

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE ABY T VAKERY, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1326/MUM/2023
(A.Y. 2013-14)**

Labh Capital Services Pvt Ltd. A-Wing Mahatre Pen Bldg, Senapati Bapat Marg, Dadar (W) Mumbai- 400028	Vs.	Income Tax Officer, Ward 7(1)(4) Room No. 1104, 11 th Floor, Pratishtha Bhavan, M.K. Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAACL2308R		
Appellant	..	Respondent

Appellant by :	Shri Mahaveer Jain, AR,
Respondent by :	Shri Manoj Kumar Sinha, DR

Date of Hearing	24.08.2023
Date of Pronouncement	27.09.2023

आदेश / O R D E R

PER AMARJIT SINGH :-

1. The present appeal filed by the assessee is directed against the order passed u/s 250 of the Income Tax Act, 1961 ([hereinafter “the Act”] by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [hereinafter “the CIT(A)'/NFAC] dated 24.03.2023 for A.Y. 2013-14.
2. The assessee has raised the following grounds of appeal :-

1. *On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition of Rs. 2,15,25,000/- on account of Debt Redemption Reserve in computing book profit u/s 115JB of the I.T.Act, 1961 without accepting the explanation of the appellant. He ought to have deleted the addition made by ld. AO.*

2. *The appellant craves leave to alter, amend, modify or substitute any ground/ grounds and to add any new ground or grounds on or before the appeal is disposed off.*

3. Facts in brief is that return of income declaring total loss of Rs. 9,29,259/- was filed on 29.09.2013. The case was subject to scrutiny and notice u/s 142(2) of the Act was issued 02.09.2014. The assessee is engaged in the business of investment and trading in shares. During the course of assessment the assessing officer noticed that while computing the book profit the assessee has reduced Debt Redemption Reserve amount of Rs. 1,98,96,599/- and exempt dividend of Rs. 10,08,103/- and thereby shown loss of Rs. 27,959/-. The assessing officer stated that the assessee has not added the amount of Debt Redemption Reserve to the book profit computed u/s 115JB of the Act. On query the assessee placed reliance upon the ratio of decision the Hon'ble Bombay High Court in the case of CIT Vs. Raymond Ltd. 21 Taxman.com 60 Bombay (2012) on 20.03.2012. However the assessing officer has not agreed with the submission of the assessee. The assessing officer stated that no

where in section 115JB of the Act, it has been specified that debt redemption reserve is not liable for book profit. The assessing officer also stated that there was no contingency to create such a reserve as there were sufficient assets available in the form of investment, interest free advances and cash and bank balance with the assessee. The assessing officer also stated that facts of the case of the assessee are distinguishable from the facts of the case of Raymond Ltd decided by the Hon'ble High Court of Bombay. The assessing officer stated that in the case of Raymond India Ltd reserves were created for meeting debenture redemption liability and the same cannot be compared with the nature reserve created in the case of the assessee. Therefore, the assessing officer observed that debt redemption reserve created by the assessee was merely a mechanism to avoid payment of MAT. Therefore, the assessing officer has treated the debt redemption reserve as general reserve and added the same to the book profit u/s 115JB of the Act.

4. The assessee has filed before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee.

5. During the course of appellant proceedings before us. The Ld. Counsel at the outset submitted that on similar facts and identical issue the Co-ordinate Bench of the ITAT, Mumbai after following the decision of Hon'ble Bombay High Court in the case of Raymond Ltd has adjudicated

the issue in favour of the assessee in the case of Rachana Finance & Investment P. Ltd Vs Income Tax Officer vide ITA No. 5817 & 5816/M/2015 dated 31.05.2017. The Ld. Counsel further contented that in the aforesaid case of ITAT, Mumbai held that debt redemption fund did not fall in any category of adjustment provided u/s 115JB of the Act. The Ld. Counsel has also placed reliance on the decision of ITAT, Ahmedabad in the case of Genus Electrotech Ltd vs ITO vide ITA No. 2826/Ahd/2012 dated 11.05.2016 and decision of LMJ International Ltd Vs. DCIT ITAT Kolkata vide ITA No. 230/Kol/2013 dated 21.03.2018. On the other hand the Ld. DR supported the order of the lower authorities and submitted that adjustment u/s 115JB of the Act has been correctly made by the assessing officer while computing book profit u/s 115JB of the Act.

6. Heard both the side the perused the material on record. The assessee had reduced debt redemption reserve while computing book profit u/s 115JB of the Act. During the course of assessment u/s 115JB of the Act the assessing officer observed that no where in section 115JB and the Income Tax it is specified that debt redemption reserve is not liable for book profit. The assessing officer treated that the debt redemption reserve as general reserve and added to book profit u/s 115JB of the Act. We have perused the various judicial pronouncements

as referred upon by the Ld. Counsel. The Ld. Counsel referred the decision of ITAT, Mumbai, ITAT, Ahmedabad and ITAT, Kolkata on the proposition that debt redemption reserve is not to be added for computing book profit u/s 115JB of the Act. With the assistance of the Ld. Representative we have perused the decision of ITAT, Mumbai relied upon by the assessee in the case of Rachana Finance & Investment P. Ltd Vs Income Tax Officer vide ITA No. 5817 & 5816/M/2015 dated 31.05.2017. The relevant extract of the decision of the ITAT is reproduced as under:-

4. Before us, the assessee claim that the adjustment has rightly been made for the amount of Debt Redemption Reserve created by the company of Rs.78,06,403/- while working out the amount of book profit u/s. 115JB of the Act. It is submitted that the said amount is not required to be added back to the net profit u/s. 115JB of the Act as no adjustment is provided in the provision enumerated in the Explanation to this section. In this regard the learned counsel for the assessee placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs. Raymonds Ltd. (2012) 21 Taxman.com 60 (Bom). It was explained by the learned Counsel that the facts before Hon'ble Bombay High Court was that the company debited the amount under the head Debenture Redemption Reserve in the profit and loss account and no adjustment was made while computing the book profit. The Hon'ble High Court has accepted the contention of the assessee. It was claimed by the learned Counsel that the Debt Redemption Reserve is akin to the Debenture Redemption Reserve and therefore, following the ratio of the above decision, no adjustment is to be made while computing book profit u/s 115JB of the Act.

5. The learned Counsel for the assessee also taken us through the accounts of the assessee, wherein in the balance sheet 'non-current borrowings' as on 31-03-2011 is at Rs. 69.87 millions, whereas as on 31-03-2012 it is 81.34 millions. He further, drew our attention to P & L Account for the year ended 31-03-2012, wherein in the Profit and Loss Account Debt Redemption Reserve is Rs. 7.81 millions as on 31-03-2012. Further, the learned Counsel for the assessee also assailed the order of CIT(A) on the ground that the CIT(A) has gone into the accounts of the assessee which is not within his purview while adjudicating the matter on computation of income u/s 115JB of the Act. In view of the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. Vs. CIT (2002) 255 ITR 0273 (SC). On the other hand, the learned Sr. DR relied on the decision of Hon'ble Delhi High Court in the case of Seri Infrastructure Finance Ltd. Vs. ACIT (2015) taxman.com 254 (Delhi).

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee is adjusted the amount of Debt Redemption Reserve created by the company for an amount of Rs. 78,06,403/- while working out the amount of book profit u/s 115JB of the Act. We find that similar issue is dealt by the Hon'ble Bombay High Court in the case of Raymond Ltd. (supra) wherein it is held as under: -

"3. The nature of a Debenture Redemption Reserve (DRR) has been considered by the judgment of the Supreme Court in National Rayon Corpn. Ltd. v. CIT [1997] 227 ITR 764/93 Taxman 754. The Supreme Court after adverting to the provisions of Clause 7 of Part III to Schedule VI of the Companies Act, 1956 held that "the basic principle is that an amount set apart to meet a known liability cannot be regarded as reserve". Where a company issues debentures, the liability to repay arises the moment the money is borrowed. By issuing debentures a company takes a loan

against the security of its assets. Though the loan may not be repayable in the year of account, the obligation to repay is a present obligation. Hence any money set apart in the accounts of the company to redeem the debenture has to be treated as monies set apart to meet a known liability. Consequently, debentures have to be shown in the balance sheet of a company as a liability. Being monies set apart to meet a known liability, a Debenture Redemption Reserve cannot be regarded as a reserve for the purpose of Schedule VI to the Companies Act, 1956. In National Rayon Corpn. Ltd. (supra) the Supreme Court followed its earlier decision in Vazir Sultan Tobacco Co. Ltd. v. CIT [1981] 132 ITR 559 / 7 Taxman 28, in holding that since the concept of reserve and of a provision is well known in commercial accountancy and is used in the Companies Act, 1956, while dealing with the preparation of balance sheets and profit and loss accounts the meaning of that concept would have to be gathered from the meaning attached in the Companies Act itself. The following observations of the Supreme Court are of significance:

"The debentures were nothing but secured loans. Merely because the debentures were not redeemable during the accounting period, the liability to redeem the debentures did not cease to exist. It was redeemable or repayable at a future date. But it was a known liability. In the form of balance-sheet prescribed by the Act in Schedule VI, the secured loans have to be shown under the heading "liabilities". Secured loans include (1) debentures, (2) loans and advances from banks, (3) loans and advances from subsidiaries, and (4) other loans and advances. The secured loans might not be immediately repayable, but the liability to repay these loans is an existing

liability and has to be shown in the company's balance-sheet for the relevant year of account as a liability. Amounts set apart to pay these loans cannot be "reserve". The interpretation clause of the balance-sheet in Schedule VI of the Companies Act specifically lays down that reserves shall not include any amount written off or retained by way of providing for a known liability."

4. The mere fact that a Debenture Redemption Reserve is labeled as a reserve will not render it as a reserve in the true sense or meaning of that concept. An amount which is retained by way of providing for a known liability is not a reserve. Consequently the Tribunal was correct in holding that the amount which was set apart as a Debenture Redemption Reserve is not a reserve within the meaning of Explanation (b) to Section 115JA of the Income Tax Act, 1961. No substantial question of law would, therefore, arise."

7. In the similar case ITAT Ahmedabad Bench in the case of ACIT vs. Genus Electrotech Ltd. (2016) (161 ITD 644 (Ahd – Trib) has held that the adjustment claimed by the assessee for Debt Redemption Fund was declined with a short observation that Debt Redemption Fund was an appropriation for the purpose of creating a reserve and was a below line adjustment and it did not fall in any category of adjustments provided u/s 115JB of the Act. Respectfully following the Hon'ble Bombay High Court in the case of Raymond Ltd. (supra), we allow the claim of the assessee. The orders of the lower authorities are reversed and deduction is allowed.

8. As regards to the ITA No. 5186/Mum/2015 in the case of Repute Properties Pvt. Ltd., Similar are the facts and hence taking a consistent view we allow this appeal also.

9. In the result, both the appeals of assesseees' are allowed

7. After taking into consideration the decision of ITAT, Mumbai on similar facts and identical issue in the case of Rachana Finance & Investment P. Ltd as (supra), we find there is nothing before us on hand from the issue raised in the case of the assessee so as to take different view of this issue. Therefore, since the issue on hand being squarely covered, following the principle of consistency the submission of the assessee is allowed. Therefore, appeal of the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order Pronounced in Open Court on 27.09.2023

Sd/-

(ABY T VARKEY)
JUDICIAL MEMBER

Place: Mumbai
Date 27.09.2023
Shubham P. Lohar

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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