

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

अपील सं./ I.T.A. No. 1648/Mds/2013

निर्धारण वर्ष / Assessment Year : 2006-07

Procon Instrumentation Pvt. Ltd.,
1-H, Sakthi Towers,
766, Anna Salai,
Chennai - 600 002.

Vs. Assistant Commissioner of
Income Tax,
Company circle -v(2),
Chennai.

[PAN: AAACP 5175A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Applicant by

: Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri Clement Ramesh Kumar,
Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 19.10.2016

घोषणा की तारीख/Date of Pronouncement

: 15.11.2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The Hon'ble High Court in Tax case appeal no. 1117/2015 dated 10.02.2016 has set aside the order of Tribunal in ITA No. 1648/Mds/2013 dated 28.11.2014 and condoned the delay in filing the appeal before the

tribunal and directed the Tribunal to take up the case for hearing in the usual course and as per the directions the case is heard.

2. The assessee has raised the following grounds:

2.1 The commissioner of Income Tax (Appeals) is wrong in confirming the action of the Assessing Officer in re-computing the book profit, when the Assessing Officer has no jurisdiction to do so.

2.2 The Commissioner of Income Tax (Appeals) ought to have seen that sale of land being an extra-ordinary item need to be routed through the profit and loss account.

2.3 The Commissioner of Income Tax (Appeals) went wrong in holding that the profit and loss account prepared by the assessee is not in accordance with schedule-VI of the companies Act, warranting re-computation of book profits for the purpose of section 115JB of Income Tax Act.

2.4 The Commissioner of Income Tax (Appeals) went wrong in not following the decision of the Hon'ble Supreme Court in the case of Appolo Tyres Vs. CIT.

2.5 The order of assessment and the order of the Commissioner of Income Tax (Appeals) are liable to be quashed as contrary to facts and due to non application of mind.

3. The brief facts of the case, that the assessee company is in the Business of manufacturing of Electronic Process Control instruments including supply, Erection and Commissioning and filed Return of income on 30.11.2006 with total income of Rs. 2,75,994/- and the return of income was processed u/s. 143(1) of the Act on 18.02.2008. Subsequently, the Assessing Officer has reason to believe that there is income escaping assessment and observed that the assessee has claimed exemption u/s. 54EC to the extent of Rs. 2,22,94,324/- and not completed the provisions of the law and issued notice u/s. 148 of the Act. In compliance to the notice the assessee company filed letter to consider the return of income filed originally on 30.11.2006 as in response to the notice. The Assessing Officer on verification of the records found that the assessee has claimed expenditure of Erection and Commissioning in Profit & Loss Account were as same has to be treated as capital in nature and also excess claim of deduction u/s. 54EC of the Act. Further, the Assessing Officer found that the assessee company has not credited profit on sale of land to Profit and Loss Account in accordance with the part II and III of Schedule VI of Companies Act and Accounting Standards of ICAI, but the assessee company credited the profit on sale of land under Appropriation Account under head of Extra ordinary income and is not in accordance with the law. The Assessing Officer disputed that profit on sale of land was not considered by the assessee for calculation of Book profits u/s. 115JB of the Act and unilaterally re-arranged the Profit and Loss Account and

calculated the taxable income of Rs. 20,09,524/- under provisions of section 115JB of the Act on Book profits of Rs. 2,38,80,279/- and raised the demand of Rs. 28,93,870/-including interest.

4. Aggrieved by the order of the Assessing Officer, the assessee company has filed an appeal with the CIT(A), the Ld. AR and argued the grounds and relied on the judicial decisions of Supreme Court, High Court and submitted that the assessee company has followed the accounting policies and the provisions under part II and part III of Companies Act. The Ld. CIT(A) considered the decisions relied by the assessee and discussed the applicability of provisions of section 115JB of the Act at page 6-8 of his order and is of the firm opinion that the profit on account of sale land was excluded for Books profits calculation and was credited to the Appropriation Account. The Ld. CIT(A) justified the action of Assessing Officer on provisions of Schedule VI of the Companies Act and calculation of Book profits u/s. 115JB of the Act and distinguished the cases relied by the assessee and uphold the action of the Assessing Officer and partly allowed the appeal.

5. Aggrieved by the order of the CIT(A), the assessee has assiled appeal with the tribunal. The Ld. AR of the assessee reiterated submissions made in the appeal proceedings and the lower authorities and argued that the order of Ld. CIT(A) confirming the action of the Assessing Officer is bad in

law. The assessee company sold the land and profit on sale was transferred to the Capital Reserve Account and offered to tax separately. Whereas, the Assessing Officer has re-caste the Profit and Loss Account and included profit on sale of land for the purpose of calculation of Book profits u/s. 115JB of the Act. The Ld. CIT(A) has not considered the decision of coordinate bench and Apex Court decision of Apollo Tyres Vs. CIT (2002) 255 ITR 273 (SC) were held that the Assessing Officer does not have power to make changes and recast the financial were as the Ld. AO has unilaterally dealt on the issue overlooking the judicial decisions. The Ld. AR also supported his submissions with the decision of the coordinate bench in the case of M/s. Thambi Modern Spinning Mills Ltd., ITA No. 765/Mds/2015 dated 30.12.2015 where the Tribunal has considered the judgment of Jurisdictional High Court and other coordinate bench decision and prayed for allowing the appeal.

6. Contra, the Ld. DR relied on the order of the CIT(A) and opposed to the grounds. We heard the rival submissions and material on record perused the material on record and judicial decisions cited, the assessee company is engaged in manufacturing activity and complied the provisions of Companies Act and the accounting standards and accounting policies. We found that the similar issue on applicability of provision of section 115JB of the Act was dealt in the case of M/s. Thambi Modern Spinning Mills Ltd. (supra) at para 9, page 6 of the order.

" We heard the submissions of both the parties, material available on record, orders of the lower authorities and the judicial decisions cited. The assessee company's Accounts are Audited under the Companies Act and followed the accounting standards and accounting policies reported by the Auditor and placed in assessment proceedings. The assessee has reiterated the submissions before the lower authorities that there is no difference in the provisions of sec. 115J, 115JA and presently 115JB. Over a period of time, these provisions have been considered under different sections. We find the co-ordinate Bench of the Tribunal in the case of M/s. Besser Concrete Systems Ltd vs ACIT in ITA No. 458/Mds/2007 has considered similar issue and observed in para 8 and 9 of its order as under:

"8. A similar issue has been considered by the Hon'ble High Court of Madras in the case of CIT v. Vijayashree Finance & Investment Co. (P) Ltd. (2008) 216 CTR (Mad) 191. The Hon'ble High Court was considering the issue in the context of Section 115J. In that case, the assessee-company had sold certain land and made certain gains out of the sale. The surplus on sale of land was transferred by the assessee-company directly to its "Capital Reserve" and it did not form part of the book profit. The Assessing Officer added the profit from the sale of land to the book profits while making computation under Section 115J of the Income-tax Act, 1961. In this context, the Hon'ble High Court, referring to the judgment of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. v. CIT (2002) 255 ITR 273 (SC), held that the Assessing Officer, while computing income under Section 115J of the Act, has only the power of examining whether the books of accounts are certified by the authorities under the Companies Act, 1956 as having been properly maintained in accordance with that Act. The Assessing Officer, thereafter, has the limited power of making increases or reduction as provided in the Explanation to the said Section. The Hon'ble High Court held that the assessing authority does not have the jurisdiction to go behind the net profit shown in the Profit & Loss account except to the extent provided for in the Explanation to Section 115J of the Act.

9. In view of the judgment of the Hon'ble jurisdictional High Court, we hold that the lower authorities are not justified in adding back

7,46,46,043/- to the book profits of the assessee-company. The said addition is accordingly deleted." ITA No. 765/15 We find that facts and circumstances of the present case are similar to the facts of the case decided earlier and respectfully following the same, we direct the Assessing Officer to delete the addition of profit on sale of land considered for calculation of Book Profits.."

7. We respectfully follow the co-ordinate bench decision and direct the Assessing Officer to delete the profit on sale of land for the purpose of calculation of Book profits u/s. 115JB of the Act and the grounds of the assessee are allowed.

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

Order pronounced on Tuesday, the 15th day of November, 2016 at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 15th November, 2016

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF