



ITA.No.3625/Mum/2017
Rashtriya Chemicals & Fertilizers Limited
Assessment Year-2012-13

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

जोगिन्दर सिंह ,न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.3625/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Rashtriya Chemicals & Fertilizers Limited 'Priyadarshini' Eastern Express Highway, Sion Mumbai-400 022	बनाम/ Vs.	Commissioner Of Income Tax - Large Tax Payer Unit World Trade Centre Tower-1 Cuffe Parade Mumbai -400 005
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACR-2831-H		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ketan K Ved, Ld.AR
Revenue by	:	Narendra Singh Jangpangi, Ld. CIT DR

सुनवाई की तारीख / Date of Hearing	:	12/12/2017
घोषणा की तारीख / Date of Pronouncement	:	14/02/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2012-13 contest the invocation of revisional jurisdiction u/s 263 by the Ld. Commissioner of Income Tax (LTU), Mumbai [CIT] on 29/03/2017 by raising the following grounds of appeal:-



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- 1.1 *The Commissioner of Income tax has erred in perfunctorily (as pointed out in detail in the annexure hereto) passing an Order u/s.263 of the Income Tax Act, 1961.*
- 1.2 *The Commissioner of Income tax failed to appreciate that the conditions precedent to passing an Order under the said section were not satisfied and hence the Order U/s.263 of the Income-tax act,1961 is ultra vires and void.*
- 1.3 *The Commissioner of Income tax has erred in holding that the Assessment Order dated 18 February 2015 passed by the Assessing Officer was erroneous and prejudicial to the interests of revenue and hence erred in passing an Order u/s.263 of the Income-tax Act in respect of the same.*
- 1.4 *The appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the assessment framed by the Assessing Officer was after due consideration of the facts and the law by the Assessing Officer and hence the setting aside of the same by the Commissioner of Income tax u/s.263 of the Income tax act,1961 is erroneous, in excess of jurisdiction and bad in law.*
- 1.5 *The appellant submits that the impugned Order u/s.263 of the Commissioner of income tax be struck down.*
Without Prejudice to the aforesaid:
- 2.0 *Re: Addition of Rs.11.91 crores being the taxes paid on perquisites to employees while computing "book profits" under section 115 JB of the Income-tax Act,1961.*
- 2.1 *The Commissioner of Income tax has erred in directing the Assessing Officer to increase in the "book profits" for the purposes of section 115JB of the Income-tax Act,1961 by an amount of Rs.11.91 crores being taxes borne by the appellant on the non-monetary perquisites given to employees while computing its book profits.*
- 2.2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the taxes paid on non-monetary perquisites to employees amounting to Rs.11.91 crores is allowable while computing its "book profits" for the year and the stand taken by the Commissioner of income-tax in this regard is erroneous and not in accordance with law.*

2.1 Briefly stated the assessee being *resident corporate assessee*, engaged as *manufacturer of fertilizers and chemical products* was assessed u/s 143(3) on 18/02/2015 by *Ld. Deputy Commissioner of Income Tax LTU-1, Mumbai*. The income of the assessee was determined at Rs.198.12 crores under normal provisions and Rs.365.02 crores u/s 115JB as against returned income of Rs.193.66 Crores & Rs.365.02 Crores under normal provisions and u/s 115JB respectively.

2.2 Subsequently, the said assessment order was subjected to exercise of revisional jurisdiction u/s 263 by *Ld. CIT vide show cause*



notice dated 09/11/2016 on the premises that corresponding adjustment of certain *employee benefits expenses* of Rs.11.91 Crores being tax borne by the assessee on deemed perquisites on the value of accommodation provided to employees and which were not admissible u/s 40(a)(v), was omitted to be carried out while arriving at book profits u/s 115JB. Therefore, the order being erroneous and prejudicial to the interest of the revenue, required revision u/s 263. Accordingly, after providing due opportunity of being heard to the assessee, Ld. CIT directed Ld. AO to re-compute *Minimum Alternative Tax [MAT]* u/s 115JB and raise demand against the assessee for the same. Aggrieved by the directions of Ld. CIT, the assessee has by way of the appeal, challenged invocation of revisional jurisdiction u/s 263.

3.1 The arguments raised by Ld. Counsel by Assessee [AR], before us, are two folds. The Ld. AR contended that Ld. AO duly appreciated the computation u/s 115JB during original assessment proceedings filed by the assessee and completed the assessment with due application of mind and hence, the Ld. CIT's interference was not justified particularly when there was no omission on the part of Ld. AO to complete the assessment as per law. The Ld. AR also drew attention to the fact that, even on merits, the aforesaid adjustment in book profits u/s 115JB could not be carried out in view of the meaning of '*book profits*' as contained in Explanation-1 to Section 115JB of the Income Tax Act, 1961. Reliance has been placed on several judgments to support the various contentions on legal grounds as well as on merits.

3.2 *Per Contra*, Ld. DR drew our attention to the fact that the impugned item was not allowable to the assessee in terms of express provisions as



contained in Section 40(a)(v) and Ld. AO was required to add back the same to arrive at book profits u/s 115JB. The failure to do so has caused the loss of revenue and therefore, the jurisdiction u/s 263 was perfectly justified which was the only possible recourse as available to the revenue. Reliance was placed on the ratio of decision of Hon'ble Supreme Court rendered in *Malabar Industrial Company Limited Vs. CIT* [243 ITR 83].

4. We have carefully heard the rival contentions and perused relevant material on record. At the outset, we note that Ld. CIT, in opening paragraph of impugned order dated 29/03/2017, has erred in noting the income particulars of the assessee. However, we are not concerned with the same under the present appeal.

5. Proceeding further, it is undisputed fact that the said item of expenditure viz. taxes borne by the assessee on deemed perquisites on the value of accommodation provided to the employees was not allowable to assessee while arriving at income under normal provisions in terms of provisions of Section 40(a)(v) which is evident from the fact that the assessee himself, has added the same while computing income under the normal provisions. There is absolutely no quarrel on this point.

6. Upon perusal of the quantum assessment order and assessee's submissions as placed on Page Numbers 9 to 13 in the *paper book*, we find that computation of '*Book Profits*' was neither provided by the assessee during hearing before Ld. AO nor discussed in any manner. The quantum order reveals that Ld. AO has picked up the figures of '*Book Profits*' as per '*Return of Income*' without applying any mind thereupon and adopted the same as such without any iota of discussion



in the quantum assessment order. *Prima facie*, we are of the opinion that this is a case of 'no inquiry' by Ld. AO and not the case of 'inadequate inquiry' or 'Lack of Inquiry' or 'adoption of one of the possible views' as stressed by Ld. AR during hearing before us and therefore the various case laws relied upon by Ld. AR in this regard could not help assessee in any manner. We also note the statutory provisions as contained in Section 263 including Explanation-2 creates a deeming fiction that the order of Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue if, in the opinion of Ld. CIT the order is passed without making inquiries or verification which should have been made.

7. With this, the only question that survives for our consideration is that whether the omission to carry out the stated adjustment in the *Book profits* as envisaged by Ld. CIT has made the quantum order erroneous and prejudicial to the interest of the revenue and whether the stated adjustment as suggested by Ld. CIT was tenable in law or not? In other words, we are concerned with whether the twin prime conditions viz. *erroneous and prejudicial to the interest of the revenue* for invoking the provisions of Section 263 was fulfilled in the instant case or not.

8. We note that computation of *Book Profits* u/s 115JB has to be computed in the manner as provided in *Explanation-1* to Section 115JB. The *Minimum Alternative Tax [MAT] provisions* as contained in Section 115JB, as per well-settled law, are a complete code in itself and creates a deeming fiction which is to be construed strictly and therefore, whatever computations / adjustments are to be made, they are to be made strictly in accordance with the provisions provided in the code



itself. The clause (a) of *Explanation-1* envisages add-back of *the amount of Income Tax paid or payable and the provision therefore* while arriving at *Book Profits*. Further, in terms of *Explanation-2* to Section 115JB, the *amount of Income Tax* specifically includes the following components-

- (i) *any tax on distributed profits under section 115-O or on distributed income under section 115R;*
- (ii) *any interest charged under this Act;*
- (iii) *surcharge, if any, as levied by the Central Acts from time to time;*
- (iv) *Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and*
- (v) *Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.*

We further note that *Explanation-2* was inserted by the Finance Act, 2008 with retrospective effect from 01/04/2011. The legislative intent to insert the same could be traced from the *Memorandum Explaining the provisions of Finance Bill, 2008* and the same is extracted hereunder:-

Section 115JB of the Income-tax Act provides for levy of minimum alternate tax (MAT) on the basis of book profits of a company. As per the Explanation after sub-section (2), the expression "book profit" means net profit as shown in the profit and loss account prepared in accordance with the provisions of Part II and III of Schedule VI to the Companies Act, 1956, as increased or reduced by certain adjustments, as specified in that section. Clause (a) of the aforesaid Explanation, inter-alia, provides for increasing the book profits by income-tax paid or payable and the provision therefor; if debited to profit and loss account. The intention behind these add backs is that the items which mainly appear "below the line" in the profit and loss account should be added back to arrive at the "book profit" if they appear "above the line" in the profit and loss account. Section 115JB has not specifically provided for add back of some such "below the line" items like deferred tax, dividend distribution tax, etc. as they were thought to be included in the term "income-tax". However, there has been some ambiguity regarding add back of these items, if debited to profit and loss account.

With a view to clarifying the intention, a new clause has been inserted after clause (g) of the Explanation 1, as so numbered, so as to provide that the book profit shall be increased by the amount of deferred tax and the provision thereof, if debited to profit and loss account. Further, it has also been clarified that the amount of income tax shall include,-

- (i) *tax on distributed profits under section 115-O or distributed income under section 115R;*
- (ii) *any interest charged under this Act;*



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- (iii) surcharge, if any, as levied by the provisions of the Central Acts from time to time;
- (iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and
- (v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

These amendments have been made applicable retrospectively with effect from 1st April, 2001 and will accordingly apply in relation to assessment year 2001-02 and subsequent assessment years.

We further find that taxes borne by the assessee on non-monetary perquisites provided to employees forms part of *Employee Benefit cost* and akin to *Fringe Benefit Tax* since they are certainly not *below the line* items since the same are expressively disallowed u/s 40(a)(v) and the same do not constitute *Income Tax* for the assessee in terms of *Explanation-2*. This view of ours is duly fortified by the judgment of Tribunal rendered in *ITO Vs. Vintage Distillers Ltd. [130 TTJ 79]* where the Tribunal has taken the view that the term 'tax' was much wider term than the term '*Income Tax*' since the former, as per amended definition of 'tax' as provided in Section 2(43) included not only *Income Tax* but also *Super Tax & Fringe Benefit Tax*. Therefore, without there being any corresponding amendment in the definition of *Income Tax* as provided in *Explanation-2* to Section 115JB, *Fringe Benefit Tax* was not required to be added back while arriving at *Book Profits* u/s 115JB. Similar view has been expressed in another judgment of Tribunal titled as *Reliance Industries Ltd Vs. ACIT [ITA No. 5769/M/2013 dated 16/09/2015]* where the Tribunal took a view that '*Wealth Tax*' did not form part of *Income Tax* and therefore, could not be added back to arrive at *Book Profits* since the adjustment thereof was not envisaged by the statutory



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provisions. Therefore, we are of the opinion that the adjustment of impugned item as suggested by Ld. CIT was not legally tenable in law which leads us to inevitable conclusion that the omission to carry out the said adjustment did not result into any loss of revenue. Therefore, one of the prime condition viz. *prejudicial to interest of revenue* to invoke the revisional jurisdiction under the provisions of Section 263 has remained unfulfilled in the present case and therefore, the impugned order could not be sustained in law. Hence, we set aside the same.

9. Resultantly, the assessee's appeal stands allowed in terms of our above order.

Order pronounced in the open court on 14th February, 2018.

Sd/-
(Joginder Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 14.02.2018

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि ँ ग्रेषित/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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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