

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASHTY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2038/Mum/2021
(A.Y. 2007-08)**

Just Textiles Limited K-5, Anand Nagar, MIDC Ambarnath (East) Thane - 421506	Vs.	ACIT, Circle-15(2)(1) Aayakar Bhawan, 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACJ1221D		
Appellant	..	Respondent

Appellant by :	Kiran Mehta
Respondent by :	S.N. Kabra

Date of Hearing	04.05.2022
Date of Pronouncement	04.05.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order passed by the Id. CIT(A), NFAC, Delhi, which in turn arises from the order passed by the A.O. u/s 143(3) of the Income Tax Act, 1961, for A.Y. 2007-08. The assessee has assailed the impugned order on the following grounds before us:

- “1. *In the Facts and Circumstances of the Appellant's case the learned CIT (A) erred in confirming computation made by the learned AO u/s 115JB by taking Book Profit Before Tax as a starting point and then making addition for provisions for (a) Fringe Benefit tax Rs. 4,87,000 and (b) Deferred tax Rs.2,03,05,670 to such profits which has resulted into enhanced computation of Rs. 2,07,92,670 U/s 115JB*

2. *In the facts and circumstances of the Appellant's case and in law the learned CIT (A) erred in holding that the rectification order passed by the learned AO u/s 154, which was the subject matter of appeal before the Learned CIT (A) was passed beyond the time allowed by section 154 and hence the Appeal before the learned CIT (A) was not maintainable.*
3. *In the facts of the case, since the learned AO had already passed an order u/s 154 and since the said order was subject matter of appeal before the learned CIT(A), the learned CIT(A) erred in holding that the order appealed against was not valid and hence the appeal was not maintainable.*
4. *The learned CIT(A) erred in passing the impugned order without giving the Appellant an opportunity to be heard on the view taken by the learned CIT(A).”*

2. All the grounds of appeal of the assessee are interconnected, therefore, these grounds of appeals are adjudicated together in this order.

3. The fact in brief is that return of income declaring total income at Rs. nil was filed on 31.10.2007. The assessment u/s 143(3) of the Act was completed on 02.12.2009 assessing the total loss at Rs.354,37,974/-. Thereafter, the assessee had filed rectification application u/s 154 of the Act on 15.01.2010 on receipt of assessment order passed u/s 143(3) of the Act. In the rectification application the assessee stated that in the assessment order u/s 143(3) the A.O has made double addition of FBT of Rs.4,87,000/- and deferred tax of Rs.2,03,05,670/- to the book profit of Rs.538,29,520/- while computing book profit of the assessee company. In this regard, the assessee explained that book profit of Rs.5,38,29,520/- was already determined in its statement of income without reducing the aforesaid items of FBT and deferred tax. Vide aforesaid rectification application dated 15.11.2010, the assessee was requested to rectify the book profit determined u/s 115JB of the Act. However, the A.O dismissed the application of the

assessee stating that issue had already been adjudicated by the CIT(A) and ITAT.

4. The assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that application of the assessee u/s 154 dated 09.05.2015 was beyond the limitation period of 4 years as prescribed u/s 154(7) of the Act.

5. Heard both the side and perused the material on record. It is undisputed fact that in the assessment order for computing book profit u/s 115JB of the Act, the A.O has taken the profit before tax at Rs.5,38,29,520/- without taking into consideration that the assessee had already added the amount of deferred tax liability of Rs.2,03,05,670/- and fringe benefit of Rs.4,87,000/- to the amount of Rs.5,38,29,520/-. In fact the A.O has again added the aforesaid amount to the profit before tax and determined the book profit at Rs.7,46,22,190/-. The A.O has passed order u/s 154 of the Act on 04.11.2015 and held that rectification application dated 19.05.2015 of the assessee was rejected since the issue of aforesaid double addition had already been adjudicated by the ld. CIT(A) and ITAT. However, on perusal of the material placed in the paper book it is observed that A.O had not decided the rectification application of assessee filed u/s 154 of the Act on 15.01.2010. We have also gone through the copy of order of CIT(A) and ITAT placed by the assessee in the paper book and noticed that nowhere impugned issue of making double addition of Rs.2,07,92,670/- while computing book profit was adjudicated. It is discerned from the above facts that A.O has not decided the application for rectification filed on 15.01.2010. The assessee had applied for rectification on 15.01.2010 before filing of appeal before the ld. CIT(A). Since the assessment order u/s 143(3) of the Act was passed on

02.12.2009, therefore, rectification application dated 15.01.2010 was not time barred. Therefore, the decision of the ld. CIT(A) is not justified and we direct the A.O to decide the rectification application of the assessee filed on 15.10.2010 on merit after verification/examination of the relevant material and supporting evidences filed by the assessee, after affording due opportunity to the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.05.2022

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 04.05.2022

PS: Rohit

आदेश की प्रतिलिपि ढ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai