

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 7245/Del/2018
[Assessment Year: 2015-16]**

Jindal ITF Ltd., 28, Najafgarh Road, Ramesh Nagar, Sivaji Marg, West Delhi, New Delhi PAN: AABCJ9263C	<u>Vs</u>	DCIT, Circle-13(2), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. Anil Jain, CA	
Respondent by	Sh. Rajesh Kumar, CIT-DR	
Date of hearing	26.07.2022	
Date of pronouncement	29.07.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of learned CIT(Appeals)-5, Delhi dated 16.08.2018 pertaining to the assessment year 2015-

16. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in upholding AO’s act of reducing appellant book loss by the amount of disallowance made by him u/s 14A without appreciating that the provisions of section 115JB are attracted only when there are book profits.

“2(a) On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in upholding AO’s act of reducing appellant book loss u/s 115JB by sum of Rs. 5,26,23,522/- being amount of premium on convertible debenture offered to tax by appellant.

(b). On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in giving a finding that the claim of the aforesaid amount is in the nature of unascertained liability without appreciating that the said amount was never debited to the profit and loss account of the appellant.

3. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in not directing the AO to increase book loss u/s 115JB by the amount of Rs. 33,56,68,161/- being of expenditure allowed to appellant on account of premium payable on conversion of debentures not debited in appellants P&L a/c.

4. That the above grounds of appeal are mutually exclusive and without prejudice to each other.

5. Appellant craves for grant of permission to add, alter, or withdraw any ground(s) of appeal at or any time before the hearing of appeal.

2. Facts, in brief, are that in this case the return of income was filed electronically by the assessee on 30.11.2015 by declaring loss of Rs. 171,50,53,450/- under normal provision and at book loss of Rs. 150,64,75,547/-, which was subsequently revised on 31.03.2017 at total loss of Rs. 210,33,45,133/- under normal provision and at book loss of Rs. 150,64,75,547/-. The case was selected for scrutiny assessment and the assessment u/s 143(3) of the income-tax Act, 1961 (in short “the Act”) was framed vide order dated 26.12.2017. The Assessing officer while framing the assessment made addition by invoking the

provisions of Section 14A of the Act amounting to Rs. 21,15,14,527/- and also made addition in respect of excess claim of premium on redemption of compulsorily convertible debentures (CCDs) amounting to Rs. 5,26,23,522/-. Thus, assessed loss at Rs. 183,92,07,084/- under normal provision and at book loss of Rs. 124,23,37,498/-.

3. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals). The learned CIT(Appeals) partly allowed the appeal. Thereby he restricted the disallowance u/s 14A to the extent of Rs. 382/-. Further, in respect of excess claim of expenditure on account of premium payable on redemption of compulsorily convertible debentures (CCDs), it is notified by the learned CIT(Appeals) that the assessee acknowledged that this amount was not allowable as expenditure in the year under appeal due to the new accounting standards. Moreover, it was not disputed that expense was not relatable to the income being charged to tax in the year under appeal. Aggrieved against the order of the learned CIT(Appeals), the assessee is in appeal before this Tribunal.

4. Apropos all the grounds of appeal learned counsel for the assessee reiterated the submissions as made in the written submissions. For the sake of clarity the written submissions of the assessee are reproduced as under:

“GROUND NO. 1

FACTS

During the year while determining appellants taxable income under normal provisions of the I T Act, AO disallowed a sum of Rs. 21,15,14,527/- by invoking the provisions of section 14A. There was no book profit for the year under consideration. In spite of this AO went on to compute the book loss and reduced the same by the amount of disallowance determined by him u/s 14A. AO also reduced the amount of book loss by a sum of Rs. 5,26,23,522/- being amount surrendered by appellant by way of letter during assessment proceedings being amount of premium on conversion/redemption of debentures excess claimed in the revised return due to computational error. AO did not realize that amount pertaining to premium was not debited in the appellant audited P & L account; consequently, question of reducing the same from book loss does not arise. On the other hand, premium amount of Rs 33,56,68,161/- allowed as expenditure by AO would go on to increase the book loss.

The learned CIT(A) has reduced disallowance u/s 14A from 21,15,14,527/- to RS 382/- i.e., to the extent of dividend received by the appellant on the basis of jurisdictional High Court decision both under normal provision and under section 115JB computation.

AO’S FINDING Page no 12 of AO’s order.

Ao did not give any finding as to why he is reducing book loss by the amount disallowed in the assessment while determining appellant’s income under normal provisions. There was no separate computation u/s 115JB. He simply in the concluding para reduced the amount of book loss by the amount of two disallowances of Rs 21,15,14,527/- made u/s 14A and Rs 5,26,23,522/- on account of premium on redemption of debenture. Kindly refer internal page no 12 of AO’s order.

CIT(A)’S FINDING -Page 11 para 4 heading

*Ld. CIT did not give any adjudication on this issue although specific written submissions were made before him. Kindly see **PB 1-18**.*

APPELLANTS CONTENTION

*It is submitted that section 115JB provide methodology for providing alternate scheme of taxation in case of assesseees where there are book profits but tax payable under normal provisions is Nil or at a figure which is less than 18.5% of book profits. Section 115JB provides that in such cases 18.5% of book profits shall be deemed as total income of the assessee and assessee shall be liable to pay tax @ 18.5% of book profits (deemed income) so determined. Book profits are to be computed on the basis of profits declared by assessee as per its audited financials. AO has no power to tinker with book profit/loss. This proposition has been laid down by the hon'ble Supreme Court in the case of **APPOLLO TYRES LTD Vs CIT 255 ITR 273 (SC)**.*

It is submitted that section 115JB applies only when there are book profits, and it does not apply where there is book loss because alternate scheme does not apply. Section does not provide any methodology for computing book loss. This act of AO was beyond legislative mandate. Therefore, AO's act of reducing book loss is illegal and as such act should be struck down.

Heading of the section also makes it very clear that it would apply only in case of book profits. Heading read as under:

“Special provisions for payment of tax by certain companies.”

Section 115JB

Bare perusal of the above would make it clear that it has been introduced to collect taxes and consequently it would not apply to loss situation.

Further a question may arise that income would include loss this principle is not applicable in this case since sub section (1) of section 115B states that in case of assesseees income computed by applying normal provisions is less than 18.5% of its book profit than 18.5% of book profits would be deemed to be its total income. This phrase cannot be implemented. Normal income cannot be compared with book loss, therefore by this interpretation section would become in workable.

Finally, we would submit that both the adjustment in itself is infructuous as explained below. The disallowance under section 14A has been reduced from Rs 21,15,14,527/- to Rs 382 by the CIT(A). It is noteworthy that

*department's appeal against Ld. CIT(A) has been dismissed by hon'ble ITAT vide its order dated 08.12.2021 in ITA no. 6871/Del/2018 for AY 2015-16. Copy of order enclosed at **PB 49-51**. The second adjustment done of Rs 5,26,23,522/- is again erroneous as premium amount was never debited by appellant in its P&L a/c therefore its addition by calling it a contingent liability/ disallowable amount, is unwarranted.*

In view of above submissions, it is humbly prayed that appellant book loss should be retained at Rs 150,64,75,547/- and AO's act of recomputing them at Rs 124,23,37,498/- should be struck down.

GROUND NO 2

Surrender of premium on redemption of debentures of Rs. 5,26,23,522/-

FACTS

Appellant had issued convertible and non convertible debenture to be redeemed at a premium. Appellant had issued various series of debentures to financial Institution aggregating to more than Rs 500 crores. Initially appellant had decided to claim redemption amount as deductible expenditure at the time of redemption of these debentures, consequently the premium amount was not debited to P&L a/c nor the same was claimed as expenditure in the computation of assessable income. In between section 145 of the IT act was amended by Finance (No 2) Act 2014 w.e.f. AY 2015-16, pursuant to the powers conferred to it Central Government notified Income Computation Disclosure Standards (ICDS). In ICDS no. 9 (relating to 'Borrowing Cost') it was prescribed that borrowing cost would include amortised value of discounts/premium in connection with borrowings, meaning thereby that deduction of such expenditure would be allowed on the basis of spreading such expenditure over the tenure of the borrowing. Consequently, it was decided to change the basis of claim by spreading over the premium amount year wise instead of claiming the same in one lumpsum at the time of redemption. Consequent to the aforesaid decision premium on redemption amount of Rs 38,82,91.686/-, was claimed as deductible expenditure by way of revise return.

While filing subsequent year's return it was noticed that there was error in computation of premium amount last year. Filing of revised return of income had lapsed by that time, left with no alternative during assessment proceedings appellant suo-motto surrendered excess amount of Rs 5,26,23,522/- being premium on redemption of debentures vide letter dated 07.12.2017. These facts have been recorded in internal page no 10, para 5 of Ao' order.

The said surrendered amount has been added by AO while computing assessable income under normal provisions of income tax. Further he went on to reduce this amount from book loss. The premium on redemption/conversion of debentures amount was claimed in computation of income as a separate item since the same was not debited in P & L account, in fact had appellant debited this amount in book, the loss would have increased by sum of Rs 33,56,68,164/- (38,82,91,686- 5,26,23,527/-) ironically Ao is reducing book loss by sum of Rs 5,26,23,522/-.

AO'S FINDING - Page 12 first para

Ao did not give any finding on the matter and simply reduce this amount while stating figure of book loss in the concluding para of his order.

CIT FINDINGS- page 18, para 4.4

Ld. CIT held that as under: -

“The book profit also has to be consistent with the accounting standards. Moreover, it is not disputed that the expense is not relatable to the income being charged to tax in the present year therefore the amount originally debited to the books was more in the nature of a required to be set aside for future liability covered in clause c of the Explanation 1 to section 115JB. This is required to be added to book profit and therefore has been correctly added by the assessing officer and the addition of RS 5,26,23,522/- to the book profit is upheld.”

APPELLANTS CONTENTIONS

Kindly note the above finding of the ld. CIT(A) is erroneous as amount of premium on redemption was never debited to P&L account. This amount was claimed as deduction way of revise return. Had this amount stood debited to P&L a/c question of revising the return would not have arisen? Kindly see the P&L a/c at PB 28,39 & 40.

The issue in ground is also erroneous as per our stand in ground no 1 that there is no provision in Income Tax Act for computing or recomputing book loss.

In view of above submissions, it is humbly prayed that appellant book loss should be retained at Rs 150,64,75,547/- and AO's act of reducing the same to RS 124,23,37,498/- should be struck down.

GROUND NO 3: - INCREASE IN BOOK LOSS BY RS 33,56,68,161/-

It is submitted that share premium amount of Rs 33,56,68,161/- allowed as deductible expenditure by AO was not debited to P & L Account consequently book loss should be increased by this amount.”

5. Learned counsel, however, contended that all the grounds have become academic in nature as the assessee is not claiming any relief against the impugned order. The assessee is restricting its claim to the extent of the finding of the learned CIT(Appeals) regarding treatment of book loss.
6. Learned CIT(DR) opposed the submissions and submitted that substantial relief has been given by the learned CIT(Appeals). There is no infirmity in the order of the learned CIT(Appeals) and no grievance of assessee is left to be adjudicated.
7. We have heard rival submissions and perused the material available on

record. We are of the considered view that the assessee seeks to agitate the reduction into book loss owing to disallowance made u/s 14A of the Act. However, the reduction to book loss has no potential to cause any prejudice to the assessee at present or in future as per scheme of the act. Hence, the litigation by the assessee is a futile exercise. Therefore, we are not inclined to engage in disposal of such litigation on merit. Hence, the grounds raised by the assessee are rejected

8. In the result, assessee's appeal is dismissed.

Order pronounced in open court on 29th July, 2022.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI