

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

**Before Shri Amit Shukla, JM & Shri Ratnesh Nandan Sahay,
AM**

ITA No.1977/Mum/2023: Asst.Year : 2002-2003

The Deputy Commissioner of Income-tax, Circle 3(4) Mumbai	vs.	M/s.Tata Motors Limited 29 th Floor, Centre-1, World Trade Centre, Cuffe Parade Mumbai – 400 005. [PAN: AA ACT2727Q]
(Appellant)		(Respondent)

CO No.79/Mum/2023: Asst.Year : 2002-2003

M/s.Tata Motors Limited 29 th Floor, Centre-1, World Trade Centre, Cuffe Parade Mumbai – 400 005.	vs.	The Deputy Commissioner of Income-tax, Circle 3(4) Mumbai
(Cross Objector)		(Respondent)

Revenue by: Shri Biswanath Das, CIT-DR
Assessee by: S/Shri Rajan Vora, Nikhil Tiwari & Mihir Chitalia

Date of Hearing : 27.05.2024	Date of Pronouncement: 21.06.2024
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ORDER

Per Amit Shukla, JM :

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee, against the order dated 29.03.2023, passed by the NFAC for the quantum of assessment passed u/s.147/143(3) r.w.s. 254 of the Income-tax Act, 1961, for the assessment year 2002-2003.

2. In the grounds of appeal, the Revenue has raised following grounds:-

“1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the adjustment by way of addition of provision for Deferred tax of Rs 190,55,00,000/- to Book profit u/s 115JB, the addition of which was made in accordance with clause (h) provided in Explanation (1) under section 115JB(2) as inserted by Finance Act 2008 with retrospective effect from 01.04.2001

2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was right in deleting the adjustment by way of addition of provision for Diminution in value of investments of Rs 26,00,00,000/-to Book profit u/s 115JB, the addition of which was made in accordance with clause (1) provided in Explanation 1] under section 115JB(2) as inserted by Finance Act 2009 with retrospective effect from 01.04.2001?

3. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in deleting the adjustment by way of addition of provision for Bad and Doubtful debts of Rs 97,94,00,000/- to Book profit u/s 115JB, the addition of which was made in accordance with clause (c) provided in Explanation (1) under section 1151B/2) since this provision was in respect of unascertained liability?

4. Whether, On the facts and in the circumstances of the case and in law, the Id CIT(A) is justified in deleting the adjustment to book profit of provision of Staff Welfare expenses of Rs 10.58 Crores holding the same as ascertained liability ignoring the fact that the same was worked out on scientific basis by actuarial method despite the assessee not providing any supporting documents?

5. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the adjustment to book profit under section 115JB of the Act for provision for loss on Guarantee of Rs 69,00,000/- holding the same as an ascertained liability?

3. In the Cross Objection, the assessee has raised the following grounds:-

“A. On the facts and in the circumstances of the case, the learned AO has erred in objecting the order of ld.CIT(A):

General:

1. without appreciating that the ld.CIT(A) rightly deleted the addition of Rs.3,25,76,00,000/- made to book profit under section 115JB of the Act;

Sr. No.	Particulars of Ground	Amount
1.	Addition in respect of provision for deferred tax	Rs.190,55,00,000
2.	Addition in respect of provision for diminution in the value of investments of	Rs.26,00,00,000
3.	Addition in respect of provision for bad & doubtful debt	Rs.97,94,00,000

2. ought to have appreciated that the additions to the book profit on these three issues were made under section 115JB of the Act, by way of enhancement by the Ld. CIT(A) in the first round of litigation and thereby Ld. CIT(A) had shifted these three additions which were originally made in order passed under section 147 of the Act to order passed under section 143(3) of the Act, which in-turn was deleted by the Hon'ble Tribunal and thereby, the action of AO to make the additions again in the second round of section 147 proceedings is grossly unjustified and liable to be quashed;

3. ought to have appreciated that no addition in relation to provision for deferred tax of Rs. 190,55,00,000/-, provision for diminution in the value of investments of Rs. 26,00,00,000/- and provision for bad & doubtful debt of Rs. 97,94,00,000/- can be made while computing book profit under section 115JB of the Act;

4. without appreciating that the additions in relation to provision for deferred tax of Rs. 190,55,00,000/-, provision for diminution in the value of investments of Rs. 26,00,00,000/- and provision for bad & doubtful debt of Rs. 97,94,00,000/- to the book profit under section 115JB of the Act have already been deleted by the Hon'ble Tribunal and therefore, the additions have been rightly deleted by the Ld. CIT(A) in second round following the binding directions of the Hon'ble Tribunal;

5. failed to appreciate that these three additions were not made originally on the basis of retrospective amendment in section 115JB of the Act by Finance Act 2008 and Finance Act 2009 respectively, since on the date on which order under section 147 for reopening of assessment was passed, there was no amendment in the Act and thereby ground taken by the AO before the Hon'ble Tribunal is not correct and hence Department appeal is liable to be dismissed;

Addition in respect of provision for staff welfare expenses of Rs. 10,58,00,000/-

6. failed to appreciate that provision for staff welfare expenses of Rs. 10,58,00,000/- is worked out on a scientific basis by actuarial method represented provision for meeting ascertained liability and therefore the addition has been rightfully deleted by the Ld. CIT(A) for computing book profits under section 115JB of the Act;

Addition in respect of provision for loss on guarantee of Rs. 69,00,000/-

7. failed to appreciate that Ld. CIT(A) had rightly deleted the addition to book profit under section 115JB of the Act in respect of provision for loss on guarantee of Rs. 69,00,000/-

8. failed to appreciate that Ld. CIT(A) had deleted the addition in the first round of proceedings and no appeal was filed by the Department and thereby the issue has attained finality and thereby this issue was wrongly added by the AO in remand proceedings which were rightly deleted by the Ld. CIT(A) in the second round of litigation;

Order under section 143(3) r.w.s. 147 r.w.s. 254 of the Act dated 29 September 2021 issued in contravention to CBDT Circular No. 19/ 2019 dated 14 August 2019

9. without appreciating that the impugned order under section 143(3) r.w.s. 147 r.w.s. 254 of the Act dated 29 September 2021 has been passed without allotting a computer generated Document Identification Number (DIN) and without recording reasons for passing manual order (even without manual signature) and, thereby rendering the entire proceedings null and void and the order deemed to have been never issued as per CBDT Circular 19/2019 dated 14 August 2019 and subsequent communication of DIN vide letter dated 30.09.2021 will not make the order legal;

B. On the facts and in the circumstances of the case, the learned CIT(A):

Re-assessment proceedings under section 147 of the Act is invalid and bad in law

10. ought to have appreciated that the reassessment proceedings initiated under section 147 of the Act are without following the provisions of law and therefore the entire proceeding are bad in law and liable to be quashed;

11. ought to have appreciated that reassessment proceedings initiated is in absence of any new tangible material, thereby the present proceedings are bad in law and liable to be quashed;

12. ought to have appreciated that the Ld. AO has applied his mind in the original assessment proceedings under section 143(3) of the Act on the issues raised in the reassessment proceedings and therefore the reassessment proceedings based on change of opinion are bad in law and liable to be quashed;

13. ought to have appreciated that reassessment proceedings based on audit objections based on borrowed satisfaction is bad in law and liable to be quashed;

14. ought to have appreciated that the Ld. AO has not followed the binding directions of the Hon'ble Tribunal and not provided the original reasons for reopening recorded at the time of issue of notice under section 148 of the Act and thereby the entire reopening proceedings is bad in law;

15. ought to have appreciated that the Ld. AO erred in providing reasons for reopening (during remand proceedings as per directions of Hon'ble Tribunal) which is different from reasons originally recorded and thereby the reopening proceedings under section 148 in the remand proceedings should be quashed in the absence of supply of original reasons for reopening to the Assessee;

16. ought to have appreciated that by passing the order under section 143(3) r.w.s. 147 r.w.s.254 of the Act, without granting 30 days time from disposal of objections for reopening as mandated by the Hon'ble Supreme Court in case of GKN Driveshafts (India) Limited (259 ITR 19) and hence the re-opening order passed by the Ld. AO is bad in law and liable to be quashed;

Levy of interest under section 234B of the Act

17. ought to have appreciated that no interest under section 234B of the Act can be charged since the income for the year under consideration is taxable as per provisions of section 115JB of the Act;

18. ought to have appreciated that no interest under section 234B of the Act can be charged as the additions are made while computing the book profits under section 115JB on the basis of the retrospective amendment in the Act;

The Appellant craves, to consider each of the above grounds of cross-objection without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of cross-objection.”

4. The brief facts and background of the issues involved are that the assessee is a company engaged in the business of manufacturing of chassis and vehicles for transport of goods and passengers

including motor car and parts. It has filed its return of income for assessment year 2003-2004 on 30th October, 2003 declaring 'Nil' income as per the normal provisions of the Act (due to set off of brought forward losses). However, the book profit u/s.115JB was disclosed at Rs.1,34,14,48,553. In this case, the original assessment order was passed u/s.143(3) on 31.01.2006, whereby the Assessing Officer (AO) has made various additions / disallowances. Against the said order, the assessee preferred appeal before the CIT (Appeals) on 13th April, 2006. Pending the disposal of appeal by the CIT(A), the A.O. initiated proceedings u/s. 147 vide notice dated 29th May, 2006 u/s.148. Accordingly, the assessment order u/s.143(3) r.w.s. 147 was passed on 31.12.2007, making following additions:-

Sr. No.	Particulars	Amount (Rs.)	Subsequent retrospective amendment (in favour of department) i.e. subsequent to the passing of 147 order
1.	Deferred Tax (which was not added back to the profits for purposes of MAT)	190,55,00,000	Finance Act 2008 (w.r.e.f. 1 April 2001)
2.	Provision for pension	14,87,00,000	--
3.	Provision for staff welfare	10,58,00,000	---
4.	Provision for loss on guarantee	69,00,000	--
5.	Provision for bad and doubtful debts (which was not added back to the profits for purposes of MAT)	97,94,00,000	Finance Act 2009 (W.r.e.f 1 April 2001)

6.	Provision for diminution in value of investments (which was not added back to the profits for purposes of MAT)	26,00,00,000	Finance Act 2009 (W.r.e.f 1 April 2001)
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5. Aggrieved by the aforesaid reassessment order passed u/s.143(3) r.w.s. 147, the assessee preferred appeal before the CIT(A).

6. The learned CIT(A) insofar as the appeal filed earlier against regular assessment u/s.143(3) dated 31.01.2006, made following enhancement to the assessee's income vide his dated 08th March, 2011:-

Sr. No.	Particulars	Amount (Rs.)
1.	Deferred Tax not added back to the profits for purposes of MAT computation.	190,55,00,000
2.	Provision for diminution in value of investment	26,00,00,000
3.	Provisions for bad and doubtful debts not added back to book profits for MAT	97,94,00,000

7. Thus, the enhancement was made by the CIT(A) on the same ground on which the A.O. had made addition in the reassessment order passed u/s 147, which were also pending before the CIT(A) as on the date of order u/s.250 of the Act dated 08th March, 2011. The ld. CIT(A) considered only those issues for enhancement which were subject to retrospective amendment by the Finance Act, 2008 and Finance Act, 2009.

8. Insofar as appeal against order u/s.143(3) r.w.s. 148 dated 31.12.2007, the ld.CIT(A) held that since enhancement has already been made in respect of these grounds, therefore, no further adjudication was required. Thus, the ld.CIT(A) held that since enhancement has already been made in the normal assessment proceedings, therefore, reassessment proceedings does not require any adjudication qua these three issues. However, insofar as validity of reopening is concerned, he held that the same is academic and does not require any specific adjudication. In a summary manner, the issue decided by the ld.CIT(A) including enhancement and the appeal filed before the Tribunal against original assessment proceedings is as under:-

Sr. No.	Grounds	Appeal in Tribunal
1.	Adjustment to book profit in respect of provision for staff welfare of Rs.10.58 crore	Allowed and agitated by the department before the Tribunal.
2.	Adjustment in respect of the three issues on which enhancement was made in the 143(3) proceedings	Ground dismissed as the adjustment was made in the normal proceedings
3.	Validity of reopening proceedings	Ground treated as academic in nature.

9. Before the Tribunal, in the first round of proceedings, which was appeal against CIT(A)'s order dated 08th March, 2011, wherein enhancement was made, the Tribunal vide order dated 17th July, 2019 held that since additions were already made by the AO under reopening proceedings u/s 147, then addition on same issues could not have been made by the learned CIT(A) by making the enhancement. Tribunal noted that the learned AO had already made

addition on these 3 issues vide reassessment order under section 143(3) read with section 147 dated 31 December 2007. Tribunal further observed that there was no scope left with the CIT(A) to enhance the very same items in the appellate proceedings pending before him against the order passed under section 143(3) of the Act. Thus, the premise was that the interest of the revenue is well protected by the action of the learned AO resorting to make the adjustments in the computation of book profits with regard to aforesaid three items in re-assessment order framed on 31 December 2007. Tribunal further noted that with respect to provisions for deferred tax, AO had called for detailed note which was submitted by assessee. Accordingly, Tribunal held that the enhancement could not have been done by learned CIT(A). Further, even on merits of the case, the Hon'ble Tribunal held that learned AO in the original assessment proceedings under section 143(3) of the Act completed on 31 January 2006 had applied the law prevailing on that date. The three items were sought to be added in the computation of book profits under section 115JB of the Act only pursuant to an amendment brought by the Finance Act 2008 with retrospective effect from 01 April 2001. Hence, on the date of passing order under section 143(3) of the Act on 31 January 2006, the AO could not have added these three items in the computation of book profits under section 115 JB of the Act. Hence what could not have been done by the AO as per law prevailing at that time, the learned CIT(A) could not do by exercising power of enhancement.

10. Thus, in a way the Tribunal has deleted the addition made by the CIT(A) by way of enhancement on the aforesaid three issues.

11. The AO while giving effect to the order of the Tribunal vide order dated 27th July, 2021 had granted relief on the issues deleted by the Tribunal. Thus no addition onn these 3 issues remained and matter had attained finality. It has been brought on record that the Department had not filed any appeal before the Hon'ble Bombay High Court against the Tribunal order and the learned Counsel for the assessee had drew our attention to the note of the PCIT not recommending the appeal on these three issues, whereas on some other issues the Revenue did filed appeal u/s 260A. Thus, qua these issues, matter had attained finality in the original assessment proceedings because the Department had not challenged the order of the Tribunal before the Hon'ble High Court of Bombay.

12. Now in the appeal against the CIT(A)'s order dated 10th March, 2011 pursuant to the order passed u/s.143(3) r.w.s. 147 of the Act, wherein the assessee had challenged the validity of reopening and also filed various grounds including applicability of interest u/s. 234B, the Department had also filed appeal before the Tribunal against the relief granted by the CIT(A) in respect of the adjustment in book profit u/s.115JB on the provision of staff welfare expenses to the extent of Rs.10.58 crore. It is important to note that, the Revenue again did not challenge the order of the CIT(A) on the impugned three issues and the appeal was filed only for the adjustment to the extent of staff welfare expenses only. The Tribunal vide order dated 03rd May, 2019 concluded that the actual reasons recorded were not communicated to the assessee so that assessee could file its objection in the light of the decision of the Hon'ble Supreme Court in the case of *GKN Driveshafts (India) Limited v. ITO (259 ITR 19)*. Hence, the

issue was remanded back to the AO to pass a speaking order to dispose of the assessee's objection and the matter was remanded back to the AO for *de novo* adjudication only in respect of the issues contested before the tribunal and on the issue of validity of reopening after supplying the actual reasons recorded. Thus the impugned 3 issues relating to book adjustment was neither remanded nor was there any ground by either of the parties.

13. In the second round of proceedings post remand by the Tribunal vide order dated 03rd May, 2019 for the 147 proceedings, the AO supplied the reasons for reopening of assessment to the assessee on 09th September, 2021 against which the assessee filed its objection to the above reasons for reopening on 15th September, 2021. The assessee also furnished submissions on merits of the case why the adjustment proposed by the AO should not be made, that is on the issues which were remanded back by the Tribunal. However, the AO in the impugned order passed u/s.143(3) r.w.s. 147 r.w.s. 254 dated 29th September, 2021 have made all the eight additions, which were made originally in the order u/s.147 and 143(3). The AO only decided the issue on merits without even deciding anything about the validity of reopening despite the assessee had filed objections challenging the validity of reopening and as directed by the Tribunal which was blatant defiance of Tribunal's direction.

14. Now aggrieved by the assessment order dated 29th September, 2021 (that is, post direction by the Tribunal dated 03rd May, 2019), appeal was filed before the Id.CIT(A). The CIT(A) had granted relief on merits and deleted various additions / disallowances made by the AO. Insofar as the issue relating to adjustment of book profit

u/s.115JB for the provision for deferred tax of Rs.190.55 crore, he held that since the issue has been considered by the Tribunal while adjudicating the appeal against original assessment order u/s.143(3) and thus following the same he deleted the same. Insofar as the adjustment of book profit u/s.115JB in respect of provision of diminution in value of investment of Rs.26 crore, he again referred to the order of the Tribunal dated 17.07.2019. lastly on the issue of adjustment to the book profit u/s.115JB in respect of provision for bad and doubtful debts of Rs.97.94 crore, again he followed the decision of the Tribunal. Thus, he deleted the addition on the issue of these three issues following the Tribunal order.

15. Insofar as the adjustment of book profit u/s.115JB for provision for staff welfare expenses of Rs.10.58 crore and the provision for loss on guarantee of Rs.69 lakh, the CIT(A) vide order dated 03.03.2011 had observed and held as under:-

“10.4 After considering the facts of the issue and the written submissions made by appellant regarding the adjustment to book profit u/s 115JB in respect of provision for staff welfare of Rs. 10.58 crores, I find that this provision is admittedly an accrual worked out on a scientific basis by actuarial method and represent provision for meeting ascertained liability. Hence, considering the legal position brought out by appellant, no adjustment should be made to the book profit in respect of the above ascertained liability of Rs. 10.58 crores. Similarly, the provision in respect of loss on guarantee is noted to be a contractual liability of the company on the basis of the agreements and the appellant has to account for the accrued liability for the accrued liability towards default by the dealer. It is further noted that the liability has been accounted for on accrual basis based on the amount of default intimated by the bankers. Hence the said amount provided in the books of appellant, being in accordance with the accounting standards

cannot be said to be "Contingent Liability" or liability other than "ascertained liability". In view of the above, these adjustments to the book profit u/s 115JB made by the Assessing Officer are directed to be deleted. These grounds of appeal are allowed.

16. Similarly, with regard to other adjustment in the book profit u/s.115JB, he followed the earlier CIT(A)'s order. However, insofar as validity of reopening is concerned, he dismissed assessee's ground. In a summary manner, the relief granted by the Id.CIT(A) in the impugned order on various issues are as under:-

Relying on the decision of the Hon'ble Co-ordinate Bench in the Appellant's own case dated 17 July 2019 in ITA No.3333/Mum/2011 & ITA No.4823/Mum/11

Addition u/s.115JB of the Act in respect of provision for deferred tax of Rs.190,55,00,000.

Addition u/s.115JB of the Act in respect of provision for diminution in the value of investments of Rs.26,00,00,000.

Addition u/s.115JB of the Act in respect of provision for bad & doubtful debt of Rs.97,94,00,000.

Addition under section 115JB of the Act in respect of provision for staff welfare of Rs.10,58,00.000:

The provision is admittedly an accrual worked out on a scientific basis by actuarial method and represent provision for meeting ascertained liability and concluded that considering the legal position brought out by the assessee, no adjustment should be made to the book profits.

Addition under section 115JB of the Act in respect of provision for loss on guarantee of Rs.69,00,000

The liability is contractual in nature and that the liability has been accounted for on accrual basis based on the amount of default intimated by the bankers. Accordingly, the said amount provided in the books of assessee, being in accordance with the accounting standards cannot be said to be "Contingent Liability" or liability other than "Ascertained Liability" and granted relief.

Addition under section 115JB of the Act in respect of provisions of wealth tax of Rs. 55,00,000:

The issue has already been decided in favor of the assessee by learned CIT(A) vide order dated & March 2011 wherein, relying on the decision in case of Echjay Forgings Pvt. Ltd (251 ITR 15) (Bombay HC), it was held that wealth tax cannot be added for the purpose of book profit computation.

Addition under section 115JB of the Act in respect of current tax of Rs. 19,70,97,000 and contingencies of Rs. 96,86,000:

Directed the learned AO to verify the amount of current tax and contingencies from the return on income and the P&L account and, delete the addition in case the same have already been considered in the P&L account.

17. Before us, the learned Counsel for the assessee, Shri Rajan Vora, insofar as ground No.1, 2 and 3 of the Revenue's appeal and cross objection No.1 to 5 of the assessee, submitted that the addition which has been made by the AO in the impugned order has already been decided by the Tribunal vide order dated 17th July, 2019 and

the said issues cannot be considered in the order giving effect. He submitted that the Tribunal vide order dated 17th July, 2019 against the order passed u/s.143(3) held that additions were already made by the AO under reopening proceedings, and therefore, addition on same issues could not have been made by the learned CIT(A) by making enhancement. Tribunal noted that the learned AO had already made addition on these 3 issues vide reopening order under section 143(3) read with section 147 dated 31 December 2007. Tribunal further observed that there is no scope left with the learned CIT(A) to enhance the very same items in the appellate proceedings pending before him against the order passed under section 143(3) of the Act. Tribunal further noted that with respect to provisions for deferred tax, AO had called for detailed note which was submitted by assessee. Accordingly, Tribunal held that the enhancement could not be done by learned CIT(A).

18. Even the AO while giving effect to the order, has granted relief on the issues deleted by the Tribunal. He further pointed out that the department has not filed appeal before the Hon'ble Bombay High Court against the Tribunal order on the aforesaid issues and this is evident from the question of law raised to the Hon'ble Bombay High Court by the Department. Thus, all these issues had attained finality in the original assessment proceedings itself because the department had not challenged the impugned order or filed any appeal before the Hon'ble Bombay High Court on these issues. For the sake of ready reference, the relevant observation and finding of the Tribunal qua these additions are as under:-

“4.2 In this regard, we also find that with regard to provision for deferred tax, vis-à-vis the computation of book profits u/s. 115JB of the Act, the Id. AO in the original scrutiny assessment proceedings u/s. 143(3) had indeed called for a detailed note and assessee vide its letter dated 25/11/2005 had filed a detailed note thereon which are enclosed in pages 70 & 71 of the paper book. The Id.AO on due appreciation of the said note came to conscious conclusion that the same need not be added to the book profits u/s. 115/B of the Act. In this scenario, can this be a subject matter of enhancement by the learned CIT(A) is to be looked into. In this regard, the Id. AR placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Rai Bahadur Hardutray Motilal Chamaria reported in 66 ITR 443 (SC) wherein the facts of the issue before the Hon'ble Supreme Court and the decision rendered thereon are as under:-

4.3. Hence, respectfully following the aforesaid decision, in any case, the provision for deferred tax could not be the subject matter of addition in the computation of book profits u/s. 115JB of the Act.

4.6. Even on merits, we find that the Id. AO in the original assessment proceedings u/s. 143(3) of the Act completed on 31/01/2006 had applied the law prevailing on that date. These three items i.e. provision for deferred tax; provision for diminution in value of investments; Provision for bad and doubtful debts were sought to be added in the computation of book profits u/s. 115JB of the Act only pursuant to an amendment brought by the Finance Act 2008 with retrospective effect from 01/04/2001. Hence, on the date of passing of order u/s. 143(3) of the Act on 31/01/2006, the Id. AO could not have added these three items in the computation of book profits u/s. 115 JB of the Act. Hence, what could not have been done by the Id. AO as per law prevailing at that time, the learned CIT(A) could not do by exercising enhancement powers. Reliance in this regard is placed on the decision of Hon'ble Calcutta High Court in the case of CIT vs. Hardeo Das Agarwala Trust reported in 198 ITR 511(CAL), wherein it was held as under.-

16. In our view, the result of ignoring such return or the audit report will be denial of exemption to the trust although the income

has been spent for charitable or religious purposes. This was not intended by the legislators. If an assessee fails to obtain the audit report in the prescribed form before the assessment is completed, he may not, ordinarily, be entitled to get the benefit of exemption. In this case, however, as we have indicated, the assessee was not given an opportunity to file the audit report in the prescribed form which was available with the assessee before the assessment was completed. In such a case, the appeal being a continuation of the original proceedings, the appellate authority has the power to accept the audit report and direct the Assessing Officer to redo the assessment. The appellate authority has plenary powers in disposing of an appeal and the scope of the power is coterminous and co-extensive with that of the Assessing Officer. He may, therefore, consider and decide any matter arising out of the proceedings in which the order appealed against is passed. He can do what the Assessing Officer can do and direct him to do what he has failed to do. Such powers are, however, subject to the limitation that what an Assessing Officer could not do validly, the first appellate authority also cannot do in appeal. This question, however, does not arise in this case as the assessee was entitled to file the audit report before the completion of the assessment with or without a revised return for the purpose of curing the defect in the original return filed without the audit report."

4.7. Respectfully following the observations of Hon'ble Calcutta High Court in para 16 above, the enhancement made by the learned CIT(A) with respect to aforesaid three items in the computation of book profits under section 115JB of the Act deserves to be deleted and is hereby deleted."

19. Thus, he submitted that these issues cannot be added in the proceedings.

20. Shri Vora submitted that in the first round of reopening proceedings in the appeal against the CIT(A) order pursuant to the reopening proceedings under section 147 of the Act, the Respondent had challenged the validity of the reopening proceedings and the Department had appealed before Tribunal only on relief provided by

the learned CIT(A) with respect to adjustment to book profit under section 115JB of the Act for provision of staff welfare of Rs. 10,58,00,000. Therefore, it is pertinent to note that the Department did not challenge the CIT(A) order on the impugned issues and appeal was only filed on the adjustment to book profit under section 115JB of the Act for provision of staff welfare of Rs.10,58,00,000. Further, the same is also evident from recommendation given by the Department to appeal against the CIT(A) order, wherein it has been categorically mentioned that no appeal should be filed against the CIT(A) order on issues arising except for issue of provision for pension, provision for staff welfare and provision for loss on guarantee. The Tribunal concluded that actual reasons recorded were not communicated to the assessee for filing its objections to the same in the light of the decision rendered by the Hon'ble Supreme Court in the case of G.K.N Driveshafts (India) Ltd. vs ITO (2003) (259 ITR 19) (SC). Hence, the learned AO also could not pass a separate speaking order disposing off those objections to the reasons recorded. Accordingly, the Hon'ble Tribunal vide order dated 3 May 2019 remanded the matter back to the AO for de novo adjudication only in respect of issues contested before it after giving clear finding on validity of reopening proceedings. The Tribunal also directed the AO to supply actual reasons recorded for reopening to the assessee. Further, even otherwise on merits, the assessee wishes to submit that as per the provisions of section 115JB of the Act applicable for the year under consideration, the impugned provisions cannot be added back to book profit under section 115JB of the Act.

21. In addition to the above, Mr. Vora submitted that no adjustment can be made to book profit beyond what is authorized by the definition given in Explanation to Section when accounts are prepared and as on the said date, there was no provision under the prevailing provisions of the Act to make adjustment of deferred tax to book profits and provision for diminution in value of investment and provision for bad & doubtful debts, the same was introduced vide Finance Act 2008 with retrospective effect from 1 April 2001. Therefore, no adjustment can be made if not authorized by the definition given in the then prevailing provisions of Explanation to section 115JB of the Act. Reliance in this regard was placed by hi, on the following:-

- * Apollo Tyres Ltd (255 ITR 273) (SC)
- * Kinetic Motor Co (62 (TR 330) (Bom) - SLP dismissed by SC (270 ITR 3) (SC)
- * Usha Martin Industries Ltd (104 ITD 249) (Kol SB)
- * NCL Industries Ltd (88 ITD 150)(Hyd)

22. Ld. Counsel further submitted that even on the date of reopening, there was no retrospective amendment introduced in the Act. The amendments were introduced vide Finance Act 2008 and 2009 respectively whereas notice under section 148 of the Act was issued on 29 May 2006 on which day the amended provisions did not exist in the Act. Further, he submitted that reopening on the basis of retrospective amendment is not justified and cannot be done. Reliance was placed in this regard on the following:-

- * Own case order for AY 2003-04 (ITA No. 3333/Mum/2011) dated 17 July 2019
- * Denish Industries Ltd. v. ITO (271 ITR 340) (Guj.)
- * Rallies India Ltd. v. ACIT (2010) 323 ITR 54(Bom)

* SGS India Pvt. Ltd. v. ACIT (2007) 292 ITR 93 (Bom) Siemens Information Ltd. (2007) 293 ITR 548 (Bom)

* Simens Housing Corporation Ltd. (CA No. 15067 of 2011) dated 12 March 2012

The learned CIT (A) too relying on order of Hon'ble Mumbai ITAT dated 17th July 2019 (ITA No.3333,4823/Mum/2011) held that provision for deferred tax and provision for diminution in value of investment and provision for bad and doubtful debts cannot be subject matter of addition under section 115JB of the Act.

23. In view of the above, he submitted that provisions are not to be added back for the purpose of computation of book profit under section 115JB of the Act and it has rightly been not added back in the assessment. Therefore, no adjustment should be made.

24. On the issue of ground of appeal No.4 of Department's appeal and cross objection No.6 of assessee's cross objection relating to adjustment of book profit u/s.115JB for the provision for staff welfare expenses of Rs.10.58 crores, Ld. Counsel submitted that the assessee is one of the largest automotive manufacturer in India engaged in design development and sale of all types of automotive vehicles and has certain facilities at remote areas in India where basic facilities of education, hospitals, etc were lacking. As a result, the assessee had to provide many facilities to employees to attract them to work in such remote areas. On account of this, assessee had introduced certain welfare measures for its employees. During the manufacturing process, there are some accidental deaths of employees while in service and the Appellant makes monthly payments to families of these deceased employees. The monthly payments to dependents of the deceased/disabled employees equals

50% of the salary drawn at the time of death or accident or specified amount whichever is higher. For the same, the Assessee operates an unfunded defined benefit plan under the name of Bhavishya Kalyan Yojna ('BKY') where benefits of the plan are provided to eligible employees based on their entitlement on death or permanent disablement while in service. The monthly payments to the dependents of the deceased/ disabled employee under the plan equals to 50% of the salary drawn at the time of death or accident or a specified amount whichever is higher.

25. The above benefits provided by the assessee are contractual in nature and in accordance with the Accounting Standards, these are required to be accrued every year. For the said purpose, company takes an independent actuarial valuation and based on the actuarial valuation, the assessee makes accrual every year. Therefore, in view of the above, it is submitted that the above amount represents accrual based on actuarial valuation and expenses incurred during the year. Since it is valued on a scientific method by following actuarial valuation, it constitutes accrual of expenses and is not an ad hoc provision in any manner. Reliance in this regard was placed on Hon'ble Bombay High Court decision in case of Echjay Forgings Pvt Ltd (251 ITR 15) (Bom)

26. Ld. Counsel pointed out that the learned CIT (A) in the first round of reopening proceedings vide order dated 10 March 2011 at para 7.3 of the order, had held that the provisions had been worked out on a scientific basis by actuarial method and represent provision for meeting ascertained liability and hence no adjustment could be made under book profits. Thereafter, in the second round of

proceedings, the CIT(A) at para 10.4 of the order deleted the adjustments made to the book profit under section 115JB of the Act by observing that the provision is admittedly an accrual worked out on a scientific basis by actuarial method and represent provision for meeting ascertained liability.

27 Further, in case of Tata Motors Finance Limited [ITA No. 4353/Mum./2013 dated 19 September 2018 (Mumbai ITAT)] and Tata Motors Finance Limited [ITA No. 7550/Mum/2016 dated 13 April 2022 (Mumbai ITAT)] it has been held that the provision for staff welfare is an ascertained liability and therefore allowable while computing income under normal provisions of the Act. Accordingly, it is submitted that the same can also not be added while computing book profits on the premise of the same being unascertained. In view of the above, it is submitted that no adjustment can be made to book profit under section 115JB of the Act.

28. Regarding ground of Appeal No. 5 of Departmental Appeal & Cross Objection Nos. 7 & 8 of Assessee's Cross Objections relating to Provision for loss on Guarantee Rs. 69,00,000, Ld. Counsel submitted that the said issue was decided in favour of assessee by the learned CIT(A) in first round of proceedings, wherein the CIT(A) at para 7.3 had held that provision on loss of guarantee is a contractual liability on the basis of the agreement and company had to account for the accrued liability and no appeal has been filed against the same by Department before Hon'ble Tribunal as the same is accepted by Department which is also evident from the Department Memo mentioning issues on which appeal should be filed by Department before Tribunal. Further, the same is also evident from the Tribunal

order dated 3 May 2019, wherein the Department had only filed appeal on the issue of provision for staff welfare and not for the impugned issue and therefore, the present addition made by Ld. AO is not maintainable and Departmental appeal should be dismissed. Further, the learned CIT (A) in second round of proceedings, at para 10.4 of the order, observed that the provision in respect of loss on guarantee is noted to be a contractual liability of the company on the basis of the agreements and the Respondent has to account for the accrued liability towards default by the dealer. The liability has been accounted for on accrual basis based on the amount of default intimated by the bankers. Hence the said amount provided in the books of assessee, being in accordance with the accounting standards cannot be said to be "Contingent Liability" or liability other than "ascertained liability". Hence, the addition on said issue cannot be done. In view of the above, it is submitted that no adjustment can be made to book profit under section 115JB of the Act.

29. Lastly, on the issue of interest u/s.234B, he submitted that the interest u/s.234B can be charged since the income for the year under consideration is taxable under the provisions of section 115JB.

30. On the other hand, the learned DR submitted that in the original round of assessment proceedings, the ld. CIT (A) has made enhancement for which the Tribunal has held that since the AO had initiated reassessment proceedings u/s.147, therefore, enhancement could not have been done. The ld. CIT(A) insofar as the appeal relating to reassessment proceedings has held that since he has already held that the issue while enhancing the income in the original assessment proceedings u/s.143(3), therefore, these 3 issues were

not adjudicated at all. Further these issues have not been dealt specifically on merits by the Tribunal also. Once an amendment has been brought with retrospective effect and the matter was pending before the Tribunal, then the amended law should have been applied. Accordingly, the AO is correct in making the said additions and the order giving effect to the Tribunal order u/s. 143(3) r.w.s. 147 r.w.s. 254 of the Act. Thus, he submitted that the ld. CIT (A) was not correct in following the Tribunal order.

31. We have heard the rival parties and also perused the relevant facts and chronology of various orders passed in the case of the assessee. We have discussed in detail the checkered history of the assessments and the appeals for the same issue which is subject matter of appeal by the department, that is,:

- i) Addition u/s.115JB of the Act in respect of provision for deferred tax of Rs.190,55,00,000/-.
- ii) Addition u/s.115JB of the Act in respect of provision for diminution in the value of investments of Rs.26,00,00,000/-.
- iii) Addition u/s.115JB of the Act in respect of provision for bad & doubtful debt of Rs.97,94,00,000/-.

For the sake of ready reference, summary of various proceedings and orders are summarized as under:-

Flow of events on 3 issues where enhancement made in normal appeal by CIT(A)

1

Order under section 143(3) dated 31 January 2006 (refer page nos. 81-97)

Additions made under normal provisions, few issues raised under section 115JB but not additions made under book profits

2

Order under section 143(3) rws 147 dated 31st December 2007 (refer page nos.200-212)

Addition under section 115JB of the Act, inter-alia, of	Amount (in Rs.)
Provision for deferred tax	190,55,00,000
Provision for diminution in value of investment	26,00,00,000
Provision for bad and doubtful debts	97,94,00,000

3

CIT(A) Order dated 8th March 2011 (refer page nos. 108-110)

Enhancement (addition to book profits)	Amount (in Rs.)
Provision for deferred tax	190,55,00,000
Provision for diminution in value of investment	26,00,00,000
Provision for bad and doubtful debts	97,94,00,000

4

CIT(A) order dated 10 March 2011 (refer page nos. 213-222)

Issue regarding addition under section 115JB of the Act in respect of provision for deferred tax, diminution in value of investments and bad and doubtful debt deleted since enhancement made during appeal proceedings against order under section 143(3) of the Act.

No adjudication on validity of proceedings under section 147 of the Act since the issues were either part of enhancement made during appellant proceedings against order under section 143(3) of the Act or relief granted.

5

ITAT Order dated 17 July 2019 (heard on 23 April 2019) (refer page nos. 111-136)

Enhancement made by the CIT(A) on above 3 issues deleted on technical as well as on merits of the case (refer para 4.4. and 4.5) Even otherwise, no addition can be made since on the date of passing of passing of order under section 143(3) of the Act, Finance Act, 2008 and Finance Act, 2009 was not present and therefore, AO could not have made the additions (refer para 4.6).

6

ITAT Order dated 3 May 2019 (refer page nos. 223 - 230)

Issue regarding addition under section 115JB of the Act in respect of provision for deferred tax, diminution in value of investments and bad and doubtful debt not agitated by the Department and accordingly, accepted (refer Department's grounds of appeal reproduced in the ITAT order at page nos 227-228). Therefore, Department has accepted shifting of issue from 147 to 143(3) appeal.

Assessee filed appeal against validity of the proceedings - Tribunal noted that reasons recorded by the learned AO and the copy of reasons of reopening supplied to the assessee do not match in entirety and therefore, Tribunal directed AO to supply actual reasons recorded for reopening and remanded the matter for de novo adjudication only in respect of issues contested before it after giving clear finding on validity of reopening proceedings.

7

Appeal filed before Hon'ble Bombay High Court by the Department on 2 January 2020 where the impugned additions (3 enhancement issues) not agitated (refer page no. 150). Therefore, these 3 issues have attained finality and Department has accepted the same

In view of the this, the present appeal cannot stand since Department has not filed appeal on merits before the Hon'ble High Court.

8

OGE to ITAT order 27 July 2021 wherein relief given on above 3 issues (refer page nos.161-164)

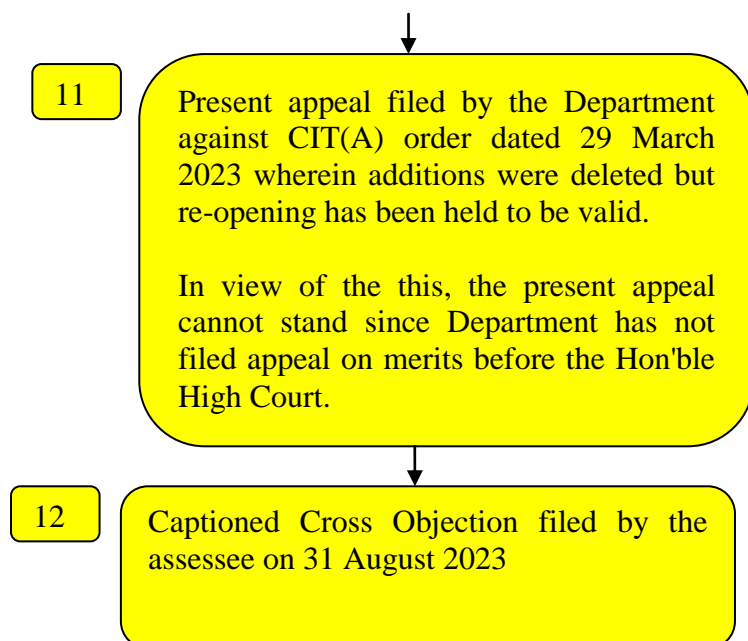
9

Order under section 147 rws 143(3) rws 254 dated 29 September 2021 passed by AO making the impugned additions including addition on above 3 issues (refer page nos. 3-5 of the order forming part of the appeal set).

In view of this, the present appeal cannot stand since Department has not filed appeal on merits before the Hon'ble High Court

10

CIT(A) vide order dated 29 March 2023 deleted the impugned additions relying on the ITAT Order dated 17 July 2019 (refer page nos. 111-136)



32. As discussed in the following observations, insofar as the issue relating to provisions for deferred tax of Rs.190.55 crores provision for diminution in the value of investment of Rs.26 crores and provision for bad and doubtful debts of Rs.97.94 crores, the same were subject matter of enhancement by the CIT (A) and also subject matter of reopening u/s.147 by the AO. The CIT(A) had passed the order dated 08th March, 2011 against assessment order u/s.143(3), making the enhancement when the AO has already reopened and has made the addition on the same issues u/s 147. Then in his order dated 10th March, 2011, the CIT (A) held that the additions are to be deleted because enhancement has already been made in the appeal proceedings against original assessment order. Now the Tribunal insofar as the appeal against the original assessment order vide order dated 17th July, 2019 held that the ld.CIT(A) was not justified in making enhancement when these three issues had already been added by the AO in the reassessment proceedings and on merits also, the issue has been decided in favour of the assessee. Now in the

appeal against the order u/s.147, the Revenue on these three issues had not preferred any appeal before the Tribunal. Thus, these three issues were not raised at all and the only issue was with regard to the reopening u/s.147 and other issues of book profit adjustments. The Tribunal held that the validity of reopening has to be decided by the AO because the AO had not followed the law laid down by the decision in the case of *GKN Driveshafts (India) Limited (supra)* and not supplied the reasons recorded to the assessee, and the only issue which was challenged by the assessee and the Revenue was adjustment of book profit u/s.115JB for the provision for staff welfare expenses of Rs.10.58 crores. Thus, the mandate of the A.O. while giving effect to the aforesaid order was only to comply with the issues there before the Tribunal and the directions by the Tribunal. For the sake of ready reference, the relevant observation of the Tribunal setting aside the matter to the AO was as under:-

“5. We have heard the rival submissions of both the parties and perused the material available on record. We find that the assessee has challenged the preliminary grounds on the validity of reopening of the assessment before us. Ld. AR before us argued that copy of actual reasons recorded by the AO for reopening of the assessment was never furnished to the assessee in order to enable the assessee to file its objections thereon during the course of reassessment proceedings. Admittedly the assessment was sought to be reopened for making certain additions to book profits computed u/s. 115JB of the Act. Ld. AO in the reassessment order made various additions to book profits u/s. 115JB of the Act, against which the assessee preferred an appeal before the Id.CIT(A). Before the Id. CIT(A), the assessee also challenged the validity of reopening of assessment while making several legal arguments thereon. We find from the perusal of the order of Id. CIT(A) that the Id.CIT(A) in para 10.1 at page 10 of his order had given his finding with regard to the

challenge of the assessee on the question of validity of reassessment proceedings as under :-

"10.1 It may be noted from a perusal of the foregoing paragraphs of this order that the additions /disallowances made by the AO as a consequence of the re-opening or the case for this year have either already been considered by this office for enhancement in the appellate order passed in the order u/s. 143(3) or relief has been allowed by this office in respect of such' additions / disallowances. Hence, the issue regarding the validity reassessment proceedings u/s.147 has become academic in nature which requires no adjudication."

6. From the above, it could be seen that the Id. CIT(A) had not adjudicated the legal issue which is preliminary in nature on the question of validity of reopening of assessment. At the time of hearing, Id. DR produced the assessment records before us. We have gone through the assessment folder and found that the reasons recorded by the Id. AO vis-à-vis the letter of the Id. AO dated 15.11.2007 purported to be the reasons recorded do not match in entirety. When the fact was shown to both the parties before us and both the parties agreed for the mismatch thereon. In this background, it could be safely concluded that the actual reasons recorded were not communicated to the assessee for filing its objections to the same in the light of the decision rendered by the Hon'ble Supreme Court in the case of G.K.N Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19 (SC). Hence, the Id. AO also could not pass a separate speaking order disposing off those objections to the reasons recorded. In these peculiar facts and circumstances of the case, we deem it fit and appropriate, in the interest of justice and fair-play, to remand both the appeals of the assessee as well as the Revenue to the file of Id. AO for de novo adjudication in respect of issues contested before us alone by both the parties, after giving a clear finding on the validity of reopening of assessment. In this regard, la. A is directed to supply the actual reasons recorded for reopening of the assessment to the assessee. The assessee, if it so desires, may file objections to the same. In case, if any objections are filed by the assessee to the reasons recorded, Id.

AO is directed to pass a separate speaking order disposing off those objections.

7. We would like to make it clear that in view of the aforesaid directions, all the issues contested before us on merits by both the parties including the additional grounds raised by the assessee are left open and no decision is rendered thereon by us.

33. Thus, the AO was strictly circumscribed on the issues and the directions given by the Tribunal. The AO could not be raked up the issues which already had attained finality. If the Department was aggrieved by the order of the Tribunal then they should have filed appeal before the Hon'ble Bombay High Court, which on these three issues Revenue did not specifically prefer any appeal even if the order of the Tribunal was legally unsustainable according to revenue that post amendment such provision were to be disallowed. Even otherwise also, the Revenue had chances to raise the grounds before the Tribunal against the CIT (A)'s order passed in relation to the order u/s.147 r.w.s. 143(3), however, the Revenue did not prefer any appeal before the Tribunal. Thus, how in the impugned assessment proceedings which is in pursuance of order of the Tribunal dated 03.05.2019 passed u/s.143(3) r.w.s. 147 r.w.s. 254 of the Act, these three issues could not have been raised. Thus, on these three issues, the order of the AO is quashed as the additions are beyond the scope of the present assessment proceedings. We are not going into the merits of the addition, but we are deleting the additions on f the reason that these are beyond the scope of present assessment proceedings.

34. Now coming to the issue of provision for staff welfare expenses, the said issue has already been decided in the first round of

proceedings where it was held that the provision had been worked out on scientific basis by accrual method and represents provision for meeting ascertained liabilities, and therefore, no adjustment could be made in the book profit. There is no rebuttal that the provision has been made on the basis of accrual method and therefore it cannot be held that it is an unascertained liability. The observation and the finding of the CIT(A) as noted above is thus confirmed. Further, similar issue has been decided by the Tribunal in assessee's group concerns in the case of Tata Motors Finance Limited, wherein it was held that provision for staff welfare is an ascertained liability and the same cannot be added while computing book profits. Thus this issue is decided in favour of the assessee.

35. Lastly, on the issue of provision for loss on guarantee of Rs.69 lakh, this issue again has been considered in the first round of assessment proceedings wherein it was held that the provision for loss on guarantee is a contractual liability and is on the basis of the agreement and the company had to account for the accrued liability. Against this no appeal was filed by the Revenue before the Tribunal and this issue had attained finality. Thus, this issue is again decided in favour of the assessee.

36. Insofar as the issue relating to interest u/s.234B, we hold it as consequential and moreover we have deleted most of the additions, and therefore, the AO while giving effect to this order ensure that there would be no liability on interest u/s.234B.

37. Insofar as the reopening and validity of proceedings u/s.147, the same is treated as academic as the matter has been decided on merits.

38. In the result, the appeal filed by the Revenue is dismissed and the Cross Objection filed by the assessee is allowed except the issue relating to reopening, which is treated as academic.

Order pronounced on this 21st day of June, 2024.

Sd/-
(Ratnesh Nandan Sahay)
Accountant Member

Sd/-
(Amit Shukla)
Judicial Member

Mumbai; Dated: 21st June, 2024
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals).
4. The CIT concerned.
5. The Sr. DR, ITAT, Mumbai.
Mumbai
6. Guard File.

Asst.Registrar
ITAT,