

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 734/KOL/2023  
Assessment Year: 2015-2016**

***Splendour Villa Makers Pvt. Ltd.,.....Appellant  
Flat-4D, Lansdown Heights,  
6, Sarat Bose Road, Bhowanipur,  
Kolkata-700020  
[PAN:AAHCS9726M]***

**-Vs.-**

***Assistant Commissioner of Income Tax,.....Respondent  
Circle-12(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Miraj D. Shah, A.R., appeared on behalf of the  
assessee*

*Shri B.K. Singh, Addl. CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing : June 05, 2024**

**Date of pronouncing the order : July 25, 2024**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi dated 26<sup>th</sup> May, 2023 passed for assessment year 2015-16.

2. The assessee has taken eight grounds of appeal, which are not in consonance of Rule 8 of Income Tax Appellate Tribunal Rules. In brief, its grievances revolve around a single issue namely, whether capital gain earned on sale of flats by the assessee be directed to be added in the book profit computed under section 115JB of the Income Tax Act or not. In Ground No. 6, the assessee has sought permission to adduce additional evidences in terms of Rule 29 of the Income Tax Appellate Tribunal Rules, 1963.

3. Brief facts of the case are that the assessee-company has filed its return of income electronically on 22.03.2016 declaring total income of Rs.60,37,050/-. The case of the assessee was selected for scrutiny assessment and notices under sections 143(2) and 142(1) were issued and served upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee has sold flats No.1402B and 1402C. It did not credit its profit & loss account by the gain from the sale of capital asset (flats). The ld. Assessing Officer confronted the assessee to explain as to why the gain from sale of flats should not be considered for the calculation of book profit. The assessee vide its written submission dated 10.10.2017 explained that those flats were held as a capital asset and the income from the same was not income from regular operation and in the normal computation of income, the capital gain has been offered to tax after taking the indexation cost. The assessee also submitted that the gains from the sale of

these two flats were credited as a capital reserve account in the audited accounts of the company and the fact is duly reflected in the note-sheet to the audited accounts. The assessee thereafter relied upon the judgment of the Hon'ble Supreme Court in the case of Apollo Tyres Limited -vs.- CIT reported in 255 ITR 273 and submitted that the ld. Assessing Officer has no jurisdiction to tinker with the book profit determined by the assessee, which has been qualified by the auditors. The ld. Assessing Officer did not accept this contention of the assessee and held that if the accounts are not prepared under the Companies Act in accordance with Part-I & III of Schedule VI, then ld. Assessing Officer has every right to tinker with those accounts and make adjustment in the computation of book profit. The ld. Assessing Officer has made a lucid discussion on this subject. It is worth to take note of his finding, which reads as under:-

*“The Hon'ble Supreme Court in the case of Apollo Tyres has held that the AO has to satisfy himself as to whether, the Auditors have certified that Profit & Loss Account is in accordance with Part - I & III of the Schedule- VI.*

*If the Auditors have certified that the accounts have been properly maintained but subject to certain Notes on Accounts or Qualification on the accounts, then, the AO is duty bound to adjust the amount of profit shown in Profit & Loss Account with the figures affecting profit, which reported in Notes on Accounts suggesting deviation from S. 211 - Schedule - VI, and Accounting Standard.*

*In the case of Apollo Tyres, the question before the Apex court was whether an A.O. can, while assessing a company for income tax u/s. 115J of the I.T. Act, question the correctness of the P&L Account prepared in accordance with requirement of part-II & III of schedule VI of the Company's Act. From the question as same before the Apex court it is clear that the issue before the Hon'ble Apex Court was with regard to the power of the A.O. to recast audited accounts prepared in accordance with part- II & III of schedule VI of the Company's*

*Act. Therefore, for applicability of the decision of the Apex court the prerequisite is that whether the accounts are prepared in accordance with part II and part III to schedule VI of the Companies Act. If however, the P&L Account are not in accordance with part II & III of schedule VI the said decision cannot be applied and in that situation it does not prohibit the needful adjustment.*

*With the above discussion the only question left to be considered is whether exclusion of the Capital receipt is in line with the principal as laid down by Hon'ble Apex court in the case of Apollo Tyres.*

*The ruling of Delhi ITAT in the case of Growth Avenue Securities Pvt. Ltd. -vs- DCIT (ITA No. 3912/Del/2005) on the issue of inclusion of Capital Gain in Book Profit while computing MAT under the provision of the Indian Tax Law, where Capital Gain are not chargeable to tax under the normal provision of the Indian Tax Law may be considered. The ITAT held that any adjustment outside the scope of MAT computation mechanism, under the Indian Tax Law (ITL) is not permissible and since the exclusion of Capital Gains is not specifically provided therein, a tax payer is not entitled to such an adjustment while computing Book Profit for the purpose of MAT. The Financial statement of the assessee is made to clearly disclose the result of the working of the company during the period covered by the accounts. Here, the P&L Account do not reflect it to result of the working of the company for the year, and it cannot be said that the P&L Account was prepared as per schedule VI, part-II & III of the Company's Act and it would necessitate corrective adjustment so as to comply with schedule VI part II & III.*

*The issue whether capital gain had to be included in Book Profit arises before the Bombay High Court in the case of Veekaylal Investment Company Pvt. Ltd. In the case court held that if for computing the total income under the normal provision capital gain computed u/s. 45 of the Act has to be taken into account, it was not understood how in computing the Book Profit u/s. 115J of the Act, the assessee could exclude capital gain. It was opined that while computing Book Profit under the Company's act the assessee has to include Capital Gain for computing Book Profit u/s. 115J. Even under clause 3(XII) of part II of schedule VI to the Company's Act, 1956, profits or losses in respect of transaction of an exceptional or non-recurring nature are to be disclosed. A simple reading of the above makes it clear that Hon'ble Bombay High Court has expounded that P&L Account drawn up without considering the capital gain cannot be said to be in accordance with the provision of part II and III of the Company's Act.*

*The decision of Mumbai Tribunal in the case of Bombay Diamond and that of Bangalore Tribunal in the case of Syndicate Bank where also Tribunal, after considering the decision of Supreme Court in the case of Apollo Tyres and explaining the same, have permitted adjustment to the profit as per P&L Account, so as to comply with schedule VI part-II & III of the Company's Act which is a prerequisite for sec. 115JB.*

*In this aspect the decision of the Hon'ble High Court of Calcutta in the case of GKW Ltd. -vs-CIT vide order dtd. 13/07/2011 may be considered. In this case the question framed was whether the Tribunal was justified in law in holding that the profit on sale of fixed assets amounting to Rs. 6,29,01,024/- formed part of the Book Profit u/s. 115JA of the I.T. Act 1961. The Hon'ble Court has held that it is absurd to suggest that the profit on sale of fixed assets amounting to Rs. . 6,29,01,024/- did not form part of the Book Profit u/s. 115JA of the I.T. Act. 1961. It was held that Tribunal rightly decided the aforesaid points in favour of the revenue. Ld. ITAT, Mumbai Bench in the case of Summer Builders Pvt. Ltd. -vs-DCIT in ITA No. 2512 to 2514 (Mum) of 2009 vide order dtd. 13/01/2012 held that not crediting profit on sale of shares to P&L Account was contrary to significant accounting policy of assessee itself as well as requirement of part-II & III of Schedule VI of Company's Act, 1956. It was held that assessing officer had rightly brought profit on sale of shares through taxation under MAT provision of Sec. 115JB.*

*The Book profit u/s 115JB is the Profit as per P&L Account prepared in accordance with Companies Act subject to some addition and deletion as prescribed in the explanation 1 to subsection (2) of section 115JB. The Companies Act does not permit any indexation of cost and the prescribed adjustments of section 115JB does not include such adjustment. So, the indexation of cost for acquisition and improvement of the asset as claimed by the assessee is ignored.*

*From the above it is clear that:*

- (1) When the P&L Account is not prepared as per the relevant provision of the Companies Act, the assessing officer has the right to make adjustment of profit so as to fit the provision of the Companies Act*
- (2) The Capital Gain from the sale of fixed asset is an integral part of the P&L Account prepared as per Companies Act.*

*(3) There is no provision of taking indexed cost of acquisition or indexed cost of improvement while preparing the P&L Account as per companies Act and such adjustment are also not provided in the section 115JB.*

4. Appeal to the Id. CIT(Appeals) did not bring any relief to the assessee.

5. Ld. Counsel for the assessee has raised two folds of contention. In his first fold of contention, he submitted that the issue in dispute is covered by the judgment of the Hon'ble Bombay High Court in the case of Pr. Commissioner of Income Tax -vs.- M/s. Bhagwan Industries Limited in Income Tax Appeal No. 436 of 2015. According to the Id. Counsel for the assessee that in this case, the assessee had directly credited the profit arising from sale of land to Capital Reserve Account in the Balance sheet rather than routing it through Profit & Loss Account in the manner provided as per Part-II and Part-III of Schedule VI to the Companies Act. This account of the assessee was accepted by the ITAT and the Hon'ble High Court has dismissed the appeal of the Revenue. He thereafter relied upon the order of the ITAT passed in the case of M/s. MBL A Capital Ltd. -vs.- Pr. CIT-2, Kolkata. In his alternative contention, he submitted that if it is to be held that this gain ought to be routed through the Profit & Loss Account and it requires adjustment in the computation of book profit, then benefit of indexation ought to be granted to the assessee while computing the book profit. For this purpose, the assessee relied upon the judgment of the Hon'ble Karnataka High Court in the case of M/s. Best Trading And Agencies Limited -vs.- DCIT reported in 428 ITR 52 (Karnataka).

6. On the other hand, Id. D.R. relied upon the orders of the revenue authorities.

7. We have duly considered the rival contentions and gone through the record carefully. As far as the judgment of ITAT, Kolkata in the case of MBL A Capital Ltd. relied upon by the Id. Counsel for the assessee is concerned, in that case action of the Id. CIT taken under section 263 was challenged by the assessee before the Tribunal. In that case, the scrutiny assessment was selected for limited scrutiny relating to the examination of issue of expenses incurred for earning of exempt income. In that background, the Tribunal has held that no other issue ought to be entertained. The Tribunal has held that assessment order neither erroneous nor prejudicial to the interest of revenue. As far as observation of the Tribunal on the basis of judgment of the Hon'ble Karnataka High Court in the case of Best Trading and Agencies Limited is concerned, that aspect is not being adjudicated by the Tribunal specifically in the given facts. It was just tested on the point whether action under section 263 is justifiable or not. The judgment of the Hon'ble Bombay High Court in the case of Bhagwan Industries Limited is concerned, we are of the view that this judgment is totally silent either on the construction of the interpretation of the provision or due consideration of the fact as to how it is applicable on this aspect. The total finding of the Hon'ble High Court is being reproduced as under:-

*"2. The learned counsel for the Respondent supports the Order.*

3. *Tribunal while passing the impugned Order observed that while computing the book profit under Section 115JB of the Income-Tax Act, the Assessing Officer added the sum of Rs.2,84,84,000/- in the book profit. The Commissioner of Income- Tax (Appeals) deleted the addition. The Tribunal referring to the Judgment of the Apex Court in a case of Apollo Tyres Ltd. v. C.I.T. reported in 255 ITR 273 and Judgment of this Court in case of Akshay Textiles Trading and Agencies Pvt.Ltd., reported in 304 ITR 401 has observed as under :*

*“Respectfully following the decision of Hon'ble Bombay High Court in the case of Abdhut Trading Co. Pvt. Ltd. (supra) and in the case of Akshay Textiles Trading and Agencies Pvt. Ltd. (supra), we do not find any infirmity in the order of Id. CIT(A) for deleting the addition under Section 115JB.”*

*4. In light of above, the Tribunal has not committed any error. The Appeal as such is dismissed. No costs”.*

8. As far as the question of granting benefit of indexation is concerned, we find that for the purpose of computing book profit, the assessee has to prepare its accounts in accordance with Part-I & Part-III of Schedule VI of the Companies Act. There is no concept of indexation in the Companies Act. The benefit of indexation is only available if capital gain is being computed for the purpose of taxation, but both these concepts operated in different fields for the purpose of book profit. Provisions of Income Tax are not to be drawn, rather that is to be computed under the Companies Act i.e. in accordance with Part-I and Part-II of Schedule-VI. Under that provision, there is no concept of granting benefit of indexation. Decision of the Hon'ble Karnataka High Court has brought to our notice by the ld. Counsel for the assessee in the case of Best Trading and Agencies Limited (supra) in support of his contention that for the purpose of computing book profit, the assessee is eligible to first claim the indexed cost benefit and the resultant profit is only required to be added in the book profit.

However, we fail to find any force in the submission of the Id. Counsel for the assessee and also find that the judgment of the Hon'ble Karnataka High Court in the case of Best Trading and Agencies Limited (supra) is not applicable on the facts of the instant case. On perusal of the order of the Hon'ble Court, we observe that Hon'ble Court has held that there is no provision under 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. Hon'ble Court has thus held that if a Company is subjected to section 115JB of the Act, it is still not precluded from claiming the benefit of indexed cost of acquisition for calculating the income under section 45 of the Act at the rate provided under section 112 of the Act. Thus, the objective of section 45 and section 115JB of the Act operates in different fields. We completely agree with the finding of the Hon'ble Court that section 45 read with section 112 of the Act, which is part of the Income Tax Act deals with the calculation of long-term capital gain and capital asset held for more than three years and the assessee is eligible for indexed cost benefit even if it is subjected to section 115JB of the Act. However, in the instant case, since the issue is only relating to computation of book profit under section 115JB of the Act and not the computation of income under section 45 of the Act, therefore, the judgment of the Hon'ble Karnataka High Court in the case of Best Trading and Agencies Limited (supra) will not be of any help to the assessee. Therefore, since the issue before us is only that whether the assessee is eligible to calculate book profit by including net gains from sale of capital assets, after claiming indexed cost of acquisition and the

book profit is to be calculated in accordance with Part-II and Part-III of Schedule VI of Companies Act and subject to the adjustments provided under section 115JB of the Act and in absence of any specific clause under section 115JB of the Act, which could provide alleged benefit claimed by the assessee, we are inclined to hold against the assessee and confirm the view taken by the Id. CIT(Appeals).

9. In view of the above discussion, we do not find any error in the finding of the revenue authorities and this appeal is devoid of any merit, hence dismissed.

**10. In the result, the appeal of the assessee is dismissed.**

Order pronounced in the open Court on 25/07/2024.

Sd/-

**(Manish Borad)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 25<sup>th</sup> day of July, 2024***

*Copies to :(1 Splendour Villa Makers Pvt. Ltd.,  
Flat-4D, Lansdown Heights,  
6, Sarat Bose Road, Bhowanipur,  
Kolkata-700020  
(2) Assistant Commissioner of Income Tax,  
Circle-12(2), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069  
(3) Commissioner of Income Tax (Appeals),  
National Faceless Appeal Centre (NFAC), Delhi;*

(4) CIT- , Kolkata  
(5) The Departmental Representative;  
(6) Guard File  
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*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**