

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
and  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.726/Bang/2014  
(Assessment year: 2005-06)**

M/s.B & B Infotech Ltd.,  
No.17, 4<sup>th</sup> floor,  
Shah Sultan Apartment,  
Ali Asker Road,  
Bangalore-560 052.  
*PAN: AAACR6295D*

... Appellant

Vs.

Income-tax Officer,  
Ward 12(1),  
Bangalore.

... Respondent

Appellant by: Shri T.Srinivasa, CA.  
Respondent by: Shri G.Ramesha, JCIT(DR)

Date of hearing : 08/09/2015.  
Date of pronouncement: 07/10/2015.

**O R D E R**

**Per VIJAY PAY RAO, JM :**

This appeal by the assessee is directed against the order dated 20/2/2014 of the CIT(A)III, Bangalore for the assessment year 2005-06.

**Page 2 of 9**

2. The assessee has raised the following grounds:

- 1) *The learned Commissioner of Income Tax (appeals) is not justified to have dismissed the Appeal which is unjust and contrary to facts and circumstances of the case.*
- 2) *The learned CIT (A) ought to have appreciated that remission of liability by bank financial institution so far as it relates to the principal amount lent will be "capital receipt" and being statutorily excluded from the definition of "income" u/s. 2(24) of Income Tax Act, such capital receipt were outside the ambit of taxation under Indian Income Tax Act, 1961.*
- 3) *The learned CIT (A) has failed to appreciate that Sec. 115JB of the Income Tax Act was introduced mainly to restrict various exemption, concession and incentives and as a measure of equity so that a segment of corporate assesseees having substantial income and dividend paying records shall contribute at least a minimum amount of tax under the Act and not to tax those receipts which were outside the purview of section 2(24) of the Act.*
- 4) *The learned CIT(A) has erred in law in not appreciating the legislative intent behind introduction of MAT as clarified by CBDT vide Circular No 495 dated 22-09-1987 as also the proviso to section 10(38) wherein it specifically provided that income by way long term capital gains of a company arising out of transfer of equity on which securities transaction tax is applicable which are otherwise exempt from the levy of long term capital gains, shall be taken into account in computing the book profit and income tax payable under section 115JB.*
- 5) *The learned CIT(A) also ought to have appreciated from the above circular and proviso that if the understanding of the provisions of Section 115 JB were to include any type of receipts including the ones u/s 2(24), there was no need for the law makers to introduce proviso to Section 10(38) to make its intention clear.*
- 6) *The learned CIT (A) ought to have appreciated that Sec. 115JB is part and parcel of Income Tax Act, 1961 and consequently those receipts which are statutorily excluded from definition of income u/s. 2(24) cannot be subjected to tax under this section following the Principles of law laid down by the Hon'ble Calcutta High Court in the case of SAIL DSP yr employees Association*

**Page 3 of 9**

*Vs UOI (2003) 128 TAXMAN 704 Cal.*

- 7) *The learned CIT (A) failed to appreciate that while, book profits as computed under Part II and Part III of Schedule VI to Companies Act, 1956 and not amenable for re-computation / recasting in the normal course, but there is no total bar in either the assessee or AO making such exercise in case of any manifest errors of including receipt notional income which will not fall within the definition of "to disclose the working of the company during the financial year".*
- 8) *The learned CIT(A) is also not justified in not admitting letter dated 08.02.2011 issued by ING Vysya Bank confirming that the remission of Rs. 43 lacs was towards the Principal under Rule 46A, which was, in fact, in compliance of the directions of the assessing officer, but received after conclusion of the assessment proceedings and no new facts were being canvassed for the first time before the learned CIT(A).*
- 9) *The CIT(A) also ought to have appreciated that the for the purposes of computation of the book profits u/s 115 JB, statute has prescribed a statutory report under Rule 40B (Form No 29B) and the said report shall be read as part and parcel of the audited annual accounts for the purposes of determining the book profits.*
- 10) *The Learned CIT (A) has grossly erred in not following the binding decision of the jurisdictional Tribunal in the case of Syndicate Bank, Manipal Vs. CIT, wherein the Hon'ble ITAT, Bangalore was pleased to declare that notional income by way of interest on zero coupon bonds has to be excluded for the purpose of 115JB.*
- 11) *The learned CIT (A) is not justified to have followed the decision of ITAT Mumbai in the case of Duke off Shore Ltd. Vs. DCIT In ITA No 5810/mum/2008 dated 05.01.2011, which was essentially based on the decision of ITAT Hyderabad in the case of Rain Commodities Ltd Vs. DCIT dealing with incomes which were exempted receipts such as capital gains and not directly relate the issue of excluded receipts.*
- 12) *The learned CIT(A) ought to have followed the following decisions which are directly on the issue of exclude receipts and directly on the issue under agitation:*
  - a) *Hon'ble ITAT, Bangalore in the case of Syndicate Bank, Manipal Vs. Assessee*

**Page 4 of 9**

- b) *Hon'ble ITAT, Mumbai in the case of DCIT Vs. Bombay Diamond Co. Ltd (2010) 33 DTR 59 (Mum)*
- c) *ITAT, Jaipur in the case of Shree Cement Ltd., Ajmer Vs. Department of Income Tax dated 09.09.2011*
- d) *ITAT, Jaipur in the case of Shree Cement Ltd., Ajmer Vs. Department of Income Tax dated 27.01.2014*
- e) *ITAT, Hyderabad in the case of My Home Power Ltd., Hyderabad Vs. Assessee*
- f) *ITAT Mumbai in the case of Hitkari Fibers Ltd Vs JCIT dated 26.05.2003*

13. *For the above grounds and such other grounds that may be urged at the time of hearing, with kind permission, Appellant prays that the Hon' ble Tribunal may be pleased to :*

- i. Set aside the impugned order dated 20.02.2014*
- ii. Allow the Appeal with consequential reliefs*
- iii. Grant such other relief/s as the Hon'ble Tribunal deems fit and appropriate in the facts and circumstances of the case.*

3. Brief facts of the case are that the assessee filed its return of income on 25/3/2006 declaring 'nil' income. A notice u/s 148 of the IT Act, 1961 [the Act" for short] was issued on 8/11/2006 whereby the AO sought to tax under MAT an amount of Rs.43 lakhs being remission of liability of ING Vysya Bank Ltd. The assessee submitted before the AO that this remission of the liability was on account of principal amount of loan and therefore, the same is not in the nature of income which can be considered as part of the book profits u/s 115JB of the Act. The AO rejected the objections of the assessee and added the said amount of Rs.43 lakhs while computing book profits u/s 115JB of the Act.

**Page 5 of 9**

The assessment was completed by the AO vide order dated 24/12/2007 determining the book profits for the purpose of MAT u/s 115JB at Rs.43 lakhs.

4. Before the CIT(A), assessee reiterated the contention that the remission of the principal loan amount in one time settlement cannot be considered as income for the purpose of book profits u/s 115JB. The CIT(A) did not accept the contention of the assessee and had held that book profits arrived at as per the provisos of Schedule VI of the Companies Act cannot be tinkered with in view of the judgment of the Hon'ble Supreme Court in the case of *Apollo Tyres* (255 ITR 274).

5. Before us, learned AR of the assessee submitted that remission being capital receipt, cannot be considered as income of the assessee even for the purpose of book profits u/s 115JB of the Act. In support of his contention, he has relied upon the decision of the Mumbai Bench of the Tribunal in the case of *M/s.Shivalik Venture Pvt. Ltd. vs. DCIT* in ITA No.2008/Mum/2012 dated 19/8/2015 as well as the decision of the Jaipur Bench of the Tribunal in the case of *ACIT vs. Shree Cement Ltd.* in ITA Nos.614, 615 & 635/JP/2010 dated 9/9/2011. The learned AR of the assessee has also relied on the judgment of the Hon'ble Andhra Pradesh High Court in the case of *CIT vs. Nagarjuna Fertilizers & Chemicals Ltd.* in ITTA No.100 of 2003 dated 23/9/2014 and submitted that when the assessee has the

**Page 6 of 9**

disclosed the fact of capital receipt in the notes to accounts, then said amount shall be excluded from the profit and loss account (P&L A/c) for the purpose of book profits u/s 115JB. The learned AR of the assessee has submitted that even if the said amount is shown by the assessee in the P&L A/c when the assessee has disclosed the nature of receipt in the notes to the accounts, then the effect of said disclosure in the notes to the accounts will be that the said amount should not be considered as part of P&L A/c of the assessee as per the provisions of Schedule VI of the Companies Act.

6. On the other hand, learned Departmental Representative submitted that this amount has been credited by the assessee in the P&L A/c. The assessee has not disputed that the accounts of the assessee are prepared as per the provisions of Schedule VI of the Companies Act. Therefore, the AO has no power to tinker with the P&L A/c prepared by the assessee as per Schedule VI of the Companies Act except the adjustment as permitted under the Explanation to sec.115JB. He has relied upon the orders of the authorities below.

7. We have considered the rival submissions as well as relevant material on record. The amount of Rs.43 lakhs pertains to remission of liability under one time settlement of outstanding loan with ING Vysya Bank. The assessee has prepared its P&L A/c by including this amount as income. However, the assessee

**Page 7 of 9**

has contended that this amount should be excluded for the purpose of computing book profits u/s 115JB of the Act. The assessee has placed reliance on various judgments as referred above. We note that the ratio of the decisions relied upon by the assessee is based on the premise that if an item of income or expenditure is required as per Part II of Schedule VI of the Companies Act to be part of P&L A/c, but the same was not disclosed in the P&L A/c and has been disclosed in the notes forming part of the accounts, then the said disclosure in the notes to the accounts would be treated as disclosure of that particular item of income or expenditure as the case may be, in the P&L A/c for the purpose of book profits u/s 115JB. In the case in hand, the assessee got remission of liability of Rs.43 lakhs under one time settlement by the ING Vysya Bank which has been disclosed by the assessee in the P&L A/c. This disclosure, in the P&L A/c is strictly as per the requirement of Schedule VI of the Companies Act and further in conformity with the mandatory accounting standard AS 5. Therefore, the treatment of the amount in the books of account and particularly in the P&L A/c, is as per the provisions of Schedule VI of the Companies Act as well as accounting standard AS 5. Hence, any disclosure in the notes to accounts would not require any change in the P&L A/c already prepared as per Schedule VI of the Companies Act. The decisions relied upon by the assessee are applicable on the facts and circumstances where if an item of income or expenditure which is

**Page 8 of 9**

required to be disclosed in the P&L A/c prepared as per provisions of Schedule VI of the Companies Act but instead of disclosing the said item in the P&L A/c, it was disclosed in the Notes to the accounts, then such item of income or expenditure will be treated as part of the P&L A/c for the purpose of computing book profits u/s 115JB. Once P&L A/c is admittedly prepared as per Schedule VI of the Companies Act, then neither the AO has any power to tinker with it nor the assessee is permitted to claim exclusion or inclusion of any item of income or expenditure as the case may be, for the purpose of computing book profits u/s 115JB except the permissible adjustment provided under the Explanation to sec.115JB of the Act itself. It is not disputed that this amount does not fall in the ambit of any of the clauses of Explanation to 115JB. Therefore, once this amount has been disclosed in the P&L A/c prepared strictly as per provisions of Schedule VI of the Companies Act, the same cannot be excluded for the purpose of computing book profits u/s 115JB. We find that the CIT(A) has rejected the claim of the assessee by following the judgment of the Hon'ble Supreme Court in the case of Apollo Tyres (supra) as well as the Hon'ble Bombay High Court in the case of *CIT vs. HCL Comnet Systems & Services Ltd.* (305 ITR 409). Accordingly, in the facts and circumstances of the case as well as above discussion, we do not find any error or illegality in the impugned order of the CIT(A).



**Page 9 of 9**

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

*Pronounced in the open court on 07<sup>th</sup> October, 2015.*

sd/-  
**(Jason P Boaz)**  
**ACCOUNTANT MEMBER**  
*eksrinivasulu*

sd/-  
**(Vijay Pal Rao)**  
**JUDICIAL MEMBER**

Copy to:

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

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore