

आयकर अपीलिय अधिकरण "जी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. : 5996/Mum/2013
(Assessment year: 2007-08)

Dy Commissioner of Income Tax Range -8(1), Mumbai.	Vs	M/s Garware Polyester Ltd, 50-A, Swami Nityanand Marg, Western Express Highway, Vile Parle (East), Mumbai-400 057 स्थयी लेखा सं.:PAN: AAACG 0571 D
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Vikash Kr. Agarwal
Respondent by	:	Shri Vijay Mehta

सुनवाई की तारीख /Date of Hearing : 12-08-2015

घोषणा की तारीख /Date of Pronouncement : 14-08-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the revenue against the impugned order dated 31.07.2013, passed by CIT(A)-16 Mumbai, for the quantum of assessment passed u/s 143(3) r.w.s. 147 for the assessment year 2007-08 on following grounds:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the adjustment/addition in computing Book Profit u/s 115JB of the IT Act, of Rs. 3,52,78,000/- of waiver of principal amount on one Time Settlement (OTS) of loan by Vijaya Bank, without appreciation the findings of the AO for making such an addition.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the adjustment/addition in computing Book Profit u/s 115JB of the IT Act, of Rs. 3,52,78,000/- of waiver of principal amount on one Time Settlement (OTS) of loan by Vijaya Bank, without appreciating that the directly transfer of the

amount to General Reserve without routing the same through Profit & Loss Account”

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the adjustment/addition in computing Book Profit u/s 115JB of the IT Act, of Rs. 3,52,78,000/- of waiver of principal amount on one Time Settlement (OTS) of loan by Vijaya Bank, without appreciating that the direct transfer of the amount to General Reserve without routing the same through Profit & Loss Account is not in accordance with Schedule VI of the Companies Act, 1952.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the adjustment/addition in computing Book Profit u/s 115JB of the IT Act, of Rs. 3,52,78,000/- of waiver of principal amount on one Time Settlement (OTS) of loan by Vijaya Bank, ignoring the decision dated 15/12/2009 of the Hon'ble ITAT, Mumbai Bench, in DCIT vs Bombay Diamond Co. Ltd. wherein the Hon'ble ITAT has held that even Capital Profits have to be added for computing Book Profit u/s 115JB”.*

2. The brief facts *qua* the issue involved is that, the assessee has filed its return of income for the assessment year 2007-08 on 25.10.2007 declaring “Nil” income under the normal provisions of the Act. However, the book profit u/s 115JB was shown at Rs. 2,49,44,465/-. Thereafter assessment was completed u/s 144C(4) r w s 143(3) on 22.12.2010 on a ‘Nil’ income, however, book profit u/s 115JB was assessed at Rs. 4,43,54,908/-. Later on the assessment so completed was reopened u/s 147 on the ground that there is a cessation of liability of Rs. 3,52,78,700/- in the form of waiver of principal amount of loan which were directly credited to ‘General Reserves’ in the balance sheet, which ought to have been routed through profit and loss account and therefore, would have form part of the book profit.

3. The assessee’s case on merits before the Assessing Officer was that in the relevant year, one time settlement (OTS) was entered into by the assessee with Vijaya Bank in respect of loan liability. The loan borrowed from Vijaya Bank in the earlier years

was utilized for the capital expenditure and capital expansion. Under the OTS Agreement, lumpsum payment of Rs. 7 crores against total outstanding of Rs. 12,81,12,000/- was to be made. Thus, there was waiver of Rs. 5,81,12,000/-, which was bifurcated into principal amount of Rs. 3,52,78,000/- and waiver on account of interest amount of Rs. 2,28,33,000/-. The waiver of principal amount was thus Rs. 3,52,78,000/-, which was transferred to 'General Reserve' in the balance sheet. In support of the contention that Assessing Officer cannot disturb the P&L account maintained in accordance with Part II & III of Schedule VI of the Company Act, reliance was placed on the decision of Supreme Court in Apollo Tyres Ltd vs CIT, reported in 255 ITR 273 (SC). However, the Ld. Assessing Officer held that the assessee should have credited the waiver of loan liability in the profit and loss account and accordingly, he made the adjustment in the book profit for the same amount.

4. Before the CIT(A), it was reiterated that the term loan was received in the year 1998, which was for 'capital expansion plan'. When the loan was waived off, the principal amount has been credited to 'General Reserve', because the waiver is on account of capital receipt. This accounting entry was reviewed and accepted by the Auditors and duly approved by the Board. The accounts were prepared under Schedule-VI of the Companies Act and there was no deviation from the same, hence, the same should not have been adjusted by the Assessing Officer. The Ld. CIT(A) agreed with the contention of the assessee and held that in view of the principle laid down by the Hon'ble Supreme Court in the case of Apollo Tyres Ltd. vs CIT (*supra*) that, once the profit and loss account has been prepared under Part-I & Part-II of Schedule-VI of the Companies Act; duly certified by the Auditors; placed before the shareholders and adopted/approved by the AGM, then the Assessing Officer cannot make any adjustments to the company's book profit except to the extent provided in Explanation 1. The assessee here in this case has prepared its account in accordance

with the Schedule-VI of the Companies Act and, therefore, he held that the addition made by the Assessing Officer in the book profit is not correct.

5. Before us, Ld. Counsel supported the order of CIT(A) and submitted that this issue is now well settled by series of decisions rendered by various High Court and by this Tribunal in *catena* of case laws some of the decisions were also filed before us.

6. The Ld. DR, on the other hand, relied upon on the order of the Assessing Officer.

7. We have heard the rival contentions and also perused relevant finding given in the impugned orders. The sole dispute raised is, whether the Assessing Officer could have made adjustment to the book profits for an amount of Rs. 3,52,78,000/-, which was on account of waiver of principal amount of loan, which has been credited by the assessee directly in the Balance Sheet in 'General Reserve' account, which according to the Assessing Officer should have been routed through profit and loss account and thus, would have been part of the book profit. The provisions relating to book profit u/s 115JB are absolutely clear that same is to be computed on the basis of profit and loss account prepared in accordance with the provision of Part-II and Part-III of Schedule-VI of the Companies Act and to such profit only certain adjustments as provided in Explanation 1 can be made. The Assessing Officer does not have the power to tinker with such accounts prepared as per Schedule VI and certified by the Auditors. Assessing Officer has also not specified categorically that as to how the Part II & III of Schedule VI has not been followed or is against the prescribed accounting standard there is a requirement of law that waiver of loan taken for utilizing capital expansion is to be routed only through profit and loss account and cannot be credited to the 'General Reserve', i.e. directly in the Balance sheet. Thus, the finding of the CIT(A) is purely in accordance with the provisions of the law and the principle laid down by the Hon'ble Supreme Court

in the case of Apollo Tyres (*supra*). The Hon'ble Bombay High Court in the case of CIT vs Akshay Textiles Trading And Agencies (P) Ltd., reported in 304 ITR 401 and later on in the case of CIT vs Adbhut Trading Co. Pvt Ltd, reported in 338 ITR 94, following the aforesaid decision of the Hon'ble Supreme Court held *that accounts prepared under the Companies Act and certified by the authorities under the said "Act" have to be accepted*. Thus, we do not find any merits in the grounds raised by the revenue and is accordingly dismissed.

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

Order pronounced in the open court on 14th August, 2015.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 14th August, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -16, Mumbai.
 - 4) The CIT- 8, Mumbai.
 - 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हाण व.नि.स
*Chavan, Sr.PS