

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 7395/Del/2018
(Assessment Year : 2010-11)

Havells India Ltd. 904, 9 th Floor, Surya Kiran Building, K.G. Marg, Connaught Place, New Delhi-110 001 PAN No. AAACH 0351 E (APPELLANT)	Vs.	DCIT(LTU) New Delhi (RESPONDENT)
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Assessee by	Shri Varun Chaudhary, C.A Shri Rishi Jaiswal, Adv.
Revenue by	Shri Anuj Garg, Sr. D.R.

Date of hearing:	17.08.2022
Date of Pronouncement:	31.08.2022

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-22, New Delhi relating to Assessment Year 2010-11.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of manufacturing of electrical items and bath fittings viz. industrial and domestic Switchgears etc. Assessee had electronically filed its return of income for A.Y. 2010-11 on 30.09.2010 declaring total income of Rs.1,51,61,77,024/- under the normal provisions and book profit of Rs.2,89,78,57,388/- under the MAT provisions of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 144C (1) of the Act vide order dated 26.05.2014 and the total income was determined at Rs.190,99,55,316/- under the normal provisions and a book profit u/s 115JB of the Act of Rs.2,89,78,57,388/-. Thereafter, AO passed order u/s 154/143(3) r.w.s 144C(1) of the Act vide order dated 10.03.2017 wherein he computed the total income u/s 115JB of the Act at Rs.2,93,20,10,815/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 20.09.2018 in Appeal No.193/16-17/CIT(A)-22 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), Assessee is now in appeal and has raised the following grounds:

1. *“That the impugned order of CIT(A)-22, New Delhi is bad in law and wrong on the facts and in the circumstances of the case and legal position.*
2. *That on the facts and in the circumstances of the case and the legal position, the learned CIT(A) has erred in confirming the order passed by the AO re computing the book profit u/s 115JB of the Act by adding the amount of Rs.3,41,53,427/- on account of sales incentive under ‘Shahenshah Scheme’ treating the same as unascertained and contingent liability.*

The assessment is made on mere surmise and conjecture, there being no independent application of mind and no reasons for The Assessing Officer to believe that income chargeable to tax has escaped assessment so as to grant jurisdiction to initiate proceedings u/s 147 of The Act.

3. *That on the facts and in the circumstances of the case and the legal position, the Learned CIT(A) has erred in confirming the order of the AO whereas:*
 - i) *The addition made by the AO in the assessment proceedings u/s 143(3) is a debatable addition.*
 - ii) *In case the addition u/s 143(3) is debatable, the rectification proceedings u/s 154 are illegal and void-ab-initio.*
4. *That the appellant, craves, leave to add/alter/delete/amend any ground(s) of appeal before or at the time of hearing.”*

5. Before us, at the outset, Learned AR submitted that though assessee has raised various grounds but the sole controversy is with respect to the re-computing the book profit u/s 115JB of the Act by adding the amount of Rs.3,41,53,427/- on account of sales incentive under ‘Shahenshah Scheme’ by treating the same as unascertained and contingent liability.

6. AO in the order passed u/s 154/143(3) r.w.s 144C(1) of the Act has noted that assessee had made a provision for ‘Shahenshah Scheme’ of Rs.6,71,90,647/- out of which Rs.3,41,53,427/- was added as income on the ground of the provision for ‘Shahenshah Scheme’ to be in the nature of contingent liabilities. AO was of the view that unascertained liabilities should have been added to Net Profit u/s 115JB of the Act. He therefore, held the provision made for ‘Shahenshah Scheme’ to be unascertained liabilities and made addition of

Rs.3,41,53,427/- to compute the total income u/s 115JB of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

7. Before us, at the outset, Learned AR submitted that the issue raised in the present appeal is covered in favour of the assessee by the order for A.Y. 2009-10. He submitted that the Tribunal while deciding the appeal in ITA No.6194/Del/2015 and 463/del/2016 for A.Y. 2009-10 has held that the provision made by the assessee in respect of 'Shahenshah Scheme' to be on scientific basis and therefore not in contingent in nature. He submitted that thereafter in MA order dated 10.09.2021, the Hon'ble ITAT has held that once the amount has been held it to be allowable as not being in contingent nature, the effect of the same will be that since it is not in the nature of contingent liability, it cannot be added to the book profits u/s 115JB of the Act. He pointed to the relevant order and placed the same on record. He therefore submitted that since the facts of the case are identical to that of A.Y. 2009-10, the issue needs to be decided in assessee's favour.

8. Learned DR did not controvert the aforesaid contentions of Learned AR but however supported the order of lower authorities.

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the treatment to the amount of provision under

‘Shahenshah Scheme’ as ascertained and contingent liabilities and therefore adding it for computing the total income u/s 115JB of the Act. We find that identical issue arose in assessee’s own case for A.Y. 2009-10, wherein the Co-ordinate Bench of Tribunal has held that provision made for sales incentive scheme by the assessee under ‘Shahenshah Scheme’ to be scientific in nature and not contingent liabilities. It was further held that once the amount has been held to be allowable and not contingent in nature, it cannot be added back to the Book Profit u/s 115JB of the Act. Before us, Revenue has not placed any distinguishing feature in the facts of the case and that for the A.Y. 2009-10. We therefore following the order of Tribunal in assessee’s own case for A.Y. 2009-10 and for similar reasons hold that the provisions made for ‘Shahenshah Scheme’ cannot be considered to be a contingent liabilities for the purpose of computing the total income u/s 115JB of the Act. **Thus the ground of assessee is allowed.**

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 31.08.2022

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.08.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI