IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA Nos. 400 & 668/PUN/2018

निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s. Chheda Electricals and Electronics Pvt. Ltd., Belmont Park, Off Ganeshkhind Road, ICS Colony, Pune 411 007 PAN : AAACC7268D	Vs.	DCIT, Circle-1(1), Pune/ ITO, Ward-1(3), Pune
Appellant		Respondent

Assessee by	Shri Kishor Phadke
Revenue by	Shri Sardar Singh Meena & Shri M.G. Jasnani
Date of hearing	02-05-2022
Date of pronouncement	04-05-2022

आदेश / ORDER

PER R.S. SYAL, VP :

These two appeals by the assessee arise out of the separate orders dated 27-07-2017 & 13-12-2017 passed by the CIT(A)-1, Pune in relation to the assessment years 2013-14 & 2014-15. Since both the appeals have some commonality of facts, we have ergo clubbed them for disposal by this consolidated order.

2. The appeal for the A.Y. 2013-14 is time barred by 128 days. The assessee has filed an affidavit indicating reasons for the

belated filing of the appeal. We are satisfied with such reasons. The delay is condoned and the appeal is admitted for hearing.

3. The only issue raised by the assessee in its appeal is against restricting the deduction u/s.80IC of the Income-tax Act, 1961 (hereinafter also called 'the Act') on the profits of Roorkee undertaking to Rs.3,11,49,011/- instead of profits from eligible undertaking at Rs.7,57,11,731/-.

4. Succinctly, the facts of the case are that the assessee is engaged in manufacture of Auto Electrical and Electronics components for two and three wheelers. Return of income was filed on 30-11-2013 declaring total income under normal computation at Nil. In such computation, the assessee claimed deduction u/s.80IC of the Act amounting to Rs.3,11,49,011/- from the gross total income of Rs.3,11,49,011/-. The Assessing Officer (AO) observed that the assessee was having two plants located at Pune and Roorkee in Uttarakhand. There was profit of Rs.7.57 crore in the eligible Roorkee unit and loss of Rs.4.26 crore in Shirwal, non-eligible unit. The assessee claimed that the entire profit from Shirwal unit was eligible for deduction u/s.80IC of the Act. The AO noticed that the gross total income of the assessee

was only to the tune of Rs.3,11,49,011/- and hence, the amount of deduction u/s.80IC r.w.s. 80A(2) was to be restricted to that level. The ld. CIT(A) countenanced the decision of the AO, against which the assessee has approached the Tribunal.

5. We have heard both the sides and gone through the relevant material on record. In the computation of total income under normal provisions, the assessee computed gross total income at Rs.3.30 crore. Thereafter, deduction was claimed u/s.80IC amounting to Rs.7.57 crore. The view point of the authorities on this issue is that deduction u/s.80IC is required to be restricted to the amount of `gross total income' of Rs.3.11 crore and odd. Chapter VIA of the Act deals with the deductions to be made in computing the total income. Section 80A(1) provides that: "In computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U". Sub-section (2) of section 80A provides that: "The aggregate amount of the deductions under this Chapter shall not, in any case, exceed the gross total income of the assessee". The term "gross total income" has been defined in section 80B(5) to

mean: 'the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter". On a conjoint reading of the above provisions, it emerges that the total amount of deductions under the Chapter VIA cannot breach the amount of gross total income, which, in turn, means the total income computed in accordance with the provisions of the Act immediately before making any deductions under this Chapter. Thus, the procedure is to compute head-wise income under Chapter IV; club incomes of other persons in the assessee's total income as per Chapter V; then apply the provisions of set off and carry forward as per Chapter VI, so as to reach the amount of gross total income. To put it simply, the amount of gross total income is the total income of the assessee immediately before the claim of deductions under Chapter VIA of the Act. Going with the prescription of section 80A(2) of the Act, if the gross total income is more than the aggregate amount of deductions under Chapter VI-A, then such total amount of deductions is reduced from it to find out the total income. If however, the aggregate amount of deductions under this Chapter happens to be more than the gross total income, then such

aggregate amount of deductions gets restricted to the amount of the gross total income with the effect that the total income is reduced to Nil and is not converted into loss so as to allow carry forward of the amount of deductions under this Chapter to the next year. The Hon'ble Supreme Court in M/s. *Synco Industries Ltd. Vs. AO and another (2008) 299 ITR 444 (SC)* has also laid down to this extent.

6. Adverting to the facts of the instant case, it is seen that the assessee's final gross total income was Rs.3,11,49,011/-. Thus, the total amount of deductions under Chapter VI could not have breached the amount of gross total income. The authorities have rightly restricted the amount of deduction u/s 80IC to the extent of gross total income computed at Rs.3.11 crore. The ld. AR was fair enough to accept this position against the assessee. The ground is thus dismissed.

7. The assessee had on an earlier occasion filed application raising additional ground, which reads as under:

> "Appellant contends that Appellant is eligible to claim deduction u/s.80IC of ITA, 1961 while computing book profit u/s.115JB of the ITA, 1961 considering presence of section 115JB(5) and keeping reliance on following decisions :

a) Neha Home Builders Private Limited V. CIT – 195 TTJ 506 (Mumbai)
b) CIT V. Metal & Chromium Platers P. Ltd. - 415 ITR 123 (Madras).
c) Best Trading & Agencies Ltd. V. DCIT – 119 taxman.com 129 (Karnataka)".

8. It has been urged through the additional ground that the deduction u/s.80IC be allowed in the computation of book profit u/s.115JB of the Act in the light of sub-section (5) thereto.

9. Before examining the admissibility or otherwise of the additional ground, it is relevant to note that the assessee in its computation of total income under regular provisions determined total income at Nil. It, being a private limited company, was governed by the provisions of section 115JB of the Act. Under the second computation as per this section, the assessee computed its book profit at Rs.6,90,68,947/- by taking the amount of profit as per parts II and III of Schedule VI to the Companies Act at Rs.5.46 crore as added by the amount of Income-tax u/s.40(a)(ii) and Deferred tax liability. Thereafter, tax was calculated at 18.50% on the book profit of Rs.6.90 crore and the assessee paid/adjusted the amount of tax due thereon at Rs.1,38,19,147/-. The contention of the assessee is that in the computation of book

profit u/s.115JB, it did not reduce the amount of deduction u/s.80IC at Rs.7.57 crore which ought to have been reduced in terms of sub-section (5) of section 115JB of the Act. It is apparent from the above discussion that the assessee *suo motu* applied the provisions of section 115JB of the Act and rightly so. Now, the claim through the additional ground is that the amount of book profit computed for paying tax u/s.115JB was wrongly computed which ought to have been reduced by the amount of deduction u/s.80IC of the Act. The subject matter of the additional ground goes to the root of the matter and is decisive of the total tax liability of the assessee. This being a legal issue, the relevant facts of which are already on record, involves adjudication on question of law. The Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)* has observed that: "the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any

reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item". Answering the question posed before it in affirmative, their Lordships held that on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee and the Tribunal has jurisdiction to examine the same. We find that the additional ground raised before the Tribunal involves a pure question of law and no fresh investigation of facts is necessary for its determination. As such, the additional ground is admitted and espoused for disposal on merits.

10. We have heard the rival submissions on the additional ground and gone through the relevant material on record. Section 115JB of the Act is a special provision for payment of tax by certain companies. Sub-section (1) of section 115JB provides that: `Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment

year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent'. A careful circumspection of this sub-section transpires that it opens with a non obstante clause and is also a deeming provision. It provides a mechanism for determination of income tax payable by a company at 18.5% of its book profit, if, the amount of income tax payable under the normal provisions is less than that. When that happens, two consequences result. Firstly, its book profit is deemed as total income and secondly, such deemed total income is subjected to tax at 18.5%. Because of the non-obstante clause, no other provision of the Act can apply and come in the way of the manner of determination of these two things, namely, either the book profit (total income) or the rate at which the tax is payable. The term `book profit', as referred to in sub-section (1), has been precisely defined in an exhaustive manner in Explanation 1 to sub-section (2). It provides that: `For the purposes of this section, "book profit" means the profit as shown

in the statement of profit and loss …' as increased by items given in clauses (a) to (k) and as reduced by, items given in clauses (i) to (viii). The list of reductions does not include the amount of deduction u/s.80IC etc., though there is reference for reduction of the income u/s.10, 11 and 12 etc. under clause (ii).

11. At this juncture, it is relevant to mention that section 115JA, predecessor of section 115JB, defined the term `book profit' under Explanation to sub-section (2) of section 115JA expressly providing for reducing the amount of deductions u/ss.80IB, 80IA, 80HHC and 80HHE in clauses (v), (vi), (viii) and (ix) in addition to exemptions u/ss.10 to 12 as per clause (ii). However, the rate of tax u/s.115JA was 30% of its book-profit. When section 115JB was inserted, it did away with specific deductions, such as, sections 80IB, 80IA, 80HHC and 80HHE which were there u/s.115JA but retained the exemptions u/ss.10 to 12 for the purposes of determination of book-profit. The list of reductions was curtailed in view of the slashing of the rate of tax to 18.50% payable on the amount of book profit as against the earlier rate of 30%. This deciphers that in the computation of income-tax payable u/s.115JB, the statute has not provided for reducing the

amount of book profit with the amount of deductions under Chapter VIA which includes section 80IC also. Since the term `book profit' has been defined in an exhaustive manner and sub-section (1) provides for charging tax at 18.5% by deeming such book profit as total income and further this is locked with the non-obstante clause in sub-section (1) *qua* any other provision of the Act, the sequitur is that determination of tax liability by applying the specified rate on the book profit of a company attains finality in this manner alone and cannot be subjected to any other provision of the Act insofar as these two aspects of book profit and the rate to be applied thereon are concerned.

12. The ld. AR has invoked the provisions of sub-section (5) of section 115JB for claiming reduction in the amount of book profit on account of amount of deduction u/s.80IC. Sub-section (5) provides: "Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section". The salient features of this sub-section are that it opens with a saving clause *qua* section 115JB and then proceeds to provide that *all other provisions* of this Act shall apply. The effect of the saving clause is that

whatsoever has been enshrined in section 115JB will be secured and protected. In that view of the matter, it is strictly impermissible to go beyond the prescription of the definition of book profit and *suo motu* import or export certain increases or reductions as have not been expressly provided therein. The use of the word `other' in the expression `all other provisions' reinforces that the mandate of section 115JB will remain undisturbed by sub-section (5) and only the provisions, other than section 115JB, which shall apply.

13. The reference to *all other provisions* is to the provisions - ante or post the computation of tax liability in the fashion as prescribed in section 115JB. To clarify, the assessee would be liable to pay advance tax with reference to the prescribed rate of tax on such book profit deemed as total income and if such advance tax is not paid, it will be visited with interest u/s 234B and 234C; similarly if the return is not furnished in time, it will be liable to pay interest u/s 234A for default in furnishing the return of income. Thus, by no stretch of imagination, sub-section (5) can have the effect of upsetting anything which is the subject matter of section 115JB, including the book profit, which got locked by

virtue of sub-section (1) read with Explanation 1 to section 115JB because of non obstante clause and got double locked by having saving clause *qua* the entire section 115JB in sub-section (5). The contention of the ld. AR would have merited acceptance if the subject matter of sub-section (5) *de hors* its saving clause, namely, applicability of all other provisions of the Act, had been placed in Explanation (1) to section 115JB(2).

14. The amount of book profit and the determination of income-tax liability thereon as per sub-section (1) attains finality on its computation itself and hence, that cannot be subjected to other provisions of the Act including the deduction u/s.80IC of the Act. The very fact that Explanation 2 to section 115JB specifically provides for the reduction of the amount of income u/ss.10,11 and 12 etc., itself evidences that the intention of the legislature is to allow reduction from the book profits only to this extent and not to deduction u/s 80IC of the Act. If the contention of the ld. AR about the applicability of sub-section (5) also to the determination of book profit in sub-section (1) of section 115JB is taken to a logical conclusion and it is supposed that the legislature intended granting benefit of all the deductions in the computation of book

profit also u/s.115JB, then there was no need to specifically retain clause (ii) to Explanation 1 providing for reduction of the income u/ss.10, 11 and 12 from the amount of profit as per the profit and loss account. In that case, sub-section (5) would have also governed sections 10, 11 and 12, thereby rendering this clause redundant. The presence of clause (ii) in Explanation 1 to section 115JB and omission of other clauses which were there in section 115JA providing for reducing some of the deductions under Chapter VI-A, clearly shows that the intention of the legislature is to continue with the reduction of income u/ss. 10 to 12 in the era of section 115JB and omit the reduction of some of the deductions under Chapter VIA in the computation of book profit.

15. Now we turn to the decisions relied by the ld. AR in support of the applicability of sub-section (5) to the computation of `book profit' u/s.115JB of the Act with the consequence of reducing the amount of deduction u/s 80IC of the Act therefrom. The first decision is that of the Hon'ble Karnataka High Court in *Best Trading & Agencies Ltd. V. DCIT – 119 taxman.com 129 (Karnataka)* in which the issue was about providing the benefit of indexation to the cost of acquisition while computing the capital

gain for the purpose of computation of book profit u/s.115JB of the Act. Taking note of sub-section (5) of section 115JB, the Hon'ble High Court granted the benefit of indexation even though such indexation has not been provided for in Explanation 1 to section 115JB of the Act. The next judgment is that of the Hon'ble Madras High Court in *CIT Vs. Metal & Chromium Plater (P) Ltd. (2016) 76 taxman.com 229 (Madras)*. The issue in that case was about granting of relief u/s.54EC in the computation of tax u/s.115JB which is otherwise not provided for in Explanation to section 115JB(1). The Hon'ble High Court invoked sub-section (5) and held that the adjusted book profit would be further eligible to the benefits set out in other provisions of the Act including section 54EC of the Act. The third decision is of the Mumbai Tribunal in *Neha Home Builders (2018) 54 CCH 0577 MumTrib* holding that the assessee was entitled to deduction u/s 80IB(10) while computing book profit u/s 115JB of the Act in the light of sub-section (5).

16. During the course of hearing, our attention was drawn towards some other judgments, *inter alia, Sankhla Polymers (P) Ltd. Vs. ITO (2013) 352 ITR 452 (Karnataka)*, and *Jaintia Alloys*

(P) Ltd. and others Vs. Union of India and others (2010) 320 ITR 442 (Guwahati) having bearing on the issue under consideration.

17. In the case of *Jaintia Alloys (P) Ltd. (supra),* the assessee filed writ petition challenging the validity of the provisions of section 115JB of the Act on the ground that it did not provide for deduction u/s.80IB and the assessee had set up its unit in the eligible area for availing benefit u/s.80IB. Dismissing the writ petition, the Hon'ble High Court held that the curtailment of the benefit earlier granted by legislative Act cannot be invalidated on the principles of promissory estoppel. In other words, the benefit of section us.80IB which was available u/s.115JA but taken away by section 115JB, was declared as valid. In *Sankhla Polymers (P) Ltd. (supra)*, the assessee claimed deduction u/s.80IB in the computation of income u/s.115JB, which was not allowed by the AO and the action of the AO was approved in the consecutive two appeals. The Hon'ble High Court, on a comparative reading of section 80IB as well as section 115JB, held that section 115JB is a special charging section and section 80-IB does not control the provisions of Section 115JB of the Act. It further laid down that: `The benefit under Section 80-IB is not denied, it works as it is. It

is only because the assessee happens to be a company to which the provisions of Section 115JB is also attracted, levy as indicated therein becomes operative'. Similar view was earlier taken by the Hon'ble Uttarakhand High Court in *Sidcul Industrial Association vs. State of Uttrakhand (2011) 331 ITR 491.* These judgments make it palpable that deduction u/s.80B/80IC is not available in the computation of book-profit u/s.115JB of the Act.

18. In view of the foregoing discussion, it is clear that for the purpose of calculation of tax liability u/s.115JB of the Act, there is no scope for reducing book profit by the amount of deduction u/s.80IC. The Mumbai Tribunal in *Neha Home Builders (supra)* has held that deduction u/s.80IC is permissible in computing book profit u/s.115JB of the Act. Unfortunately, the above referred judgments of the Hon'ble Guwahati, Uttarakhand and Karnataka High Courts, which were prevailing on the date of hearing by the Mumbai Bench, were not brought to its notice.

19. At this stage it would be relevant to take note of another judgment of the Hon'ble Rajasthan High Court in *Bishnu Krishna Shrestha vs. CIT (2019) 414 ITR 405 (Raj).* The assessee in that case challenged the provisions of Section 115JB & 80IC of the

Act on the ground that the benefit granted under Section 80IC could not have been withdrawn by introduction of section 115JB. Thus the dispute was on the non-granting of deduction u/s 80IC in the computation of tax liability u/s 115JB. Contention of the assessee that the denial of the deduction was *ultra vires* the Constitution of India came to be rejected. Although the SLP on this issue has been admitted by the Hon'ble Supreme Court in *S.B.L. (P.) Ltd. vs. CIT (2019) 263 Taxman 477 (SC),* but that does neither make the *ratio* of the judgment otiose nor accord such admission a status of binding precedent under Article 141 of the Constitution. *Ratio* of the judgment in such cases continues to have full force under Article 227 of the Constitution until it is actually reversed and not on admission of the SLP.

20. In view of the fact that four consecutive High Courts have disentitled the assesses to reduce the amount of deduction u/s.80IB/80IC in the computation of book-profit u/s.115JB of the Act, and not even a single divergent judgment of any Hon'ble High Court has been brought to our notice, there is no scope for taking a contrary view. *Ex consequenti,* the Tribunal, which is an inferior authority, is incapacitated to lay down differently.

Reverting to the language of section 115JB(5) making all other provisions of the Act applicable but by saving section 115JB and sub-section (1) of section 115JB containing a non obstante clause *qua* any other provision of the Act in the manner of computation of income tax liability of a company at 18.5% of its book profit and because of deeming provision in this sub-section regarding the computation of book profit and further Explanation 1 defining book profit in an exhaustive manner, we hold that there is no merit in the contention of the ld. AR in seeking reduction of the book profit u/s 115JB with the amount of deduction u/s 80IC of the Act. The additional ground, therefore, fails.

21. The ld. AR submitted that the appeal for the A.Y. 2014-15 is rendered infructuous and the same may be dismissed as such.

22. In the result, both the appeals are dismissed.

Order pronounced in the Open Court on 04th May, 2022.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 04th May, 2022
Satish

<u>आदेश की प्रतिलिपि अग्रेषित</u>/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Pune
4. The Pr.CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune
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Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	02-05-2022	Sr.PS
2.	Draft placed before author	04-05-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
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10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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