

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**
**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.7265/Del/2019
(Assessment Year : 2011-12)

ACIT Circle – 7(1) New Delhi PAN No. AAACD 1257 F (APPELLANT)	Vs.	Delhi State Industrial and Infrastructure Development Corporation Ltd., N-36, Bombay Life Building, Connaught Circus, New Delhi-110 001 (RESPONDENT)
---	-----	--

Assessee by	Shri Yogesh Jain & Shri Shobhit Kansal, C.A.
Revenue by	Shri Sanjay Kumar, Sr. D.R.

Date of hearing:	27.06.2023
Date of Pronouncement:	26.09.2023

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals) – 2, New Delhi ('CIT(A)' in short) dated 28.06.2019 arising from the assessment order dated 28.11.2018 passed by the Assessing Officer (AO) under Section 147/143(3)/263 of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2011-12.

2. The ground of appeal raised by assessee reads as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CITA) has erred in deleting the addition to book profits of Rs.4,12,23,820/- on account of provision for Bad Debts."

3. Briefly stated, the case of the assessee was re-opened under Section 148 read with Section 147 of the Act for the reason that 'book profits' declared by the assessee for the purpose of MAT provisions of Section 115JB was alleged to be under reported by making wrong claim towards provision for doubtful loans and advances/debts since

the same was provision for making liabilities, other than ascertained liabilities. The Assessing Officer passed the assessment order under Section 147 of the Act by enhancing the book profits on account of doubtful loan and advances amounting to Rs.4,12,23,820/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A).

5. On considering of facts and circumstances of the case, the issue was adjudicated in favour of the assessee. The relevant para dealing with the issue is reproduced hereunder for ready reference:

“6.1 Ground no.1: This ground is directed against addition of Rs. 4,12,23,820/- u/s 115JB(2) Explanation 1 (c) on account of disallowance of provision for bad debts in book profits. In this case, return of income was filed on 30.09.2011 showing income of Rs. 22,77,90,022/-.

6.2 Further verification of the return showed a provision for bad debts of Rs.4,12,23,820/- debited in P&L a/c. This amount was added back in computation of normal profits by the appellant but not added back in computation of book profits. The AO believed that this amount was unascertained liabilities and inadmissible u/s 115JB(2) explanation 1(c). The case was re-opened u/s 147 and re-assessed making the addition of this amount as unascertained liabilities.

6.3 During the appellate proceedings, the appellant submitted that the provision for bad debts was not only debited in P&L a/c but was also obliterated (removed) from loans /advances on asset side of balance sheet. Only the nomenclature used was 'provision for bad debts'. Hence, it was not just a provision but an actual write off of bad debts and very much allowable in view of decision of the Supreme Court in Vijaya Bank Vs. CIT [2010] 323 ITR 166 (SC). However, it was added back in computation of normal profit inadvertently and the appellant has also paid tax on this without agitating.

6.4 However, it has agitated adding back of this amount in the book profit. It submitted that invoking of 115JB(2) explanation 1(c) as unascertained liabilities by the AO is not correct because bad debts are receivable and not payable amounts. Writing off /provision for bad debts does not create liabilities. Therefore, there is no question of unascertained liabilities.

It was also submitted that provision for bad debts are inadmissible u/s 115JB(2) explanation 1(i) but in view of actual write off, they are no longer hit by these provisions as per decision of Gujarat High Court in the case of CIT Vs Vodafone

Essar [2017] 85 Taxmann.com 32 (Guj.) which has considered all the available decisions of Supreme Court and other courts on this issue and has clarified the issue. It has been held that actual write off of bad debt both in P&L a/c and obliteration from loans / advances on the asset side are allowable for computation of book profit and are not hit by the provision of 115JB(2) explanation 1(1).

The appellant has filed a copy of audited accounts showing reduction of this amount from loans/advances from asset side of the balance sheet. The same argument was put forth for the AO also and all these accounts were available at the time of assessment. It is evident that although the nomenclature 'provision' was used in the P&L account but it was not just a provision but an actual write off of bad debts

6.6 *As bad debt is not a payable but receivable amount, it is not hit by Sec. 115JB(2) explanation 1(c). Further, due to obliteration of bad debt from loans and advances from the balance sheet and P&L a/c, the amount is actual write off and not just a provision. The nomenclature 'provision for bad debt' used in P&L a/c does not alter the real nature of the item. As such, it is not hit even by Sec.115JB(2) explanation 1(i).*

6.7 *Keeping in view the finding of facts as above and judicial decisions relied on by the appellant, the addition does not appear justified. The same is deleted.
The ground is allowed."*

6. Aggrieved by the relief granted by the CIT(A), the Revenue has preferred appeal before ITAT.

7. We have considered the rival submissions and perused the first appellate order as well as the re-assessment order and other material placed on record. The case laws referred to and relied upon in course of hearing have also been taken into account.

8. On perusal of the re-assessment order, it is observed that the AO has referred to Clause-(c) to Explanation 1 appended to Section 115JB of the Act which reads as “*the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities, or*” . Hence, it is the case of the assessee that amounts set aside for provisions made for meeting un-ascertained liabilities requires to be increased while determining the book profits.

9. We find force in the plea of the assessee that provisions for doubtful loans / advances are not in the nature of provision for meeting liabilities. Such provisions made are attributable to existing receivables and thus provision attributable to doubts / loans are clearly not covered by Clause (c) of Explanation 1 to Section 115JB. The issue has been discussed in plethora of Judgment including Commissioner of Income Tax vs. HCL Comnet Systems & Services Ltd. (2008) 174 Taxman 118 (SC); Vijaya Bank vs. Commissioner of Income Tax (2010) 190 taxman 257 (SC); Commissioner of Income Tax vs. Vodafone Essar Gujarat Ltd. (2017) 85 taxman.com 32 (Gujarat HC) and DCIT vs. Peerless General Finance and Investment Co. Ltd. (2021) 126 taxmann.com 79 (Kolkata – Trib.). We, thus concur with the observations of Learned CIT(A) that provision in loans and advances are not hit by Clause (c) of Explanation 1 of Section 115JB as the same is provision for asset and not for liabilities.

10. The provision for loans and advances are also not hit by clause (i) of Explanation 1 of Section 115JB either since such provision have been actually reduced from loans and advances and only net figure of loans and advances are reflected in the financial statement. Consequently, this aspect is governed by the judgement of the Hon. Supreme Court in the case of Vijaya Bank (supra).

11. We thus see no infirmity in the action of the CIT(A) and thus decline to interfere therewith.

12. In the result, the captioned appeal of the Revenue is dismissed.

Order was pronounced in the open court on 26 September 2023

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 26.09.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI