

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.44/Bang/2023
Assessment Year: 2019-20

Gokulam Shelters Private Limited Gokulam Complex Doddakallasandra Post Vaanthapura Bangalore 560 062 PAN NO : AADCG6505C	Vs.	ITO Ward-3(1)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep Chalapathy, A.R.
Respondent by	:	Smt. Priyadarshini Besaganni, D.R.

Date of Hearing	:	14.03.2023
Date of Pronouncement	:	14.03.2023

ORDER

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 8.12.2022 for the assessment year 2019-20.

2. The assessee has raised the first ground that NFAC erred in not considering the Deferred Tax Asset at Rs.4,77,656/- while computing the MAT u/s 115JB of the Income-tax Act,1961 [‘the Act’ for short].

3. Facts of the case are that for the purpose of computation of book profits u/s. 115JB of the Act, the assessee started with the profit after tax of Rs.1,61,80,699. Therefore, the tax expense of Rs. 40,36,670/- and Deferred tax income of Rs. 4,83,088/- has to be given effect for arriving at the book profits u/s. 115JB of the Act. The net effect of tax expense and deferred tax income is Rs. 35,53,5827/-. However, the amount entered in the ITR Form is Rs. 35,59,014/- and the difference is Rs.5,432/- which is interest on TDS included in interest expenses claimed in the Statement of Profit and Loss. The breakup of the above is tabulated below;

Particulars	Amount in Rs.
Tax expense	40,36,670
Interest on TDS	5,432
Deferred tax income	(4,83,088)
Total tax expenses	35,59,014

3.1 The computation of book profits in the ITR form filed is reproduced below;

<i>Schedule MAT – Computation of Minimum Alternate Tax payable under section 115JB</i>			
1	<i>Whether the profit and Loss account is prepared in accordance with the provisions of Parts II of Schedule III to the Companies Act, 2013 (If yes, write 'Y', if no write 'N')</i>		Yes
2	<i>If 1 is no, whether profit and loss account is prepared in accordance with the provisions of the Act governing such company (If yes, write 'Y', if no write 'N')</i>		Yes
3	<i>Whether, for the Profit and Loss account referred to in item 1 above, the same accounting policies accounting standards and same method and rates for calculating depreciation have been followed as have been adopted for preparing accounts laid before the company as its annual general body meeting? (If yes, write 'Y', if no write 'N')</i>		Yes
4	<i>Profit after tax as shown in the Profit and Loss Account (enter item 56 of Part-A-P&L) (enter item 56 of Part-A – P&L Ind AS) (as applicable)</i>	4	16180699
5	<i>Additions (if debited in Profit and loss account)</i>		
	<i>a</i> <i>Income-tax paid or payable or its provision including the amount of deferred tax and the provision thereof</i>	<i>5a</i>	3559014
	<i>b</i> <i>Reserve (except reserve under section 33 AC</i>	<i>5b</i>	0

3.2 From the above extract also it was found that the appellant has added tax expenses net of deferred tax asset/income amounting to Rs. 35,59,014/- to the profit after taxes as per the statement of profit and loss account of the appellant as per the clause (a) of Explanation 1 to section 115JB(2) of the Act. However, the learned assessing officer and the learned Commissioner of Income Tax (Appeals) without considering the above fact that the deferred tax asset is in the nature of income and not expense, added back Rs. 40,36,670/- to arrive at the book profit.

3.3 Principally, as per explanation 1 to section 115JB(2) of the Act, the 'book profit' means the profit as shown in the statement of profit and loss which is computed in accordance with the provisions of the Companies Act, 2013 as increased or decreased by the items mentioned in Explanation 1 of section 115JB of the Act. Clause (a) of Explanation 1 of section 115JB(2) of the Act states that "*the amount of income-tax paid or payable, and the provision therefor*" has to be added to the profit as mentioned earlier. Therefore, a conclusion can be drawn that for the purposes of computation of book profits under section 115JB of the Act, the profit before giving any adjustment to tax expense (including tax expense relating to the current year, MAT credit, Tax expense relating to the prior years, deferred tax) has to be considered. In this connection, if the profit before tax is considered then it can be said that the effect of clause (a) of Explanation 1 of section 115JB(2) of the Act is already provided. Hence, if is considered that the 'profit before tax' as computation of book profits then the deferred tax adjustment in the statement of profit and loss of the appellant which is provided after arriving at 'profit before taxes' has nothing to do with any adjustments as specified in clause (b) to

clause (k) to Explanation 1 of section 115JB(2) of the Act. In view of the above, the ld. A.R. requested to allow the above grounds.

4. We have heard the rival submissions and perused the materials available on record. In our opinion, the claim of assessee requires to be examined after verifying the records by the AO as the NFAC has wrongly observed that from 1.4.2016 i.e. from assessment year 2016-17, sub clause – (h) of explanation (1) of sub section (2) of section 115JB of the Act is applicable and as per which the adjustment made by the CPC while processing return u/s 143(1) of the Act is justified. However, CPC as well as NFAC has not considered the actual computation made by assessee in its return of income. In other words, while computing the book profit, the AO has not considered netting of tax expenses with interest on TDS and deferred tax income. In other words, the assessee has taken net of tax expenses after deducting interest on TDS and deferred tax expenses as below:-

1. Tax expenses		40,36,670/-
2. Interest on TDS	(+) 5,432/-	
3. Deferred tax income	<u>(-)4,83,088/-</u>	
	(-)4,77,656/-	<u>(-) 4,77,656/-</u>
		<u>35,59,014/-</u>

4.1 This figure of Rs.35,59,014/- is to be reduced from profit before tax of Rs.19,73,438/- and the net figure of book profit is computed as follows:-

1. Profit before tax	1,97,34,281/-
2. Total tax expenses	(-) <u>35,59,014/-</u>
Book profit	<u>1,61,80,699/-</u>

4.2 However, the lower authorities without noticing the above made further addition of Rs.4,77,656/- while computing the book profit.

4.3 Being so, we remit this issue to the file of AO to go through the records and recompute the book profit accordingly.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14th Mar, 2023.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 14th Mar, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.