

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES “E”, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI LALIET KUMAR, JM**

ITA No. : 764/Mum/2021  
Assessment Year : 2013-14

Everest Kanto Cylinder Ltd. 204, Raheja Centre, Ree Press Journal Marg, Nariman Point, Mumbai-400 021  PAN: AAACE 0836 F  (Appellant)	Vs.	Asst. CIT (LTU)-2 29 <sup>th</sup> Floor, Cenntre-1, World Trade Centre-1, Cuff Parade, Mumbai-400 005    (Respondent)
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Appellant by : Shri Shekhar Gupta  
Respondent by : Shri B. K. Bagchi

Date of hearing : 22.02.2022  
Date of Pronouncement : 25.02.2022

**ORDER**

Per Laliet Kumar, JM :

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-56, Mumbai (‘Id.CIT(A) for short) dated 25.03.2021 and pertains to the assessment year (A.Y.) 2013-14 on the following ground:

1. *The learned CIT(Appeals) has erred in law and on the facts of the case in sustaining the addition of Rs.30,82,223/- to the book profit while computing the same u/s.115JB of the Act.*
2. In this regard, the Id. Authorised Representative (Id. AR for short) of the assessee had submitted that the Revenue has wrongly decided the issue while computing the book profit off the assessee u/s.115JB and have taken into account the

amount of interest while calculating the book profit. He has drawn our attention to Explanation 1 to section 115JB of the Act. He submitted that the amount of interest (the difference of the amount) which was reflected in section 26AS cannot be added to the book profit, as the same was not provided under the Explanation 1 to section 115JB. It was also the contention of the Id. AR that the Hon'ble Supreme Court in the case of *Apollo Tyres v. CIT (255 ITR 273)(SC)* has decided the issue in favour of the assessee, whereby it was held that for the purposes of computing the book profit, the amount which are mentioned in Explanation 1 to section 115JB, can be added and no other amount/s can be added to the book profit.

3. Per contra, the Id. Departmental Representative (Id. DR for short) relied upon the order passed by the lower authorities and our attention was drawn to the paragraph 7.3 of the Id. CIT(A)'s order which is to the following effect:

*7.3 As far as the second issue regarding claim of non-applicability of Sec 115JB to the addition made on account of difference between the income reflecting in 26AS and books of account is concerned, no specific submission has been filed by the Appellant, as can be seen from the submission reproduced above already. Also, the decision of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd Vs CIT (2002) 255 ITR 273 will not be applicable here. From the assessment order, Para 5 it is seen that there was a difference between income as per 26AS and as per Books of Rs 852,91,132/-. The difference of Rs 30,82,223/- has been accepted by the Appellant before the A.O: who has proceeded to add this to the total income of the Appellant as per regular provision of the Act and also to Book Profit u/s 115JB. I am of the opinion that this difference will also affect the book results of the Appellant and Book Profit needs to be modified accordingly. Since the Book Profit itself needs modification, the decision of Hon'ble Supreme Court in Apollo Tyres will not be applicable. The addition made by the AO is accordingly, upheld.*

4. We have heard the rival contention and perused the material available on record. Undoubtedly, during the assessment proceedings, the Assessing Officer had asked the assessee to reconcile the income appearing in Form 26AS. After that enquiry by the Assessing Officer, the assessee offered the income of Rs.30,82,223/- under the normal computation of income, which reads as under:

*5.1 During the assessment proceedings, the assessee was asked to reconcile the income appearing in the Form 26AS. The assessee submitted the details vide letter*

*dated 26.12.2016 regarding the reason for the difference. The assessee offered the income of Rs.30,82,223/- as per the table below:*

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*5.2 As can be seen, the income as per 26AS is Rs.8,52,91,132/- and as per books Rs.8,22,08,909/-. Thus, the differential amount of Rs.30,82,223/- is added to the total income of the assessee. Penalty u/s.271(1)(c) are separately initiated for furnishing inaccurate particulars of income.*

5. The said amount of Rs.30,82,223/- was also added by the Assessing Officer in the book profit of the assessee for the purpose of section 115JB of the Act. The argument of the Id. AR for the assessee is that the amount appearing in Form No.26, accepted and offered as income, cannot be added to the book profit of the assessee, as stipulated in section 115JB of the Act. The perusal to the Explanation 1 to section 115JB clearly shows the book profit, which means the profit as shown in the statement of the profit and loss for the relevant previous year drawn according to the provision of section 129 of the Companies Act, 2013. It is not the case of the assessee that the income shown in Form No. 26AS was not the assessee's income or was not required to be shown by the assessee in the books of account while computing the profit and loss statement. In other words, the income which was now shown and offered by the assessee as income of the assessee was required to be duly shown by the assessee in the book profit while preparing the accounts, including the statement of the profit and loss account in accordance with the Companies Act, 2013. In our view, once the error was committed by the assessee in preparation of Profit and loss statement by not adding the entire amount shown in 26AS as income of the assessee either on account of omission, inadvertent error or by way of fraud which was otherwise required to be included in the statement of the profit and loss account, then it cannot be said that the said amount which was wrongly or deliberately or otherwise left to be included in the book of accounts, cannot be added to the book profit for the purpose of section 115JB of the Act.

In our considered opinion, no person can be permitted to gain from his own mistake either deliberately or intentionally or otherwise done. Giving a pedantic interpretation to the book profit as mentioned in the Explanation would be the antithesis to the purpose, for which it was enacted by the legislature and would result in absurdity and contradictions. Hence amount which was rightfully offered as income by the assessee during the assessment proceedings is also required to be added to the Book Profit for the purposes of section 115JB also .

Hence we do not find any merit in the appeal of the assessee, Accordingly the Appela of the assesseem is dismissed.

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 25<sup>th</sup> day of February, 2022.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

- Sd/-

**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

MUMBAI, Dt: 25.02.2022

Copy forwarded to :

1. The Appellant,
2. The Respondent,
3. The C.I.T.
4. CIT (A)
5. The DR, Bench, ITAT, Mumbai

BY ORDER

ASSISTANT REGISTRAR/SR. PRIVATE SECRETARY  
ITAT, Mumbai Benches, Mumbai

*Roshani, Sr. PS*