

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

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.3210/Del/2019
(ASSESSMENT YEAR 2015-16)**

Value First Digital Media Pvt. Ltd. (Successor Company of Value First Mobility Vision Technologies Pvt. Ltd.) 1315, Ansal Tower 38, Nehru Place New Delhi-110019 PAN-AAGCM1829A (Appellant)	Vs.	ACIT Circle-26(I), (Respondent)
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Assessee by	Mr. Ajay Vohra, Sr. Advocate & Ms. Somya Jain, CA Mr. Aditya Gupta, CA Mr. Ashish Agarwal, CA
Respondent by	Mr. Vivek Vardhan, Sr. DR

Date of Hearing	16/04/2024
Date of Pronouncement	26/04/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-9, New Delhi

[“Ld. CIT(A”, for short], dated 25/01/2019 for Assessment Year 2018-19.

2. The revised grounds raised by the Assessee are as under:

“1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in confirming the action of determining the Appellant's book profits at Rs.1,62,27,467/- as against book loss of Rs.2,15,89,896/- declared by the appellant without appreciating the fact that demerger profit of Rs. 3,78,17,363 is a capital profit and need not be treated as profit from business operations and credited to the profit or loss account of the current year.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) has failed to appreciate the fact that Rs 3,78,17,363 added by the Learned AO represents inter-company loan taken from parent entity (i.e., the transferee company) which has been cancelled pursuant to transfer of demerged business undertaking.

3. On the facts and circumstances of the case, and in law Ld. CIT(A) has erred in law and in confirming the act of AO of charging interest u/s 234B and 234C on the appellant.

4. On the facts and circumstances of the case and in law, LD. CIT(A) has erred in passing the appellate order in the name of non-existent company.

5. That the above grounds are mutually exclusive and are without prejudice to each other.

6. That the appellant craves the leave to add, modify, amend, or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

3. At the time of hearing, the Ld. AR of the assessee submitted that the issue involved in Grounds No.1 & 2 are similar issue relating to book profit u/s 115JB of the Income Tax Act, 1961 (‘the

Act' for short) and Ground No.3 is consequential in nature, however, requested for direction u/s 234B and 234C of the Act.

4. With regard to Ground No.4, the Ld. AR submitted that the assessee is not pressing this ground. Accordingly, Ground No.4 is dismissed as not pressed.

5. With regard to Ground Nos.5 & 6 are general in nature, accordingly not adjudicated.

6. Coming to the consolatory issue of book profit u/s 115JB of the Act in Ground Nos. 1 & 2, the relevant facts are, the assessee filed its return of income on 29/09/2015 declaring a returned loss of Rs.2,42,36,110/-. The case was selected for limited scrutiny through CASS and notices u/s 143(2) and 142(1) were issued and served upon the assessee. Subsequently, the case was converted to complete scrutiny from limited scrutiny after obtaining proper approval.

7. The assessee is engaged in the business of providing messaging products and services and value added services for various communication media like GSM, CDMA and TDMA telecom

networks, WI-FI Network Wide Networks and Local Area Network etc. In response to the various notices, the Ld. AR of the assessee attended and submitted the relevant information as called for. During the course of assessment proceedings, the Assessing Officer observed from the Notes No.21 of the financial statement submitted by the assessee. In the above said note No.21, the assessee has declared the treatment in its books of accounts for the demerger. The same was reproduced for the sake of convenience:

“In the books of Demerged Company

i) On the Scheme becoming effective and with effect from the Appointed Date, the book value of assets and liabilities of Mobility pertaining to Demerged Business Undertaking transferred to Value First shall be reduced from the respective book value of assets and liabilities of Mobility.

ii) The difference between net assets and liabilities of the Demerged Business Undertaking transferred to Value First standing in the books of Mobility shall be adjusted in Profit and Loss Account in the books of Mobility. The balance of net assets after adjustment against Profit and Loss Account, if any, shall be transferred to Demerger Adjustment Reserve in the books of Mobility.

Accordingly, the Demerger Adjustment Reserve amount arising in the books of the Demerged Company as on 1 April 2014 pursuant to transfer of the Demerged Business Undertaking is as follows:

Particulars	Amount
Fixed Assets	
Intangible assets	
Gross Block	1,53,89,725/-
Accumulated Depreciation	(6,81,368/-)
Net Block	1,47,08,357/-
Current Assets, Loan & Advance	
Long term loan and advances	66,589/-
Short term loan and advances	80,525/-
Other current assets	12,24,047/-
	13,71,161/-
Less: Current Liabilities	
Short term borrowings	5,17,75,921/-
Other current liabilities	21,20,960/-
	5,38,96,881/-
Net Current Assets	(5,25,25,720/-)
Total	(3,78,17,363/-)

8. The Assessing Officer observed from the above notes that the difference of net current asset as per the above chart mentioned in the note-21, that the above difference should have been adjusted through the profit and loss account as per the direction of Hon'ble High Court, however, as per the financial statement submitted by the assessee, the assessee has not made such effect in the Profit & Loss Account statement. He observed that the relevance of the above deliberate exclusion; of the effect of the reserve creation on the Profit and loss account are in contravention to section 115JB of the Act in particular clause (b) to Explanation (1) to Section-115JB (2) of the Act. With the above said observation, the assessee was asked to explain why the book profit should not be recomputed as per the Act.

