

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.184/Nag./2016**  
(Assessment Year : 2004-05)

M/s. Universal Drinks Pvt. Ltd.  
Somalwada, Wardha Road  
Nagpur 440 015 PAN – AAACU2519D

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-2, Nagpur

..... Respondent

Assessee by : Shri Rajesh Loya a/w  
Shri Sanjay Thakar  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 15/07/2024

Date of Order – 15/07/2024

**ORDER**

**PER K.M. ROY, A.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 20/11/2015, passed by the learned Commissioner of Income Tax (Appeals)-I, Nagpur, [*learned CIT(A)*], for the assessment year 2004-05.

2. In its appeal, the assessee has raised following grounds:-

*"1] Learned C.I.T.(A) failed to see that the net profit as per P and L account was Rs.57,27,891/- and not Rs.71,80,391/-.*

*2] Learned lower authorities while computing the book profit took into consideration the gain on sale of share at Rs.80,77,605/- but failed to consider the loss on sale of share at Rs.14,52,500/- both of which are of the same*

nature and both of which are forming part and parcel of profit and loss account.

3] Learned C.I.T.(A) failed to properly appreciate the written submission filed by the assessee.

4] Learned C.I.T.(A) and A.O. failed to see that the assessee is not claiming deduction of Rs.14,52,500/- from the alleged book profit assumed by them at Rs.71,80,391/- what is claimed is that the book profit itself is Rs.27,27,891/- (7180391-1452500-5727891).

5] Assessee craves leave to urge additional grounds at the time of hearing as may be necessary."

3. Opening the arguments, Shri Rajesh Loya, learned A.R., invited our attention to Profit & Loss Account reproduced in Paper Book Page-16 which is presented below for easy recapitulation of the matter.

UNIVERSAL DRINKS PVT. LTD.

PROFIT AND LOSS ACCOUNT FOR THE YEAR ENDED 31<sup>ST</sup> MARCH 2004

	<u>SCHEDULE</u>	<u>Year Ending 31/03/2004 (₹)</u>	<u>YEAR ENDING 31/03/2003 (₹)</u>
<u>INCOME :</u>			
VEHICLE AND OTHER HIRE CHARGES		266385	403489
OTHER INCOME	J	1746468	1837648
	<b>TOTAL:</b>	<b>10090458</b>	<b>1837648</b>
<u>EXPENDITURE:</u>			
GOVERNMENT LEVIES & TAXES	K	731863	627967
SALARIES AND OTHER AMENITIES	L	84	58870
REPAIRS AND MAINTENANCE	M	37069	--
ADMINISTRATIVE EXPENSES	N	1602174	870050
TRANSPORTATION, VEHICLE AND HANDLING EXPENSES	O	1713	12247
FINANCIAL CHARGES	P	3169	8948
DEPRECIATION	898365	533995	769869
<u>LESS: REVALUATION RESERVE</u>	<u>364370</u>		
	<b>TOTAL :-</b>	<b>2910067</b>	<b>2347951</b>
PROFIT BEFORE EXCEPTIONAL AND EXTRAORDINARY ITEMS		7180391	4537841
LESS: LOSS ON SALE OF SHARES (INVESTMENT)		1452500	--
LOSS ON SALE OF SHARES (ASSETS)		--	2253149
PROFIT AFTER EXCEPTIONAL AND EXTRAORDINARY ITEMS		5727891	2284692

4. During the course of hearing, the learned Authorised Representative (*"the learned A.R."*) invited our attention to Page-8 to 10 of the paper book wherein the computation of income both under normal provisions and as per 115JB of the Act was disclosed. It appears from the assessment order that the Assessing Officer has not allowed the deduction of ₹ 14,52,500, towards loss on sale of shares as deduction from the book profit. He computed the Minimum Alternate Tax on ₹ 71,80,391. We find from the Profit & Loss A/c that there is a separate gain on sale of shares of ₹ 80,77,605. The assessee has considered net gain as part of book profit, whereas the Assessing Officer is only considering the gross gain on sale of share without deduction of the amount of capital gain. The learned A.R. vehemently submitted that the computation by the Assessing Officer is incorrect and the book profit should be considered at ₹ 57,27,891, i.e., he pleaded that the loss on sale of shares should be deducted while computing the book profit.

5. The learned Departmental Representative submitted that the order passed by the learned CIT(A) is cogent and watertight and need not be disturbed. He relied upon the order of the learned CIT(A) and the Assessing Officer.

6. After hearing both the parties, we find that the matter has been considered by the Hon'ble Supreme Court, wherein the Hon'ble Court has observed as follows:-

*"Net profits in profit and loss account prepared in accordance with Parts II and III of Schedule VI to Companies Act Accounts scrutinised and certified by statutory auditors - Assessing Officer has no power to scrutinise to go behind*

*net profit shown in profit and loss account except to extent provided in Explanation to section 115J - Tribunal had rightly set aside order of Assessing Officer.*

*Section 115J of the Income-tax Act, 1961, read with Parts II and III of Schedule VI to the Companies Act, 1956 Zero-tax companies - Assessee-company, while determining its net profit, had provided for arrears of depreciation in its profit and loss account which according to revenue was not in accordance with Parts II and III of Schedule VI to the Companies Act, 1956.*

*Hence, Assessing Officer, while considering case of assessee-company under section 115J, recomputed said profit and loss account so as to exclude provisions made for arrears of depreciation. Accounts of assessee-company were certified by auditors as having been maintained in accordance with provisions of the Companies Act.*

*The object of introducing section 115J can be deduced from the Budget Speech of Finance Minister made in Parliament while introducing the said section. The Speech shows that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that section 115) was introduced in the Income-tax Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own accounts.*

*For the said purpose, section 115J makes the income reflected in the companies' books of account as deemed income for the purpose of assessing the tax. If one examines the said provision in the above background, one notices that the use of the words 'in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act' is made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the Income-tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by statutory auditors and will have to be approved by the company in its General Meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, it is difficult to accept the argument of the revenue that it is still open to the Assessing Officer to rescrutinise the accounts and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. Reliance placed by the revenue on sub-section (1A) of section 115) in support of the above contention was misplaced. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate is bodily lifted from the Companies Act into the Income-tax Act for the limited purpose of making the said accounts so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, the said sub-section*

*does not empower the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115), then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of Companies Act and another for the purpose of Income-tax Act. If the Legislature intended the Assessing Officer to reassess the company's income, then it would have stated in section 115] that 'income of the company as accepted by the Assessing Officer. In the absence of the same and on the language of section 115], the view taken by the Tribunal that Assessing Officer had no authority to reopen accounts of a company which were certified by auditors of company as having been maintained in accordance with provisions of the Companies Act and which account had been accepted in general meeting of company as well as by Registrar of Companies was correct and the High Court had erred in reversing the said view of Tribunal.*

*Therefore, the Assessing Officer while computing the income under section 115] has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has limited power of making additions and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J.- [Apollo Tyres Ltd. D. CIT (2002) 255 ITR 273: 174 CTR 521: 122 Taxman 562 (SC)."*

7. There is no empowering provision in section 115JB to disallow the capital loss. Once capital gain is includible under the book profit, it is axiomatic that loss is also deductible since they are of same genre. Further, as held by the Hon'ble Supreme Court, the Assessing Officer has only limited power to examine whether the books of account have been certified by the authorities under 1956 Act, as having been properly being maintained in accordance with the said Act and, therefore, he does not have jurisdiction to go behind the net profit shown in the Profit & Loss A/c except to the extent provided in Explanation to section 115JB of the Act. In view of the above contention, we find that the order passed by the learned CIT(A) is not based on correct appreciation of law. He has utterly misdirected himself and has failed to grasp the nuances of the self-contained code of computation of book

profit. Thus, the assessee's ground is bound to succeed. Book profit should be reckoned by considering the profit as per accounts at ₹ 57,27,891.

8. In the result, appeal is allowed.

Order pronounced in the open Court on 15/07/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 15/07/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur