

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND SHRI
CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No.6942/Del/2018
Assessment Year: 2010-11

DCIT, Central Circle-3(1), New Delhi	Vs.	M/s. APL Apollo Tubes Ltd., 37, Hargovind Enclave, New Delhi-1100 92
PAN :AAACB0960D		
(Appellant)		(Respondent)

Department by	Shri Kanv Bali, Sr. DR
Assessee by	Dr. Rakesh Gupta & Shri Deepesh Garg, Advs.

Date of hearing	14.11.2023
Date of pronouncement	12.02.2024

ORDER

PERCHALLA NAGENDRA PRASAD: JUDICIAL MEMBER:

This appeal is filed by the Revenue against the order of the learned Commissioner of Income-Tax (Appeals), New Delhi dated 14.08.2018 for the assessment year 2010-11 in deleting the provision for gratuity amounting to Rs.12,44,377/- while computing the book profit under Section 114JB of the Income-Tax Act,1961.

2. Learned Departmental Representative referring to page 6 para 3 of the assessment order submits that the assessee while computing the book profit under Section 115JB deducted prior period expenses amounting to Rs.12,44,377/- being the provision for gratuity expenses. However, the Assessing Officer disallowed the provisions for gratuity expenses holding that it is not an ascertained liability.

3. Learned Departmental Representative further submits that the assessee furnished actuarial valuation report only before the learned CIT (Appeals) based on which the learned CIT (Appeals) deleted the addition. Referring to ground no.2 of grounds appeal, learned Departmental Representative submits that learned CIT (Appeals) erred in admitting additional evidence without allowing proper opportunity to the Assessing Officer.

4. On the other hand, learned counsel for the assessee submits that assessee followed accounting standard 5 and made the provision for gratuity which is an ascertained liability. Learned counsel placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Khaitan Chemicals & Fertilizers Ltd. – 307 ITR 150 submits that the provision for gratuity calculated on the basis of an actuarial

valuation is an ascertained liability and, therefore, no justification can be made under Section 115 JB of the Act. The learned counsel also expressed no objection in restoring the matter to the file of the Assessing Officer for verification of the valuation report and allowing the claim of the assessee.

5. On hearing both the sides and perusing the orders of the authorities below, we are of the view that this matter should go back to the file of the Assessing Officer to examine whether the valuation report furnished by the assessee in respect of provisions for gratuity whether such valuation was made is as per actuarial valuation prepared by valuer and if so it is an ascertained liability. Thus, this issue is restored to the file of the Assessing Officer to decide the issue after providing adequate opportunity of being heard.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 12/02/2024.

Sd/-

Sd/-

**(G.S. PANNU)
VICE PRESIDENT**

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Dated: 12th February, 2024.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi