

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER**

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| ITA No.708/Bang/2019 |
| Assessment year : 2011-12 |

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| The Income Tax Officer, Ward 2(1)(3), Bangalore. | Vs. | M/s. Daffy Cosmetics Pvt. Ltd., C-201, Platinum City, HMT Road, Peenya Yeshwanthpur, Bengaluru – 560 022. PAN: AABCD 8098F |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru. |
| Respondent by | : | None |

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| Date of hearing | : | 10.05.2022 |
| Date of Pronouncement | : | 10.05.2022 |

ORDER

Per Padmavathy S., Accountant Member

This appeal of the revenue is against the order of the CIT(Appeals)-2, Bengaluru dated 24.01.2019 for the assessment year 2011-12 on the following grounds:-

1. CIT(A) erred on facts and law in applying the conditions of eligibility of deduction u/s. 80IC to the provisions of section 115JB(6).
2. CIT(A) failed to appreciate the fact that an "Industrial Estate" situated in the state of Uttaranchal may be notified for the purpose of deduction u/s.80IC of the I.T. Act and may not be notified as SEZ to be able to claim application of the provisions of section 115JB(6).

3. CIT(A) erred on facts and law in deciding that the assessee is eligible for the exemption of the application of section 115JB of the IT Act U/s.115JB(6), despite the fact that the area of the business of the assessee is not part of the list of the notified SEZs.
4. CIT(A) erred in law in applying the eligibility of deduction u/s.80IC to the provisions of section 115JB(6) against the decision of Sidcul Industrial Association Vs State of Uttaranchal 119 Tax man 75(UTR).”

2. This appeal of the revenue originally came up for hearing and was dismissed by the Tribunal by order dated 09.09.2019 on the ground of low tax effect. However, the revenue filed a miscellaneous petition in MP No.71/Bang/2020 stating that the appeal fell within the exceptions mentioned in para 10 of the CBDT Circular No.3 of 2018 dated 11.7.2018 since there was audit objection. On these facts, the Tribunal allowed this MP by order dated 11.12.2020 recalling the earlier order of the Tribunal dated 9.9.2019 for fresh hearing on merits. In these circumstances, this appeal was taken up for hearing and heard.

3. The brief facts of the case are that the assessee filed a return of income for the AY 2011-12 declaring income at Nil. Assessment was completed u/s. 143(3) of the Income-tax Act, 1961 [the Act] on 2.1.2014. Further, the AO issued a notice for rectification u/s. 154 of the Act stating that there was a mistake apparent on the record in the assessee's case for not charging MAT u/s .115JB of the Act. Thereafter, The AO computed the book profit u/s. 115JB and computed income at Rs.60,50,259.

4. The assessee preferred an appeal before the CIT(Appeals) against the order of the AO stating that assessee is deriving income from the operation of unit at Special Economic Zone (SEZ) in special category state of Uttaranchal which is eligible for deduction u/s. 80IC of the Act and therefore MAT is not applicable for units located under SEZ as per the

provisions of section 115JB. The CIT(Appeals) allowed the appeal in favour of the assessee stating in detail how the assessee satisfies the conditions specified in section 80IC of the Act. However, the CIT(Appeals) did not pass a speaking order with respect to the applicability of section 115JB to the assessee. Aggrieved by the order of the CIT(Appeals), the revenue is in appeal before us.

5. None appeared for the assessee. We have heard the Id. DR and perused the material on record.

6. The Id. DR submitted that the main issue is with respect to applicability of provisions of section 115JB of the Act to the assessee's case. He submitted that though the CIT(Appeals) in his order had discussed in detail about the assessee satisfying the conditions applicable for claiming the deduction u/s. 80IC of the Act, but he has not dealt with the applicability of the provisions of section 115JB. The Id. DR submitted that these two provisions are different from each other and hence had to be dealt with separately.

7. We have considered the submissions of the Id. DR. The provisions of sub-section (6) of section 115JB of the Act reads as under:-

“Special provision for payment of tax by certain companies.

115JB. (6) **115JB.** (1) 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, 2011, is less than *eighteen 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 per cent*

(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.”

8. According to these provisions, to claim that MAT provisions u/s. 115JB are not applicable to it, the assessee should be a unit of SEZ. This fact has not been dealt in detail by the lower authorities. We also notice that the lower authorities have not called for any evidence from the assessee to substantiate the claim of the assessee that MAT provisions u/s. 115JB are not applicable to its case. It is also noticed that the Ministry of Commerce & Industry, Govt. of India, vide Notification dated 15.3.2011 under Rule 8 of the Special Economic Zone Rules Act, 2006, has rescinded the SEZ which was issued by Notification dated 16.6.2008. The Notification by the Ministry of Commerce & Industry, Govt. of India prescribing a particular area or location to be in a SEZ is a basic criterion for deciding the applicability of section 115JB of the Act. This fact needs to be examined in detail by the lower authorities. Hence, we remit this issue back to the AO to look into the facts of the case regarding applicability of section 115JB of the Act to the assessee's case afresh and decide the issue in accordance with law, after giving reasonable opportunity of being heard to the assessee.

9. In the result, the appeal of the revenue is allowed for statistical purposes.

Pronounced in the open court on this 10th day of May, 2022..

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Sd/-
(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 10th May, 2022.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.