

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESEIDENT
AND
SHRI PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No. 201/Bang/2022
Assessment year : 2017-18

Shri Chamundeswari Sugars Ltd., 88/5, Richmond Road, Richmond Town, Bangalore – 560 025. PAN: AACCS 5004R	Vs.	The Principal Commissioner of Income-tax – 1, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pooja Maru, CA
Respondent by	:	Smt. Susan Dolores George, CIT(OSD)

Date of hearing	:	20.07.2022
Date of Pronouncement	:	25.07.2022

ORDER

Per Padmavathy S., Accountant Member

This appeal is against the order of the Principal Commissioner of Income Tax (PCIT) passed u/s. 263 of the Income Tax Act, 1961 (the Act) dated 31.01.2022 for AY 2017-18.

2. The assessee raised the following grounds of appeal:-

“1) The order of Principal Commissioner in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

- 2) The Ld. Principal Commissioner of Income Tax (PCIT) has erred in passing order u/s 263 of the Act without satisfying the two conditions of section 263 of the Act i.e. Assessment order u/s 143(3) of the Act must be erroneous as well as prejudicial to the interest of the Revenue.
- 3) The Ld. PCIT has erred in passing order u/s 263 of the Act without considering the fact that the Assessment order has been passed after verification of relevant facts and legal position prevailing at the time of law.
- 4) The Ld. PCIT has failed to consider the fact that the Appellant Company has correctly recognised profits from sale of property in the Statement of Profit and Loss prepared as per the provisions of the Companies Act, 2013 and applicable Accounting Standards in accordance with fundamental accounting assumption of "substance over form" as laid in Accounting Standard - 1.
- 5) The Ld. PCIT has also failed to consider that the Appellant's property was compulsorily acquired by the Government of Karnataka under Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 ("RFCTLARR Act") and the compensation received through compulsory acquisition is not taxable income in the hands of Appellant Company.
- 6) The Ld. PCIT has also failed to consider that the CBDT Circular No. 36/2016 dated 25.08.2016 which stated that the compensation received in respect of non-agricultural land which has been exempted from levy of income tax vide Section 96 of RFCTLARR Act shall also not be taxable under the provisions of the Income Tax Act, 1961.
- 7) The Ld. Pr. CIT has also ignored the plea/request placed by the Appellant Company in the submission made on 17.12.2021 with respect to restoration of business losses and unabsorbed depreciation adjusted against capital gains on non-taxable income.

8) For these and such other grounds that may be adduced at the time of hearing, it is prayed that the order u/s 263 of the Act may kindly be set aside.”

3. The assessee is a private limited company and is engaged in the business of sugar manufacturing. The assessee filed the return of income for AY 2017-18 on 16.11.2017 declaring NIL income after setting off the current year net loss of Rs.37,80,30,431/-. The case was selected for scrutiny under CASS and a notice u/s. 143(2) of the Act was served upon the assessee. The AO called for various details and concluded the assessment u/s. 143(3) of the Act by disallowing a sum of Rs.55,700/- u/s. 14A of the Act r.w. Rule 7D.

4. The PCIT on verification of records noticed that the assessee has declared an income from long term capital gains amounting to Rs. 50,12,35,745/- in the computation of income and has set off the business loss against the same. The PCIT also noticed that the said sum is not entered into the books of accounts and hence not considered for computation of book profit u/s. 115JB of the Act. The PCIT concluded that the financial statements of the assessee are not prepared in accordance with AS-10 and Companies Act which resulted in short declaration of book profits u/s. 115JB of the Act and the resultant tax. Thus the PCIT stated that the order passed by the AO u/s. 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue as the AO has not verified the details of property sold and the capital gains arising. The PCIT issued a show cause notice to the assessee u/s. 263 in this regard.

5. The assessee submitted that the company had recognized the sale of property in question in its books of accounts for an amount of Rs.60.01 Crores in the F.Y. 2015-16 itself and after deducting the cost of property i.e. Rs.4.70 Lakhs, a profit on sale of property of Rs.59.96 crores have been recorded as Exceptional items in the Statement of profit and loss for the year ended on 31.03.2016. The assessee also submitted that even though the amount of book profit on sale of property Rs.59.96 crores have been brought to tax under the provisions of Section 115JB of the Act, the tax effect would be nil in terms of CBDT Circular No. 36/2016 dated 25.08.2016.

6. The PCIT did not accept the contentions of the assessee by stating that the non-verification and non-inclusion of the gain from the disposal of property by the AO has affected the reduction in book profits resulting in short income of Rs.50,10,70,670/- u/s. 115JB of the Act with a consequent short levy of tax of Rs.7,21,35,215/- which is prejudicial to the interest of Revenue. The PCIT set aside the order passed u/s. 143(3) of the Act by the AO with a direction to conduct detailed enquiry in this regard.

7. Aggrieved the assessee is in appeal before the Tribunal. The learned A.R. reiterated the submissions made before the lower authorities. The learned A.R. submitted that all the details pertaining to the property acquisition was submitted before the AO who after verification of the details submitted concluded the assessment accepting the long term capital gain returned by the assessee and also

the book profit computation u/s. 115JB of the Act. Further the learned A.R. submitted that there is no prejudice to the interest of the Revenue as the income from sale of property would be excluded for Section 115JB purpose as per the terms of CBDT circular No. 36/2016 dated 25.08.2016. The learned A.R. also drew our attention to the various submissions made before the AO and also to the decision of the Supreme Court in the case of Appollo Tyres Ltd. vs. CIT, 225 ITR 273 (SC).

8. The learned D.R. relied on the order of the PCIT and the written submissions made in this regard.

9. We heard the rival submissions and perused the material on record. During the year under consideration the assessee has received sum of Rs.50,12,35,745/- towards sale consideration of property acquired by Bangalore Metro Rail Corporation Ltd. (BMRCL) being acquisition made for 2486.23 sq. meter of land. In the return of income the assessee offered to tax as long term capital gain a sum of Rs.48,62,27,549/- after deducting the indexed cost of acquisition at Rs.1,50,08,196/-. The assessee has set off the current year business loss and brought forward depreciation loss against the capital gains. The PCIT has revised the order of the AO for the reason that the AO has not examined the fact that the sale consideration has not been reflected in the books of account resulting in understatement of book profits and the resultant tax. To this extent the PCIT has treated the order u/s.

143(3) of the Act passed by the AO as prejudicial to the interest of the Revenue.

10. We will examine first whether the AO during the course of assessment has examined the details relating to the capital gains. We notice that the AO has called for the details pertaining to the long term capital gain along with supporting documents and proof vide notice dated 08.10.2019 (pages 83 & 84 of PB) and the assessee vide letter dated 11.06.2019 had furnished the computation, copy of purchase deed, communication from BMRCL and ledger abstract showing cost including stamp paper, registration charges etc. (pages 85 to 89 of PB). The assessee has also furnished the details of tax deducted along with reconciliation as per P&L account and Form 26AS before the AO (page 82 of PB) where the details of TDS done by BMRCL was furnished. The AO has verified these details and has passed the assessment order making a disallowance u/s. 14A of the Act r.w. Rule 8D. Though there is no mention specifically on the verification of capital gains by the AO, the same cannot be a reason for coming to the conclusion that the AO has not made any enquiry. Further, the enquiry made by the AO need not be extended to the verification of the P&L Account of the assessee based on which computation u/s. 115JB of the Act was prepared as the assessee being a public limited company has prepared the accounts as per the Companies Act and the same was approved by the share holders in the AGM of the company. Reliance in this regard is placed on the decision of the Apex Court in the case of Apollo Tyres (supra) where the Hon'ble Supreme Court has held that:

“Therefore, we are of the opinion that the Assessing Officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increase and reductions as provided for in the *Explanation* to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the *Explanation* to section 115J.”

11. The contention of the PCIT that the above decision is not applicable in assessee's case as the accounts are not prepared as per Companies Act has no merits, since the accounts are audited and certified by the auditors in this regard. The Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT* (2000) 243 ITR 83 (SC) had observed that phrase 'prejudicial to the interest of Revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of Revenue as a consequence of an order by the AO cannot be treated as prejudicial to the interest of the Revenue. In the given case the AO has perused the materials and have come to the conclusion accepting the book profit computation of the assessee. Further the assessee has also submitted before the AO/PCIT the fact that the compensation/ consideration is accounted in the FY 2015-16 and offered to tax in the year under consideration.

12. In view of the above discussion and relying on the decision of the Hon'ble Supreme Court, we are of the considered view that the AO has correctly accepted the book profit computation u/s. 115JB of the Act. We therefore set aside the impugned order of the PCIT passed u/s.

263 and restore the assessment order. The issue is allowed in favour of the assessee.

13. In the result, the appeal is allowed in favour of the assessee.

Pronounced in the open court on this 25th day of July, 2022.

Sd/-

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 25th July, 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.