

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.6157/Mum/2024 & 6158/Mum/2024
(Assessment Year :2010-11 & 2011-12)**

M/s. Duflon Industries Private Limited 3, Neeldhara Shradhanand Road Extn. Vile Parle (East) Mumbai- 400 057	Vs.	Assistant Commissioner of Income Tax-1(3)(1) Aayakar Bhavan Maharshi Karve Road New Marine Lines, Churchgate, Mumbai - 400 020
PAN/GIR No.AACD1668G		
(Appellant)	..	(Respondent)

Assessee by	Shri Alok Saksena
Revenue by	Shri R.R.Makwana
Date of Hearing	20/01/2025
Date of Pronouncement	29/01/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against separate impugned orders dated 30/09/2024 and 09/10/2024 passed by NFAC, Delhi in the proceedings u/s.154 for the A.Y.2010-11 and 2011-12 respectively.

2. In both the years the issues raised are arising out of identical set of facts, therefore, same were heard together and have been disposed of by way of this consolidated order.

3. In various grounds of appeal assessee has challenged the addition of bogus purchases of Rs.1,02,77,632/- and Rs.75,48,959/- while computing the book profit u/s.115JB.

4. The brief facts qua the issue involved are that in both the years assessments were completed u/s.143(3) for the A.Y.2010-11 and u/s.143(3) /147 for the A.Y.2011-12, wherein the addition of Rs.1,02,77,632/- and Rs.75,48,959/- was finally made on account of bogus purchases whereby ld. AO has added the entire 100% of the purchases. In the appeal filed by the assessee, the ld. CIT(A) vide consolidated order dated 31/10/2017 restricted the disallowance by applying GP rate of 12.5% on alleged bogus purchases which worked out to Rs.12,84,704/- in A.Y.2010-11 and Rs.9,43,620/- in A.Y.2011-12.

6. Thereafter, the ld. AO issued a notice u/s.154 on the ground that why the addition on account of bogus purchases shall not be made in the book profit as computed u/s.115JB of the Act. Assessee's contention has been that no disallowance can be made in the book profit on account of such disputed amount u/s.115JB because ld. AO cannot tinker with the profit and loss account prepared for the purpose of computation of book profit u/s.115JB in view of the decision of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. vs. CIT reported in (2022) 122

taxmann.com 562 and judgment of the Hon'ble Bombay High Court in the case of PCIT vs. Bhagwan Industries Ltd., in ITA no.436 of 2015. However, the ld. AO rejected the submissions of the assessee and proceeded to make the addition on account of alleged bogus purchases for the entire amount as was made in the assessment order which was computed u/s.115JB. Such an addition was made despite the addition was substantially reduced in the first appeal by applying the GP rate of 12.5%.

7. The ld. CIT (A) dismissed the assessee's grounds after noting all these submissions held that once bogus purchase was found in the case of the assessee and addition was made which has been accepted by the assessee, then authenticity of books of accounts cannot be beyond doubt and therefore, the books of accounts are not prepared in accordance with the Companies Act.

8. We have heard both the parties and also perused the relevant finding given in the impugned order. Here in this case in A.Y.2010-11, the ld. AO has completed the assessment u/s. 143(3) on book profit u/s.115JB because tax payable u/s.115JB was more than tax payable under the normal provisions of the Act. The addition made under the normal provisions of the Act and was not the finally assessed income. Similarly, in A.Y.2011-12 also the income has been assessed under book profit because the tax payable u/s.115JB of the Act was more than the provisions of the Act. First of all it is a well settled law that ld. AO has a very limited power for making increase and decrease as

provided in Explanation 2 to Section 115JB and Id. AO does not have any jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in Explanation. If the treatment given by the assessee in its accounts have been approved by the Board of Directors, the Id. AO cannot tinker with such accounts except as provided in the explanation below u/s.115JB(2) and only those adjustments can be permitted to made in the book profits. The only power to the Id. AO is to examine whether the books of accounts are satisfied by the authorities under the Companies Act and have been properly maintained in accordance with the Companies Act. This proposition was laid down by the Hon'ble Supreme Court in the case of **Apollo Tires Ltd. vs. CIT reported in 255 ITR 273** and this principle has been reiterated by the **Hon'ble Jurisdictional High Court in several cases in the case of PCIT vs. Varun Corporation Limited**. The Hon'ble Supreme Court in the case of **Indo Rama Synthetics (I) Ltd. vs. CIT reported in 196 taxmann.com 539** held that book profit has been defined and explained in the Explanation 1 to Section 115JB(2) and Section 115JB is self-explained and being a non-obstante provisions, there is no scope for any allowance or any deduction under any other section from what is deemed to be total income of the company. The first step for arriving at the book profit is that net profit as shown in the profit and loss account for the relevant previous year was paid u/s.115JB(2) has to be increased by the amounts in Clauses (a) to (f) if such amounts are debited to the profit and loss account and second step for arriving at the book

profit is that the net profit as shown in the profit and loss account is reduced by the amounts in Clauses (i) to (vii). Here in this case, ld. AO did not make any addition to the book profit while making original assessments and further such an addition got substantively reduced from the first appeal and thereafter, he has proceeded to make the addition within the scope of Section 154 by book profit for the amount of entire alleged bogus purchases. Such an adjustment or addition to the book profit is not only beyond the scope of Section 154 but also u/s.115JB. Ld. AO cannot tinker with such net profit in profit and loss account prepared under the Companies Act duly approved by the Board of Directors itself in the manner provided in Explanation 1 to Section 115JB(2). Thus, the action of the ld. AO for enhancing the book profit is set aside and the addition made by the ld. AO and as confirmed by the ld. CIT(A) is deleted.

9. In the result, both the appeals of the assessee are allowed.

Order pronounced on 29th January, 2025.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2025
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant

2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai