

**IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI**  
**BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 111/Mum/2024  
(Assessment Year: 2018-19)

Fine Estates Private Limited 111, Maker Chambers IV, 11 <sup>th</sup> Floor, Nariman Point, Mumbai-400 021	Vs.	Pr. CIT-2 Room No. 344, 3 <sup>rd</sup> Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAACF 2738 F		
(Assessee)	:	(Respondent)
<b>Assessee by</b>	:	Shri Vijay Mehta
<b>Respondent by</b>	:	Shri Parsoon Kabra
<b>Date of Hearing</b>	:	06.05.2024
<b>Date of Pronouncement</b>	:	01.08.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

The captioned appeal has been filed by the assessee, challenging the order of the learned Principal Commissioner of Income Tax (‘ld. Pr. CIT for short) passed u/s.263 of the Income Tax Act, 1961 (‘the Act’), relevant to the Assessment Year (‘A.Y.’ for short) 2018-19.

2. The assessee has challenged the order of the ld. PCIT in invoking section 263 of the Act for making an addition amounting to Rs.5,00,01,850/- on the issue of computing book profit u/s. 115JB of the Act, pertaining to the share of loss received from the partnership firm and holding that the assessment order dated 19.04.2021 to be erroneous and prejudicial to the interest of the Revenue.

3. Briefly stated the assessee company is engaged in the business of renting of premises and providing professional services towards coordination and facilitation of projects and investment activities. The assessee had filed its return of income dated 30.09.2018, declaring total income of Rs.14,40,690/- under the normal provisions of the Act and loss of Rs.1,85,80,649/- u/s. 115JB of the Act. The assessee's case was selected for complete scrutiny and notice u/s. 143(2) and 142(1) were duly issued and served upon the assessee.

4. The Id. Assessing Officer ('A.O.' for short) then passed the assessment order dated 19.04.2021 u/s. 143(3) r.w.s. 144B of the Act determining the total income at Rs.84,13,706/- after making an addition of Rs.69,50,978/- and Rs.22,039/- as per the adjustment made u/s. 143(1) of the Act vide intimation dated 16.07.2019.

5. The Id. PCIT invoked section 263 of the Act on the ground that the assessment order was erroneous and prejudicial to the interest of the Revenue for the reason that the assessee has debited share of loss from LLP amounting to Rs.17,28,891/- u/s. 10(2A) of the Act and share of loss from partnership firm amounting to Rs.4,82,72,959/- u/s. 10(2A) of the Act aggregating to Rs.5,00,01,850/- in its profit and loss account which was not added back while computing the book profit u/s. 115JB of the Act. The Id. PCIT assumed jurisdiction u/s. 263 of the Act for the reason that the Id. A.O. has not examined the same during the assessment proceeding.

6. As there was no representation made during the revisionary proceeding, the Id. PCIT passed the order u/s. 263 of the I. T Act dated 08.12.2023 after duly considering the

written submission filed by the assessee dated 17.02.2023 and held the assessment order to be erroneous and prejudicial to the interest of the Revenue and thereby determined the total income at Rs.3,14,21,201/- to the book profit u/s. 115JB of the Act, where the total income determined under the normal provisions remain unchanged at Rs.84,13,706/-.

7. Aggrieved the assessee is in appeal before us, challenging the order of the Id. PCIT.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee has duly disallowed the share of loss from LLP and from partnership firm while computing the business income under the regular provisions of the Act and had also filed computation of Minimum Alternate Tax (MAT for short) u/s. 115JB of the Act during the assessment proceeding which was duly enquired and examined by the Id. A.O. who in the assessment order has accepted the deemed income computed u/s. 115JB of the Act. The Id. AR further stated that there was share of loss from LLP and partnership firm during the year under consideration which was exempted u/s. 10(2A) of the Act which the assessee had debited to the profit and loss account and was not added back while computing profit u/s. 115JB of the Act for the reason that the said share of loss is not an expenditure which is relatable to the exempt income u/s. 10(2A) of the Act. The Id. AR further stated that the provisions of section 115JB of the Act does not expressly state that 'income' includes losses and that it was never the intention of the legislature to bring losses under the purview of income. The Id. AR relied on the provision of *Explanation 2* to section 64 of the Act where the statute has expressly included income to be losses and also brought our attention to *Explanation 1(fc)* and *(ie)*

to section 115JB of the Act. The ld. AR contended that the ld. PCIT had relied on the decision of the co-ordinate bench in the case of *DCIT vs. Fixit (P.) Ltd.* [2018] 95 taxmann.com 188 (Chennai) wherein it was held that the losses from partnership firm and from LLP is to be added back for computing the book profit u/s. 115JB of the Act without considering that the said decision is an *ex parte* order passed by the Tribunal without duly considering the decision of the ITAT, Mumbai in the case of *Metro Exporters* 10 SOT 647 (Mum) and the Kolkata Bench decision in the case of *DCIT vs. C. D. Equifinance Pvt. Ltd.* (in ITA No. 2146/Kol/2019) which has decided this issue in favour of the assessee in section 115JB provision which is *para materia* to section 115JB of the Act. The ld. AR prayed that the revisionary order passed u/s. 263 of the Act to be quashed and held to be bad in law.

9. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said fact and stated that the loss from the partnership firm and LLP has to be added back while computing the book profit u/s. 115JB of the Act where the assessee *suo moto* while computing the book profit u/s. 115JB of the Act has proposed two separate column for adding back the said losses. The ld. DR further stated that the income also includes loss and relied on the decision of the Hon'ble Apex Court in the case of *J. H. Gotla* 156 ITR 323 (SC) for the said proposition. The ld. DR also relied on the decision of the ITAT Chennai Bench in the case of *Fixit (P.) Ltd.* (supra) which has been extensively relied upon by the ld. PCIT. The ld. DR contended that as this issue has not been enquired or verified by the ld. A.O., the assessment order therefore qualifies to

be erroneous and prejudicial to the interest of the Revenue and prayed that the order of the Id. PCIT be upheld.

10. We have heard the rival submissions and perused the materials available on record. The moot questions to be determined in this appeal are :

- whether the share of loss from assessee's partnership firm and from LLP is to be added back while computing book profit u/s. 115JB of the Act and;
- whether the same would be relatable expenditure to the earning of exempt income and;
- whether the income would include loss in the absence of express provision of section 115JB of the Act and;
- whether the same would be a debatable issue when there are two contradictory decisions of the Tribunal.

11. It is observed that the assessee has debited the share of losses from LLP amounting to Rs.17,20,891/- and from partnership firm amounting to Rs.4,82,72,959/- u/s. 10(2A) of the Act which was debited to the profit and loss account and not added back while computing the profit u/s. 115JB of the Act for the reason that the loss incurred does not equate income as per section 115JB of the Act. The assessee has contended that its case was squarely covered by the decision of the Kolkata Bench of the Tribunal in the case of *C. D. Equifinance Pvt. Ltd.* where the Id. CIT(A) and the Tribunal held that the share of losses from partnership firm should not be added while computing the book profit u/s. 115JB of the Act. It is also observed that the assessee has computed a loss of Rs.1,85,80,649/- while computing the book profit u/s. 115JB of the Act and made no further adjustment with regard to the share of losses from LLP and partnership firm which was only debited in the profit and loss account. The assessee has claimed relief

under sub clause (f) to *Explanation 1* of section 115JB of the Act by holding that the share of loss from firm is not an expenditure relatable to exempt income u/s. 10 of the Act. The Id. PCIT, on the other hand, held the share of losses to be a negative profit which has to be reduced out of the income as per section 10 of the Act and as per *Explanation 2* to section 115JB of the Act. It is pertinent to peruse the arguments enhanced by the Id. AR where the intention of the legislature has to be clearly expressed in equating “loss” to “income” as in *Explanation 2* to section 64 of the Act stating that “income includes loss”.

12. The Id. AR negated the contention that even in section 115JB of the Act income includes loss for the reason that it has not been specifically stated so in the said provision unlike section 64 of the Act. We, therefore, are convinced with the fact that income does not include losses in all cases, on the issue of two distinct decision of the Tribunal, one in favour of the assessee and the other against the assessee. On perusal of the said decisions, it is observed that the Revenue has placed reliance on the decision of the Chennai Bench of the Tribunal which has been pointed out by the Id. AR that it is an *ex parte* order where the Bench did not have an option to consider the decision of the Kolkata Bench which has held that the share of losses from LLP and partnership firm is not a relatable expenditure for earning exempt income and the same ought not to be added while computing the book profit u/s. 115JB of the Act. We find force in the submission of the Id. AR on this issue. Lastly, to consider whether an order is erroneous and prejudicial to the interest of the Revenue there are various decisions of the Tribunal as well as the higher forum which has held that when there are two plausible views in an issue, where

the Id. A.O. has taken one of such view, then it would not categorize to be an order which is erroneous and prejudicial to the interest of the Revenue. In order to exercise revisionary powers, the Id. PCIT will have to satisfy the twin condition that the order passed by the Id. A.O. is without enquiry and verification of the facts the same should be both erroneous as well as prejudicial to the interest of the Revenue. In the present case in hand, we are aware that there has been two views taken by two different benches one in favour and against the assessee qualifying the same to be a debatable issue for which the revisionary power u/s. 263 could not be exercised. Considering all these facts, we are of the considered view that the assessment order passed by the Id. A.O. is not erroneous and prejudicial to the Revenue and we hold that the order of the Id. PCIT passed u/s. 263 of the Act to be bad in law and is, therefore, liable to be quashed.

13. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 01.08.2024.*

Sd/-

Sd/-

(B R Baskaran)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 01.08.2024

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai