

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI SANJAY ARORA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 6898/MUM/2013
Assessment Year: 2007-08**

The ACIT, Cir. 4(2), Room No. 642, 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai- 400 020.	Vs.	M/s. SVS Securities Pvt. Ltd. 32-B, Khatau Building Annex, A.D.Marg, Mumbai- 400 023. PAN:- AABCS5982K
(Appellant)		(Respondent)

Appellant by : Shri. Ravinder Sindhu.
Respondent by : Shri. Sanjay Parikh.

Date of Hearing: 26/05/2016
Date of Pronouncement: 04/10/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been preferred by the revenue against order dated 18/09/2013 passed by the Ld. CIT (Appeals)-8 Mumbai for the Asst. Year 2007-08, whereby the Ld. CIT(A) allowed the appeal filed by the assessee against assessment order passed u/s 143(3) read with rule 147 of the Income Tax Act, 1961 (in short 'the Act').

2. Brief facts of the case are that the assessee filed its return of income for the relevant Asst. year declaring the total income of Rs. 14,44,09,280/-. The assessment was completed u/s 143(3) and the total income was determined at Rs. 14,67,09,507/- and total tax payable was worked out at Rs. 75,52,111/- after giving rebate u/s 88E of Rs. 3,72,81,916/-. The book profit u/s 115JB

was calculated at Rs. 14,40,13,793/- and the Tax payable under the said section was Rs. 1,61,65,868/-. Subsequently, it was found that the income was taxed at a lower rate, hence, the assessment was reopened u/s 147 after recording the reasons. Aggrieved, the assessee filed appeal before the Ld. CIT(A) who after hearing the assessee allowed the same relying on the decision of ITAT, Mumbai rendered in appellant's own appeal for the assessment year 2008-09. Against the said order the revenue is in appeal before the Tribunal on the following effective grounds:-

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the A.O to allow rebate u/s. 88E from income computed u/s 115JB of the Income Tax Act, 1961".

2. "On the facts and in the circumstances of the case and in law, the impugned order of the Ld. CIT(A) is contrary to law and consequently merits to be set aside and that of the Assessing Officer be restored".

3. Before us the Ld. Authorised Representative (AR) submitted that the case of the assessee is covered by the decision in the assessee's own appeal (ITA No. 6149/Mum/2011) for the A.Y. 2008-09. The Ld. DR did not dispute the said fact. We notice that the co-ordinate bench has decided the identical issue in favour of the assessee in revenue's appeal filed against order dated 05/07/2011 passed by the Ld. CIT (Appeals)-8, Mumbai. The co-ordinate bench, on the same issue raised before it, decided the identical issue in favour of the assessee by following the decision in the case of Horizon Capital Ltd. vs. ITO (ITA No 592/Bang/10).

4. In the case of Horizon Capital Ltd. vs. ITO(supra) the ITAT Bangalore Bench has decided the similar issue holding as under:-

6. Having heard both the parties and having considered the rival contentions, we find that the only dispute is whether the rebate of SIT paid by the assessee is allowable from the income tax computed against the total income computed under section 115JB of the Income Tax Act, 1961. The term 'total income' has been defined under the Income Tax Act, 1961 as "the total amount of income referred to in section 5, computed in the manner laid down in this Act." Section 5 of the Income Tax Act, 1961 defines the scope of the total income of a resident or a non-resident person. The total income of the assessee has to be computed under the regular provisions of the Income Tax Act, 1961 and in the case of a company it can be arrived at both under the regular provisions of the Income Tax Act and under the deeming provision under section 115JB of the Act. It has been provided that where the income tax payable by the assessee on the total income computed under regular provisions of the Act is less than 7 ½ % of the book profit prepared in accordance with the Companies Act, the higher of the tax i.e. the book profit shall be deemed to be the total income of the assessee and tax payable by the assessee shall be the amount of income tax at the specified rate. When we look at the provisions of section 87 of the Income Tax Act, 1961, we find that the rebate is to be granted from the amount of income tax chargeable on the total income of the assessee. The income tax is computed after arriving at the total income of the assessee and section 87 of the Income Tax Act, 1961 does not differentiate between the total income computed under the regular provisions of the Act or under section 115JB of the Income

Tax Act, 1961. Even though the sub section (1) of section 115JB starts with the non-abstane clause, "Notwithstanding anything contained in any other provision of this Act", we find that it is only for the computation of the total income and the sub section (5) of section 115JB provides for a saving clause that the rest of the provisions of the income tax Act relating to deductions, rebate, etc The other provisions of the Income Tax Act Shall apply. Therefore it is clear that the provision of sections 87 and 88A to 88E also apply after the total income is computed under section 115JB of the Income Tax Act, 1961 and since the assessee's total income includes the income from the taxable Securities Transactions, the assessee is entitled to a deduction of the amount equal to the STT paid by him in respect of the taxable Securities Transactions entered into in the course of business during the previous year. The assessee's appeal is thus allowed and the Assessing Officer is directed to give rebate under section 88E for the STT paid by the assessee."

5. Since the identical issue has already been decided in favour of the assessee, there is no reason to deviate from the view taken by the co-ordinate bench. We, therefore, respectfully following the decision of the co-ordinate Bench rendered in assessee's own case aforesaid for the A.Y. 2008-09 uphold the order passed by the Ld CIT(A) and dismiss the grounds of the appeal of the revenue.

5. In the result appeal filed by the revenue for the A.Y. 2007-08 is dismissed.

Order pronounced in the open court on 4th October, 2016

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 4/10/2016

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

Pramila

Sr. No.	Details	Date	Initials	Designation
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