IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
and
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No.761/Bang/2013
(Assessment year: 2004-05)

M/s.United Breweries (Holdings) Ltd.,
(Successor to UB Global Corporation Ltd.
on account of amalgamation),
UB Towers, Level12, 14 & 15,
UB City, 24, Vittal Mallya Road,
Bangalore-560001. … Appellant
PAN:AAACU2305B

Vs

Commissioner of Income-tax,
Bangalore-III,
Bangalore. … Respondent

Appellant by : Shri K.R.Pradeep, CA
Respondent by : Shri G.R.Reddy, CIT(DR)

Date of hearing : 28/03/2016
Date of pronouncement : 12/04/2016

O R D E R

Per VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 30/3/2012 of the Commissioner of Income-tax [CIT] passed under section 263 r.w.s. 254 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] for the assessment year 2004-05.

2. The assessee has raised the following grounds of appeal:

1. *"That the order of the Commissioner of Income tax in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity, without jurisdiction, bad in law and all other known principles of law.*

2. *That the order passed u/s 263 by the Learned CIT is erroneous having regard to the facts, circumstances and law on the issue.*

3. *That the order passed u/s 263 by the Learned CIT is barred by limitation requires to be cancelled.*

4. *The CIT erred in assuming jurisdiction u/s 263 without first satisfying that the assessment order suffered from an error which is prejudicial to the interest of revenue.*

5. *The CIT erred in issuing the notice u/s 263 when there was no error from the records available.*

6. *That the CIT erred in holding that order of assessment was erroneous and prejudicial to the interests of revenue*

7. *That the Learned CIT erred in directing the AO to allow deduction u/s 80HHC of Rs. 67,47,326/- while determining total income as per normal provisions and as well as u/s 115JB of the Act.*

8. *That the directions issued by the Learned CIT are contrary and not as per law requires to be cancelled.*

9. *The Learned CIT erred in issuing directions without appreciating the decision of Hon'ble Supreme Court in the case of Ajanta Pharma Ltd v CIT-327 ITR 303.*

10. *For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered."*

3. The original assessment in this case was completed u/s 143(3) on 30/11/2006. Subsequently, on verification of records, the CIT noted that while allowing the claim of deduction u/s 80HHC, loss suffered under export of trading goods was not set off against the amount which bears to 90% of the export incentives, the same proportion as export turnover bears to the total turnover. Thus, the CIT noted that the assessment order is erroneous and prejudicial to the interest of the revenue so far as the AO has allowed excess deduction u/s 80HHC without setting off the loss as per proviso to sec.80HHC(3) of the Act. Accordingly, the CIT proposed to revise the order of the AO by issuing show-cause notice dated 15/2/2008 u/s 263 of the Act. Thereafter, the CIT passed revision order dated 12/2/2009 which was challenged by the assessee before this Tribunal in ITA No.518/Bang/2009 on the ground that the CIT has passed the impugned order dated 12/2/2009 without considering the reply filed by the assessee in response to the show cause notice. The Tribunal vide its order dated 30/10/2009, restored the matter to the record of the CIT to decide the issue after providing due opportunity of hearing to the assessee. Consequently, the CIT has passed the impugned order dated 30/3/2012 whereby it was held that the order of the AO passed u/s 143(3) dated 30/11/2006 is erroneous and prejudicial to the interest of the revenue inasmuch as deduction u/s 80HHC has been wrongly computed by the AO. The CIT directed the AO to allow deduction

u/s 80HHC after setting off the loss suffered by the assessee in the export of trading goods and consequently the deduction shall be of Rs.67,47,326/- instead of Rs.4,48,59,326/- claimed by the assessee and allowed by the AO. The CIT further directed the AO to adopt the deduction u/s 80HHC at Rs.67,47,326/- and compute the total income of the assessee as per normal provisions of the Act as well as u/s 115JB and then work out the tax liability.

4. Before us, learned AR of the assessee has submitted that so far as the computation of deduction u/s 80HHC(3), after setting off the loss in the export of trading goods, assessee has no grievance and therefore, the deduction u/s 80HHC allowed by the CIT to the extent of Rs.67,47,326/- instead of Rs.448,59,326/- is accepted by the assessee. However, only grievance of the assessee against the impugned order is regarding the direction given by the CIT to compute deduction u/s 80HHC while computing MAT on the book profit u/s 115JB. The learned AR of the assessee has submitted that the computation of deduction u/s 80HHC on the book profit has to be on the full amount and not 30% of the profits from export of goods. He has further contended that this issue is covered by the judgment of the Hon'ble Supreme Court in the case of *Ajanta Pharma Ltd. vs. CIT* (327 ITR 305) wherein the Hon'ble Supreme Court has held that sec.115JB refers to levy of MAT on deemed income and sections 80HHC and 115JB operate in different spheres. Hon'ble Supreme Court has observed that section 80HHC(1) refers to

eligibility whereas sec.80HHC(3) refers to computation of tax incentive. Sec.115JB is a self-contained code as it taxes deemed income. Thus for computing book profits, downward adjustment would be the full amount of export profits. Therefore, clause (iv) of Explanation to sec.115JB covers full export profits of 100% as eligible profit and the same cannot be reduced to the slab percentage as in the normal computation of income of the assessee. He has pointed out that by following the judgment of the Hon'ble Supreme Court in the case of *Ajanta Pharma Ltd.*(supra), Hon'ble jurisdictional High Court in the case of *CIT vs. Hindustan Aeronautics Ltd.* (203 Taxman 449) has taken a similar view by holding that deduction u/s 80HHC is available on full export profits while computing book profits and MAT liability of the assessee u/s 115JB.

On the other hand, ld. DR has submitted that the CIT has already considered this issue in the impugned order and the issue involved in revision proceedings is only limited to the point of setting off the loss incurred by the assessee in the export of trading goods and therefore, this issue does not emanate from the impugned order. He has relied upon the revision order of the CIT as well as the decision of this Tribunal in assessee's own case for assessment year 2003-04 dated 21/11/2009 in ITA No.655/Bang/2008 dated 21/11/2009.

5. We have considered the rival submissions as well as the relevant material on record. We find that the CIT proposed to revise the assessment order dated 30/11/2006 only in respect of the issue that the AO has allowed excess deduction u/s 80HHC without setting off losses incurred by the assessee on export of trading goods. The AO, while completing the assessment u/s 143(3) allowed deduction u/s 80HHC at Rs.4,48,59,326/- which was claimed by the assessee. The CIT noted that if loss suffered under export of trading goods was to be set off against the amount which bears to 90% of the export incentive, same proportion as the export turnover bears to the total turnover then, the deduction u/s 80HHC would be Rs.67,47,326/-. This finding of the CIT has not been disputed by the assessee that loss suffered under export of trading goods was to be set off against the amount as per proviso to sec.80HHC(3), then the deduction u/s 80HHC would be Rs.67,47,326/- as against the claim of Rs.4,48,59,326/-. We find that the issue involved in the revision proceedings is limited only to the extent of not setting off of loss suffered by the assessee in the export of trading goods in terms of proviso to sec.80HHC(3) and therefore, there was no issue regarding allowing deduction u/s 80HHC on the full amount of export profit while computing MAT liability u/s 115JB. The CIT has directed the AO that while computing MAT liability under the provisions of sec.115JB, deduction u/s 80HHC shall be allowed after setting off losses suffered on export of trading goods.

Therefore, there was no issue on the point of allowing deduction at 100% instead of 30% while computing MAT liability u/s 115JB. There is no quarrel as far as the judgment of Hon'ble Supreme Court in the case of *Ajanta Pharma Ltd* (supra) that deduction u/s 80HHC has to be allowed on the full amount of export profits instead of on the reduced rate of 30% in the case of the assessee. We find that the assessee itself has computed deduction u/s 80HHC even on the book profit without applying the decision of the Hon'ble Supreme Court in the case of *Ajanta Pharma Ltd* (supra). When the revision proceedings /s 263 were initiated only on the point of setting off of loss suffered in export of trading goods while computing deduction us 80HHC, then the claim of the assessee that while computing MAT liability of the assessee u/s 115JB deduction u/s 80HHC shall be allowed on the full amount instead of 30% of the profit derived from export of goods cannot be taken into consideration because the revision proceedings u/s 263 of the Act cannot be used for the benefit of the assessee but it is only meant for revision of the assessment order if the same is found erroneous and prejudicial to the interest of revenue. Thus the pre-requisite conditions for invoking provisions of section 263 are the order of the AO is erroneous and prejudicial to the interest of the revenue, and therefore these proceedings cannot be used for the benefit of the assessee. Even if the assessee has committed a mistake in filing return, remedy available with the assessee is under other relevant provisions of

the Act and not u/s 263. In view of the above facts and circumstances of the case, we do not find any merit or substance in the appeal of the assessee. Consequently, we uphold the impugned order revision order of the CIT.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this 12th day of April, 2016

sd/-	sd/-
(ABRAHAM P GEORGE)	**(VIJAY PAL RAO)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Place : Bangalore
D a t e d : 12/04/2016

eks

Copy to :

1 Appellant
2 Respondent
3 CIT(A)-II Bangalore
4 CIT
5 DR, ITAT, Bangalore.
6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore