

IN THE INCOME TAX APPELLATE TRIBUNAL  
"H" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 968/MUM/2021  
(ASSESSMENT YEAR: 2015-16)

Hindustan Construction Company Limited,  
Hincon House, L B S Marg, Vikhroli (West),  
Mumbai - 400083  
[PAN: AAACH0968B]

..... Appellant

PCIT -6, Mumbai,  
Room No. 501, 5<sup>th</sup> Floor,  
Aayakar Bhavan, Maharishi Karve Road,  
Mumbai - 400020

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri H. P. Mahajani  
For the Respondent/Department : Shri Mehul Jain

Date of conclusion of hearing : 27.05.2022  
Date of pronouncement of order : 25.08.2022

**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 30.03.2021, passed by the Ld. Principal Commissioner of Income Tax, Mumbai - 6, [hereinafter referred to as 'the PCIT'] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] whereby the Assessment Order, dated 26.12.2017, passed under Section 143(3) of the Act has been set-aside.
2. The Appellant has raised following grounds of appeal:

- “1. *On the facts and in the circumstances of the case and in law the order passed by the learned PCIT is barred by limitation and is thus ab initio bad in law and needs to be annulled.*
2. *On the facts and in the circumstances of the case and in law, assumption of jurisdiction by the learned PCIT, is even otherwise ab initio bad in law and hence the order passed by him u/s 263 of the Act needs to be annulled.*
3. *Without prejudice to the above the learned PCIT erred in noting that none attended the hearing before him when factually the representative of the Appellant had appeared and also made written submissions.*
4. *On the facts and in the circumstances of the case and in law, the learned PCIT erred in taking a view that a sum of Rs. 70.66 crores was not available to it as unabsorbed book loss and hence the book profits computed by the AO for the purposes of s 115JB of the Income tax Act 1961 were erroneous to that extent.*
5. *On the facts and in the circumstances of the case and in law, the learned PCIT erred in forming a view that interest of Rs. 33.84 crores, attributable to interest corporate deposit advanced by the Appellant merited being disallowed in computing the income of the Appellant.*  
  
*The conclusion reached by the Learned PCIT is fallacious and based on mere conjectures and surmises and not warranted by facts.*
6. *On the facts and in the circumstances of the case and in law, the learned PCIT erred in forming a view that remuneration of Rs. 8.74 crores, paid to the Chairman & Managing Director of the Appellant, in excess of the amount approved by the Ministry of Corporate Affairs, was called for.*
7. *The order passed by the learned CIT merits being annulled.*
8. *The Appellant reserves the right to add to, alter or delete any of the grounds taken hereinabove.”*

3. The relevant facts, in brief, are that the Appellant, a company engaged in the business of civil construction, filed return of income for the Assessment Year 2015-16 on 28.11.2015 declaring loss of INR 6,91,39,49,100/- under the normal provisions of the Act and Book Profit of INR 62,56,35,749/- under the provision of Section 115JB of the Act.
4. The case of the Appellant was selected for scrutiny. Vide order, dated 26.12.2017, the Assessing Officer completed the assessment under Section 143(3) of the Act at Total Loss of INR 6,56,16,90,707/- under normal provisions of the Act. While determining the Minimum Alternative Tax (MAT) liability of the Appellant under Section 115JB of the Act, the Assessing Officer computed Book Profits at INR.65,47,11,522/- after, inter alia, reducing the Profits as per the Profit & Loss Account by INR 70,66,18,181/- taking the same to be the brought forward book loss on the basis of the Assessment Order for the Assessment Year 2014-15.
5. Subsequently, a show cause notice, dated 15.03.2021, under Section 263 of the Act was issued by the PCIT whereby the Appellant was asked to show cause why the Assessment Order, dated 26.12.2017, should not be held to be erroneous in so far as it is prejudicial to the interest of Revenue under Section 263 of the Act on account of the following issues:
  - (a) First issue : The PCIT observed that while computing Book Profits the Assessing Officer erred in reduced Profits as per the Profit & Loss Account by INR 70.66 Crores by taking the same to be business loss as per books of accounts brought forward to the relevant assessment

year whereas there were no brought forward business losses as per the books of accounts for the Assessment Year 2015-16. For the financial year 2013-14 relevant to the Assessment Year 2014-15, Book Profit of INR 80.64 Crores were carried to the Reserve & Surplus and therefore, according to the PCIT, the Assessing Officer had incorrectly taken the figure of INR 70.66 Crores as brought forward book loss.

- (b) Second issue: The PCIT observed that during the relevant previous year the Appellant held borrowed funds and had claimed deduction of INR 624.95 Crores for interest on borrowed capital. At the same time, the Appellant had given interest free Inter Corporate Deposits (ICDs) to the tune of INR 294.27 Crores to HCC Real Estate Ltd., its subsidiary Company. The PCIT was of the view that the Assessing Officer had erred in not making disallowance of proportionate interest expenses on account of interest bearing funds utilized for giving interest free ICDs to its subsidiary and had failed to make necessary inquiry/verification into the claim.
- (c) Third issue: The PCIT observed that the Appellant Company had claimed deduction on accrual basis for remuneration to the Chairman and Managing Director (CMD) amounting to INR 10.66 Crores. The aforesaid remuneration was in excess of the limits specified in Schedule – V of the Companies Act, 2013, therefore, the Appellant had filed application seeking approval before the Ministry of Corporate Affairs (MCA) which was pending. For the Assessment Year 2013-14 and 2014-15

MCA had granted approval only for INR 1.72 Crores and INR 1.92 Crores, respectively. Despite this, the Assessing Officer allowed deduction for the entire amount without inquiring into the claim of deduction made by the Appellant.

6. In response to the above show-cause notice, dated 15.03.2021, the Appellant filed written submission, vide letter, dated 22.03.2021, and requested that the proceedings under Section 263 of the Act be dropped. However, the PCIT, vide order dated 30.03.2021, having considered the explanation/submission provided by the Appellant, concluded that the Assessment Order, dated 26.12.2017, was erroneous in so far as it was prejudicial to the interest of the Revenue. Thus, by exercising powers of revision under Section 263 of the Act, the Assessing Officer set aside the Assessment Order, dated 26.12.2017, with the directions to the Assessing Officer to pass de-novo assessment after taking into account the observations made by the PCIT.
7. Being aggrieved, the Appellant has filed the present appeal.
8. The Ld. Authorised Representative for the Appellant reiterated the submission made before PCIT and relied upon the submissions, dated 22.03.2021, filed before PCIT (placed at pg. 1-5 of the paper-book). Whereas, the Ld. Departmental Representative relied upon the order passed by the PCIT.
9. We have given a thoughtful consideration to the rival contentions and have perused the material on record. The PCIT has exercised powers under Section 263 of the Act as he was of the view that the assessment order is erroneous to the

extent it is prejudicial to the interest of revenue in terms of Section 263 of the Act on the basis of the following 3 issues.

Ground No. 4

10. First issue pertains to computation of book profits under Section 115JB of the Act. According to PCIT the Assessing Officer has, while computing book profits, erred in reducing Profits as per Profit & Loss Account by INR 70.66 Crores taking the same to be unabsorbed brought forward book loss. We find that what is contemplated in clause (iii) of Explanation 1 to Section 115JB of the Act is the simple numerical figure being the amount of loss brought forward or unabsorbed depreciation whichever is less. Hence, it could be safely concluded that it is a simple determination of numerical amount which would be eligible for reduction from net profit for the purposes of arriving at the book profit under Section 115JB of the Act. [*GO Airlines (India) Ltd. V. DCIT: 189 ITD 430 (Mumbai - Trib.)*][13-01-2021]. Further, we note that Clause (iii) of Explanation 1 to Section 115JB of the Act uses the expression "as per books of accounts". A perusal of the 'Note 3: Reserves & Surplus' forming part of the Audited Financial Statements of the Appellant pertaining to the Assessment Year 2015-16, shows that as per the "books of accounts" of the Appellant, the Appellant had Book Profit of INR 80.64 Crores, and INR 81.65 Crores for the Assessment Year 2014-15 and 2015-16, respectively. The brought forward book loss of INR 11.64 Crores was completely set off against the book profits during the Assessment Year 2014-15 and the balance of INR 69.00 Crores was transferred to Reserve & Surplus. Hence, once the entire book loss as per "books of account" got wiped out by the

book profits for the Assessment Year 2014-15, there was no book loss to be carried forward to Assessment Year 2015-16. Thus, the PCIT has rightly concluded that the Appellant did not have any brought forward book loss for the Assessment Year 2015-16, and therefore, the Assessing Officer erred in reducing the Profit as per Profit & Loss Account by INR 70.66 Crores while computing Book Profits under Section 115JB of the Act. In view of the aforesaid, we conclude that the PCIT was correct in holding that the Assessment Order, dated 26.12.2017 was erroneous as well as prejudicial to the interest of Revenue to this extent, warranting exercise of powers of revisions under Section 263 of the Act by the PCIT. Further, we note that though in this submission/reply, dated 22.03.2021 the Appellant has tried to justify the action of the Assessing Officer, in the Working of Tax Liability forming part of Computation of Income filed by the Appellant along with the Return of Income the Appellant had reduced the Profits as per Profit & Loss Account by INR 64.72 only. The Assessing Officer has not carried out any inquiry/verification in this regard during the assessment proceedings. We, therefore, decline to interfere with the order of PCIT in this regard. Accordingly, Ground No. 4 raised by the Appellant is dismissed.

Ground No. 5

11. Second issue pertains of proportionate disallowance of interest cost. We note that as regards Issue No. 2 there is no material to suggest that any inquiry/investigation was carried out by the Assessing Officer during the assessment proceedings. In reply to the show-cause notice the Appellant had submitted that the ICDs were sourced out of internal accruals. However, in the

absence of any material being on record to establish that the ICDs were sourced out of internal accruals and that the interest bearing funds were used by the Appellant wholly and exclusively for the purpose of business, the Assessing Officer could not have arrived at a conclusion that no disallowance under Section 36(1)(iii) of the Act warranted. In our view, the facts on record clearly showed that the Appellant held interest bearing funds during the relevant previous year and had granted interest free ICDs to its subsidiary. These facts were sufficient to attract inquiry/investigation by the Assessing Officer into the claim of interest expenses made by the Appellant. However, no inquiry/verification was conducted by the Assessing Officer in this regard. In absence of any enquiry/verification, the view taken by the Assessing Officer cannot be considered a plausible view. Therefore, we are of the view, that the PCIT was justified in exercising his powers of revision under Section 263 of the Act (read with Explanation 2) in this regard. Accordingly, Ground No. 5 raised by the Appellant is dismissed.

Ground No. 6

12. Similarly, in relation to third issue no material has been placed before us to establish that some inquiry/verification was conducted by the Assessing Officer during the assessment proceedings while accepting the claim of the Appellant for deduction of INR 10.66 Crores in respect of remuneration for CMD. It is admitted position that MCA had granted approval for remuneration of INR 1.72 Crores and INR 1.92 Crores for Assessment Year 2013-14 and 2014-15, respectively. Even though application for seeking approval filed by the Appellant

with MCA was pending approval, the appellant had claimed deduction for the entire amount which was admittedly in excess of the limit specified by the Companies Act, 2013. The facts on record, warranted inquiry/verification by the Assessing Officer and in absence of the same, the PCIT was justified in invoking provisions of Section 263 of the Act read with Explanation 2. We do not find any infirmity in the exercise of powers of revision by PCIT in this regard. Accordingly, Ground No. 6 raised by the Appellant is dismissed.

Ground No. 1-3

13. In view of our findings in respect of Ground No. 4, 5 and 6 above, Ground No. 2 is disposed off as being general in nature. Whereas, Ground No. 1 & 3 are disposed off as being not pressed in view of the statement made by the Learned Authorised Representative for the Appellant during the course of hearing.
14. In result, the present appeal is dismissed.

Order pronounced on 25.08.2022.

*Sd/-*  
(Pramod Kumar)  
Vice President

*Sd/-*  
(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 25.08.2022  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai