

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 2687/Kol/2018
Assessment Year : 2012-13

Lords Chemicals Limited	Vs.	DCIT, Circle-11(4), Kolkata
PAN: AAACL 5339 A		
Appellant		Respondent

Date of Hearing	06.09.2023
Date of Pronouncement	10.11.2023
For the Assessee	Shri Amit Agarwal, Advocate
For the Revenue	Shri Susanta Saha, JCIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 23.10.2018 passed by the Id. Commissioner of Income-tax, (Appeals)-4, Kolkata [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

- 1. That the appeal order dated 23.10.2018 passed by the ld. CIT(A) is against the law and facts of the case.*
- 2. That the ld. CIT(A) has wrongly confirmed the addition sum of Rs. 3,68,434/- as filing fee for ROC without considering documents as filed before ld. CIT(A) as well as before ld. AO and wrongly added the same saying that the other possibility is that it can be a penalty nature paid to ROC.*
- 3. The ld. CIT(A) has wrongly restricted the allowable expenses @ 20% though it should be allowed @ 100%.*
- 4. That ld. CIT(A) has wrongly issue the direction to AO for calculation of MAT under section 115JB though ld. AO has already calculated the MAT after allowing deduction u/s 80IC of Income Tax Act, Ld. AO has calculated the MAT according to fact of the case.*

5. That ld. CIT(A) has wrongly stated and taken the view about the enhancement of income by calculation the book profit.

6. That ld. CIT(A) has wrongly initiated the penalty proceedings u/s 271(1)(c) of Income Tax Act.

7. That ld. CIT(A) has not any jurisdiction to consider any part other than grounds of appeal which was taken by the assessee.

8. That your assessee has reserved their right to alter, to modify, to amend, to rectify, add the grounds of appeal and/or to take additional grounds of appeal on or before hearing of the case.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2012-13 by declaring total income of Rs. 1,36,09,537/-. The case of the assessee was selected for scrutiny through CASS followed by notices u/s 143(2) and 142(1) of the Act. In response to the notices, ld. AR of the assessee appeared time to time before the ld. AO and filed necessary compliance before him by producing various documents/details/vouchers etc. in support of return of income. The ld. AO after examining the various documents, details as well as the submission made by the assessee following disallowances were made in the hands of assessee by assessing the total income in following manner:

		Rs.
<i>Business Income as per return of income</i>		
<i>Add: Addition/Disallowance as discussed above</i>		
<i>(i) Disallowance of capital expenditure</i>	1054194	
<i>(ii) Disallowance u/s 40(a)(ia) of the I.T. Act, 61</i>	1464400	
<i>(iii) Disallowance u/s 14A</i>	148000	
<i>(iv) Employees Contribution to PF</i>	120127	
<i>(v) Central Excise Duty and Sales Tax Payable</i>	9132477	
<i>(vi) Disallowance of interest paid on VAT & CST</i>	10484	11929682
		25539219
<i>Rounded off u/s 288A</i>		25539220

3. Aggrieved by the above order assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was partly allowed with the direction to the AO to re-compute the book profit of the assessee by disallowance claim of deduction u/s 80IC of the Act of Rs. 13.78 crores while computing the profit u/s 115JB of the Act.

4. Dissatisfied with the above order, assessee is in appeal before this Tribunal raising multiple grounds of appeal. However, at the time of hearing, the assessee did not like to press the ground nos. 1 to 3. Therefore, effective grounds for adjudication are 4, 5 & 6 only. In ground no. 4 & 5 of the appeal, the ld. AR states that as per sub-section 6 of section 115JB of the Act says that "The provisions of this section shall not apply to the income accrued or arising on or after 1st day of April, 2005 from any business carried on or services rendered by an entrepreneurs or a developer, in a unit or special economic zone, as the case may be.

5. He further submitted that the assessee is entitled to get exemption u/s 80IC of the Act which is under the purview of special provision in respect of certain undertaking or enterprises in certain special category states. He stated before the bench that Hon'ble Parliament has announced by declaring tax holidays in the budget session in 1999 in North East States with a view to make development of the region for which tax holidays was declared and assessee's present unit is under area of

special category states and as such the provisions of section 115JB of the Act is not applicable in the case of assessee. Further, the ld. AR has stated that since the ld. AO has already taken cognizance of section 115JB and accordingly charged the MAT. In such a situation, the view taken by the ld. CIT(A) is uncalled for and the view taken by the ld. CIT(A) is liable to be set aside.

6. On the other hand, ld. DR stated that the provisions of law u/s 115JB is very much clear and states that only items mentioned in explanation 1 to section 115JB is allowed to be deducted from the book profit as shown in the companies accounts. Items relating to Chapter VIA were contained in sub-clause (IV), (V) & (VI) of explanation 1 which has been omitted by Finance Act, 2011 with retrospective effect from 01.04.2005 and even these sub-clauses done cover section 80IC of the Act. Therefore, on plain reading of the Act, the assessee cannot deduct the claim u/s 80IC of the Act while calculation of section 115JB. The ld. DR in order to support his contention submitted that in the case of Sidcul Industrial Association order dated 26.11.2010, 331 ITR 491 (Uttrakhand). The facts were identical and in the instant case also assessee had claimed that 80IC is a special provision and the assessee should be allowed to deduct it from profit u/s 115JB of the Act. In the same case the petitioner also contended that section 80IC was a later insertion, therefore, it was overriding section 115JB of the Act.

However, the Hon'ble High Court has decided the writ petition in favour of the revenue.

7. The ld. DR also placed before us the case of M/s. Rockline Developers P. Ltd. in ITA No. 5125/Mum/2016 wherein the assessee has contended that it is entitled to deducting the profit u/s 80IB of the Act in computation of profit u/s 115JB. However, the Hon'ble Tribunal has held by observing as under:

“18. The above said decisions clearly bring out that the term ‘Total Income’ and ‘Book Profit’ are clearly distinguished under the Act. The book profit is required to be computed in accordance with the provisions of section 115JB of the Act while the total income is required to be computed in accordance with the provisions of the Act. While computing the total income, the deduction u/s 80IB(10) is allowed. However, the book profit is required to be computed strictly in accordance with section 115JB of the Act which does not specify ‘amount computed u/s 80IB(10) as a permissible deduction’.

19. *****

20. In view of the foregoing discussions, in our considered view, the contention of the ld. AR that provisions of section 80IB(10) would fall under the category of ‘all other provisions of the Act as mentioned in section 115JB(5)’ is liable to be rejected. Accordingly, we hold that the assessee is not entitled to claim deduction u/s 80IB(10) of the Act from the net profit for the purpose of computing ‘book profit’ u/s 115JB of the Act. Accordingly, we confirm the order passed by ld. CIT(A) on this issue.”

8. Similarly, Hon'ble Karnataka High Court held on this point very clear in the case of Sankhla Polymers P. Ltd. wherein the Hon'ble High Court has held that the

provisions of section 115JB would apply to the assessee who is claiming deduction u/s 80IB & u/s 80IB(10) of the Act cannot be allowed while computing the book profit u/s 115JB of the Act. Therefore, the ld. DR stated that there is no infirmity in the order passed by the ld. CIT(A). Accordingly, grounds taken by the assessee is liable to be dismissed.

9. We after hearing the rival submission of the parties and perusing the records find that deduction u/s 80IC of the Act to the assessee the total income under the normal provisions of the Act cannot be allowed to deduct while computing the book profit u/s 115JB of the Act. The ld. ITAT, Mumbai while deciding the case of Rockline Developers P. Ltd. vs ITO in ITA No. 5125/Mum/2016 held that deduction u/s 80IB of the Act while computing the total income under the normal provisions of the Act cannot be allowed to be deducted, while computing book profit u/s 115JB of the Act and Hon'ble Karnataka High Court in the case of Sankhla Polymers P. Ltd. 257 CTR 185 has taken similar view on this issue. In view of the above discussion and following the decision rendered by the various Tribunal as well as the Hon'ble High Court the issue is covered in favour of the revenue and we do not find any infirmity in the impugned order passed by the ld. CIT(A) accordingly following the judgement rendered by the Karnataka High Court in the case of Sankhla Polymers P. Ltd. (supra), the grounds taken by the assessee are hereby

dismissed and the remaining ground is consequential in nature therefore, need not required to be adjudicated any more. In terms of the above, the appeal of the assessee is dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 10.11.2023

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 10.11.2023
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Lords Chemicals Limited, 1/1A, Mahendra Roy Lane, Topsia, P.S. Pace Building, 7th Floor, Room No. 705A, Kolkata-700046.
2. Respondent – DCIT, Circle-11(4), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata