

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 2486/Mum/2021
(A.Y: 2015-16)

ACIT – 2(2)(1) Room No. 545, 5 th Floor AayakarBhavan, M.K.Road, Mumbai – 400020.	Vs.	M/s Mahima Stocks Pvt Ltd 1, Gauresh Apartments, Old Police Line, Andheri (E) Mumbai – 400069.
PAN/GIR No. : AAECM2983K		
Appellant	..	Respondent

Appellant by :	Smt.Mahita Nair.DR
Respondent by :	Shri.Vimal Punmiya.AR

Date of Hearing	10.08.2022
Date of Pronouncement	24.08.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the CIT(A)- National Faceless Appeal Centre (NFAC), Delhi passed u/s143(3) and U/sec250 of the Act. The revenue has raised the following grounds of appeal:

- 1. Whether on the facts and the circumstances of the case and in law, the Ld.CIT(A) erred in accepting the differential LTCG on account of indexation, when there is no provision*

in the companies Act 1956 to compute the indexed cost of any asset for the purpose of computing capital gain.

2. The appellant craves to amend, alter and delete any of the aforesaid grounds and add any additional grounds either before or at the time of hearing.

2. The brief facts of the case are that the assessee company is engaged in the business of trading and investments in shares and securities and derives income from business, income from capital gains and other sources of income. The assessee has filed the return of income electronically for the A.Y 2015-16 on 29.09.2015 disclosing a total income of Rs. 7,70,42,550/- under normal provisions of the Act and Rs.15,67,45,568/- under the provisions of Sec. 115JB of the Act. The assessee has filed a revised return of income on 30.03.2017 disclosing a total income of Rs. 7,70,42,550/- under normal provisions of the Act and of Rs.12,58,87,769/-under the provisions of Sec. 115JB of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The Assessing Officer (A.O) on perusal of the financial

statements found that the assessee company has filed the revised return of income for the A.Y 2015-16 with a total income of Rs.7,70,42,550/- under the normal provisions of the Act and the book profits computed u/s 115JB of the Act at Rs. 12,58,87,769/-.The assessee was called to furnish the details/ explanations for filing the revised return of income and reduction in computing the Book Profits. The assessee has filed a letter dated 27.09.2017 and the A.O has referred to the facts/details at page 3 of the assessment order.

3. Whereas the A.O was not satisfied with the submissions and is of the opinion that the book profits computed under revised return of income is reduction of book profits by Rs.3,08,57,799/- and the difference represents long term capital gains earned by the assessee. The amount disclosed in the audited profit and loss account and the long term capital gains computed u/s 48 of the Act are different. Whereas, the difference being the benefit of indexation of cost allowed u/s 48 of the Act while computing the long term capital gains, which is not available to the assessee while computing the book profits u/s 115JB

of the Act. The A.O. observed that the book profits computation is as per profit and loss account as adjusted by explanation 1 to Sec. 115JB of the Act and there is no provision under companies Act to compute the index cost of asset hence for the purpose of computing the capital gains only actual cost of the capital asset as per books of account to be considered and actual gain credited to profit and loss account. The A.O also dealt on the explanation 1 to Sec.115JB of the Act and judicial decisions and finally concluded that the deduction claimed by the assessee in the revised return of income of Rs.3,08,57,799/- on account of differential long term capital gain due to index cost is disallowed and was added back in the computation of book profits u/s 115JB of the Act. The A.O. computed the book profits u/s 115JB of the Act of Rs.15,67,45,568/- and passed the order u/s 143(3) of the Act dated 28.11.2017.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the scrutiny assessment and the judicial decisions. Finally the CIT(A) relied on the decision of

the Hon'ble Jurisdictional High Court of Karnataka and observed that the assessee is entitled for deduction of indexed cost of acquisition from the long term capital gains for the purpose of Section 115JB of the Act and allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) erred in granting the relief to the assessee by directing the reduction of indexed cost of acquisition from the long term capital gains for the purpose of computing book profits u/sec 115JB of the Act. Further there is no provision in the Act to change the income criteria as per the audited profit and loss account and prayed for allowing the revenue appeal.

6. Contra, the Ld. AR supported the order of the CIT(A) and submitted that there are changes incorporated in the provisions of Sec.115JB of the Act. The decisions relied by the revenue are not on the applicable provisions U/sec 115JB of the Act and substantiated the submissions with factual paper book and judicial decisions.

7. We heard the rival submissions and perused the material available on record. The sole grievance of the revenue that the assessee is not entitled to the benefit of indexation while computing book profits U/s 115JB of the Income Tax Act. The Ld.AR submitted that in the case of long term capital gains computation, the assessee is allowed the benefit of cost indexation. Further the provisions of section 115JB of the Act does not state anything to deny the assessee the benefit of indexation and if any amount in excess of the amount of income in terms of Section 10(38) is credited to the Profit & Loss account, such excess amount is allowed to be deducted from the book profit to arrive at the adjusted book profit. Whereas, in the present case, the amount credited to the Profit & Loss account is in excess of the amount of income in terms of Section 10(38) of the Act as the amount credited in the Profit & Loss account being the difference between the sale proceeds/ realizable value of investments and the original cost of acquisition and not the indexed cost of acquisition of investments. Therefore, the difference between the indexed cost of acquisition and the actual cost of acquisition is to be deducted from the book

profit to arrive at the adjusted book profit. The Ld.AR supported the submissions with the following judicial decisions.

1. M/s Best Trading and Agencies Ltd. Vs. DCIT (Kar)(I.T.A.No.191 of 2011 dated 26-08-2020)

2. Karnataka State Industrial Infrastructure Development Corp Ltd. Vs. DCIT (ITAT Bangaluru)(2016) (76 taxmann.com360)

3. M/s Neha Home Builders Pvt Ltd. Vs. CIT (ITAT Mumbai).(ITA.No.2964/M/2016)

4. ITO Vs. Frigsales (India) Ltd (2005) 4SOT 376 (Mum)

5. CIT Vs. Chennai V. Metal & Chromiun Plater (P.) Ltd. (Madras) (415 ITR 123)

8. We find CIT(A) has dealt on the provisions of the Act, facts and judicial decisions. We considered it appropriate to refer to the observations of the CIT(A) in granting the relief held at page 6 of the order as under:

The above matter was taken up by the jurisdictional Karnataka High Court in the case of the M.S. R. & Sons Investment Ltd. Vs. DCIT (ITA No. 3189 of 2005), wherein the court upheld that the benefit of indexed cost of

acquisition is to be considered for the purpose of computing tax liability u/s 115JB. The same issue was again confirmed by the Karnataka High Court in the case of the M/s Best Trading Agencies Ltd. VS. DCIT on 26.8.2020(ITA No.191 of 2011) wherein the Hon'ble High Court held as under:

The Income Tax Appellate Tribunal, Bangalore Bench in KARNATAKA STATE INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. supra took note of decision of the coordinate Bench in 'MSR & SONS INVESTMENT LTD. VS. DY. CIT wherein it was held that while computing capital gains the benefit of indexed cost of acquisition is to be considered for the purpose of computing tax liability under Section 115JB of the Act. It was further held that the revenue challenged the aforesaid decision in an appeal before this Court and a division bench of this court vide order dated 14.09.2011 passed in ITA No.3189/2005 upheld the order of the Tribunal and followed the decision rendered in the case of MSR & Sons Investment Ltd.....

Section 115JB(5) of the Act reads as under:

"(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company, mentioned in this Section."

Thus, by virtue of sub-Section (5) of Section 115JB, the application of other provisions of the Act are open, except if specifically barred by the Section itself. The indexed cost of acquisition is a claim allowed by Section 48 of the Act to arrive at the income taxable under the income from capital

gains. The difference between the sale consideration and indexed cost of acquisition represents the actual cost of the assessee, which is taxable as per Section 45 of the Act at the rates provided under Section 112 of the Act. There is no provision in the Act to prevent the assessee from claiming indexed cost of acquisition on the sale of asset in case, where the assessee is subjected to Section 115JB of the Act. In any case, since, the indexed cost of acquisition is subjected to tax under a specific provision viz., Section 112 of the Act, therefore, the provisions of Section 115JB of the Act, which is a general provision cannot be made applicable to the case of the assessee. For yet another reason, the assessee has to be given the benefit of indexed cost of acquisition as considering the profits on sale of land without giving the benefit of indexed cost of acquisition results in taxing the income other than actual / real income. In other words, a mere book keeping entry cannot be treated as income..... In view of preceding analysis, the substantial questions of law framed in both the appeals are answered in favour of the assessee and against the revenue. In the result, the orders passed by the Income Tax Appellate Tribunal to the extent it is against the assessee are hereby quashed. In the result, the appeals are disposed of.

In view of the above, the matter has been decided in favour of the assessee by the jurisdictional High Court of Karnataka that the assessee is entitled to the benefit of indexed cost of acquisition while calculating Capital Gains for the purpose of Section 115JB. In view of this, the appeal is allowed.

9. We find that the Ld.DR could not controvert the observations/ findings of the CIT(A) with any new cogent material or information to take a different view. Accordingly, we do not find infirmity in the order of the CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 24.08.2022.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 24.08.2022

KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

आदेशानुसार/ BY ORDER,
(Asst. Registrar)
ITAT, Mumbai