9. In response to vide letter dated 06/11/2017, the assessee has submitted that there was a demerger of an undertaking from a wholly owned subsidiary company (which is the assessee company) to the holding company (which is Value First) as per the provisions of the Companies Act, 2013, in such cases there would not be any issue of shares as the 'demerged company would not be able to

issue share to itself. The assessee also relied on the ICAI guidelines and certain case laws which are reproduced in the assessment order itself. After considering the submissions of the assessee, the Assessing Officer rejected the same and proceeded to bring the above reserve adjustment Rs.3,78,17,363/- to the book profit for the current assessment year and determined the net book profit at Rs.1,62,27,467/-.

10. Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A) and filed detailed submissions which is reproduced in the appellate order in para No.4.1 of the order. After considering the submissions of the assessee, the Ld. CIT(A) dismissed the submissions made by the assessee by observing as under:

“4.12 It is relevant to note here that the said accumulated balance of profit and loss account appearing in the balance sheet in common parlance called as ‘reserves and surplus’ (free reserves) which cannot be treated at parity with P&L A/c. However, the appellant has simply modified the definition of profit and loss account to its convenience so as to cover up the wrong treatment of surplus done by them.

Accordingly, the treatment of surplus of Rs.3,78,17,363/- done by the appellant in its books of accounts is in contrast to the terms and conditions of the scheme of demerger as well as the provisions of Companies Act, 2013. The surplus of Rs.3,78,17,363/- represents the amount of excess liability taken over by the transferee company (parent company) which has resulted into the taxable profit in the hands of the

appellant. The appellant was ought to declare the same in the profit and loss account maintained as per Companies Act, 2013. Accordingly, in view of the failure of the part of the appellant in disclosing its correct books profit, the AO has rightly made an adjustment of Rs.3,78,17,363/-. Hence, impugned addition is confirmed. Appellant fails in these grounds”.

11. Aggrieved with the above order, the assessee is in appeal before us. At the time of hearing, the Ld. AR of the assessee brought to our notice the order of the Hon'ble High Court and scheme of arrangement approved. He specifically submitted that the assessee having two types business namely Digital Media Business Undertaking engaged in Digital Media Services and operative value added services business. In the scheme of arrangement, in order to consolidated/merge similar group businesses into itself. Considering the fact that the assessee and holding company value first are engaged in similar business on providing digital media based services and mobility data based services to their own respective clients. In order to consolidate the business the digital media business undertaking of the assessee company are demerged into value first (holding company). Based on the above scheme approved by Hon'ble High Court, the assessee has transferred relevant assets and liabilities to the value first and accordingly,

assessee has disclosed the net effect in the Notes No.21. In this regard, he brought to our notice page 32 of the Paper Book wherein the Hon'ble High Court has approved discharge of consideration and approved the accounting treatment in the books of the assessee. As per which the difference between asset and liabilities of the demerged business undertaking are transferred to value first standing in the books of the assessee shall be adjusted in profits and loss account in the books of the assessee. The Ld. AR insisted that the word used in the above said scheme 'shall be adjusted **in the profit and loss account** not **through the profit and loss account**. Further, he brought to our notice page 91 of the PB which is notes to the financial statement as per which assessee has declared surplus/deficit from the regular operation of the company and capital reserves was declared separately, the details of the reserves are explained in Note-21, scheme of arrangement declared in the same notes to financial statement. The surplus from the operation of demerger is declared in the Capital Reserves. He submitted that the transaction under taken by the assessee is a capital nature and it has no impact in the regular business carried

on by the assessee and the book profit mentioned u/s 115JB is a profit to be determined as per section 115JB sub-section (2) of the Act. Any adjustment has to be made relevant to determine book profit has to be carried from the net profit declared in the profits and loss account. If there is any adjustment has to be made to the net profit has to be adjusted as per the provisions of section 115JB. He submitted that the Hon'ble High Court has directed to make the adjustment in the profits and loss account does not mean it should be through the profit and loss account. The nature of surplus determined in the course of demerger is a capital in nature and it does not carry the character of Revenue. He brought to our notice that the surplus determined in the scheme of demerger has not affect the book profit.

12. On the other hand, the Ld. DR brought to our notice, relevant facts in the assessment order and the findings of the Ld. CIT(A) at para 4.12. He submitted that he relies on the findings of the lower authorities.

13. Considered the rival submissions and material placed on record, we observed that the Hon'ble High Court has approved the scheme of demerger and, accordingly, the demerged the business of digital media undertaking of the assessee company. Accordingly, it has taken relevant assets and liabilities relating to the digital media undertaking as per the Notes-21 submitted before us, as per the scheme approved by the Hon'ble High Court. Assessee has taken over net fixed asset and net current asset to the extent of Rs.1,39,58,558/- and taken over short term borrowing of Rs.5,17,75,921/- and they absorbed additional liabilities to the extent of 2,78,17,363/-. Therefore, assessee has transferred its liability to the holding company and ended up with reserves of Rs.3,78,17,363/-. The issue before us is, whether the transfer of liabilities to the holding company as the capital transaction or a Revenue transaction. The Assessing Officer observed from the scheme of demerger as per which the Hon'ble High Court has directed that on the difference between net assets and liabilities of the demerged business undertaking transferred to Value First (Holding Company) standing in the books of mobility shall be

adjusted for profit and loss account in the book of mobility. The balance of net asset after adjustment against profit and loss account if any shall be transferred to demerger adjustment reserves in the books of mobility.

14. The Assessing Officer interpreted the above direction to mean that above said adjustment has to be routed through the profits and loss account, after careful reading of the above direction of Hon'ble Court, we observe that the direction was that the difference between net assets and liability of the demerger business undertaking transferred to Value First shall be adjusted in the profit and loss account in the books of the assessee which means the excess of assets transferred has to be adjusted in the profit and loss account. In case the excess of liability has to be transferred to "demerger adjustment reserves" in the books of mobility. The above observation of the Hon'ble High Court is for the two possibilities, as if, there is excess of assets transferred, it leads to loss in that case, may be adjusted in Profit & Loss Account. In case, transfer of excess liability, it amounts to capital reserves. It should be transferred to "demerger adjustment reserves".

15. In the given case, the assessee has transferred excess of liability to Value First, therefore, as per the directions of Hon'ble High Court, the assessee has to create "demerger adjustment reserves" as it transfers excess of liability over the assets. In the given case, the assessee has created capital reserves which is nothing but demerger adjustment reserves, which is clearly a capital transactions carried out by the assessee. From the above directions of the Hon'ble High Court only in case of transfer of excess of assets over the liability has to be adjusted in profit and loss account and not otherwise. In our considered view, the assessee has followed the above directions of Hon'ble High Court creating a capital reserves in its balance sheet.

16. The question before us is whether the above said transaction has to be adjusted in the book profit in case the same is routed through the profits and loss account. In our considered view even otherwise if the above transactions are routed through the profit and loss account, it can be done only as an extraordinary adjustment below the line in the Profit and Loss account, since, the

above transactions is an extraordinary transaction carried on by the assessee which is nothing to do with the current year operation or determination of current year result. As per the prudent method of determination of book profit, any extraordinary item has to be eliminated for determining book profit, the Assessing Officer has relied on Explanation-B to Section 115JB(2) of the Act which is an adjustment called for when there is an amount carried to any reserves by whatever name called by debiting the profit and loss account, the above said relevant amount is reduced from the profit by making adjustment. In that case the above said reserves has to be adjusted for the purposes of determining the actual book profit. In the given case, the assessee has not routed through the profit and loss account. It merely created a capital reserves, which in our view, proper.

17. Considering the fact that the transaction carried on by the assessee for implementing the scheme of demerger it has transferred excess liability to the holding company, therefore, transfer of excess liability is nothing but a capital transaction which does not warrant the transaction to be routed through Profit and

Loss account. Accordingly, we are inclined to allow the grounds raised by the assessee. Accordingly, Ground Nos. 1 & 2 raised by the assessee are allowed.

18. Coming to the Ground No.3 which is nothing but consequential in nature, however, with regard to section 234C of the Act, the Ld. AR of the assessee specifically prayed that a suitable direction should be given in this regard. We direct the Assessing Officer to determine the interest u/s 234B and 234C as per law after considering our findings specially in Ground Nos. 1 & 2 raised by the assessee. Accordingly, these grounds of the assessee are allowed for statistical purposes.

19. In the result, the appeal filed by the assessee is allowed as per above directions.

Order pronounced in open Court on 26th April, 2024.

Sd/-

(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 26/04/2024
Pk/sps

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI