

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 241/CHD/2023

निर्धारण वर्ष / Assessment Year : 2019-20

M/s Ludhiana Leasing Pvt.Ltd., #168, Sector 8, Chandigarh	बनाम	The DCIT, Central Circle-II, Chandigarh
स्थायी लेखा सं./PAN NO: AAACL6365N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 04.04.2024

उद्घोषणा की तारीख/Date of Pronouncement : 21.05.2024

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.03.2023 of the Commissioner of Income Tax (Appeals)-3, Gurgaon [hereinafter referred to as 'CIT(A)'].

2. The Assessee in this appeal has taken following grounds of appeal:

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the action of the Assessing Officer taking the book profit at Rs. 16,95,64,156/- as against Rs.24,21,387/- which is arbitrary and unjustified.*

2. *That the Ld. Commissioner of Income Tax (Appeals) has further erred in law as well as on facts in upholding that the profit on sale of capital assets is to be included in book profit for the purpose of computation of tax under Section 115JB which is arbitrary and illegal.*
3. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*
4. *That the order of the Ld. CIT(A) is erroneous, arbitrary, opposed to the facts of the case and thus untenable.*

3. The brief facts of the case are that the Assessee during the year sold a Show Room (capital asset) upon which the Assessee even did not have claimed any depreciation and earned net gain of Rs. 16,71,42,769/- Even the Assessee has paid due capital gains tax on the said receipt, as applicable, under the normal provisions of the Income Tax Act. The Auditor of the Assessee had shown this capital gain under the Column 'other income'. However, the Assessee in the Income Tax return deducted the said amount while computing book profit as per the provisions of section 115JB of the Act. Both the lower authorities are of the view that the Assessee company had included the said amount in the book profits, therefore, the Assessee was liable to include the said amount in its profit and loss account under the Minimum Alternate Tax (MAT) provisions u/s 115JB of the I.T. Act.

5. Before us, the Id. Counsel for the Assessee submitted that the profit from the sale of fixed assets was not revenue receipt from operations and, thus, could not form part of the profit and loss account

even as per the provisions of the Companies Act. That since the said income of the Assessee was a capital receipt and was not forming part of the book profit and loss, therefore, the Assessee rightly excluded the same for the purpose of paying tax in accordance with the MAT provisions u/s 115JB of the Act. It was explained that inadvertently the Auditor included the said capital receipt under the head 'other income' whereas, the said receipt was required to be shown as additional information by way of a note, as receipt of exceptional and extraordinary nature, which are not to be included in the book profit and loss of the Assessee company even in accordance of the MAT provisions of section 115JB of the Act.

5.1 The Id. Counsel for the assessee has made alternative contention that if this Tribunal is of the view that the capital gains earned by the assessee on the sale of capital asset are to be included to the book profits then the net book profit should be calculated after giving the assessee the benefit of indexed cost of acquisition on such asset. The Id. Counsel for the assessee in this respect has relied upon the following case laws:

i. Hon'ble Karnataka High Court in the case of Best Trading and Agencies Ltd. v. DCIT reported in [2020] 119 taxmann.com 129(Karnataka)

ii. ITAT Bangalore Bench in the case of Karnataka State Industrial Infrastructure Development Corporation Ltd. v. DCIT reported in [2016] 76 taxmann.com 360 (Bangalore-Trib.)

iii. ITAT Kolkata Bench in the case of DCIT v. Gloster Jute Mills Ltd. reported in [2017] 88 taxmann.com 738 (Kolkata-Trib.)

iv. Hon'ble Madras High Court in the case of CIT v. Metal & Chromium Plater (P) Ltd. reported in [2016] 76 taxmann.com 229 (Madras)

6. We have considered the rival submissions and gone through the record. Admittedly, as per the provisions of section 115JB of the Act, the statement of profit and loss is to be prepared as per the provisions of the Companies Act and under the Companies Act, there is no provision that the book profits earned on the sale of capital asset are to be excluded while preparing statement of profit and loss. Even looking at the Explanation 1 to section 115JB would also show that there is no such provision of excluding of the capital gains earned on the sale of capital asset. Therefore, the first contention of the Id. Counsel for the assessee is not tenable. However, so far as the alternate contention of the Id. Counsel that the assessee is entitled to the benefit of indexed cost of acquisition in line with the provisions of section 48 of the Act is concerned, the issue is squarely covered in favour of the assessee by the various decisions. The Hon'ble Karnataka High Court in the case of Best Trading and Agencies Ltd. v. DCIT (supra) has held that the benefit of

indexed cost of acquisition is applicable to an assessee while computing capital gain for the purpose of computation of book profit u/s 115JB of the Act. The relevant part of the order of the Karnataka High Court is reproduced as under:

“13. [Section 115JB\(5\)](#) of the Act reads as under:

“(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company, mentioned in this Section.”

Thus, by virtue of sub-Section (5) of [Section 115JB](#), the application of other provisions of the Act are open, except if specifically barred by the Section itself. The indexed cost of acquisition is a claim allowed by [Section 48](#) of the Act to arrive at the income taxable under the income from capital gains. The difference between the sale consideration and indexed cost of acquisition represents the actual cost of the assessee, which is taxable as per [Section 45](#) of the Act at the rates provided under [Section 112](#) of the Act. There is no provision in the Act to prevent the assessee from claiming indexed cost of acquisition on the sale of asset in case, where the assessee is subjected to [Section 115JB](#) of the Act. In any case, since, the indexed cost of acquisition is subjected to tax under a specific provision viz., [Section 112](#) of the Act, therefore, the provisions of [Section 115JB](#) of the Act, which is a general provision cannot be made applicable to the case of the assessee. For yet another reason, the assessee has to be given the benefit of indexed cost of acquisition as considering the profits on sale of land without giving the benefit of indexed cost of acquisition results in taxing the income other than actual / real income. In other words, a mere book keeping entry cannot be treated as income.”

6.1 Further, the Coordinate Bangalore Bench in the case of Karnataka State Industrial Infrastructure Development Corporation Ltd. v. DCIT (supra) also held that the benefit of indexed cost of acquisition was to be given to the assessee while computing long-term capital gain for the purpose of section 115JB. The relevant part of the order of the Coordinate Bangalore Bench is reproduced as under:

“16. Clause (ii) to Explanation to section 115JB lays down that the amount of income to which provisions of section 10, other than provisions of sub-section (38) of section 10 or sections 11 and 12 if any such amount is credited to P&L A/c shall be reduced from the book

profits for the purpose of computing tax liability. The provisions of section 10(38) read as under:

"10(38) any income arising from the transfer of a long-term capital asset, being equity share in a company or a unit of an equity oriented fund where —

- (a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No.2)Act,1004 comes into force.
- (b) such transaction is chargeable to securities transaction tax under that Chapter:

Provided that the income by way of long-term capital gain of a company shall be taken into account in computing the book profit and income-tax payable under section 115JB.

Explanation : For the purposes of this clause, "equity oriented fund" means a fund —

- (i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund; and
- (ii) which has been set up under a scheme of a Mutual Fund specified under clauses (23D);

Provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures."

Therefore, the issue revolves around interpretation of the term 'any income' as used in sub-section (38) of section 10 of the Act from the transfer of long-term capital asset. Provisions of section 48 provide for method of computation of income chargeable under long-term capital gains. It was provided that long-term capital gain shall be computed by deducting from full value of consideration received as a result of long-term capital asset expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset and the cost of any improvement thereto. It is further provided that the amount in case of long-term capital gain arising from transfer of long-term capital asset, cost of acquisition shall be substituted by indexed cost of acquisition. Therefore, the term 'any income' used in sub-section (38) of section 10 of the Act refers to only the amount of long term capital gains computed under the provisions of section 48 which means that the benefit of indexation of cost of acquisition should be given to the assessee while computing long term capital gain for the purpose of section 115JB of the Act. Even the Hon'ble Supreme Court, in the case of *Ajanta Pharma v. CIT* [2010] 327 ITR 305/194 Taxman 358 in the context of deciding whether amount eligible profits u/s 80HHC or the amount of deduction u/s 80HHC to be deducted from book profits for the purpose of computing u/s 115JB held that it is only the amount of eligible profits which are eligible as deduction from the book profits. The relevant part of the judgment is extracted:

'10. One of the contentions raised on behalf of the Department was that if clause (iv) of Explanation to Section 115JB is read in entirety including the last line thereof (which reads as

"subject to the conditions specified in that section"), it becomes clear that the amount of profits eligible for deduction under Section 80HHC, computed under clause (a) or clause (b) or clause (c) of subsection (3) or sub-section (3A) as the case may be, is subject to the conditions specified in that Section, <http://www.itatonline.org> According to the Department, the assessee herein is trying to read the various provisions of Section 80HHC in isolation whereas as per clause (iv) of Explanation to Section 115JB, it is clear that book profit shall be reduced by the amount of profits eligible for deduction under Section 80HHC as computed under clause(a) or clause(b) or clause(c) of subsection (3) or sub-section (3A), as the case may be, of that Section and subject to the conditions specified in that Section, thereby meaning that the deduction allowable would be only to the extent of deduction computed In accordance with the provisions of Section 80HHC. Thus, according to the Department, both "eligibility" as well as "deductibility" of the profit have got to be considered together for working out the deduction as mentioned in clause (iv) of Explanation to Section 115JB. We find no merit in this argument. If the dichotomy between "eligibility" of profit and "deductibility" of profit is not kept in mind then Section 115JB will cease to be a self-contained code. In Section 115JB, as in Section 115J A, it has been clearly stated that the relief will be computed under Section 80HHC(3)/(3A), subject to the conditions under sub-clauses (4) and (4A) of that Section. The conditions are only that the relief should be certified by the Chartered Accountant Such condition is not a qualifying condition but it is a compliance condition. Therefore, one cannot rely upon the last sentence in clause (iv) of Explanation to Section 115JB (subject to the conditions specified in sub-clauses (4) and (4A) of that Section) to obliterate the difference <http://www.itatonline.org> between "eligibility" and "deductibility" of profits as contended on behalf of the Department. '

Therefore following the same ratio, we hold that the amount of profit eligible u/s 10(38) should alone be considered for the purpose of tax liability u/s 115JB of the Act. The coordinate bench in the case of M.S.R & Sons Investments Ltd. v. Dy. CIT [IT Appeal No.769 (Bang.) of 2000, dated 20-05-2005] held while computing capital gains, benefit of indexed cost of acquisition is to be considered for the purpose of computing tax liability u/s 115JB. This decision was appealed by the Revenue before the Hon'ble jurisdictional High Court in ITA No.3189 of 2005 and the Hon'ble jurisdictional High Court by its judgment dated 14th September 2011 had upheld the order of the Tribunal. The same ratio is squarely applicable to the facts of the case. Therefore, the assessee-company is entitled to the benefit of indexation while calculating long-term capital gains which are to be considered for the purpose of computing tax liability u/s 115JB of the Act. This ground of appeal viz. 2(b) is allowed."

6.2 Similar view has been taken by the Coordinate Mumbai Bench of the Tribunal in the case of Thomas Cook (India) Ltd. vs. Additional/Joint/Deputy/Assistant Commissioner of Income Tax vide

order dated 24.11.23 reported in [2023] 157 taxmann.com 177 (Mumbai-Trib.).

7. Respectfully following the aforesaid judgments on the issue, it is held that the assessee is entitled to the benefit of indexed cost of acquisition while computing book profit u/s 115Jb of the Act.

8. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the open Court on 21.05.2024.

Sd/-
(VIKRAM SINGH YADAV)
Accountant Member
RS

Sd/-
(SANJAY GARG)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar