

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.328/Del/2024
निर्धारणवर्ष/Assessment Year: 2021-22

DCIT Room No.244, E-2, 2 nd Floor, ARA Centre, Jhandewalan Extn., New Delhi.	बनाम Vs.	GL LITMUS EVENTS PVT. LTD. A-204, Sarita Vihar, Ali Bo, South East Delhi, New Delhi. PAN No.AADCG6909N
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Revenue by	Sh. Sanjay Tripathi, Sr. DR
Assessee by	Sh. S.K. Tulsian, Adv. & Ms. Nisha Rachh, CA

सुनवाईकीतारीख/ Date of hearing:	09.05.2024
उद्घोषणाकीतारीख/Pronouncement on	26.06.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Revenue against the order of the Id.CIT(Appeals)-27, New Delhi dated 29.11.2023 for the AY 2021-22 arising out of the intimation passed u/s 143(1) of the Act by Centralized Processing Centre (CPC), Bengaluru.

2. The only issue in the appeal of the Revenue for adjudication is whether the CPC is right in adopting the profit/loss as per the cash

system of accounting prepared for the purpose of Income Tax while computing the book profits u/s 115JB of the Act.

3. Briefly stated the facts are that the assessee is a Private Limited Company filed NIL return of income for the AY 2021-22 following the cash system of accounting, whereby the loss for Income tax was computed at Rs.1,17,65,869/-. The Profit & Loss Account as per cash system followed by the assessee for the purpose of Income tax reflected a loss of Rs.1,18,45,229/-. The assessee also prepared its Profit & Loss Account and balance sheet on accrual basis for the purpose of Companies Act according to which the assessee has shown loss of Rs.7,07,13,188/-. In the return filed for the AY 2021-22 the assessee has declared this book loss of Rs.7,07,13,188/- while computing the book profits u/s 115JB of the Act. The return was processed u/s 143(1) of the Act by CPC, Bangaluru on 07.07.2022 accepting the loss of Rs.1,17,65,879/- declared by the assessee under normal provisions of the Act. However, while computing book profits u/s 115JB of the Act the CPC assessed book profits of the assessee at Rs.4,70,22,730/- as against book loss of Rs.1,18,45,229/- declared by the assessee in its return of income. The CPC while computing the book profits u/s 115JB of the Act adopted the profit as per Profit & Loss Account

prepared for the purpose of Income tax i.e. loss of Rs.1,18,45,229/- as the starting figure instead of loss of Rs.7,07,13,188/- as shown by the assessee as per the Profit & Loss Account prepared as per the Companies Act. In this process the CPC, Bangaluru raised demand of Rs.82,99,980/-. The assessee preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) considering the submissions of the assessee and analyzing the provisions of Section 115JB of the Act, directed the Assessing Officer to adopt loss of Rs.7,07,13,188/- as per audited Profit & Loss Account on the basis of accrual basis of accounting for the purpose of calculation of MAT u/s 115JB of the Act. Against this order the Revenue is in appeal before us.

4. The Ld. DR strongly placed reliance on the computation made by the CPC, Bangaluru and on the other hand, the Ld. Counsel for the assessee strongly supported the orders of the Ld. CIT(A). The Ld. Counsel for the assessee further referring to page 71 of the Paper Book submits that the Tribunal in its own case for the AY 2011-12 approved the cash system of accounting for the purpose of Income tax computation. It is submitted that the assessee has been filing Income tax returns regularly from the Financial Year 2010-11 relevant to the Assessment Year 2011-12 on the basis of cash system

of accounting which was also accepted by the Department including for the assessment year under consideration.

5. However, coming to the computation u/s 115JB of the Act, the Ld. Counsel for the assessee submits that provisions u/s 115JB(2) of the Act require every assessee being a company prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 and accordingly, the assessee prepared its Profit & Loss Account as per the Companies Act, 2013 for the AY 2021-22 according to which there is a loss of Rs.7,07,13,188/-. The Ld. Counsel for the assessee submits that for the purpose of computation of book profit u/s 115JB of the Act the loss arrived at on the basis of the profit and loss account prepared under Companies Act should be considered for computing MAT payable u/s 115JB of the Act but not the profit/loss prepared for the purpose of Income tax. The Ld. Counsel for the assessee therefore submits that the loss of Rs.1,18,45,229/- arrived at by the assessee by following cash system of accounting for the purpose of Income tax cannot be the basis for computing the book profits u/s 115JB of the Act. Thus, the Ld. Counsel for the assessee submits that the Ld.CIT(A) has rightly directed the Assessing Officer to adopt the loss

declared in the audited Profit & Loss Account on the basis of accrual accounting system prepared under Companies Act, 2013 for the purpose of calculation of MAT payable u/s 115JB of the Act.

6. Heard rival submissions, perused the orders of the authorities below. We find considerable force in the submissions of the Ld. Counsel for the assessee. For ready reference the provisions of Section 115JB(2) is reproduced as under:

“(2) Every assessee,—

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013); or

(b) being a company, to which the second proviso to subsection (1) of section 129 of the Companies Act, 2013 (18 of 2013) is applicable, shall, for the purposes of this section, prepare its statement of profit and loss for the relevant previous year in accordance with the provisions of the Act governing such company:

Provided that while preparing the annual accounts including statement of profit and loss,—

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including statement of profit and loss;

(iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit

and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013 (18 of 2013)”

7. A plain reading of the above provision of Section 115JB(2) of the Act provides that every assessee being a company other than a company u/s 129(1) shall for the purpose of Section 115JB of the Act prepare its statement of Profit & Loss Account for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013 (18 of 2013). Thus, for the purpose of Section 115JB of the Act the book profit shall be computed by taking the profit as per Profit & Loss Account prepared in accordance with the provision of Schedule III to the Companies Act, 2013. In the assessee's case the profit as per Profit & Loss Account prepared in accordance with the provisions of Schedule III to the Companies Act, 2013 is (-) Rs.7,07,13,188/-. However, the CPC while computing the book profit u/s 115JB of the Act adopted the profit/loss of (-) Rs.1,18,45,229/- as prepared by the assessee in its Profit & Loss Account for the purpose of Income tax, while arriving at the book profits u/s 115JB of the Act which is not permissible under law. In the circumstances, we hold that the direction given by the Ld.CIT(A) to adopt loss of Rs.7,07,13,188/- as per Profit & loss Account prepared under the Schedule III of Companies Act for

the purpose of MAT calculation u/s 115JB of the Act is in accordance with the provisions of 115JB(2) of the Act. The same is sustained. Grounds raised by the Revenue are rejected.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 26/06/2024

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 26/06/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi