

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

श्री संजय अवरथी, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE-PRESIDENT

&

SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 406/KOL/2023

Assessment Year: 2018-19

***Industrial Investment Bank of India Limited.....Appellant
[PAN: AABCI 0324 D]***

Vs.

PCIT, Kolkata -2, Kolkata.....Respondent

Appearances:

Assessee represented by: Sanjay Bhattacharaya, FCA.

Department represented by: Subhendu Datta, CIT DR.

Date of concluding the hearing : July 9th, 2024

Date of pronouncing the order : September 10th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

Before spelling out the contentious issues in this case, it is necessary to mention a brief chronology regarding the proceedings before Income Tax Authorities, as also the proceedings of voluntary liquidation undertaken by the company since the year 2012. In this case, the return for AY 2018-19 was filed on 21.09.2018 declaring total income of Rs. 26,50,70,571/-. This income was set off against brought forward losses, thereby reducing the taxable income to "NIL". Through a rather cryptic assessment order dated 22.02.2021 the Assessing Officer (hereinafter referred to as ld. 'AO') the total income was

again assessed at “NIL”. Thereafter, the Pr. Commissioner of Income Tax, Kolkata-2 (hereinafter referred to as Ld. 'Pr. CIT') initiated proceedings u/s 263 of the Income Tax Act, 1961 (in short the 'Act') mainly on the ground that the assessee had not computed income under the provisions of Minimum Alternate Tax (in short 'MAT') and had not computed book profit on the basis of claim that provisions of MAT were not applicable on him. A detailed show cause notice u/s 263 of the Act was issued on 08.02.2023 regarding the action of the appellant in not computing tax as per the provisions of MAT. The assessee is seen to have given a detailed reply to the said notice and the same is duly reproduced in the body of the impugned order. We will have occasion to deal with the facts peculiar to this case and hence, the contents of the response to the Ld. Pr. CIT's notice u/s 263 of the Act are not discussed in detail here. Suffice it to say that the appellant claimed that they are a company undergoing voluntary liquidation and hence, are not preparing accounts from which any “book profit” can be worked out. This argument is not elaborated upon at this stage since there will be occasion to discuss it later in detail. Thereafter, Ld. Pr. CIT proceeded to hold that the provisions of Section u/s 115JB of the Act would squarely apply to the assessee even when he is undergoing voluntary liquidation. To strengthen his argument regarding the applicability of Section 263 of the Act, he has also held that in this case the Ld. AO did not conduct any enquiry whatsoever on this issue and effectively assessed the case on the returned income. Ld. Pr. CIT has relied on a number of authorities to demonstrate that this case is one where the order of the Ld. AO is erroneous insofar as it is prejudicial to the interests of the Revenue. Through the impugned order, the Ld. Pr. CIT directed the Ld. AO to pass a fresh assessment order in the assessee's case.

1.1. Coming to the second limb of fact regarding the peculiar status of the appellant company, the same may be briefly summarized in the following manner:

A) It deserves to be mentioned that the appellant is a wholly owned company of the Govt. of India, with its entire share capital being held by the

Hon'ble President of India and her seven nominees. Considering poor financial performance, in accordance with the directions of the Ministry of Finance, Govt. of India, at an Extraordinary General Meeting (in short 'EGM') of the shareholders on 05.09.2012, it was decided in accordance with Section 484 of the Companies Act, 1956 (Section 304 of the Companies Act, 2013) to go in for voluntary winding up. Consequent upon the adoption of this special resolution for winding up, it became a case of Members' voluntary winding up after which the company has not been carrying on any business activity other than realizing its assets and discharging its statutory liabilities. Here it needs to be mentioned that the voluntary winding up was authorized when the Companies Act, 1956 was still in force and thus, in a number of places in the appellant's submission this particular Act has been mentioned, with corresponding Sections in Companies Act, 2013. However, for the sake of convenience and for the purposes of this adjudication, we would be referring mainly to the provisions of Companies Act, 2013, corresponding to relevant provisions of Companies Act, 1956.

B) It has been claimed by the appellant that they are following a mandate u/s 348 of the Companies Act, 2013 (Section 551 of Companies Act, 1956) and preparing only quarterly receipts and payments accounts in prescribed Form No. 153 as per the Companies (Court) Rules, 1959. It has been informed to this Bench that the said quarterly receipts and payments accounts are being audited by internal auditors and thereafter by the statutory auditors. Following the statutory audit, the said audited accounts are placed before the shareholders at the quarterly EGM for adoption u/s 314 of the Companies Act, 2013 (Section 512 of the Companies Act, 1956). It has been informed that after placement of such accounts in the EGM the same are filed with the Registrar of Companies (in short 'RoC') and eventually forwarded to the Ministry of Finance, Govt. of India for placement before both the Houses of Parliament u/s 394 of the Companies Act, 2013 (Section 619A of the Companies Act, 1956).

C) It has been claimed that since only a receipts and payments account is being prepared, there is, as claimed, no scope to prepare a profit and loss account and balance sheet in accordance with Schedule 3 of the Companies Act, 2013 (Schedule 6 of the Companies Act, 1956).

D) It is a matter of record that the winding up is continuing up to the year under consideration and even beyond.

1.2. Aggrieved with the action of Id. Pr. CIT, the appellant has filed the present appeal with the following grounds of appeal:

“1. That the Ld. Principal Commissioner of Income-tax was wrong in holding that the Assessment Order dated 22/02/2021 passed u/s 143(3) was allegedly erroneous in so far as it was allegedly prejudicial to the interest of Revenue and thus he erred in setting aside the said Assessment Order for the Assessment Year 2018-19.

2. That without prejudice to the contention raised in Ground No. 1 above, the Ld. Principal Commissioner of Income-tax was wrong in not appreciating the fact that in the absence of requirement of preparation of any Profit and Loss Account under the Companies Act, 2013 for a company under a voluntary liquidation and also due to the fact that there had not been any scope in the prescribed Return Form (ITR-6) for computing any Book Profit u/s 115JB(2), the appellant could not have computed any Book Profit u/s 115JB(2) and thus the Ld. Principal Commissioner of Income-tax erred in holding the Assessment Order dated 22/02/2021 passed u/s 143(3) as allegedly erroneous in so far as it was allegedly prejudicial to the interest of Revenue.

3. That without prejudice to the contentions raised in Grounds Nos. 1 and 2 above, the Ld. Principal Commissioner of Income-tax was wrong in directing the Assessing Officer to reframe the assessment afresh through an Order passed u/s 263.

4. That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal before or at the hearing of the appeal.”

2. Before us, a paper book has been filed along with written submissions. In the paper book, apart from the brief narration of the issues under consideration, extracts from Companies Act, 1956 and Companies Act, 2013 have been placed for our consideration. To begin with, the appellant has contended that as per the requirement of Section 115JB of the Act, book profits are required to be computed as per Section 115JB(2) of the Act. This

sub-Section requires that “a statement of profit and loss” needs to be prepared, which thereafter must be laid before the annual general meeting of the concerned company. It has been averred that due to the statutory provisions governing voluntary winding up of companies it is, as has been vehemently asserted, not possible to prepare a profit and loss statement because there is only a requirement of preparing a receipts and payments account. Also, it has been claimed that there cannot be any annual general meeting in which such accounts can be presented because the company is under voluntary winding up. Through this reasoning, it has been argued that the provisions of Section 115JB of the Act cannot be fulfilled because it is not possible to prepare a “statement of profit and loss” which is *sine qua non* for complying with this provision. In support of this line of argument it has been pointed out that the CBDT prescribed ITR-6 as a specific schedule for companies in liquidation and in the instructions for filling up this form, it has been mentioned that this particular portion needs to be filled up by the official liquidator in respect of company under liquidation. It is also mentioned in the instructions that in respect of such companies, filing of balance sheet and profit and loss account is not mandatory if the same has not been drawn. The language of this part of the instructions for filling up of ITR-6 has been used to argue that even the CBDT is aware that in cases of winding up of companies it may not be possible to prepare balance sheet and profit and loss account. Building further on this argument, the appellant has urged that computation of book profit can commence only when balance sheet and profit and loss account can be prepared. Again, since this is not possible in the present case hence, the provisions of Section 115JB of the Act would not apply. A critical portion of the submissions, which will have a bearing on the eventual outcome of this adjudication, deserves to be extracted as under:

“(8) For the Assessment Year 2018-19 the surplus of the year after adjustment of the inadmissible amount u/s 40(a)(iv) came to Rs.26,50,70,571. Due to set off of Brought Forward Business loss relating to the Assessment Year 2010-11 the entire surplus. amount of Rs.26,50,70,571 became NIL. The income-tax positions of the subsequent year are given below:

Sl. No.	Assessment Year	Business Income of the Year	Set off of B/f Business Loss	Total Income	Tax Paid
		Rs.	Rs.	Rs.	Rs.
1.	2019-10	21,88,80,431	21,88,80,431	NIL	NIL
2.	2020-21	28,88,78,415	28,88,78,415	NIL	NIL
3.	2021-22	26,20,37,997	26,20,37,997	NIL	NIL
4.	2022-23	22,86,58,450	NIL	22,86,58,450	5,75,48,759
5.	2023-24	21,89,92,930	NIL	21,89,92,930	5,51,16,141

On the basis of the above facts it may kindly be appreciated that as soon as the Brought forward losses got set off and/or lapsed, the appellant commenced payment of due income-taxes.

(9) In respect of all the Assessment Years prior to the Assessment Year 2018-19 and also in respect of all the Assessment Years subsequent to the Assessment Year 2018-19, the Income-tax Department accepted the fact that there had not been any MAT liability u/s 115JB for the appellant.

On the basis of the facts stated hereinabove at SI. Nos.(i) to (8), it is submitted on behalf of the appellant that there being no scope of preparation of Profit and Loss Account in the case of the appellant for the Financial Year 2017-18 (relevant for the Assessment Year 2018-19), there could not have been any computation of "Book Profit" u/s 115JB for determination of MAT liability. Since it had been impossible to prepare any Profit and Loss Account on the basis of which the "Book Profit" could be computed, there was no applicability of Section 115JB in the case of the appellant. Hence, while making the assessment u/s 143(3) on 22/02/2021 the then Assessing Officer had not committed nay mistake by not computing any MAT liability u/s 115JB and therefore the said Assessment Order should not be considered as any allegedly erroneous and allegedly prejudicial to the interest of revenue. Accordingly, on behalf of the appellant it is submitted that the Order of Revision passed u/s 263 on 27/03/2023 for the Assessment Year 2018-19, may kindly be held to be unsustainable and consequently the said Order may kindly be quashed."

2.1. The ld. D/R has also submitted several written submissions to support the view that the provisions of Section 115JB of the Act do not carve out any exception for companies under voluntary liquidation and thus, the appellant is bound to have his book profits computed for the purposes of Section 115JB of the Act. It would be in the fitness of things to mention the arguments advanced on behalf of the Revenue:

(A) It has been averred that the accounts submitted by the assessee as per the CASS system of accounting, shows a gross receipt of Rs. 27,85,57,514/-

and gross disbursement of Rs. 1,35,72,561/-, thereby arriving at a surplus of Rs. 26,49,82,953/- for the FY 2017-18 (being relevant to the assessment year under consideration).

(B) It has been argued that there is no specific provision in the Companies Act, 1956 or Companies Act, 2013 which would have an overriding effect on the Income Tax Act to enable the appellant company to avoid paying taxes as legally required.

(C) It has been further mentioned that the exemption from the provision of Section 115JB of the Act to a certain category of companies is already clearly specified in the provision itself.

(D) For the sake of record, the last such written submission dated 09.07.2024 deserves to be extracted for putting in perspective the crucial arguments advanced on behalf of the Revenue as under:

“In this case, the contention of the assessee is centered around the concept that it is only required to prepare quarterly statements of receipt and payment as required u/s 551 of Company Act, 1956 in the prescribed Form No. 153 under rule 327 of the companies (Court) Rules, 1959. As per section 115JB (5A) of the Act, the concept of book profit is applicable to all domestic companies except for the Life Insurance Business and the companies who exercised to be taxed u/s 115BBA and 115BAB. Also, the provisions of Section 551 of the Company Act do not have an overriding effect over provision of sec. 115JB of the IT Act. Nothing is mentioned in section 115JB of the IT Act that a company under voluntary winding up is not required to pay tax on book profit. Therefore, the assessee company is required to prepare quarterly statements of receipt and payment as required u/s 551 of the Companies Act, 1956 and at the same time prepare its statements of profit and loss account as per provision of Schedule-III to the Companies Act, 2013. Maintaining of quarterly statements of receipt and payment is only a procedural matter in the case of company under voluntarily winding up and the said provision of Company Act does not give blanket exemption to the company from preparing its statement of profit and loss account, from which book profit can be ascertained.”

2.2. During the course of oral arguments, the Id. A/R repeatedly emphasized on the inability to prepare accounts in a manner where there could be a “book profit” leading to computation of tax as per Section 115JB of the Act. Per

contra, the ld. D/R vehemently argued that there is no exception carved out for a company under voluntary liquidation for the purposes of taxation u/s 115JB of the Act.

3. We have carefully considered the written submissions and arguments from both sides, written submissions filed by both the Revenue and by the Ld. AR, the impugned order and have carefully gone through the various provisions of Companies Act, 1956, with their corresponding provisions in Companies Act, 2013. Right at the outset, it is felt necessary to adjudicate on ground no. 1 which challenges the impugned order in holding that ld. AO's order dated 22.02.2021 passed u/s 143(3) of the Act was neither erroneous nor prejudicial to the interests of the Revenue and thus, its setting aside is erroneous. Admittedly, the ld. AO has not discussed about any enquiry or verification regarding the applicability of provisions of Section 115JB of the Act and neither have any documents been brought to our notice whereby such an enquiry was conducted at all at the stage of the AO or not. In fact, in para 2.1 of the impugned order it is mentioned that during the course of assessment proceedings this issue was not taken into account while framing the assessment order by the ld. AO. At this stage, it is felt necessary to dwell on the mandate u/s 263 of the Act. Circular No. 19/2015 dated 27.11.2015 on the Finance Act, 2015 has summed up the mandate available to a Principal Commissioner or a Commissioner u/s 263 of the Act to be as under:

“(a) the order is passed without making inquiries or verification which, should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.”

3.1. Furthermore, we can do no better than sum up the fundamental principles governing the revisionary powers u/s 263 of the Act as have been spelled out in the case of *Mrs. Khatiza S. Oomerbhoy vs. ITO* reported in 100

ITD 173 (Mum. Trib.). The fundamental principles have been summed up as under:

(i) The CIT must record satisfaction that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the Assessing Officer has adopted one of the courses permissible under law or where two views are possible and the Assessing Officer has taken one view with which he does not agree. It cannot be treated as an erroneous order, unless the view taken by the Assessing Officer is unsustainable under law

(vi) If while making the assessment, the Assessing Officer examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the Commissioner of Income-tax, while exercising his power under section 263 of the Act is not permitted to substitute his estimate of income in place of the income estimated by the Assessing Officer.

(vii) The Assessing Officer exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous

simply because the Commissioner of Income-tax does not feel stratified with the conclusion.

(viii) The Commissioner of Income-tax, before exercising his jurisdiction under section 263 of the Act must have material on record to arrive at a satisfaction and

(ix) If the Assessing Officer has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the Assessing Officer allows the claim on being satisfied with the explanation of the assessee, the decision of the Assessing Officer cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

These observations were extracted in full with approval in the following cases- the relevant para numbers are indicated against each order captioned below-

(i) *Colour Publications (P.) Ltd. v. Pr. CIT [2018] 97 taxmann.com 116 (Mum - Trib.)-Para.16.*

(ii) *Mukesh Jayantilal Kanakhara v. CIT/Dy. CIT [2017] 88 taxmann.com 866 (Rajkot - Trib.)-Para.8.*

(iii) *Subhash Kabini Power Corpn. Ltd. v. CIT [2015] 58 taxmann.com 166 (Bang.-Trib) Quoted in CIT v. Subhash Kabini Power Corpn. Ltd. [2016] 69 taxmann.com 394/240 Taxman 514/385 ITR 592 (Kar.)-para.3.*

(iv) *Adani Wilmar Ltd. v. Dy. CIT [2017] 81 taxmann.com 459 (Ahd. - Trib.)-Para.10.*

(v) *DLF Commercial Developers Ltd. v. CIT [2014] 49 taxmann.com 487/151 ITD 563 (Delhi - Trib.)- Para.13.*

(vi) *N.T.P.C. Ltd. v. Dy. CIT [2012] 22 taxmann.com 247/54 SOT 177 (Delhi) (URO) -Para.12.*

(vii) *Eldeco Infrastructure & Properties Ltd. v. CIT [2012] 23 taxmann.com 17/52 SOT 207 (Delhi) (URO) - Para.7.*

(viii) *Hulas Rahul Gupta v. CIT [2012] 24 taxmann.com 191/53 SOT 301 (Delhi) (URO)-Para.14.*

(ix) *Rain Commodities Ltd. v. Dy. CIT [2011] 9 taxmann.com 128 (Hyd.)-Para.5.1.*

(x) *Fabindia Overseas (P.) Ltd. v. Dy. CIT [2011] 10 taxmann.com 70 (Delhi)-Para.8.*

(xi) *Rajiv Agnihotri v. CIT [2009] 125 TTJ 428 (Delhi)-Para.5.*

(xii) *Ahalya Trading (P.) Ltd. v. CIT [2008] 22 SOT 68 (Mum.)- Para.6.*

Apart from this, it is interesting to note that the order passed by the Bombay Bench of ITAT in the case of *Mrs. Khatiza S. Oomerbhoy (supra)* has been referred to in more than 20 other orders passed by Tribunal Benches and in a few decisions passed by High Court Division Benches. Thus, it is useful for the purposes of determining the applicability of section 263 of the Act in the present case.

3.2. Applying the tests contained in the case of *Mrs. Khatiza S. Oomerbhoy (supra)* it is seen that the ld. Pr. CIT has recorded a satisfaction regarding the ld. AO's order being erroneous and prejudicial to the interests of the Revenue. Secondly, there is an incorrect assumption of facts, coupled with an incorrect application of law in this case, in as much as the ld. AO has not even considered the applicability of the provisions of Section 115JB of the Act. Thirdly, since this issue was not enquired into at the stage of assessment proceedings, then this is not a case of change of opinion which could have vitiated the said proceedings. In light of the facts and circumstances of the case and considering the various authorities, it is clear from a bare reading of Section 263 of the Act that the ld. Pr. CIT has to be satisfied of twin conditions namely: (i) The order of the ld. AO sought to be revised is erroneous; and (ii) It is prejudicial to the interests of the Revenue. Both the conditions need to exist for attracting the rigours of Section 263 of the Act. There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the ld. AO. It is only when there is an incorrect assumption of facts or an incorrect application of law that this Section will

apply. In this case, it is seen that neither did the Id. AO conduct any enquiry nor did he attempt to apply the provisions of Section 115JB of the Act and hence, there is no hesitation in holding that the provisions of Section 263 of the Act have been correctly applied in the present case.

However, apart from the factum of assumption of jurisdiction by the Id. Pr. CIT, which has been shown to have been validly done, this issue needs to be examined from another angle also, whether the provisions of Section 115JB of the Act will apply in the present case or not.

3.3. For the sake of reference relevant portions from Section 115JB of the Act need to be mentioned:

“[Special provision for payment of tax by certain companies.

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [2012], is less than [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [eighteen and one-half per cent]]:

[Provided that for the previous year relevant to the assessment year commencing on or after the 1st day of April, 2020, the provisions of this sub-section shall have effect as if for the words "eighteen and one-half per cent" occurring at both the places, the words "fifteen per cent" had been substituted.]

(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 sub-section (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)]:

Provided further that where the company has adopted or adopts the financial year under the [Companies Act, 2013 (18 of 2013)], which is different from the previous year under this Act,—

(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 correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including [statement of profit and loss] for such financial year or part of such financial year falling within the relevant previous year.

Explanation [1].—For the purposes of this section, "book profit" means the [profit] as shown in the [statement of profit and] for the relevant previous year prepared under sub-section (2), as increased by—

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves, by whatever name called [, other than a reserve specified under section 33AC]; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

*(f) the amount or amounts of expenditure relatable to any income to which [section 10 (other than the provisions contained in clause (38) thereof) or [***] section 11 or section 12 apply; or]*

.....

.....

551. Information as to pending liquidations.-

(1) If the winding up of a company is not concluded within one year after its commencement, the Liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,-

(a) [in the case of a winding up by the Tribunal, in Tribunal; and]

(b) [in the case of a voluntary winding up, with the Registrar: [Substituted by Act 65 of 1960, Section 190, for sub-Section (1) (w.e.f. 28.12.1960).]

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.]

(2) When the statement is filed in [Tribunal] [Substituted by Act 11 of 2003, Section 107, for "Court".] under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the Liquidator shall forward a copy thereof,-

(a) to the Central Government, if that Government is a member of the Government company; or

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.]”

3.4. It is seen that in a number of places consequential amendments have been affected in this provision in line with words and phrases adopted in the Companies Act, 2013, when there was changeover from the earlier Companies Act, 1956. The noteworthy point here is that in Section 115JB(2)(a) of the Act the phrase “*profit and loss account*” has been changed to the phrase “*statement of profit and loss*” by the Finance Act, 2017. Several other changes

are visible in this Section which purportedly bring the provisions in harmony with the Companies Act, 2013. At this stage, even at the expense of over-emphasis, it needs to be mentioned that the commentary on the Finance Act, 2017 clearly mentions that the terminology of Section 115JB of the Act has been brought in line with the changes in Companies Act, 2013 over whatever was there in the Companies Act, 1956. This fact has some bearing on the outcome of this case and hence some portions from the said commentary need to be extracted:

“10.2 Companies Act, 2013 and MAT [Section 115JB]

The section provides for the levy of minimum alternate tax based on "book profit". Book profit needs to be computed as per the profit and loss account prepared for the purpose and in the same manner, basis, accounting policies and accounting standards as followed for the purposes of laying financial statements before the shareholders in Annual General Meeting under the applicable provisions of the Companies, Act, 1956.

For the purpose, in various provisions of the section, a reference is made to the relevant applicable provisions of the Companies Act, 1956.

Companies Act, 1956 was substituted by the Companies Act, 2013. Further, in case of certain companies, under the Companies Act, 2013 a new set of Accounting Standards was notified.

To provide for references to the applicable law in force, Finance Act, 2017 amends the section, with effect from assessment year 2017-18 as follows:

<i>Provision of the section and brief details thereof</i>	<i>Provisions of or terminology used under the Companies Act, 1956, which are/were referred</i>	<i>Substituted by the following provisions of or terminology used under the Companies Act, 2013</i>
<i>Sub-section (2) providing for preparation of profit and loss account, basis thereof and computation of book profit</i>	<i>"Profit and loss account" and "the Companies Act, 1956" (wherever they occur in the provision)</i>	<i>"Statement of profit and loss" and "the Companies Act, 2013", respectively</i>
<i>Sub-section (2)(a) providing for preparation of profit and loss account</i>	<i>"Part II of Schedule VI"</i>	<i>"Schedule III"</i>
<i>Sub-section (2)(b) providing for preparation of profit and loss account</i>	<i>"Proviso to sub-section (2) of section 211"</i>	<i>"Second proviso to sub-section (1) of section 129"</i>

First proviso to sub-section (2) providing for following same accounting policies and the like	"Section 210"	"Section 129"
Explanation 1 providing for computation of profit	"Net profit"	"Profit"
Explanation 1 providing for computation of profit	"Profit and loss account" wherever they occur	"Statement of profit and loss"
Explanation 1(k) providing for an adjustment for computation of profit	"Profit or loss account"	"Statement of profit and loss"
Explanation 3 providing for preparation of profit and loss account in certain cases	"Proviso to sub-section (2) of section 211 of the Companies Act, 1956"	"Second proviso to sub-section (1) of section 129 of the Companies Act, 2013"
	"Profit and loss account"	"Statement of profit and loss"
	"Part II and Part III of Schedule VI to the Companies Act, 1956"	"Schedule III to the Companies Act, 2013"

This narration illustrates the fact the section under consideration has kept pace with any changes in the Companies Act and more importantly, has given due weightage to any aspect contained therein which needs to have a bearing on the computation of Book Profit u/s 115JB of the Act. Extrapolating this reasoning further it needs to be assumed that in case any aspect of the Companies Act, 2013/1956 would have an overriding effect on the MAT provision of Income Tax Act then that should also have been specifically mentioned in the language of section 115JB of the Act.

3.5. Furthermore, in the Finance Bill, 2017, "notes on clauses" explains the rationale behind the amendments effected in the provisions under consideration as under:

"Clause 47 of the Bill seeks to amend section 115JB of the Income-tax Act relating to special provision for payment of tax by certain companies.

The said section provides for levy of tax on certain companies on the basis of book profit which is determined after making certain adjustments to the net profit disclosed in the profit and loss account prepared in accordance with the provisions of the Companies Act, 1956.

It is proposed to amend the section so as to align the provisions of section 115JB for the company preparing financial statements in accordance with the provisions of Indian Accounting Standards and to update the provisions of the Companies Act, 1956 referred in the said section in accordance with the provisions of the new Companies Act, 2013.

The amendment will take effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.”

3.6. The whole point of this exercise is to demonstrate that there is an indication of acute sensitivity in the provisions of Section 115JB of the Act when it comes to recognizing the relevant provisions of Companies Act, 2013. It is clear that had the legislature intended to exclude any kind of corporate entity from the provisions of Section 115JB of the Act then it would certainly have been mentioned in the body of the said statute, just as there is a specific exemption for certain category of companies mentioned in Section 115JB(2)(b) of the Act. In fact, to stretch this line of reasoning a little bit further it deserves to be mentioned that with the promulgation of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') it was realized that companies under corporate insolvency were facing some hardships in terms of implementing the provisions of MAT. Accordingly, the Ministry of Finance issued a press note on 06.01.2018 which stated that with a view to minimise genuine hardships faced by corporate entities undergoing corporate insolvency resolution process, it has been decided, with effect from AY 2018-19, that the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from the book profit for the purposes of levy of MAT u/s 115JB of the Act. In fact, at this stage, it also needs to be mentioned that as per the Section 178(6) of the Act in cases of a company in liquidation, the provisions of IBC, 2016 shall override the provisions of Income Tax Act. This fact is merely mentioned to illustrate, at the cost of repetition, that wherever necessary, the provisions of Section 115JB of the Act have been relaxed for giving effect to the operation of other statutes and the overriding provisions of any other Act have been duly recognised in various places within the Income Tax Act. To come to the issue at hand, it is clear that there is no indication whatsoever in Section 115JB of the Act that a company under voluntary

liquidation would be exempt from any of the provisions of the Income Tax Act, including Section 115JB of the Act. Importantly, the provisions governing preparation of accounts as per the Companies Act, 2013/1956 are nowhere taken cognizance of with any view towards granting exemption from the provisions of Section 115JB of the Act.

3.7. It is also necessary to advert to another line of argument advanced by the Ld. AR through which it has been averred that since there is a specific column in ITR-6 (Schedule OL) which recognises corporate entities undergoing liquidation and exempts them from filling in the schedule for Balance Sheet and Profit & Loss account. It has been argued that because of this fact also there is no way in which book Profit u/s 115JB (2) of the Act can be computed. A perusal of the said schedule of ITR-6 reveals that indeed there is a factual affirmation of the averment made by the Ld. AR, however, to draw a conclusion that due to such recognition of corporate entities undergoing liquidation in the ITR-6, a blanket exemption from MAT should be inferred, would not be an accurate understanding of the express mandate under section 115JB of the Act. This is so because the ITR proforma is a creation under the Act and would not have any effect to override its provisions. Furthermore, as would be discussed later, there are other ways of preparing a “statement of profit and loss” and this Appellant has himself demonstrated as much considering that taxable income has been worked out for AYs 2022-23 and 2023-24 [refer to table extracted in para 2 (supra)].

3.8. At this stage it may even be useful to extract certain portions from Section 348 of Companies Act, 2013 which corresponds to Section 551 of Companies Act, 1956. The relevant extract is as under:

“Information as to pending liquidations.

348. [(1) If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing, either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form

containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply.]

(2) When the statement is filed with the Tribunal under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(3) Where a statement referred to in sub-section (1) relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof—

(a) to the Central Government, if that Government is a member of the Government company;

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.”

3.9. A plain reading of this provision reveals that it merely provides for a mechanism for filing an audited statement and does not in any way give the provisions primacy over any of the provisions of Income Tax Act, including Section 115JB of the Act.

3.10. Considering the discussion above, it is clear that any assessee covered under the provisions of Section 115JB of the Act will necessarily have to compute book profit for the purposes of MAT, until and unless such assessee is exempted specifically within the said provision itself. Clearly, this appellant's case does not fall within any of the exceptions contained in the said section and thus, the applicability of Section 115JB of the Act is clearly applicable in the present case and to this extent, the action of Id. Pr. CIT is upheld and ground no. 2 raised by the appellant is dismissed.

4. Before parting with this issue, a further discussion is required on the seeming helplessness of the appellant in computing Book Profit for the purposes of MAT. It is seen from the extract of submissions filed by the appellant (*supra*) that there is a table indicating that for AYs 2022-23 to AY

2023-24, the assessee has disclosed a total income of Rs. 22,86,58,450/- (tax paid of Rs. 5,75,48,759/-) and Rs. 21,89,92,930/- (tax paid of Rs. 5,51,16,141/-) respectively for the two assessment years. It is clear that whatever is the system of accounts being followed by the assessee, it is very much possible to determine profits and losses or to put it in the language of the Companies Act, 2013 and Section 115JB of the Act, preparing a “statement of profit and loss” which would lead to computation of MAT. This fact would be an additional factor against the appellant when he claims that because of the provisions of Companies Act, 2013/1956, he is unable to work out “book profits” for determining MAT liability.

4.1. Considering the discussions above, ground nos. 1, 2 & 3 are decided against the appellant and ground no. 4 is general in nature and does not require any specific adjudication.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 10th September, 2024.

Sd/-

[Rajpal Yadav]
Vice President

Dated: 10.09.2024

Bidhan (P.S.)

Sd/-

[Sanjay Awasthi]
Accountant Member

Copy of the order forwarded to:

- 1. Industrial Investment Bank of India Limited, 19, Netaji Subhash Road, Kolkata, West Bengal, 700001.**
- 2. PCIT, Kolkata -2, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata