section 115 JB of the Act.

4.3. The brief facts of the case are that appellant company had imported second hand machines during FY 2004-05 for expansion, these machines were installed and commissioned in FY 2012-13 but due to various external factors such as change in technology, lack of demand of the product etc. the management found that these machines have lost its usefulness in terms of utility and performance. The company ascertained the recoverable value of these machines in compliance of accounting Standard- 28 issued by ICAI. A govt. approved value and chartered engineer namely Sh. M.L. Gupta, was appointed to estimate valuation of the above imported machines. The valuer vide his certificate dated 02.04.2015 certified after examining the above machines that the said machines have lost their significance in terms of utility and have already spent their useful life and further due to change in technology, these machines are of no use and have become obsolete. As such, the excess of carrying amount of these assets over recoverable amount, amounting to Rs. 347.11 lakhs has been treated as depletion in the value of plant under reference. This amount was charged to the profit and loss account by actually writing off of the same from the gross block of the company's assets in the year under consideration and had disclosed the above fact in the audited balance in Note 30(b) of accompanying notes to the financial statements. The amount of Rs.347.11 lakh has been credited to the account of plant and machinery. The corresponding debit of this



CIT(A)-7, New Delhi

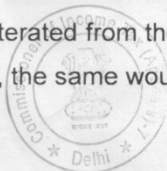
amount is made to the P&L Account as exceptional item in Note No.30. From perusal of the balance sheet with notes on accounts it will be evident that no provision has been shown in the liability side in the balance sheet on account of impairment of assets.

4.4. The appellant added back the above impairment of assets of Rs.347.11 lakh for computing the taxable income/ loss in the return of income of the year under consideration but at the same time this write off of the asset has not been reversed while computing the book profit u/s 115JB of IT Act to pay Minimum Alternative Tax (for short "MAT").

4.5. The AO was of the view that the impairment loss is nothing but provision for diminution in the value of assets and hence Rs.3.47 crore was added back to book profits of the appellant company and computed MAT thereon as per the assessment order.

4.6. The appellant submitted that the appellant company has neither set aside any amount nor made any provision for diminution in the value of assets but the gross block of the company has been reduced to the extent of Impairment of Assets actually suffered by the company due to change in technology during the year by charging the same in the Profit & Loss Account and depreciation has been calculated on reduced WDV only. Thus, it is clear that only a provision is to be adjusted to arrive at book profit. Where there is an actual loss ascertained in scientific manner and such loss is written off, then this clause will not apply.

4.7. The appellant also relied on the decision of Hon'ble Karnataka High Court in case of CIT v/s Yokogawa India Ltd 17 Taxmann.com15 where the Hon'ble Court held that in the case on hand was one of a debt which was an amount receivable by the assessee which was written off and observed that clause(c) of the explanation to section 115JA/115JB, would not apply. In context of applicability of clause(i) to the Explanation, relying on the decision of Supreme Court in case of Vijaya Bank(2010) 323 ITR 166 (SC), the Court observed that there is a dichotomy between actual write off and provision for bad and doubtful debt. A mere debit to the Profit and Loss account would constitute a bad and doubtful debt but it would not constitute actual write off. However, if simultaneously such amount is obliterated from the accounts by reducing corresponding loans and advances on the asset side, the same would amount to a write off. It was concluded as under:



*"... Therefore, after the Explanation the assessee is now required not only to debit the P&L A/c but simultaneously also reduce the loans and advances or the debtors from the assets side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of the provisions for the impugned bad debt. Therefore, in the first place if the bad debt or doubtful debt is reduced from the loans and advances or the debtors from the assets side of the balance sheet the Explanation to s. 115JA or JB is not at all attracted."*

4.8. Under Normal provisions of the Act loss on impairment is not allowed because it is only a unrealized loss thus not covered by Section 28 to Section 44D. But while calculating book profits for MAT purpose, such loss cannot be added back because book profit means Profit as per P & L A/c prepared in accordance with AS issued by the ICAI.

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

6. The Ld. D.R. heavily relied on the order of the A.O. He submitted that the assessee company has not disposed off the assets and it is a notional loss. Therefore, the A.O. was fully justified in adding the same to the book profit of the assessee company.

7. Learned Counsel for the Assessee, on the other hand, heavily relied on the order of the Ld. CIT(A). Referring to decision of the Coordinate Bench of the Tribunal in the case of Vedanta Ltd., vs., ACIT, Circle-26(2), Delhi ITA.No.12/Del./2020 order dated 12.01.2009 for the A.Y. 2014-2015, copy of which is

placed at page nos.101 to 156 of the PB, he drew the attention of the Bench to paras 149 to 150 of the said order and submitted that the Tribunal following the decision of Hon'ble Gujarat High Court in the case of Vodaphone Essar Gujarat Ltd., came to the conclusion that impairment of assets written-off in the books of account in accordance with the Accounting Standards cannot be added back to compute book profit under section 115JB under Clause-(i) to Explanation-1 of the I.T. Act, 1961.

7.1. Referring to the decision of Chennai Bench of the Tribunal in the case of Indowind Energy Ltd., vs., DCIT, Chennai, copy of which is placed at page nos.77-100 of the PB, he submitted that the Tribunal in the said decision has held that impairment of fixed assets in compliance of AS-28 cannot be added to book profit under section 115JB of the I.T. Act, 1961.

7.2. Referring to decision of Ahmedabad Bench of the Tribunal in the case of Hitech Home & Life Solutions India Ltd., ITA.No.3363/Ahd/2015 dated 02.11.2018,

copy of which is placed at page nos.68-76 of the PB, he submitted that the Tribunal in the said decision has held that impairment of loss written-off in the books of account cannot be added to compute book profit under section 115JB of the I.T. Act, 1961. Learned Counsel for the Assessee also relied on the following decisions and submitted that the issue stands squarely covered in favour of the assessee.

S. No	Particulars
1.	CIT v/s Yokogawa India Ltd 17 Taxmann.com 15 (Kar)
2.	Vijaya Bank vs Commissioner of Income Tax & Or (2010) 323 ITR 166 (SC)
3.	Commissioner of Income Tax vs. Kirloskar Systems [2013] 40 taxmann.com 124 (Kar)
4.	CIT Vs Vodafone Essar Gujarat Ltd. Tax Appeal No.749 of 2012 (Guj)
5.	Southern Technologies Ltd. Vs CIT (2010) 2 SCC 548 (SC)
6.	CIT vs HCL Comnet Systems and Services Ltd. 305 ITR 409 (SC)
7.	CIT vs. Adbhut Trading Co. (P) Ltd. (2011) 338 ITR 0094 (Bom)
8.	CIT vs. Akshay Textiles Trading & Agencies (P) Ltd. (2008) 304 ITR 0401 (Bom)

7.3. He accordingly submitted that the Ld. CIT(A) is fully justified in deleting the addition made by the A.O. and, therefore, the ground raised by the Revenue should be dismissed.

8. We have considered the rival arguments made by both the sides, perused the orders of the A.O. and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case made addition of Rs.3,47,10,830/- to the book profit computed under section 115JB of the I.T. Act, 1961 on the ground that impairment loss is nothing, but, provision for diminution in the value of assets. We find the Ld. CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph. We do not find any infirmity in the order of the Ld. CIT(A). We find an identical issue had come-up before the Ahmedabad Bench of the Tribunal in the case of Hitech Home & Life Solutions India Ltd., (supra). We find the Tribunal after considering the rival arguments made by both the sides observed as under :

*“8. We have heard the rival contentions and perused the materials available on record. On perusal of the fixed assets schedule of the assessee placed on page 34 of the paper book we note that the provision for loss on assets held for disposal was actually written off in the block of assets and accordingly resulting reduction in the assets side of the balance sheet. Thus, it is clear that the provision as discussed above was not shown as liability in the balance sheet of the assessee. Thus, in our considered view, there cannot be any addition on account of provision made by the assessee for the diminution in the value of assets in its books of accounts. In this regard, we find support and guidance from the judgment of Hon’ble Supreme Court in the case of Vijaya Bank vs. CIT reported in 323 ITR 166, wherein it was held as under:*

*“7. One point needs to be clarified. According to Shri Bishwajit Bhattacharya,*

*learned Additional Solicitor General appearing for the Department, the view expressed by the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala (supra) was prior to the insertion of the Explanation vide Finance Act, 2001, with effect from 1-4-1989, hence, that law is no more a good law. According to the learned counsel, in view of the insertion of the said Explanation in section 36(1)(vii) with effect from 1-4-1989, a mere debit of the impugned amount of bad debt to the profit and loss account would not amount to actual write off. According to him, the Explanation makes it very clear that there is a dichotomy between actual write off on the one hand and a provision for bad and doubtful debt on the other. He submitted that a mere debit to the profit and loss account would constitute a provision for bad and doubtful debt, it would*

*not constitute actual write off and that was the very reason why the Explanation stood inserted. According to him, prior to Finance Act, 2001, many assessees used to take the benefit of deduction under section 36(1)(vii) of 1961 Act by merely debiting the impugned bad debt to the profit and loss account and, therefore, the Parliament stepped in by way of Explanation to say that mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write off. To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee-bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from*

*Loans and Advances/debtors on the asset side of the balance sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance sheet was shown as net of the provision "for impugned bad debt". In the judgment of the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala (supra), a mere debit to the profit and loss account was sufficient to constitute actual write off whereas, after the Explanation, the assessee(s) is now required not only to debit the profit and loss account but simultaneously also reduce loans and advances or the debtors from the asset side of the balance sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt. This aspect is lost sight of by the High*

*Court in its impugned judgment. In the circumstances, we hold, on the first question, that the assessee was entitled to the benefit of deduction under section 36(1)(vii) of 1961 Act as there was an actual write off by the assessee in its books, as indicated above.”*

*At the time of hearing ld. DR has not brought anything on record contrary to the arguments advanced by the ld. Counsel for the assessee. Therefore, we have no alternate except to reverse the order of authorities below. Hence, after having reliance on the judgment of Hon’ble Supreme Court in the case of Vijaya Bank (supra) we hold that the provisions has actually been written off by the assessee for diminution in the value of assets. Therefore, no addition under clause-(i) to Section 115JB of the Act was warranted. Hence, we set aside the order of ld. CIT(A) and direct the AO to delete the same. Hence, ground of appeal of the assessee is allowed”.*

8.1. We find the ITAT, Chennai Bench of the Tribunal in the case of Indowind Energy Ltd., (supra) had also an occasion to decide an identical issue in favour of the assessee by dismissing the appeal of the Revenue. The relevant observation of the Chennai Bench of the Tribunal reads as under :

*“9.3. We find merit in the order of the Ld. CIT(A) on this issue because of the following reasons :*

- i) Section 2(11) (3A) of the Companies Act provides that the profit and loss account and balance sheet of the company shall comply with the accounting standards.*
- ii) Accounting Standard-28 states that an asset is said to be impaired when carrying amount of the asset is more than the recoverable amount. It further states that such impairment loss on the asset is to be accounted and the asset should be shown in the balance sheet at its cost less depreciation less impairment loss. Precisely the*

*impairment loss has to be written off in the books of accounts by debiting to profit & loss account and crediting to asset account. This is mandatory as per Accounting Standard-28, which every company has to follow while preparing its statement of affairs.*

*iii) As held by the learned Commissioner of Income Tax (Appeals) there is no whisper in the provisions of section 115JB of the Act for adding back the impairment loss to the profit & loss account of the assessee while computing “book profit” & tax under section 115JB of the Act.*

*9.4. Therefore, we do not find it necessary to interfere with the orders of the learned Commissioner of Income Tax (Appeals) on this issue.*

*10. In the result, the appeal of the assessee is partly allowed for statistical purposes and that of the Revenue is dismissed.”*

8.2. Similar view has been taken in various other decisions relied on by the Learned Counsel for the Assessee. Since the facts of the case are identical to the facts of the case decided by ITAT, Ahmedabad Bench of the Tribunal in the case of Hitech Home & Life Solutions India Ltd., (supra) and the Chennai Bench of the Tribunal in the case of Indowind Energy Ltd., (supra) therefore, respectfully following the same and in absence of any contrary decision brought to our notice by Ld. D.R, we uphold the order of the Ld. CIT(A) on this issue and the ground raised by the Revenue is dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 21.12.2021.

Sd/-  
[K. NARASIMHA CHARY]  
JUDICIAL MEMBER

Sd/-  
[R.K.PANDA]  
ACCOUNTANT MEMBER

Delhi, Dated 21<sup>st</sup> December, 2021.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.