

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 4804/MUM/2012 (A.Y: 2009-10)**

M/s. Asian Electronics Limited 1219, Maker Chamber V Nariman Point, Mumbai - 400021  <b>PAN: AABCA0832C</b>	v.	DCIT – Range – 3(1) Room No. 607 Aayakar Bhavan, M.K. Road Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA NOs. 4770/MUM/2012 (A.Y: 2009-10)**

DCIT – Range – 3(1) Room No. 607 Aayakar Bhavan, M.K. Road Mumbai - 400020	v.	M/s. Asian Electronics Limited 1219, Maker Chamber V Nariman Point, Mumbai - 400021  <b>PAN: AABCA0832C</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	<b>:</b>	<b>None</b>
<b>Department by</b>	<b>:</b>	<b>Smt Shailaja Rai</b>
<b>Date of Hearing</b>	<b>:</b>	<b>09.05.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>24.06.2022</b>

**ORDER****PER S. RIFAUH RAHMAN (AM)**

1. These appeals are filed by the assessee and revenue against order of the Learned Commissioner of Income Tax (Appeals)-5, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 27.04.2012 for the A.Y.2009-10.

2. First we take up the appeal of the assessee in ITA.No. 4804/Mum/2012, assessee has raised following grounds in its appeal: -

**"ADDITIONS OF Rs. 51,81,82,282/- BY TREATING CERTAIN PURCHASES AS NON-GENUINE"**

a) *The Commissioner of Income-tax (Appeals) [hereinafter referred to as "CIT(A)"] has erred in confirming addition to the extent of Rs. 5,18,18,282/- made by the Assessing Officer (hereinafter referred to as "AO") as follows:*

S.No.	Particulars	Amount (Rs.)
	Differences on account of Purchases from various parties	
1)	Ashwamedh Packers Pvt. Ltd	19,560/-
2)	Ashwin Plastic Industries	2,704/-
3)	Rahul Engineering	14,225/-
4)	Shubam Engineering	19,494/-
	Sub-total (A)	55,983/-
	Original Confirmation not provided	
1)	Empee Offset Private Limited	4,83,15,622/-
2)	GLS Lighting Solutions Private Limited	14,30,524/-
3)	Shreeram Industries	20,16,153/-
	Sub-total (B)	5,17,62,299/-
	Total (A+B)	5,18,18,282/-

b) *The appellant respectfully submits that all the above suppliers were genuine parties. The transactions of purchases from them were also genuine and carried out in the ordinary course of the appellant's business. Hence, the addition is not sustainable.*

c) *The appellant, therefore, prays that the alleged addition of Rs. 51,818,282/-, alleged to be on account of non-genuine purchases, be deleted.*

**2. ADDITION OF Rs. 15,87,703/- BY TREATING PURCHASES FROM SOME PARTIES AS UNEXPLAINED EXPENDITURE**

a) *The CIT(A) has erred in confirming addition of Rs. 15,87,703/- made by the AO in respect of the differences between amounts shown by the suppliers and amounts reflected in the books of the appellant by treating the same as unexplained expenditure.*

b) *The appellant respectfully submits that alleged difference in purchases is on account timing difference of accounting the transaction by the supplier and by the appellant in their books of accounts. The reconciliations of all the parties are available. Therefore, the addition is not justified.*

c) *The appellant, therefore, prays that the alleged addition of Rs. 1,587,703/- on account of alleged unexplained expenditure be deleted.*

**3. ADDITIONS U/S 14A OF THE ACT R.W.R 8D OF THE RULES**

a) *The CIT(A) has erred in directing the AO to exclude the investments made in Midcom Magnetics Management Pvt. Ltd. only while computing the disallowances u/s 14A of the Act r.w.r. 8D of the Rules.*

b) *The appellant respectfully submits that during the year under appeal, no fresh investment has been made by the appellant which involves any cash flow or interest expenditure. Consequently, no interest cost can be allocated towards earning exempt income.*

c) *The appellant, therefore, prays that the AO be directed to consider the same and disallowances of Rs. 1,53,27,039/made u/s 14A of the Act r.w.r 8D of the Rules, be deleted in the interest of justice.*

**4. ADDITION TO BOOK PROFIT OF EXPENSES INCURRED TO EARN EXEMPT INCOME**

a) *The CIT(A) has erred in confirming the addition of Rs. 1,53,27,039/- alleged to have been incurred for earning exempt*

*income, while computing "Book Profit" for the purpose of section 115JB of the Act.*

*b) The appellant respectfully submits that no fresh investment has been made during the year. Therefore, the disallowances made u/s 14A of the Act r.w.r. 8D of the Rules is not sustainable. Consequently, there would be no addition to the "book profit" for the purpose of section 115JB of the Act.*

*c) The appellant, therefore, prays that the alleged addition of Rs. 1,53,27,039/made while computing "book profit" for the purpose of section 115JB of the Act should be deleted.*

#### **5. PART DISALLOWANCE OF DEPRECIATION AND ADDITIONAL DEPRECIATION**

*a) The CIT(A) has erred in confirming part of disallowances made by the AO with regard to the normal and additional depreciation on various assets used for the purpose of the business of the appellant.*

*b) The appellant respectfully submits that all the assets on which normal and additional depreciation have been claimed are owned by the appellant and have been used for the business of the appellant. The said assets are covered within the definition of Plant and Machinery as specified in Part A (III) of New Appendix I, to the Income Tax Rules, 1962.*

*c) The appellant, therefore, prays that the alleged disallowances of normal and additional depreciation, upheld by the CIT(A), be allowed.*

#### **6. ADDITIONS ON ACCOUNT OF NON-RECONCILIATION WITH AIR INFORMATION**

*a) The CIT(A) has erred in confirming additions made by the AO to the extent of Rs. 81,17,751/- on account of alleged non-reconciliation with AIR information.*

*b) The appellant respectfully submits that the details/replies/reconciliation for most of the items have been given and, for the remaining items, time provided was too short. In some cases, the income has already been recognized in the earlier/subsequent years, but the payment is reported by the deductor during the relevant assessment year.*

*c) The appellant, therefore, prays that the addition of Rs. 81,17,751/-, upheld by the CIT(A), be deleted.*

**7. REQUEST FOR LEAVETO ADD ALTER ETC. THE GROUNDS OF APPEAL**

*The appellant craves leaves to add, alter, amend and/or supplement any ground or grounds, if necessary, at any time before disposal of the appeal."*

**3.** In spite of issue of notice, none appeared on behalf of the assessee. The notice was sent through RPAD to the address given in Form No.36 by the assessee returned unserved with an endorsement "Left" by the postal authorities. None from the assessee are appearing in this case since 02.08.2017. Earlier one Mr.Arun Shah appeared and withdrawn the Vakalat. Since 02.08.2017 several RPAD notices issued to the assessee and none appeared until now. For the present hearing, the notices was served through Ld.DR office and it is brought to our notice that the case of the assessee is with the Official Liquidator, Hon'ble Bombay High Court, Bombay and accordingly they serviced of notice on 10.02.2020 with the office of the Official Liquidator, Hon'ble Bombay High Court. Since the matter is with Official Liquidator and none is taking interest in prosecuting the case before us and even otherwise the case has to be freshly filed and Revised Form-36 has to be filed by the office of the Official Liquidator, therefore there is no benefit to keep this appeal pending. In order to

dispose of the appeal, we heard the argument of the Ld.DR and proceeded with the matter.

4. Ld. DR briefly explained the facts and supported the orders of the lower authorities.

5. Heard Ld. DR and perused the material placed on record and orders of the authorities below. On perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and sustained the addition made by the Assessing Officer. While holding so, the Ld.CIT(A) observed as under: -

*"4.3 .i I have considered the facts of the case. The AO made addition in relation to five parties (S.N.1 to 5 of "A") where the appellant has shown more purchases than the sales shown by the sellers. In this regard in reply to letter issued u/s 250(4) of the I.T. Act, the appellant has filed copy of account as appearing the books of Ms. Epcos India Private Limited and letter from M/s. Epcos India wherein it is stated that in reply to the notice received Income tax department u/s 133(6) of the I.T. Act, they had given the sales figure of their Nasik unit only. M/s. Epcos India Private Limited has furnished confirmation for sales made to the appellant for Rs.14,43,415/- and Rs.24,13,329/- for Nasik unit and Kalyan Unit respectively totaling at Rs.38,56,744/- for the F.Y. 2008-09 relevant to A.Y. 2009-10. The difference of Rs.39,396/- is stated to be on account of tax amount not considered in purchase return and purchase return of F.Y. 2007-08 considered in A.Y. 2008-09. The AO is directed to allow the difference amount if found correct after verification. In regards to differences on account of purchases made*

from the following parties, the appellant could not reconcile with evidence.

....

Therefore, the addition made on difference of purchases from the above parties is confirmed.

4.3. ii. The AO made addition on account of differences in respect of Nine parties (S.No.6 to 14 of "A") from whom no reply was received / notice returned back. During the appellate proceedings, the appellant was required to furnish confirmations from these parties u/s.250(4) of the I.T. Act and also to file reconciliation in case of differences. In response, the appellant filed confirmation from the following parties.

1. Electromag Devices Private Limited
2. Manish Electricals
3. Silver Technocast
4. Cookson India Pvt. Ltd.
5. Incap Ltd.
6. Polycab Wires Pvt. Ltd.

On the perusal of these confirmations, the position of purchases as shown by the appellant and the sales as shown by the suppliers is as follows:

....

It is submitted that the difference is on account of tax amount. The AO is directed to verify and allow the same, if found correct after verification.

4.3. iii. In respect of the following parties the appellant could not produce original confirmations from the parties:

- |    |  |                         |
|----|--|-------------------------|
| 1. | Empee Offset Private Limited           | -Rs.48315622/-          |
| 2. | GLS Lighting Solutions Private Limited | Rs.1430524/-            |
| 3. | Shreeram Industries                    | <u>Rs.2016153/-</u>     |
|    |  | <u>Rs.5,17,62,299/-</u> |

Since the appellant has failed to file confirmations from the above parties and also there was no response to the notice issued by the AO, the addition made by the AO on account of purchase from these parties amounting to Rs.5,17,62,299/- is confirmed.

4.3. iv *In the result, this ground of appeal is partly allowed."*

4.3. v. *Further, the AO. has made addition of Rs.15,87,703/ on account of differences in purchases made from twelve parties as mentioned in para 4.4 of the assessment order. The position remains the same as the appellant could not file reconciliation with evidence. Therefore the addition made by the AO is confirmed. and ground No.3 is accordingly dismissed.*

....

5.3 ii. *I have considered the submission of the appellant and have perused the assessment order. The A.O. was not satisfied with the claim of the appellant, and therefore, made disallowance under Rule 8D of the I.T. Rules. In view of the provisions of the Act and legal position, as discussed herein above, the Assessing Officer has rightly applied provision of sec.14A and Rule 8D. However, the a submission of the appellant that investment shown in the balance sheet includes certain investments, income from which is chargeable to tax, has force and the same has to be excluded from the working as per Rule 8D. In this regard, detail has been given by the appellant in its submission as reproduced herein above. Similarly the submission of the appellant that The investments in the equity shares of Midcom Magnetics Management Pvt. Ltd. was made in the year 2005-06 in exchange of assets of the company, as there was no cash flow, that no interest expenditure was incurred for acquiring the said investment; and that this was considered by the CIT (A) and he has deleted the addition made by AO in AY 2007 08, has force. Therefore, the AO is directed to consider the same and re-work the disallowance u/s. 14A read with Rule 8D. Thus this ground is partly allowed.*

.....

7.3 *I have considered the submission and facts of the case. The provisions of Explanation 1 to sec.115JB of the I.T. Act reads that 'for the purposes of sec.115JB, "book prof', book profit means the net profit as shown in the profit & loss account for the relevant previous year prepared under sub.sec. (2), as increase by ..... -*

(a) ..... -

(b) .....

(c) .....

(d) .....

(e) .....

(f) *the amount or amounts of expenditure relatable to any income to which section 10 or section 11 or section 12 apply.*

*Thus, the amount of expenditure relatable to exempt income has to be added to the book profit: in the present case, the issue of working out disallowance under Rule 8D has been referred back to the file of the A.O., hence, it is consequential. This ground is decided accordingly.*

.....

*9.3.1 I have considered the facts of the case. The AO has disallowed additional - depreciation of Rs.16,11,760/- on certain items which were held as Non eligible items in para 9.3 of the assessment order. From the list of items, it is seen that these are Air conditioners, Antenna, Electrical items, Ceiling Fan, Mobile Phone and Dyes and Moulds. It has been held by Hon'ble Punjab & Haryana High Court in the case of CIT vs Jaideep Industries (180 ITR 81) that dyes and moulds are part of machinery. Therefore, the claim of the appellant of additional depreciation treating it as Plant & Machinery is to be allowed. However for other items additional depreciation is not allowable as these are not Plant & Machinery. The AO is justified in disallowing the additional depreciation claimed on items excluding dyes and moulds. The AO is also justified in reducing rate of depreciation in respect of item No. 1 to 6 as mentioned in para 9.3 of the assessment order treating these as in the nature of furniture and fittings. Further the AO is also justified in disallowing depreciation in regard to Sr.No.1 & 2 as there was discrepancies in date of put to use. To summarize, the AO is directed to consider dyes and moulds as part of Plant & Machinery and accordingly allow depreciation / additional depreciation, and his action is justified in regards to other items. Thus the appellant gets part relief.*

*9.3. ii Further, on the facts and for the reasons as given by the AO, disallowance of Rs.3631/- and 4901974/- on account of depreciation is confirmed, for the reason that assets were claimed*

*put to use before date of acquisition and in certain cases on the date of purchase itself which was not possible.*

9.3. *iii In the result, addition made by the AO is confirmed except disallowance on dyes and moulds. Thus the ground is partly allowed.*

.....

*10.3 I have considered the facts of the case. The AO has made addition on the basis of AIR data which assessee could not reconcile. The position remains the same before me also. The appellant could not reconcile the discrepancies with evidence. Therefore, addition made by the AO is confirmed and this ground of appeal is dismissed."*

**6.** On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any reason to interfere especially when there is no material to controvert the findings of the First Appellate Authority. Accordingly, appeal filed by the assessee is dismissed.

**7.** Coming to the appeal of the revenue in ITA.No. 4770/Mum/2012, revenue has raised following grounds in its appeal: -

*"i. On the facts and circumstances of the case and in law, the Ld.CIT (A) has erred in deleting the addition of Rs.29,88,000/-, made on account of allocation of overhead to Solan Unit Cost without appreciating the fact that the assessee did not have given exact basis for allocation despite so many opportunity given".*

*2. "On the facts and circumstances of the case and in law, the Ld.CIT (A) has erred in allowing set off of brought forward business loss of Rs.1024.65 lakhs as the same is less than the brought forward depreciation of Rs.14386.34 lakhs as per provisions Of sec.115JB of the Act without appreciating the fact assessee, neither in the original nor in the revised return of the income made the Claim of brought forward loss/unabsorbed depreciation*

3. The CIT-3, Mumbai vide Authorisation Memo dated 10.10.2012 under ref No. AC(HQ)/3/1T/2012-13 has directed the undersigned to file the revised ground of appeal (ground No.2) to the ITAT in the above case which is as under :-.

*"Whether on the facts and circumstances of the case and in law, the La.CIT(A) was justified in allowing set off of brought forward depreciation of Rs.1024.65 lakhs as per provisions of Section 115JB8 of the Act as the same is less than the brought forward business loss of Rs.14386.34 lakhs without appreciating the fact that the assessee, neither in the original nor in the revised return of income made the claim of brought forward loss/unabsorbed depreciation'.*

8. Revenue has raised two grounds in its appeal, in respect of Ground No. 1 which is in respect of deleting the addition of ₹.29,88,000/-, made on account of allocation of overhead to Solan Unit Cost. Ld.CIT(A) after considering the submissions of the assessee and following the principle of consistency allowed the ground of assessee, while holding so, Ld.CIT(A) observed as under: -

*"6.3. I have considered the facts of the case. The AO has worked out overhead expenses in the ratio of turnover. It is submission of the appellant that the expenditure has been allocated following the regularly employed method in the earlier years which has been upheld by the CIT(A)-7 in appeal No.CIT(A)-7/DCIT 3(1)/IT-1061/09-10, order dt. 18.03.2011 for the A.Y. 2007-08. Since the facts are Similar, respectfully following the decision of id. CIT(A)-7, Mumbai, the addition made by the AO is directed to be deleted. The ground is accordingly allowed."*

9. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, since there is no representation from the assessee, we are inclined to accept the submissions of the Ld.DR and accordingly allow the

ground raised by the revenue. Accordingly, Ground No. 1 of the revenue is allowed.

