

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.2670/Del/2022
(ASSESSMENT YEAR 2012-13)

M/s Ebix Cash Ltd. Plot 122 & 123, NSEZ, Phase II, Noida, Noida – 201 305 PAN- AAACE9981H	Vs.	Deputy Commissioner of Income Tax, Circle-1, Noida.
(Appellant)		(Respondent)

Appellant By	Sh. Gautam Jain & Sh. Parth Singhal
Respondent by	Sh. Vivek Kumar Upadhyay
Date of Hearing	25/04/2024
Date of Pronouncement	16/07/2024

ORDER

PER M.BALAGANESH, AM:

The appeal of the assessee in ITA No.2670/Del/2022 is directed against the order passed by the Learned Principal Commissioner of Income Tax [“Ld. PCIT”, in short], New Delhi in

DIN & Order No. ITBA/NFAC/S/250/2022-23/1045973004(1)
dated 26/09/2022 for Asst. Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

- “1. *That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has erred both in law and on facts in upholding the determination of income under the normal provisions of the Act at Rs.3,60,86,179/- as against Nil income declared in return of income by the appellant company.*
2. *That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has further erred both in law and on facts in upholding an addition of Rs. 4,75,15,482/-representing foreign exchange fluctuation loss upon sale of shares of wholly owned subsidiary company by the appellant company.*
 - 2.1 *That furthermore the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has failed to appreciate that foreign exchange fluctuation loss of Rs. 4,75,15,482/- was debited in Noida unit and entire inadmissible loss of Rs. 1,03,81,487/- of Noida unit has been duly added back in computation of income unit wise profit and loss statement as well as computation of income under normal provisions of the Act and thus addition made is otherwise too is illegal, invalid and untenable.*
 - 2.2 *That finding of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) that the loss incurred is capita capital loss and thus not admissible is also not in accordance with law and therefore untenable.*
3. *That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has also erred both in law and on facts in upholding the determination of book profits of the appellant company at Rs 152,83,52,562/- as against the book profits of Rs.148,08,37,080 148, declared by the appellant company, which is exfacie without jurisdiction and, even beyond the scope of order u/s 263 of the Act.*
 - 3.1 *That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) has Erred both in law and on facts in making an adjustment of Rs. 152,83,52,562/- while determining*

the book profits u/s 115JB of the Act which is illegal, invalid and untenable.

4. *That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record statutory provisions of law and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.”*

3. We have heard the rival submissions and perused the materials on record. The assessee filed its return of income for the assessment year 2012-13 on 28.11.2012 declaring nil income under normal provisions of the Act after claiming deduction of Rs.151,19,54,517/- u/s 10AA of the Act and book profit of Rs.148,08,37,080/- u/s 115JB of the Act. The assessment was completed u/s 143(3) of the Act on 29.01.2016 accepting the returned income both under the normal provisions of the Act as well as u/s 115JB of the Act. This assessment was revised by the Id. PCIT u/s 263 of the Act vide revision order dated 31.03.2018 setting aside the assessment order to frame the de novo assessment. No appeal admittedly was preferred by the assessee before this Tribunal against the revision order passed u/s 263 of the Act. The Id. Assessing Officer passed the giving effect order u/s 143(3) r.w.s 263 of the Act on 17.12.2018 determining total income

of the assessee at Rs.3,60,86,179/- under normal provisions of the Act and book profit of Rs.152,83,52,562/- u/s 115JB of the Act.

4. The assessee company acquired 1068 equity shares of wholly owned subsidiary company M/s Confirm Net Acquisition Sub Inc. California for 2,13,31,365 USD. These shares were acquired by the assessee in different tranches during the financial years 2008-09 to 2010-11. The assessee sold the aforesaid investments to Ebix Inc. USA for total consideration of USD 2,16,40,000/- thereby resulting in profit amounting to USD 3,08,635/- in dollar terms. However, due to exchange fluctuation, the said transaction resulted in a net loss of Rs.4,75,15,482/- which was debited to the profit and loss account during the year under consideration and shown separately as exceptional items in the profit and loss account. It is pertinent to note that for the purpose of computation of book profit u/s 115JB of the Act, this exchange fluctuation loss on sale of shares of wholly owned subsidiary was claimed as deduction. For the sake of convenience, the computation of exchange fluctuation loss arising out of investment is worked out as under: -

Remittance Details for Confirmnet

Sr. No.	Date of Remittance	Amount in USD
1.	22.11.2008	7354657
2	14.02.2009	3136256
3.	03.12.2009	2000000
4.	24.05.2010	2975386
5.	21.06.2010	2886474
6.	07.10.2010	2978583
	Total	21331365

Exchange Rate 30.05.2011 44.77

Particulars	Amount in USD	Amount in INR
Investment in books	21331365	1,01,63,38,282/-
Amount Received on disinvestment	-21640000	96,88,22,800/-
Net Loss on Investment		4,75,15,482/-

5. The assessing officer in the giving effect proceedings to Sec. 263 of the Act proceeded to treat the exchange fluctuation loss arising on sale of shares of wholly owned subsidiary company to be a capital loss not allowable as deduction. Having said so, he proceeded to disallow the exchange fluctuation loss of Rs.4,75,15,482/- under normal provisions of the Act as well as in the computation of book profit u/s 115JB of the Act. In this regard, it is pertinent to note that the ld. Assessing Officer did not even bother to provide the computation of book profit u/s 115JB of the Act by stating clearly as to how or under which clause of Explanation 1 to Sec. 115JB(2) of the Act would get attracted which enabled the ld. Assessing Officer to add the exchange fluctuation loss of Rs.4,75,15,482/- while computing book profit u/s 115JB of

the Act. The entire assessment order is silent on this issue with regard to the addition to book profit u/s 115JB of the Act. This aspect was not even considered by the ld. CIT(A) and accordingly the action of the ld. Assessing Officer stood upheld by the ld. CIT(A).

6. At the outset, we find that there is absolutely no discussion in the assessment order to add the sum of Rs.4,75,15,482/- towards exchange fluctuation loss to be added back while computing the book profit u/s 115JB of the Act. The ld. Assessing Officer is duty bound to mention under which clause of Explanation 1 to Sec. 115JB(2) of the Act would get attracted in the instant case to make an addition of Rs.4,75,15,482/- to the book profit u/s 115JB of the Act. Hence, it could be safely concluded that the said addition has been made against the provisions of Sec. 115JB of the Act and accordingly deserve to be deleted at once while computing the profit under Section 115JB of the Act. In any event, we find that this item does not fall under any of the clauses mentioned in Explanation 1 to section 115JB (2) of the Act warranting any addition to book profit under Section 115JB of the Act. The law is very well settled by the decision of Hon'ble Supreme Court in the

case of Apollo Tyres Ltd. reported in 255 ITR 273 (SC) wherein it was held that the ld. Assessing Officer is not empowered to make any addition or deletion to book profit under Section 115 JB of the Act other than those specifically contemplated in Explanation 1 to section 115 JB (2) of the Act. The entire discussion of the ld. Assessing Officer in the impugned assessment order (i.e. the set aside assessment proceedings to section 263 order) was only with regard to computation of income under normal provisions of the Act qua the disallowance of exchange fluctuation loss treating it as capital loss. Specific query was put to the ld. AR by the Bench as to whether the treatment given by the assessee by debiting the exchange fluctuation loss arising on account of investment in its profit and loss account was indeed accepted by the Registrar of Companies. In response, the ld. AR made a statement from the Bar that no adverse inference was drawn by Registrar of Companies on the audited financial statements and annual returns submitted by the assessee. Further, we find the very same accounts were indeed presented to the shareholders in the General Body Meeting and the same were duly approved by them. Hence, the ratio laid down by the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (supra)

squarely applies to the facts of the instant case. Accordingly, ground nos. 3 and 3.1 raised by the assessee are allowed.

7. Ground no.1 raised by the assessee is general in nature and does not require any specific adjudication.

8. The ground nos. 2, 2.1 and 2.2 raised by the assessee for challenging the disallowance of exchange fluctuation loss under normal provisions of the Act. It is not in dispute that the said exchange fluctuation loss had arose to the assessee on account of investment in share transaction. Even though, assessee made a profit on the sale of investment in shares of wholly owned subsidiary company in dollar terms, but due to exchange fluctuation in accordance with Accounting Standard 11 issued by Institute of Chartered Accountants of India, the said transaction in dollar terms stood converted into INR and resulted in exchange fluctuation loss of Rs.4,75,15,482/-. In our considered opinion, the said exchange fluctuation loss had indeed arose only on account of capital account transaction and does not qualify to be allowed as a deduction while computing income under normal provisions of the Act. The decision relied upon by the ld. A.R on the Hon'ble Apex

Court in the case of CIT Vs. Woodward Governor India (P) Ltd. reported in 312 ITR 254 (SC) would not come to the rescue of the assessee as the said decision was rendered in the context of exchange fluctuation gains or losses arising on revenue account transactions, whereas in the present case, the said foreign exchange fluctuation loss arose on capital account transaction. Hence, the exchange fluctuation loss of Rs.4,75,15,482/- is not an allowable deduction while computing income under normal provisions of the Act. However, we find that the assessee had maintained division wise profit and loss account for the year ended 31.03.2012 for Noida Unit, Noida Special Economic Zone Unit, Nagpur Unit & Chennai Unit. The division wise profit and loss account is enclosed in page 7 of the paper book. The assessee had incurred losses in Noida Unit and Chennai Unit. We find from the division wise profit and loss account that the exchange fluctuation loss on sale of investment amounting to Rs.4,75,15,482/- has been debited by the assessee in Noida Unit. After debiting the said exchange fluctuation loss to Noida Unit, it had resulted in a loss of Rs.1,03,81,487/- which was duly disallowed by the assessee voluntarily in the return of income while computing income under

normal provisions of the Act. Since, we have already held that the exchange fluctuation loss of Rs.4,75,15,482/- is not allowable deduction under normal provisions of the Act, division wise profit and loss account requires to be amended as under:-

Sr. No.	Particulars	Chennai (Rs.)	Noida (Rs.)
i.	Total receipts (A)	----	4,57,38,731
ii.	Total expenditure (B)	2,48,28,028	86,04,736
	NET (C) = (A-B)	(2,48,28,028)	3,71,33,995

9. As a result of the aforesaid workings, there would be a surplus of Rs.1,23,05,967/- [3,71,33,995 (-) 2,48,28,028] which have to be added to the total business income computed by the assessee.

Hence, the total income of the assessee would be as under:-

Total business income as shown by the assessee	Rs.150,05,25,214/-
Addition as contemplated above	Rs.123,05,967/-
Total	Rs.151,28,31,181/-
Less: Exemption u/s 10AA	
As allowed by the Id. Assessing Officer	Rs.151,19,54,517/-
Assessed business income	Rs.8,76,664/-

10. The tax payable by the assessee under normal provisions of the Act for the total income of Rs.8,76,664/- would be far less than tax payable on the book profit of Rs.148,08,37,080/- u/s 115JB of the Act. With these observations, the ground nos. 2 & 3 raised by the assessee are partly allowed.

11. Ground No. 4 raised by the assessee is general in nature and does not require any specific adjudication.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 16.07.2024

-Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:16/07/2024

Rohit/p.s.

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Draft dictated

10.07.2024