

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 769/JP/2018
निर्धारण वर्ष/Assessment Year :2012-13

M/s Safeflex International Ltd., Jaipur	बनाम Vs.	ITO, Ward-6(3), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJCS7201D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Sogani (CA)
राजस्व की ओर से/ Revenue by : Shri Varindar Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 30/07/2019
उदघोषणा की तारीख/ Date of Pronouncement: 22/08/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 26.03.2018 for Assessment Year 2012-13 wherein the assessee has taken the following grounds of appeal:

"1. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in, confirming the action of Id. AO of invoking the provisions of section 154, thereby rectifying the assessment order passed u/s 143(3) of Income Tax Act, 1961. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rectification order being illegal, beyond scope and without any basis.

2. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in, confirming the action of Id. AO, in assessing the alleged book profits of Rs. 6,83,86,428/- and applying the MAT

provisions u/s 115JB. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the rectification order applying the MAT provisions u/s 115JB. "

2. Briefly stated, the facts of the case are that the assessee filed its return of income declaring total income of Rs. 9,39,290/- and also claimed exemption u/s 10AA in respect of its unit situated at Pithampur, District. Dhar (M.P) which is engaged manufacturing and export of Polyethylene & Polypropylene Bags which are generally used for transportation of goods. The assessment u/s 143(3) was completed by the Assessing Officer by passing order u/s 143(3) dated 28.02.2015 wherein deduction u/s 10AA amounting to Rs. 5,67,17,090/- has been allowed to the assessee and the total income finally assessed comes to Rs. 15,64,483/-. Subsequently, notice u/s 154 was issued to the assessee on 17.05.2016 stating that on perusal of the assessment records, it reveals that the assessee was liable to pay tax of Rs. 1,36,82,585/- u/s 115JB on book profit of Rs. 6,83,86,428/- which was inadvertently not charged at the time of assessment u/s 143(3) dated 28.02.2015. Accordingly, order u/s 143(3) was rectified u/s 154 dated 01.06.2016 and book profit u/s 115JB determined at Rs. 6,83,86,428/- was brought to tax, the same being higher than the income assessed under the normal provisions of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). As per Id. CIT(A), with effect from the assessment year 2012-13, the provisions of section 115JB was made applicable to the SEZ unit vide sub section (6) and proviso thereto. It was held that for the relevant assessment year, MAT was chargeable on the appellant company and not tax under normal provisions of the Act and accordingly, the action of the AO in rectifying the assessment order u/s 154 was upheld following the order of the Hon'ble

Karnataka High Court in case of CIT vs Sankala Polymers [2012] 20 taxmann.com 378 and the decision of the Coordinate Bench in case of S.I.J Chains (P) Ltd vs ACIT, Jalandhar 100 ITD 379 (Asr). Against the said finding of the Id. CIT(A), the assessee is now in appeal before us.

4. During the course of hearing, the Id. AR submitted that the assessee company started its operation in the AY 2008-09 and from the first year claimed exemption u/s 10AA of the IT Act. The year under consideration is, therefore, 5th year of claiming exemption u/s 10AA of the IT Act. The provisions of section 10AA exempts 100% of the profits and Gains derived from exports, in first five years of the claim. Therefore, the income of the assessee company, in the year under consideration is 100% exempt as per the provisions of section 10AA of the IT Act, 1961.

5. It was further submitted that the action of the Lower authorities of bringing the entire income under the purview of provisions of section 115JB, ignoring the provisions of section 115JB(5), is illegal. It is pertinent to mention that prior to insertion of section 115JB, section 115J was in operation which provided for special rate of taxation on the Book Profits. Section 115J did not provide in any of its sub-sections that all the other provisions of the Act shall apply to every assessee company. However, in section 115JA (which was in operation after section 115J), by way of sub-section (4), legislature provided that the other provisions of the Act shall apply and even under the prevailing section i.e. section 115JB, by way of sub-section (5) it has been provided as under:

"Section 115JB(5): Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section."

6. Further, the Id AR placed reliance on the following judicial pronouncements:

- CIT vs. Metal & Chromium Plater (P.) Ltd. [2016] 76 taxmann.com 229 (Madras)
- Sutlej Cotton Mills Ltd. Vs. ACIT [1993] 45 ITD 22 (SB)
- ACIT vs. Shree Cement Ltd. ITA No. 614, 615 & 635/JP/2010
- JSW Steel Ltd. Vs. ACIT [2017] 82 taxmann.com 210
- Neha Home Builders (P.) Ltd. Vs. CIT (2018) 92 taxmanncom 102 (Mumbai-Trib.) dated 22nd January 2018
- Binani Industries Ltd., Kolkata vs. Department of Income Tax ITA No. 144/Kol/2013

7. It was submitted that the above judicial decisions prove beyond doubt that even if the eligible exemption u/s 10AA is not finding mentioned in explanation 1 for deduction from the profits shown as per the profit and loss account. The same is eligible and therefore not liable for MAT.

8. It was further submitted that the decisions relied upon the Id. CIT(A) are distinguishable on facts and therefore should not be applied in the instant case. It was further submitted that the issue under consideration is whether an undertaking which is claiming its 100% of the profits and gains derived from exports as exempt u/s 10AA will be liable to pay the tax on the entire book profit as per the provisions of section 115JB or not. It was submitted that the action of the AO which was confirmed by the Id. CIT(A) in taxing that portion of the assessee's income which was exempt u/s 10AA under the provisions of section 115JB is bad in law and therefore, deserves to be quashed.

9. It was further submitted that whether income which was otherwise exempt can be charged to tax u/s 115JB is debatable issue and is beyond the

scope of rectification u/s 154 of the Act. In support, the reliance was placed on the Hon'ble Supreme Court decision in case of ITO vs. Volkart Brothers [1971] 82 ITR 50 (SC). It was submitted that various judicial decisions referred above make it clear that although the decisions have been rendered in favour of the assessee companies yet the controversy had to be resolved by long drawn reasoning by the various judicial forums. This very aspect makes the issue beyond the scope of rectification u/s 154 of the Act.

10. The Id. DR is heard who has relied on the finding of the lower authorities and submitted that the provisions of section 115JB are very clear and sub section (6) along with the proviso thereto makes its clear that the MAT provisions are applicable to the assessee company from A.Y 2012-13 onwards and there is no basis for the assessee to claim exemption as per the provisions of sub-section (5) of section 115JB of the Act. He accordingly supported the findings of the lower authorities.

11. Heard both the parties and perused the material available on record. The assessment year involved is 2012-13 and the issue under consideration is whether MAT provisions contained in Section 115JB are applicable to the assessee company which is eligible for Section 10AA benefit. The relevant provisions of Section 115JB reads as under:

"(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be:

Provided that the provisions of this sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012."

12. The proviso to sub-section (6) to section 115JB was introduced by the Finance Act, 2011 and the CBDT vide Circular No. 2/2012, dated 22-5-2012 has explained the said amendment which reads as under:

"19. Provisions relating to Minimum Alternate Tax (MAT) and Dividend Distribution Tax (DDT) in case of Special Economic Zones

19.1.1 Under the existing provisions of section 10AA, a deduction of hundred per cent is allowed in respect of profits and gains derived by a unit located in a Special Economic Zone (SEZ) from the export of articles or things or from services for the first five consecutive assessment years; of fifty per cent for further five assessment years; and thereafter, of fifty per cent of the ploughed back export profit for the next five years.

19.1.2 Further, under section 80-IAB, a deduction of hundred per cent is allowed in respect of profits and gains derived by an undertaking from the business of development of an SEZ notified on or after 1st April, 2005 from the total income for any ten consecutive assessment years out of fifteen years beginning from the year in which the SEZ has been notified by the Central Government.

19.1.3 Under the existing provisions of sub-section (6) of section 115JB, an exemption is allowed from payment of minimum alternate tax (MAT) on book profit in respect of the income accrued or arising on or after 1st April, 2005 from any business carried on, or services rendered, by an

entrepreneur or a Developer, in a Unit or Special Economic Zone (SEZ), as the case may be.

19.1.4 Further, under the existing provisions of sub-section (6) of section 115-O, an exemption is allowed from payment of tax on distributed profits [Dividend Distribution Tax (DDT)] in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after 1st April, 2005 out of its current income. Such distributed income, in the hands of the recipient, is also exempt from tax under sub-section (34) of section 10 of the Act.

19.1.5 The above provisions were inserted in the Income-tax Act by the Special Economic Zones Act, 2005 (SEZ Act) with effect from 10th February, 2006.

19.2.1 There was no sunset date provided for exemption from MAT in the case of an entrepreneur or a Developer, in a Unit or SEZ or from DDT in case of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining an SEZ.

19.2.2 The availability of exemption from minimum alternate tax in the case of SEZ Developers and units in SEZs has now been sunset in the Income Tax Act as well as the SEZ Act and the provisions of section 115JB(6) will cease to have effect from 1-4-2012.

19.2.3 Applicability - These amendments take effect from 1st April, 2012 and will accordingly apply in relation to the assessment year 2012-13 and subsequent years."

13. It is thus seen that the Special Economic Zones Act, 2005 had initially inserted sub-section (6) in section 115JB of the Act to provide that the provisions of section 115JB shall not apply to income accrued or arising on or after 1-4-2005 from any business carried on, or services rendered, by an entrepreneur in a unit of SEZ or a developer of SEZ. Thus, a company carrying on the specified business in a unit in SEZ or as a developer of SEZ was not liable to pay MAT on the profits derived from the said business. However, the Finance Act, 2011 brought-in a sunset clause and inserts a proviso to sub-section (6) to provide that, with effect from 1-4-2012, the provisions of sub-section shall cease to have effect. Accordingly, a SEZ developer or any entrepreneur carrying on business in an SEZ unit (being a company) would be liable to pay MAT on the profits arising from the development of SEZ or the business carried on in an SEZ unit with assessment year 2012-13 and onwards.

14. In the instant case, it is not in dispute that the assessee carries on its business in an SEZ Unit and its income will therefore be subject to the provisions of Section 115JB of the Act. On bare reading of provisions of sub-section (6) to section 115JB, it is crystal clear that provisions of section 115JB will apply to the assessee company for the assessment year beginning assessment year 2012-13 onwards. Therefore, while passing the assessment order u/s 143(3), where the Assessing officer has forgot to invoke the provisions of section 115JB of the Act, the matter clearly falls within purview of section 154 of the Act and the same can be rectified as mistake apparent from record.

15. Now, coming to another contention of the Id AR that in view of sub-section (5) to section 115JB of the Act, the entire income of the assessee cannot be brought to tax under Section 115JB given that the income of the assessee company is exempt as per the provisions of section 10AA of the Act. In this regard, we refer to sub-section (5) to section 115JB of the Act which reads as under:

"(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section."

16. The above provisions thus provide that all other provisions of this Act shall apply to the assessee company subject to any thing otherwise provided in or barred by section 115JB of the Act. The said provisions have been explained in CBDT Circular No. 13 of 2001 where it was stated as under:

"2. Instances have come to the notice of the Board that a large number of companies liable to tax under the new MAT provisions of section 115JB are not making advance tax payments. It may be emphasised that the new provision of section 115JB is a self-contained code. Sub-section (1) lays down the manner in which income-tax payable is to be computed. Sub-section (2) provides for computation of "book profit". Sub-section (5) specifies that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company mentioned in that section. In other words, except for substitution of tax payable under the provision and the manner of computation of book profits, all the provisions of the tax including the provision relating to charge, definitions, recoveries, payment, assessment, etc., would apply in respect of the provisions of this section."

17. In sub-section (6) to section 115JB, as we have noted above, it has been specifically provided that income accruing or arising from the business carried on by the assessee company in its SEZ Unit shall be subject to MAT provisions for assessment year beginning 2012-13 onwards. Therefore, provisions of sub-section (5) is subject to provisions of sub-section (6) of section 115JB and reading both the provisions harmoniously, it is clear that the income of the assessee company shall be subject to the provisions of MAT under section 115JB of the Act.

18. The sub-section (5) to section 115JB has also been subject matter of interpretation by the Courts and it would be relevant to refer to these decisions which have been brought to our notice during the course of arguments by the Id AR. In case of **CIT vs Metal & Chromium Plater (P) Ltd (Supra)**, the issue for consideration before the Hon'ble Madras High Court was whether claim under section 54EC for computing capital gains can be allowed while computing book profits as per section 115JB of the Act. In that context, the Hon'ble Madras High Court has held that section 115JB is a self-contained code of assessment and the levy of tax is on the book profits after effecting various adjustments as set out in terms of explanation thereto. It was further held that provisions of sub-section (5) of section 115JB open the assessment to the application of all other provisions contained in the Income Tax Act except specifically barred by that section itself. It was accordingly held that section 115JB admits grant of relief under section 54EC of the Act. In the instant case, the assessee company is eligible for relief under Section 10AA of the Act however the sub-section (6) specifically provides that MAT provisions continue to apply to the assessee company beginning assessment year 2012-13 onwards. In other words, the application of other provisions of the Act as so provided in sub-section (5) has been barred by virtue of sub-section (6) to section 115JB of the Act. Therefore, this decision of the Hon'ble Madras High

Court doesn't support the case of the assessee company rather our reading of the provisions of sub-section (5) to section 115JB has been fortified by this decision.

19. In case of **Neha Home Builders (P) Ltd vs CIT (Supra)**, the issue for consideration before the Co-ordinate Bench was whether the Id CIT has jurisdiction to issue directions u/s 263 of the Act to the Assessing officer not to allow deduction u/s 80IB(10) while computing book profits u/s 115JB of the Act. In that context, referring to provisions of sub-section (5) to section 115JB, it was held that where income is not taxable in view of section 80IB(10), the same has to be excluded while computing book profits. In the instant case, it is no doubt true that income of the assessee company is eligible for benefit u/s 10AA of the Act, however, on combined reading of provisions of sub-section (5) and (6) of section 115JB, no adjustment can be made to book profits as the MAT provisions have been specifically made applicable to assessee company in respect of its income from business carried on in its SEZ Unit for assessment year 2012-13 and onwards. Therefore, this decision of the Co-ordinate Bench doesn't support the case of the assessee company.

20. We have also gone through other decisions relied upon by the Id AR. However, we find that these decisions are distinguishable mainly for the reason that in none of these decisions, the provisions as contained in sub-section (6) to section 115JB have been examined and/or discussed which clearly provides that the MAT provisions will be applicable to income from business carried on by the assessee company in its SEZ unit. Therefore, in view of the specific provisions so contained in sub-section (6) of section 115JB, these decisions doesn't support the case of the assessee company.

21. In light of above discussions and in the entirety of facts and circumstances of the case, we affirm the order of the Id CIT(A) and the matter is decided in favour of the Revenue and against the assessee company.

In the result, appeal of the assessee is dismissed.

Order pronounced in the Open Court on 22/08/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/08/2019

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Safeflex International Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward- 6(3), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 769/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