**10.** Coming to Ground No. 2 which is in respect of allowing set off of brought forward depreciation of Rs.1024.65 lakhs as per provisions of Section 115JB of the Act. Ld.CIT(A) after considering averments in the Assessment Order and the submissions of the assessee allowed claim of the assessee observing as under: -

*"8.3 I have considered the facts of the case which are in brief as under :*

*a) The appellant filed its Return of Income for the year under consideration on 30<sup>th</sup> September 2009 declaring total income at Rs.Nil and showing a book profit of Rs. Nil under Section 115JB of the Act, after claiming a deduction of Rs. 6,15,48,998/-, out of Rs.6,61,11,546/- (being lower of brought forward loss of unabsorbed depreciation), as per the provisions of clause (iii) of Explanation 1 to Section 115JB(2) of the Act.*

*b) Thereafter, a revised return was filed on 18<sup>th</sup> November 2010 declaring total income at Rs. NIL under normal provisions of the Income-tax Act, 1961 (Act) and showing a book profit of Rs. 6,15,49,168/under Section 115JB of the Act, after claiming a deduction of Rs. Nil (being lower of brought forward loss or unabsorbed depreciation), as per the provisions of clause (iii) of Explanation 1 to Section 115JB(2) of the Act.*

*c) During the course of assessment proceedings, vide its letter dated 27<sup>th</sup> December, 2011, the appellant has submitted a corrected computation showing tax liability under section 115JB of the Act.. As per this corrected computation, the book profit is determined at Rs.Nil, after claiming a deduction of Rs.6,15,48,998/-, out of Rs.10,24,65,000/- [being lower of brought forward loss (Rs.5,056.76 lacs) or unabsorbed depreciation (Rs. 1,024.65 lacs)] as per the*

*provisions of clause (iii) of Explanation 1 to Section 115JB(2) of the Act.*

*8.3.1 The AO has did not entertain the claim of the appellant relying on decision of Hon'ble Supreme Court in the case of Goetze India Ltd., on the ground that the appellant has failed to made claim by filing revised return. This observation seems to be incorrect. As mentioned hereinabove, the appellant made claim for allowance of unabsorbed business 'loss and unabsorbed depreciation whichever was less, in the revised return of income. Thus, there was claim for set off. In the corrected computation filed during the assessment proceedings, the appellant submitted for allowance of brought forward unabsorbed depreciation Rs.6.15 cr out of total unabsorbed depreciation of Rs.10.24 cr. Which was lower from unabsorbed business loss of Rs.143.86 cr. The facts in the case of Goetze India Ltd. was different than the facts of the present case. The same is summarized as under :*

.....

*It is submission of the appellant that "The appellant submits that the computation of tax liability under section 115JB of the Act as per Revised Return of Income carried an error which was corrected during the course of assessment proceedings, vide letter dated 27<sup>th</sup> December, 2011. As such, the appellant submits a correct computation showing tax liability under section 415JB of the Act, which is attached herewith at page nos. 327 to 328 of the paper book. As per this corrected computation, the book profit works out to Rs. 21,94,518/-, after claiming a deduction of Rs. 10,24,65,000/ [being lower of brought forward loss (Rs. 14,386.34 lacs) or unabsorbed depreciation (Rs. 4,024.65 lacs)], as per the provisions of clause (iii) of Explanation 1 to Section 115JB(2) of the Act." In respect of loss as on 31.03.2008 there is no dispute as the AO accepts the same as under in para 8.2.4 and 8.2.5 of the assessment order as under :*

.....

*8.3. iii. The above loss has been determined as on 31/3/2008 for the A.Y. 200809. The same has been accepted by the AO while passing assessment order for the AY. 2008-09 as there-is no observation in this regard in the body of assessment order. Thus the*

*facts remains that the above unabsorbed depreciation and business loss were carried forward for the F.Y. 2008-09 relevant to A-Y. 2009-10. Thus the AO had to accept the same and was incorrect in altering the brought forward position of unabsorbed depreciation / business loss during the year under consideration.*

*In view of the above and in view of the submission made by the appellant, the AO is directed to allow set off of brought forward business loss of Rs.1024.65 lakhs as the same is less than the brought forward depreciation of Rs.14386.34 lakhs in view of a the provisions of section 115JB of the I.T. Act. This ground is accordingly allowed.*

**11.** On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, since there is no representation from the assessee, we are inclined to accept the submissions of the Ld.DR and accordingly allow the ground raised by the revenue. Accordingly, Ground No. 2 of the revenue is allowed.

**12.** In the result, appeal filed by the assessee is dismissed and revenue is allowed.

Order pronounced in the open court on 24<sup>th</sup> June, 2022.

Sd/-  
**(VIKAS AWASTHY)**  
**JUDICIAL MEMBER**  
Mumbai / Dated 24.06.2022  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**