

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**(HYBRID COURT)**

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER  
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

**I.T.A. Nos. 364, 385 & 386/Asr/2023**  
Assessment Years: 2016-17 to 2018-19

Deputy Commissioner of Income  
Tax, Circle- Srinagar, Rajbagh  
Srinagar

Vs.

Jammu and Kashmir Power  
Development Corporation Ltd.,  
Srinagar, Kashmir

[PAN: AAACJ 9770H]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Dalip K Kaul, C. A.  
Respondent by : Smt. Vandana Vijay Mohite, CIT-D. R.  
Date of Hearing : 17.03.2025  
Date of Pronouncement : 15.05.2025

**ORDER**

**Per Udayan Dasgupta, J.M.:**

All the three appeal preferred by the revenue against the order of the Ld. CIT (A) NFAC, passed u/s 250(6) of the Income Tax Act, 1961 (the Act), dated 17<sup>th</sup> October, 2023 for the Asstt. Year 2016-17 and dated 30<sup>th</sup> November, 2023, for both the AYs 2017-18 and 2018-19, has emanated from the order of the DCIT Circle-

Srinagar, passed u/s 143(3) dated 28<sup>th</sup> December, 2018 (for AY 2017-18 ), and orders of AO - NFAC, both dated 05/08/2021 AY 2017-18 and 2018-19, respectively.

2. The only issue raised by the revenue in all these appeals are that, whether the CSR amount debited in the profit and loss account as per provisions of the Companies Act 2013, being unascertained liability, needs to be added back for computation of “book Profits” (as per clause (c) of explanation [1], for determining the MAT payable u/s 115JB of the Act or not?

**Assessment Year: 2016-17:**

3. The grounds of appeal taken by the assessee in Form 36 are as follows:

- “1. Ld CIT(A) has erred in his judgment by ignoring the fact that the amount of Rs 5,99,44,405, being Provision for CSR of previous three years is not an ascertained liability and hence liable to be added in calculation of MAT as item (c) of the explanation to section 115JA of the Act.
2. LA CIT(A) has made an error in judgment by relying upon the judgment of the Honorable Supreme court in the case of CIT vs M/s HCL Comnet Systems & services Ltd (2008) 305 ITR 409(SC) as the facts of the case are not squarely same in the case of assessee. In the case of M/s HCL Comnet Systems & services Ltd, the Honorable supreme court has clearly highlighted the distinction by remarking that the underlying issue of provision for bad debts is a case of amount receivable by the assessee and not any liability payable by the assessee and hence does not qualify as provision for liability and as a corollary cannot be disallowed under the ambit of item (c) of the explanation to section 115JA of the Act.

3. *The appellant craves leave to amend or add any one or more grounds of Appeal.”*

4. Brief facts emerging from records are that the appellant company is engaged in the generation and sale of power mainly to Government, in the State of Jammu and Kashmir, and are managed by officials nominated by the State Government.

5. Regular returns has been filed in normal course and being a company the annual accounts including *statement of profit and loss* for the relevant previous year has been prepared as per provisions of the Companies Act 2013.

6. Two sets of computation of total income has been filed, one under normal provisions and another under MAT provisions. The amount of CSR u/s 37(2) of the Act (*2% of average NP of preceding three years*), computed at Rs.5,99,44,405/- has remained as provisions in the balance sheet.

7. The AO relied on the *CBDT circular no 1/2015 dated 21/01/2015*, to arrive at a conclusion that since the CSR expenditure relates to expenditures to be incurred by the assessee on the activities relating to corporate social responsibility as *per section 135 of the Companies Act , 2013* , the same is not an expenditure incurred wholly and exclusively for the purpose of business and it is just an application of income and since this provision is set aside for meeting liabilities other than *ascertained liabilities* the *book profits* as per explanation [1] of the said section, needs to be

increased (*or added back*) to arrive at the correct profits for the purpose of computation of MAT under section 115JB . He further observed that in the instant case since the provisions has been made on estimation ( *as per provisions of the Companies Act 13* ) , and in absence of any details or documentary evidences filed by the assessee as to where the provisions are to be expended , the said provisions cannot be said to be “ *ascertained liability* ” and the liability being *unascertained*, the same is hit by clause (c) of explanation [1] of section 115JB , and hence the book profits needs to be increased by the said amount for calculation of MAT profits.

8. The matter was carried in first appeal and the Ld CIT (A), deleted the addition by relying on the decision of the Hon'ble Supreme Court in the case of *CIT vs HCL Commet Systems and services Ltd [2008] 305 ITR 409 (SC)* by observing as follows:

*“6.1 Ground No 1 pertains to addition of Rs.5,99,44,405/- of CSR to MAT profits, during the course of assessment proceedings, it was noted by the AO that the Assessee has debited an expenditure of Rs.5,99,44,405/- in Profit and Loss statement on Corporate Social Responsibility. The assessee submitted that it was provision of CSR expenditure as stipulated under the Provisions of the Companies Act 2013. As Per Clause (c) of the Explanation to Section 115JAB of the Act "the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities" should be added to the book profit. Since assessee hadn't produced any documentary evidence of the fact that the Provision created is ascertained. The provision can never be said to be an Ascertained Liability, the only issue to be considered for Invoking Clause 'c', of Explanation to Section 115JB is that the Liability is Unascertained. Therefore, the amount was added back and the AO accordingly reworked the MAT computation under Section 115JB. The appellant relied*

*on by the decision of Hon'ble Supreme Court of India in CIT Vs HCL Comnet Systems and Services Ltd. (2008) 305 ITR 409 (SC) wherein it has been held that AO has no power to recomputed the Book profit and has to rely on the statement of accounts of the company compiled under the Companies Act respectfully following the decision of Hon'ble Supreme Court of India in CIT VS HCL Comnet Systems and Services Ltd. (Supra). The AO is directed to delete addition of Rs.5,99,44,405/- to the Book Profits under MAT.”*

9. Now the revenue is before the tribunal on the grounds contained in the memorandum of appeal. The Ld DR , argued that in the instant case the provisions of Rs. 5.99 crores, created by the assessee company as per requirements of the companies Act 2013, has simply been earmarked and kept aside for being spent for CSR , without any certainty of its end use and since the specific nature or time of expenditure is not determined , the same for all practical purpose is an *unascertained liability*, and needs to be added back to arrive at the correct book profits for the purpose of calculation of MAT u/s 115JB.

10. In support of his contention he relied upon the decision of the *ITAT, Delhi Bench in ITA No 7388/Del/2017, in the case of Pawan Hans Ltd vs DCIT, order dated 18<sup>th</sup> March, 2021*, the relevant portion reproduced for ready reference:

*“The essential question before us is as to whether the provision for CSR as made by the assessee M/s. Pawan Hans Ltd. vs. DCIT/amounting to Rs.35,09,480/- can be considered as an ascertained liability or not. In terms of Clause-(c) of Explanation-1 to 115JB, the net profit is to be adjusted by any amount or amounts set aside to provision made for meeting*

*liabilities, other than ascertained liabilities for arriving at the book profit in terms of Section 115JB of the Act. It is seen that, admittedly, the assessee has made the impugned provision in terms of the calculation provided by the guidelines issued by the Department of Public Enterprises. However, although, the amount to be provided towards meeting the liability of the CSR expenditure has been quantified in accordance with the guidelines provided by the Department of Enterprises, how the amount is to be spent has neither been determined nor has been specified by the assessee. Thus, although the assessee has set-aside an amount ear-marked for spending towards the CSR obligation, how the ear-marked amount will be finally spent has not been determined. As per the Cambridge Advanced Learner's Dictionary, the meaning of the word "ascertained" is "to make certain". In dictionary.com, the word "ascertain" has been described as "to make certain, clear or definitely known" In the present case, M/s. Pawan Hans Ltd. vs. DCIT how the amount ear-marked for spending towards the CSR obligation will be spent is "not certain". "clear" or "definitely known". At best, it is just an amount which has been set aside for being spent towards Corporate Social Responsibility but without any further certainty of its end-use. Thus, in our considered opinion, it cannot be said that the liability is an ascertained liability. Although, the Ld. AR has placed reliance on numerous judicial precedents, the same are distinguishable on facts as in those cases the nature/mode of expenditure ear-marked for Corporate Social Responsibility spending was very much determined and specified i.e. the nature/mode of expenditure was "ascertained". Therefore, on the peculiar facts of this case we are unable to agree to the contention of the Ld. AR that the impugned disallowance u/s 115JB was an ascertained liability. We dismiss the grounds raised by the assessee.*

11. Relying on the above decision the Ld DR prays for upholding the addition and for restoration of the assessment order on this issue.
12. Per contra the Ld AR of the assessee company, relied on the order of the Ld. CIT (A) and further submitted that the *statement of profit and loss account* has been

prepared as per provisions of the Companies Act, 2013, as per standard accounting practice , and the CSR expenses has already been disallowed while computing the taxable income as per normal provisions of Income tax Act but for the purpose of determination of *book profits* under MAT as per section 115JB, no further adjustments are required to be made , because amount incurred towards CSR activity was not one of the adjustment as per the explanation [1] and he submits that the issue is already covered in favour of the assessee by the decision of the Hon'ble Apex court in the case of “ *Apollo Tyres Ltd vs CIT [2002] 255 ITR 273* , where it has been held that the AO cannot tinker with the book profits and any adjustment than can be done is with respect to explanation provided to section 115BJ of the Act .

13. He further relied on the decision of the Hon'ble Supreme Court in the case of *CIT vs HCL Comnet Systems and services Ltd ( supra )* where it has been held that the AO has no power to recompute the book profits and has to rely on the statement of accounts of the company compiled under the Companies Act 2013.

14. The Ld. AR further relied on the decisions of the coordinate bench of the tribunal in the case of “ *M/s Green infra Solar Energy Ltd vs ACIT Circle -10(2) New Delhi , dated 01/12/2022, in ITA No: 1680/Delhi/ 2020 (Asstt. year: 2017-18* , which again relied on the decision of the coordinate bench in the case of *G E Power System India Private Limited vs ACIT / ITA No : 9120/Delhi / 2019 for Asst year 2016-17,*

*order dated 10/08/2022*, where the Hon'ble Bench, relying upon the decision of the Hon'ble Apex court in the case of *Apollo Tyres (supra)* has opined that none can tinker with the book profits disclosed in audited accounts and once accounts are prepared in accordance with standards in this regard this tinkering by the AO has no sanction of law .

15. As such the Ld AR prayed for upholding the order of the Ld CIT (A).

16. We have heard the rival submissions and considered the materials on record, and we find that the CBDT circular No 1/2025 dated 21/01/2015, relied upon by the AO, (*page 13 of assessment order*), is in relation to non allowability of deduction of CSR expenditure, for the purpose of computing the taxable income of the company and there is nothing contained in the said circular relating to its applicability for computation of *book profits* as per provisions of section 115JB of the Act.

17. In the instant case there is nothing on record to show that the statement of profit and loss is not prepared as per the accounting standard or the assessee has not followed the accounting policies or the same is not in accordance with the provisions of the Companies Act 2013, and we are also of the same view that the AO has no power to recompute the book profits and has to rely on the statement of accounts of the company compiled as per the provisions of the Companies Act 2013.

18. On this issue we also refer to the decision of the Hon'ble Delhi High Court in the case of *Pr. Commissioner of Income Tax -7, Delhi vs Sony India Pvt. Ltd, order dated 30<sup>th</sup>. September, 2024 [ITA 551/2023 & CM Nos. 49717/2023 & 49718/2023]*, where in an identical case the High Court while analyzing the provisions of section 115JB , has observed as follows: *(relevant portion reproduced):*

*“RE: EXPENDITURE ON CSR*

28. *The AO had deleted the expenses on CSR amounting to Rs. 4,56,46,135/- for the purposes of calculating book profits and determining the tax payable under Section 115JB of the Act. It is also material to note that since the tax determined under the normal provisions of the tax was higher, the AO had assessed the tax chargeable on the said basis and not on the basis of book profits of the assessee.*

29. *The Tribunal had found that there was no provision under Section 115 JB of the Act, which required the expenditure on CSR to be adjusted for arriving at book profits. It is also settled law that except for adjustments as expressly set out under Section 115JB of the Act, book profits are required to be determined on the basis of accounts maintained in accordance with general accepted accounting principles and in accordance with the applicable law.*

30. *We find no reason why expenditure incurred on CSR be excluded from the final accounts. The learned counsel for the Revenue has also not provided any basis for excluding the expenditure on CSR for determining book profits. We find no infirmity with the decision of the Tribunal in rejecting the AO's adjustment of expenditure on CSR for determining the book profits under Section 115JB of the Act. Clearly, no substantial question of law arises in this regard as well.”*

19. As such respectfully following the law laid down by the Hon'ble Apex Court in the case of *Apollo Tyres Ltd Vs CIT ( supra ) and CIT vs HCL Comnet Systems and Services Ltd (supra)*, and the decision of the Delhi Bench in the case of *Sony India Pvt. Ltd (supra)*, we are of the opinion that except for adjustments as expressly set out under Section 115JB of the Act, book profits are required to be determined on the basis of accounts maintained in accordance with generally accepted accounting principles and in accordance with the provisions of the Companies Act and it is not within the power of the A.O. to recompute the same.

20. As such, we uphold the order of the Ld. CIT (A).

21. The appeal of the revenue is dismissed being devoid of merits.

**I.T.A. Nos. 385 & 386/Asr/2023 for AYs. 2017-18 & 2018-19:**

22. These two appeals preferred by the revenue are identical on facts and our findings and observations in *ITANo. 364/ASR/2023 for the Asst Year: 2016-17*, applies *mutatis mutandis* to these years also.

23. In the result, all the three appeals filed by the revenue are dismissed being devoid of merits.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 15.05.2025.

**Sd/-**  
**(Krinwant Sahay)**  
**Accountant Member**

**Sd/-**  
**(Udayan Dasgupta)**  
**Judicial Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy  
By Order