

आयकर अपीलिय अधिकरण  
मुंबई पीठ "सी "  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " C", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं.192/मुं/2022 (नि.व. 2018-19)  
ITA NO.192/MUM/2022(A.Y.2018-19)

Indoco Remedies Ltd.  
166, Indoco House, CST Road,  
Santacruz (East), Mumbai – 400 098.  
PAN: AAACI-0380-C

..... अपीलार्थी /Appellant

बनाम Vs.

NFAC,DELHI.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Madhur Agarwal

प्रतिवादी द्वारा/Respondent by : Mr.R.A.Dhyani

सुनवाई की तिथि/ Date of hearing : 31/05/2022

घोषणा की तिथि/ Date of pronouncement : 31/05/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi dated 06/12/2021.

2. Shri Madhur Agarwal appearing on behalf of the assessee submitted that the assessee filed return of income for the impugned assessment year on 16/11/2018 declaring book profit of Rs.46,76,73,798/- under MAT Provisions. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961

[in short 'the Act'] on 03/09/2019. While processing the return of income the CPC/Assessing Officer made adjustment of Rs.3,84,33,678/- and determined the book profit u/s. 115JB of the Act at Rs.50,61,07,476/-. The aforesaid adjustment was made without any intimation/notice to the assessee. The Id. Counsel for the assessee submitted that the addition was made in an unilateral action in violation of the provisions of section 143(1)(a) of the Act, as well the principles of natural justice.

3. On merits the Id. Counsel for the assessee submitted that CPC/Assessing Officer has failed to allow deduction in respect of provisions for deferred tax asset credited in the P&L Account. The assessee clearly reflected the aforesaid amount in the return of income however, the Assessing Officer failed to appreciate that the amount credited to P&L Account on account of provision for deferred tax asset is to be excluded while computing book profit u/s. 115JB Clause (viii) Explanation -1. Against the addition made vide intimation u/s. 143(1) dated 30/09/2019 the assessee filed appeal before the CIT(A) . The CIT(A) without appreciating the facts and legal position dismissed the appeal of the assessee.

4. Per contra, Mr.R.A.Dhyani representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. Both sides heard orders of authorities below examined. The assessee in ground No.1 of the appeal has assailed the action of Assessing Officer /CPC in unilaterally making addition of deferred tax asset provision in contravention of the provisions of section 115JB of the Act in proceedings u/s. 143(1)(a) of the Act without issuing any notice/intimation.

6. Proviso to section 143(1)(a) mandates that no adjustment shall be made unless an intimation is given to the assessee. In the instant case as is emanating

from records no notice/intimation was given to the assessee for making adjustment/addition. The CPC/Assessing Officer made addition in an unilateral proceedings without affording opportunity of hearing to the assessee or to make submissions and explain as to how book profits have been computed by the assessee under MAT provisions. Non-granting of an opportunity of hearing/making submissions is against the principles of natural justice and mandate of section 143(1)(a) of the Act. Hence, the addition is liable to be set-aside on this ground alone.

7. Even on merits we find that the assessee is bound to succeed. In the return of income, the assessee disclosed provision for deferred tax assets. The assessee had reduced the said provision in accordance with clause (viii), Eplanation-1 to section 115JB of the Act, whereas while processing the returns the said provision was not reduced. It is a well settled law that the Assessing Officer cannot go behind the computation of book profit u/s. 115JB of the Act where the books of account by the assessee had been duly audited by the Auditors and accepted by the Assessing Officer. We find merit in the alternate contention raised by the assessee as well. Taking into consideration the facts of the case and documents on record, the appeal of assessee stands allowed and the impugned order is set-aside.

8. In the result, appeal by assessee is allowed.

Order pronounced in the open court on Tuesday the 31st day of May, 2022.

Sd/-

( AMARJIT SINGH )

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/05/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**