

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.63/PAN/2017
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Teracom (P) Ltd., Plot No.250, Kundaim Industrial Estate, Kundaim, Goa- 403115. PAN : AABCT5254B	Vs.	ACIT, Circle-2(1), Panaji, Goa.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Prabhakar Anand

Date of hearing : 08.09.2023
Date of pronouncement : 06.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Panaji [‘the CIT(A)’] dated 26.12.2016 for the assessment year 2009-10.

2. Briefly, the facts of the case are that the appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing & trading of optical fibre cable & accessories, insulated wires & power cables and telecom instruments etc. The Return of Income for the

assessment year 2009-10 was filed on 30.09.2009 disclosing Rs.Nil income under the normal provisions of book profit of Rs.14,60,06,022/- u/s 115JB of the Income Tax Act, 1961 ('the Act'). Against the said return of income, the assessment was completed by the Asst. Commissioner of Income Tax, Circle-2(1), Panaji ('the Assessing Officer') vide order dated 16.12.2011 passed u/s 143(3) of the Act at a total income of Rs.Nil under the normal provisions of book profits of Rs.14,60,06,022/- u/s 115JB of the Act.

Subsequently, the assessment was reopened by issuing of notice u/s 148 on 04.03.2014 as the Assessing Officer formed an opinion that the income got escaped assessment to tax, as the provisions for bad and doubtful debts debited to Profit & Loss Account was not added back to the book profits for the purpose of computing the tax u/s 115JB of the Act. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 29.01.2015 passed u/s 143(3) r.w.s. 147 of the Act after making addition on account of provisions for bad and doubtful debts for book profits for the purpose of computing the tax liability u/s 115JB of the Act rejecting the contention of the appellant that

the same was not required to be added back to the book profits as the said provision was reduced from the value of the sundry debtors disclosed in the Balance Sheet. The reassessment is bad in law, as it amounts to initiating of re-assessment proceedings prompted by mere change of opinion by holding that the provision for bad and doubtful debts is required to be added back to the book profits in view of retrospective effect insertion of clause (i) to Explanation (1) to section 115JB(1) w.r.e.f. 1.4.2001.

3. Being aggrieved, an appeal was filed before the Id. CIT(A), who vide impugned order confirmed the action of the Assessing Officer.

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. Ground of appeal no.(A) to (E) challenges the validity of the re-assessment proceedings. The contention of the appellant that the re-opening is promoted by mere change of opinion is rejected, it cannot be accepted for the reason that there was no material on record to demonstrate that the Assessing Officer, during the course of original assessment proceedings, had examined the application of retrospective amendment brought out by the Parliament by Finance

Act, 2009 by insertion of clause (i) to section 115JB and, therefore, the contention of the appellant that it is mere change of opinion cannot be accepted. Therefore, we uphold the validity of the assessment and, accordingly, the ground of appeal nos.(A) to (E) stands dismissed.

6. Ground of appeal nos.(F) to (K) challenges the addition on account of bad and doubtful debts. There cannot be any dispute that the provisions for bad and doubtful debts amounts to provision for diminution in the value of asset. Clause (i) to section 115JB was inserted by the Finance (No.2) Act, 2009 to include in the book profits, the amount or the amounts set-aside as the provisions for diminution in the value of asset is to be added back to the book profits. Therefore, in view of the plain provisions of the Act, the provision for bad and doubtful debts should be added back to the book profit for the purpose of computing the tax liability u/s 115JB of the Act. In this connection, we also place reliance on the decision of the Hon'ble Bombay High Court in the case of DIL Ltd. vs. ACIT, 343 ITR 296 (Bom.) and the decision of the Hon'ble Delhi High Court in the case of Whirlpool of India Ltd. vs. Union of

India, 355 ITR 51 (Delhi). Thus, the ground of appeal nos.(F) to (K) filed by the assessee stands dismissed.

7. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 06th day of October, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th October, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Panaji.
4. The Pr. CIT, Panaji.
5. DR, ITAT, Panaji.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलिय अधिकरण, पुणे / ITAT, Pune.