

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
I.T.A. No. 3514/Mum/2024
Assessment Year: 2012-13

Strides Pharma Science Limited 201, Devavrata, Sector-17 Vashi, Navi Mumbai Maharashtra - 400703 [PAN: AADCS8104P]	Vs	The Deputy Commissioner of Income Tax, 15(3)(2), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Nishit Gandhi- Advocate & Aadnya Bhandari- Advocate, A/Rs	
Revenue by :	Shri Bhangapatil Pushkaraj Ramesh, Sr. D/R	

सुनवाई की तारीख/**Date of Hearing** : 11/02/2025

घोषणा की तारीख /**Date of Pronouncement**: 13/02/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 06/06/2024 by NFAC, Delhi pertaining to AY 2012-13.

2. The grievance of the assessee reads as under:-

"1. Re-opening of assessment under Section 147 of the Act

1.1 The learned Assessing Officer ('AO') erred in invoking reassessment proceedings under section 147 of the Act even after failing to fulfill conditions as specified for invoking such proceedings under section 147, 148 and 151 of the Act.

1.2. The learned AO erred in not taking cognizance of the fact that reassessment proceedings is bad in law as no fresh information/ material is available on record.

1.3. The learned AO erred in law and in facts by revising a considered view taken by the learned AO during original assessment i.e., change in opinion does not confer jurisdiction on the learned AO to reopen the completed assessment under section 147 of the Act. Further, the reassessment could not be a review of an earlier assessment order.

2. Re-computation of book profits under Section 115JB of the Act - INR 60,11,503 [Page 4 to 9 of the Assessment Order issued under section 147 r.w.s 144 of the Act]

2.1. The Hon'ble CIT(A) and the learned AO grossly erred in re-computing the book profit under Section 115JB of the Act by making addition of an amount of INR 60,11,503 towards difference arising on account of valuation of closing stock.

2.2. The Hon'ble CIT(A) and the learned AO has failed to appreciate that the disallowance as prescribed in clause (a) to (k) of Explanation 1 to Section 115JB of the Act is not applicable in case of discrepancy in valuation of closing stock.

2.3. The Hon'ble DRP and the learned AO erred in disregarding the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. v. CIT [2002] 255 ITR 273 (SC) and Malyalam Manorama v. CIT [2008] 169 Taxman 471 (SC), wherein the Hon'ble Court has held that the AO does not have the jurisdiction to go beyond the net profit shown in the audited profit and loss account except to the extent provided in the explanation to section 115JB of the Act.

3. Disallowance on account of loss on foreign exchange fluctuation in respect of long-term foreign currency borrowings - INR 99,48,700 [Page 9 to 12 of the Assessment Order issued under section 147 r.w.s 144 of the Act]

3.1. The Hon'ble CIT(A) and Learned AO grossly erred with the facts that the loss on account of foreign exchange fluctuation incurred in respect of long-term loan borrowed for working capital purposes has not been debited to statement of profit and loss account.

3.2. The Hon'ble CIT(A) and Learned AO has failed to appreciate the facts that the Accounting Standard governing the Companies mandates that the Company needs to accumulate the foreign exchange fluctuation arising on such long-term loan borrowed for working capital purposes in Foreign Currency Monetary Item Translation Difference Account ('FCMITDA') in Balance sheet and amortize to profit and loss account over the balance period of such long-term asset/liability i.e., Loan.

The Hon'ble CIT(A) and Learned AO erred in considering that such foreign exchange fluctuation arising on long-term loan as capital in nature and not allowable under section 37(1) of the Act.

The Hon'ble CIT(A) and Learned AO erred in disregarding the decision of Hon'ble Supreme Court in the case of Woodward Governor India Pvt. Ltd (2009) 179 Taxman 326, wherein the Hon'ble court held that the 'the expression expenditure' as used in section 37 of the Act to include an amount which is really a loss to the assessee even though such amount has not gone out from the pocket of the assessee.

4. Brought forward losses and unabsorbed depreciation The Learned AO ought to have allowed the brought forward business losses and unabsorbed depreciation which is otherwise available for the appellant to set-off.

5. Interest under 234A, Section 234B and 234C of the Act

The levy of interest under Section 234A, 234B and 234C of the Act is consequential in nature.

6. Initiation of penalty proceedings under Section 271(1)(c) of the Act [Page 9 & 12 of the Assessment Order issued under section 147 r.w.s 144 of the Act]

The learned AO erred in law and facts in initiating penalty proceedings under Section 274 read with Section 271(1)(c) of the Act, as no case is made out by the AO that the Appellant has concealed any particulars of income/ furnished inaccurate particulars to the learned AO either in the tax return or during the assessment proceedings.

The appellant craves to add, alter, amend, or delete all or any of the grounds of appeal before or during the course of Hearing before the Honorable ITAT."

3. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidence brought on record, duly considered in light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated the facts of the case are that the original assessment order was framed u/s 143(3) r.w.s. 92CA(3) of the Act vide order dated 21/03/2016. The completed assessment was reopened and the reasons for reopening the assessment is extracted in the body of the assessment order which reads as under:-

*"The reason for initiating the reopening proceedings is reproduced as under:
In the instant case, on verification of the record of the assessee case was following discrepancy/ failure have been found:*

*(i) It is found from the record that the difference in valuation of closing stock amounting to Rs.1,36,36,069/- was added back to the total income under the normal provisions but could not added to book profit u/s 115JB of the I.T. Act as the valuation of the closing stock one for cost purposes and another for financials is in non-compliance of the provisions of the Companies Act, which consequently has bearing on the computation of book profits u/s 115JB of the I.T. Act.
the assessee company. Further, due to this discrepancy, there would be the effect of reducing the amount of MAT credit u/s 115JAA of the AY 2012-13 to be carried forward to subsequent AYs.*

3. This office has also examined the evidence and fact of the case independently and it is found that the difference in valuation of closing stock amounting to Rs. 1,36,36,069/- was added back to the total income under the normal provisions but could not added to book profit u/s 115JB of the I.T.Act, the sum of Rs. 99,48,700/- as exchange loss which have not been debited in the profit & loss account but claimed as deduction in the statement of income and reduction of the sum of Rs. 6,29,87,464/- towards amount withdrawn from reserves or provision no longer required from the net profits to arrive at the correct amount of book profits and claimed excess set off of losses to the tune of Rs. 1,11,15,583/- are nothing but the failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment. Therefore, I have the reason to believe that the income chargeable to tax under the provisions, amounting to Rs.9,76,87,816/-(-1,36,36,069+99,48,700+ 6,29,87,464 + 1,11,15,583) has escaped assessment for A.Y.2012-13 which comes to the notice to the undersigned subsequently in the course of the proceedings coming within the meaning of the section 147 of the I.T.Act, 1961.

4. In this case a return of income for A. Y. 2012-13 was filed for the year under consideration and regular assessment u/s.143(3) was made on 21.03.2016. Since, four years from the end of the relevant assessment year has expired in this case, the requirements to initiate proceedings u/s.147 of the Act are reason to believe that income for the year under consideration has escaped assessment because the

difference in valuation of closing stock amounting to Rs. 1,36,36,069/- was added back to the total income under the normal provisions but could not added to book profit u/s 115JB of the I.T.Act, the sum of Rs, 99,48,700/- as exchange loss which have not been debited in the profit & loss account but claimed as deduction in the statement of income and reduction of the sum of Rs. 6,29,87,464/- towards amount withdrawn

(ii) On verification of record it is seen from the statement of income that sums of Rs. 99,48,700/- have been claimed as deduction towards exchange loss which has not debited to profit & Loss. Since the method of accounting employed by assessee company is mercantile system of accounting any sum to qualify as liability/expenditure incurred should necessarily be accounted in the profit & loss account and the Balance Sheet. Therefore, the sum of Rs. 99,48,700/- which have not been debited in the profit & loss account should not be qualify for deduction which the assessee company claimed as deduction in the statement of income.

(iii) From verification of records it is found that the break-up of liabilities no longer required written back. From the details, it is seen that the amounts written back related to items such as commission payable not claimed by agents, commission to non WTD provided reversed, creditors not claimed written back, discount allowed by HSBC against loan settlement, ex-gratia for employee not payable, retention money not payable, volume. discount received from supplier, advance paid by customer no longer liable to pay back, liquidation damages no longer payable. Here, it is evident that the write back of the amount claimed as a reduction from the net profits represents only the ascertained liabilities, which have not been taken into consideration for the computation of book profits of the earlier years. Therefore, the reduction of the above sum of Rs. 6,29,87,464/- towards amount withdrawn from reserves or provision no longer required from the net profits to arrive at the book profits of Rs: 32,58,76,411/- is not in order and therefore, the tax u/s 115JB had to be levied on the correct amount of book profits.

(iv) From verification of record it is seen that the brought forward losses set off against the current income related to the AYs 2009-10 to 2011-12. Records for AYs 2009-10: to 2011-12 have been verified. On perusal of Scrutiny record for AY 2011-12 it is seen that the brought forward losses to be carried farward (aggregating to Rs: 26,12,93,064) was Rs, 15,44,31,097(relating to AY 2009-10) and Rs. 10,68,61,967 (relating to AY 2011-12). Therefore, there was excess set off of losses of Rs.1,11,15,583/- was made by from reserves or provision no longer required from the net profits to arrive at the correct amount of book profits and claimed excess set off of losses to the tune of Rs.1,11,15,583/-are nothing but the failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded in above paragraphs."

5. No return was filed pursuant to the notice u/s 148 of the Act. The AO proceeded *ex-parte* u/s 144 of the Act. The re-assessment order was framed u/s 147 r.w.s. 144 of the Act vide order dated nil as under:-

Sr. No.	Particulars	Amount (Rs.)
1	Assessed income u/s 143(3)r.w.s 92CA(3) of the Act, dated 21.03.2016 (Before set-off of losses) Income from Business & Profession: Rs. 3,82,34,212 Income from other sources : Rs. 3,67,46,033 Long term capital gain : Rs. 19,74,28,402 Total : Rs. 27,24,08,647	27,24,08,647
Less:	Set-off brought forward losses of A.Ys 2009-10 & 2011-12	24,67,34,212
2	Assessed income u/s 143(3)r.w.s 92CA(3) of the Act, dated 21.03.2016 (after set-off of losses)	2,56,74,435
Add:	Disallowance on account of loss on foreign currency fluctuation	99,48,700
3	Assessed income u/s 147 r.w.s. 144	3,56,23,135
	Total taxable income	1,06,86,940

Income under section 115JB

Sr. No.	Particulars	Amount (Rs.)
1	Book profit u/s 115JB as per ITR	32,58,76,411
2	Add: Difference in valuation of closing stock	60,11,503
3	Book profit u/s 115JB after assessment	33,18,87,914
	MAT @ 18.5%	6,13,99,264

6. We find that the issue relating to the valuation of closing stock was considered in the original assessment order dated 21/03/2016 wherein difference in valuation of closing stock amounting to Rs. 1,36,36,069/- was added to the income of the assessee. The same was also the subject matter of the first appellate proceedings wherein, the Id. CIT(A) directed to restrict the addition to Rs. 60,11,503/- and the same was considered by the AO while computing the book profit u/s 115JB of the Act.

6.1. In its reply dated 17/02/2016, filed during the original assessment proceedings, the assessee has furnished details of exchange loss claimed at Rs.99,48,700/-. The set off of brought forward loss were also considered while computing the total income of the assessee in the original assessment proceedings, which is as under:-

Computation of Total Income		21322047
Income Returned before set off of losses		
Add:		
1. Discrepancy in valuation in closing stock (as discussed in para 2 above)	1,36,36,069	
2. Disallowance u/s 14A (as discussed in para 3 above e)	74,891	
3. Disallowance u/s 35 (2AB) (as discussed in para 4 above)	31,32,553	
4. Excess Depreciation disallowed (as discussed in para 5 above)	6,86,452	
		16912165
Business Income		38234212
Less: Brought forward Business Losses		38234212
Taxable Business Income		NIL
Income under other heads before set off of losses		23,41,74,435
Less: Brought forward depreciation loss		23,41,74,435
Taxable Income under other heads		NIL
Assessed Income		NIL
Computation of MAT:		
Book profit		Rs.32,58,76,411
Tax payable on the above is		Rs.6,52,00,538

6.2. On perusal of the aforementioned facts, it is clear that the re-assessment proceedings, is nothing but mere change of opinion where action of the AO is to relook at the very same facts available at the time of original assessment proceedings. This is against the law laid down by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax, Delhi Vs. Kelvinator of India Ltd.* reported in [2010] 320 ITR 561 (SC) wherein the Hon'ble Supreme Court confirmed the full Bench decision of the Hon'ble Delhi High Court in the case of *CIT v. Kelvinator of India Ltd.* (256 ITR 1) (Del.) (FB).

7. We further find that the notice u/s 148 of the Act is dated 30/03/2019 which makes it more than four years from the impugned assessment year, therefore, 1st proviso to Section 147 of the Act squarely apply and the AO is required to mention what material facts were not fully and truly disclosed by the assessee. There is no whisper for any

failure on part of the assessee to disclose fully and truly, all material facts necessary for the assessment. On this count also, the impugned notice is bad in law.

8. Considering the facts of the case in totality, we have no hesitation in setting aside the impugned notice u/s 148 of the Act thereby quashing the resultant assessment order. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

9. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 13th February, 2025 at Mumbai.

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 13/02/2025

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
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Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai