

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.58/Chny/2020
निर्धारण वर्ष /Assessment Year: 2008-09

M/s.Kavithalayaa Productions-
(P) Ltd.,
New No.9 (Old No.5),
Lambeth Avenue (Off) Bawa Street,
Abhiramapuram,
Chennai-600 018.
[PAN: AAACK 2996E]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Media Circle-14,
(Presently Non-Corporate
Circle-19(1),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.B.Ramakrishnan, FCA
प्रत्यर्थी की ओर से /Respondent by : Mr.P.M.Senthil Kumar, JCIT
सुनवाई की तारीख/Date of Hearing : 17.11.2022
घोषणा की तारीख /Date of Pronouncement : 23.11.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-14, Chennai, dated 06.11.2019 and pertains to assessment year 2008-09.

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

1. *The appellant respectfully submits that the order of the commissioner of Income Tax (Appeals) - 14, Chennai - 600 034 in ITA No.133/CIT(A)-14/2013-14 dated 06/11/2019 is contrary to law and facts prevailing in the case of the appellant for the Asst. year 2008-09, and is against all canons of law, equity and justice.*

2. *The appellant submits that the Learned Commissioner of Income Tax (Appeal) ought to have appreciated the fact that the issue before him for adjudication was the computation of book profits for the purpose of MAT under the provisions of sec.115JB of the IT Act 1961*

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and not the computation of income for assessment purposes under the normal provisions of the IT Act 1961.

3. The appellant submits that the book loss for the assessment year 2008-09 had been recomputed by making two adjustments viz :-

<i>Income admitted to claim TDS credits</i>	<i>Rs.65,61,610</i>
<i>Prior period expenses to be excluded</i>	<i>Rs.29,85,478</i>
Total adjustments	Rs.95,47,088

The above adjustments were made to re-compute the book loss or income under the normal provisions of IT Act 1961 liable for assessment for the Asst. year 2008-09 as per the return filed for the Asst. year 2008-09. The appellant submits that the Learned CIT(Appeal) ought to have appreciated the fact that the above adjustments were to compute the income liable for assessment for the Asst. year 2008-09 under the normal provisions of the IT Act 1961, which are permissible under the said provisions of IT Act 1961.

4. The appellant submits that the Learned commissioner of Income tax (Appeal), Chennai ought to have appreciated the fact that the adjustments to book loss referred to, as above, in Ground No.3 cannot be made for the purposes of computing income liable for assessment under the provisions of section 115JB of IT Act 1961.

5. The appellant submits that the accounts of a company, as in the case of the appellant should be maintained as required under the provisions of companies Act 2003 and as per the requirements of the Accounting Standards of ICAI which are mandatorily binding on a company like that of the appellant.

6. The appellant submits that the Income offered for Asst. to claim TDS credits — Rs.65,61,610/- cannot be considered as income of the Asst. year under consideration for the purpose of book profits under the provisions of section 115 JB of IT Act as the Accounting Standards recognize income only when such income has accrued during the previous year.

7. The appellant submits that the Accounting Standards allows debiting prior period expenses to the profit & loss account of a subsequent year to compute the profit or loss for the said year. The Accounting standard 5 does not stipulate that the above adjustment has to be made after arriving at the Net profit or loss of the year under consideration, as decided by the CIT(Appeal). The disallowance of prior period expenses while computing the book profit u/s.115JB of the IT Act 1961 does not come within the purview of the provisions of the explanation to section 115JB of IT Act which stipulates the adjustments to be made to the book profits for the purposes of section 115JB of the IT Act.

8. The appellant submits that the Learned ITAT may be pleased to delete the two additions referred to in the earlier grounds and to restore the income computed by the assessee for the purpose of computing the tax liability for the Asst. year 2008-09 under the provisions of sec.115JB of IT Act and alternatively under the normal provisions of the IT Act 1961 as admitted by the appellant in the return filed for the Asst. year 2008-09.

9. The appellant craves leave to add or amend any of the Grounds already filed or to adduce fresh grounds at the time of hearing of this appeal.

3. The brief facts of the case are that the assessee company is engaged in the business of film production and distribution filed its return of income for the AY 2008-09 on 14.09.2008 declaring total income of Rs. 'NIL' under normal provisions of the Act, and also book profit computed u/s.115JB of

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the Act. The assessment has been completed u/s.143(3) of the Act, on 22.12.2010 and assessed total income of Rs.64,67,010/-. The case has been, subsequently taken up for revision proceedings and the assessment order passed by the AO has been set aside on two issues and directed the AO to re-frame the assessment on the issue of income admitted in statement of total income to claim TDS Credits amounting to Rs.65,61,610/- and also disallowance of prior period expenses while computing book profit amounting to Rs.29,85,478/-. During the second round of assessment proceedings in consequent to directions of the Ld.PCIT u/s.263 of the Act, the AO has completed assessment and determined total income under book profit at Rs.55,06,502/- by making additions towards income admitted to claim TDS Credits and disallowance of prior period expenses. The assessee carried the matter in appeal before the First Appellate Authority, but could not succeeded. The Ld.CIT(A) for the reasons stated in their appellate order dated 06.11.2019, rejected the arguments of the assessee and sustained the additions made by the AO. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Ld.Counsel for the assessee referring to provisions of Sec.115JB of the Act, more particularly, Explanation (1) to Sec.115JB of the Act, submitted that except as provided under Explanation(1), no further adjustment can be made by the AO while computing book profit u/s.115JB of the Act. He further referring to various judicial precedents, including the decision of the Hon'ble Karnataka High Court in the case of CIT (LTU) v.

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Sansera Engineering (P) Ltd. reported in [2017] 80 taxmann.com 248 (Karnataka) argued that the AO can make adjustment to the profit qua items provided in Explanation (1) to Sec.115JB of the Act. Since, adjustment made by the AO towards income offered for claiming TDS Credits and 'prior period expenses', does not come under any of adjustment as provided under Explanation (1), the question of re-computing book profit does not arise.

5. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that if financial statements of the assessee are not prepared in accordance with Part-II & Part-III of Schedule-VI of Companies Act, 1956, then, the AO can make adjustments to the items of income or expenses which is not in accordance with provisions of Income Tax Act, 1961. However, if the accounts are prepared in accordance with Part-II & III of Schedule-VI of Companies Act, 1956, then no adjustment can be made to any item, other than those items specified in Explanation (1) to Sec.115JB of the Act. In this case, the assessee has not prepared its accounts in accordance with Part-II & III of Schedule-VI to the Companies Act, 1956 and thus, the AO has rightly re-computed book profit and their orders should be upheld.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The provisions of Sec.115JB of the Act, deals with computation of book profit. Explanation (1) to Sec.115JB of the Act, provides for certain positive and negative

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adjustments. It is a well settled principle of law by the decision of various courts, including the Hon'ble Supreme Court in the case of CIT v. Apollo Tyres Ltd., reported in [2002] 255 ITR 273 (SC) that if financial statements are prepared in accordance with the provisions Part-II & III of Schedule-VI of Companies Act, 1956 and approved by the shareholders in the AGM, then the AO's power is limited to make adjustments to book profit qua the items provided in Explanation (1) to Sec.115JB of the Act. In other words, if accounts are prepared in accordance with Companies Act, 1956 and approved by the shareholders, then the AO cannot re-write the books of accounts, except as provided in Explanation (1) to Sec.115JB of the Act. In this case, it is the contention of the assessee that adjustment made by the AO towards income admitted to claim TDS Credits is not in accordance with Explanation (1) to Sec.115JB of the Act, because the assessee has offered income to claim TDS Credits in the statement of total income, but facts remains that said income represents advance received from customers for rendering services and income component is accrued to the assessee in the subsequent financial years and therefore, the assessee has rightly treated advances from customers as current liabilities in the financial statement and which is in accordance with provisions of Companies Act, 1956.

7. Having heard both sides, we are of the considered view that if advances received by the assessee from customers on which TDS Credits has been claimed, has been offered as income of subsequent financial

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years, then the same needs to be recognized as income as and when such income accrues to the assessee. Therefore, we are of the considered view that when the assessee has treated advances from customers as liability in the books of accounts pending recognition of income in subsequent financial years, it cannot be said that the assessee has not followed the provisions of Companies Act, 1956, more particularly, Part-II & III of Schedule-VI of Companies Act, 1956 while preparing its accounts. Therefore, we are of the considered view that on this issue, the AO cannot make any adjustments to re-compute book profit u/s.115JB of the Act, because said item does not come under any of the items of adjustments specified in Clause (a) to (f) of Explanation (1) to Sec.115JB of the Act and thus, we direct the AO to delete additions made towards income admitted to claim TDS Credits while computing book profit u/s.115JB of the Act.

8. As regards 'prior period expenses' excluded while computing book profit, we find that as per Part-II & III of Schedule-VI of Companies Act, 1956, the assessee is mandatorily shown separate items of 'prior period expenses' and income to disclose the effects in the profits or loss for the current year. In this case, no doubt the assessee has shown 'prior period expenses' in accordance with Part-II & III of Schedule-VI of Companies Act, 1956. However, while computing book profit u/s.115JB of the Act, the assessee has shown 'prior period expenses' along with other items of expenses of the current financial year contrary to provisions of Part-II & III of Schedule-VI of Companies Act, 1956. Further, the assessee has taken

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profit before tax after deducting 'prior period expenses' while computing book profit. However, for the purpose of computing profits & gains of business and profession added back 'prior period expenses' to arrive at income chargeable under the head 'profits & gains of business'. In our considered view, the assessee has not prepared its accounts in accordance with Part-II & III of Schedule-VI of Companies Act, 1956, and thus, we are of the considered view that the AO is very well empowered to re-compute book profit for the purpose of Sec.115JB of the Act. Therefore, we are of the considered view that there is no merit in the arguments of the assessee on this issue and thus, we reject the ground taken by the assessee and sustain the additions made by the AO towards 'prior period expenses' items to be excluded while computing book profit u/s.115JB of the Act.

9. In the result, appeal filed by the assessee partly allowed.

Order pronounced on the 23rd day of November, 2022, in Chennai.

Sd/-.
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 23rd November, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF