

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**(Conducted through E-Court, Rajkot)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.508/Rjt/2015  
निर्धारण वर्ष/Asstt. Year: 2007-2008

D.C.I.T, Morbi Circle, Morbi.	Vs.	M/s. Fact Paper Mills Ltd., Survey No.289-290, Lilapar Road, Morbi.  <b>PAN: AAACF7140B</b>
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(Applicant)		(Respondent)
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Revenue by	:	Shri Ashish Kumar Pandey, Sr.D.R
Assessee by	:	Shri Mehul Ranpura, A.R

सुनवाई की तारीख/**Date of Hearing** : **19/10/2023**

घोषणा की तारीख /**Date of Pronouncement:** **08/11/2023**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-3, Rajkot, (in short "Ld. CIT(A)") arising in the matter of rectification order passed under s. 154 of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2007-08.

2. The solitary issue raised by the revenue is that the Ld. CIT(A) erred in deleting the adjustment made by the AO in deferred tax liability of Rs. 16,67,219/- under the provision of section 115JB of the Act.

3. In the present case, the assessment was framed u/s 143(3) of the Act, dated 16/08/2019 by the AO after accepting the income at Rs Nil. Subsequently, the AO found that the assessee while calculating book profit u/s 115JB of the Act has deducted deferred tax liability of Rs. 16,67,219/- though the same was required to be added as per clause (h) of explanation 1 to section 115JB of the Act. Thus, the AO sought explanation from the assessee by issuing a notice u/s 154 of the Act. But there was no response from the side of the assessee. Accordingly, the AO added the deferred tax liability of Rs. 16,67,219/- to the book profit in the order dated 03/10/2011 passed u/s 154 of the Act, being a mistake apparent from the record.

4. On appeal before the Ld. CIT(A), the assessee submitted that it has not debited deferred tax liability in the profit and loss accounts and therefore the question of making the addition of the same while calculating the book profit under the provision of section 115JB of the Act, cannot be attracted. The Ld. CIT(A), after considering the submission made by the assessee deleted the adjustment made by the AO by observing as under:

*6.1 I have carefully considered the submission of the assessee and the order passed by the A.O. The order passed by A.O. is without considering reply of the assessee dt. 4/3/2011 wherein it was explained that the plain text of provision is that the deferred tax liability come into play when any amount referred to in clauses (a) to (h) is debited to P&L account and no such amount is debited to the P&L account for deferred tax or its provisions. There is no deferred tax liability/assets debited in P&L account and no increase is required to be made u/s.115JB 1(h). The working of deduction u/s. 115JB is duly certified by C.A. in Form No.29B is correctly accepted in scrutiny assessment. A.R's submissions as reproduced above further supports the submission of the assessee. The order passed by the A.O. u/s.154 is without verification of the facts on the computation sheet and submission of the assessee and therefore deserves to be quashed. The grounds of appeal are allowed.*

5. Being aggrieved by the order of the Ld. CIT(A), the revenue is in appeal before us.

6. The Ld. DR before us contended that the amount of deferred tax liability should be added to the book profit in pursuance to the provision of clause (h) of explanation 1 to section 115JB of the Act. The Ld. DR vehemently supported the order of the AO.

7. On the contrary, the Ld. AR before us submitted that the amount of deferred tax liability was shown under the profit and loss appropriation account, meaning thereby, the deferred tax liability was not debited to the profit and loss account. As per the Ld. AR the amount of book profit was calculated after taking into consideration the profit shown in the profit and loss accounts which was prepared under the companies Act and not as per the profit shown under appropriation account. The ld. counsel to this effect has also filed the profit and loss account in the year under dispute which is placed on record. The Ld. AR vehemently supported the order of the Ld. CIT(A).

8. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the amount of deferred tax liability was shown by the assessee in the profit and loss appropriation account which evidences that the deferred tax liability was not debited in the profit and loss account. Furthermore, the amount of book profit was calculated taking the profit shown by the assessee in the profit and loss account and not in the profit and loss appropriation account. Thus, we are of the view that if any adjustment is made to the book profit computed u/s 115JB of the Act, it would lead to a double addition which is not permissible under the provision of the Act, unless and until it is prescribed within the Act. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A). Hence, the ground of appeal of the revenue is hereby dismissed.

9. In the result, the appeal filed by the revenue is dismissed.

**Order pronounced in the Court on 08/11/2023 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**(True Copy)**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

08/11/2023