

THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 6481/Mum/2016 (Assessment Year 2011-12)

ACIT 4(3)(1) Room No. 649 6 <sup>th</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Rational Handloom Co. Pvt. Ltd. B-2/602, 6 <sup>th</sup> Floor Jamnotri Sadan CHSL Bangur Nagar Goregaon (West) Mumbai-400 004.  PAN : AABCR6496D
(Appellant)		(Respondent)

Assessee by	Shri Lalit Munoyat
Department by	Shri R. Sindhu
Date of Hearing	14.5.2019
Date of Pronouncement	23.7.2019

ORDER

Per Shamim Yahya (AM) :

This appeal by the Revenue is directed against the order of learned CIT(A) dated 29.8.2016 and pertains to A.Y. 2011-12.

2. The grounds of appeal read as under :-

“On the facts and circumstances of the case Id. CIT(A) has erred in directing the Assessing Officer to reduce the amount of Rs. 5,37,61,180/- while computing the book profit u/s. 115JB of the I.T. Act of the assessee towards difference in depreciation without appreciating the fact that no such adjustment to book profit is permissible under the provisions of the I.T. Act”.

3. Brief facts of the case are as under :-

The Assessing Officer in this case made the impugned disallowance by observing as under :-

“The Assessing Officer has discussed the issue and observed as under:

"On going through the P&L A/c it has been observed that assessee has credited an amount of Rs.5,37,61,180/- under the head "Earlier years adjustment- Difference in depreciation provision".

During the assessment proceedings assessee was asked to file the details in respect of the adjustment of difference in depreciation provision amounting to Rs.5,37,61,180/-. In response assessee filed a chart showing how the assessee has arrived at the figure of difference in value of depreciation. On perusal of the chart it has been observed that the figure of Rs.5,37,61,180 is the cumulative figure of difference of depreciation from the A.Y. 2001-02 to A.Y. 2010-11. In earlier years assessee has calculated the depreciation as per Income Tax Act only and claimed depreciation as per I.T. Act. Assessee has not computed the depreciation as per the Companies Act in books of Accounts. Therefore, for adjusting the difference of depreciation assessee calculated the same at Rs.5,37,61,180 and credited to the P&L A/c. Assessee has calculated the value of the assets as per Straight Line Method (SLM). In the P&L A/c, the profit before the tax has been shown at Rs.10,70,89,374/- which is inclusive of the amount of Rs.5,37,61,180 being earlier years' adjustment - different in depreciation provision. For computing the income under books profit u/s 115JB assessee has taken the profit before tax at Rs.5,33,28,194 (10,70,89,374-5,37,61,180). Assessee has reduced the amount of Rs.5,37,61,180/- while computing the book profit from the total profit of Rs.10,70,89,374/- and shown profit before tax at Rs.5,33,28,194/- only.

In assessee's case total profit as per P&L A/c is Rs.10,70,89,374/- and not Rs.5,33,28,194/- as taken by the assessee in its computation. The assessee has rightly credited the amount of Rs.5,37,61,180/- in its P&L A/c treated the same as profit, however reduced the same while determining the Book Profit. As per provisions of section 115JB reduction of this extraordinary item is not covered in any of subsection or clause. Further it is worthy to mention here that adjustments to profit as per P&L A/c can be made only as per defined provisions of section 115JB and in this case deduction of RS.5,37,61,180/- as credited in P&L A/c on account of depreciation difference is nowhere admissible. Therefore, the treatment of the assessee is not acceptable as discussed above."

4. Upon assessee's appeal learned CIT(A) noted the assessee's submission as under :-

1. Even if the Appellant had charged depreciation on straight line method as provided in Companies Act, 1956 and as charged for the Asst Year 2011-12, The Appellant was not required to pay MAT under section 115 JB for any previous assessment years from 2001-02 to 2011-12.

2. This change in depreciation method was as per Accounting Standard - 6 (AS-6) issued by The Institute of Chartered Accountants of India.

3. The annual accounts were prepared as per accounting standards issued by the ICAI having statutory recognition under sec 211 of the of the Companies Act, 1956.

4. The learned assessing officer has not raised any doubts genuineness of change in method of charging depreciation from written down value under Income Tax Act to straight line method under Companies Act.
5. The change in accounting policies regarding depreciation was duly reported in Annual Accounts as per note no 2 of Schedule 13, forming part of the Balance Sheet and Profit & Loss Account.
6. The Annual Accounts were duly approved by Board of Directors on 05/09/2011 and subsequently duly adopted by share holders in Annual General Meeting.
7. The said adopted Annual Accounts were duly filed with the Registrar of Companies under Companies Act, 1956.
8. The Appellant has written back the excess depreciation as per the provisions of The Companies Act, 1956 which is generally accepted practice of providing depreciation for Companies.
9. The Honourable IT AT Agra Bench in the matter of ACIT v/s Srinivas Synthetics Packers P Limited held that:

'Coming to the facts of the present case, the learned Authorised Representative has, with reference to the return for each of the four preceding years, shown that the tax for those years stood computed under the regular provisions, even as the MAT provision (s. 115JB) was applicable for the said years, implying that there has been no claim of tax reduction qua the amount of book profit represented by the excess depreciation relating to those years, i.e., as now written back. In this regard, we would firstly state that as distinct from a reserve, which represents only an appropriation of profits, so that it stands necessarily included in the book profit of the relevant year, i.e., in which it is created, a provision is, by definition, an amount set aside out of the profits/surplus to provide for any liability, the amount of which cannot be ascertained with accuracy, or toward depreciation in the value of the assets, i.e., in respect of diminution in the value of the assets on account of wear and tear, obsolescence, etc. A provision, thus, leads to a reduction in the profits for the relevant year. The basic condition of the statute, i.e., as cast per proviso to cl. (i) of Expln. 1, is not satisfied so as to entitle the assessee the benefit of reduction of the respective provision to the extent written back. Why, in that case, the entire amount provided for could be written back in a subsequent year, claiming it as a reduction, even as the profit for the earlier year stood also reduced by the amount of the provision. So, however, and which is important there is no such charge of the write back being a subterfuge or not representing the excess provision, having been, as stated, worked out with reference to changed method of accounting with respect to depreciation and, therefore, though non-suiting the assessee's claim, i.e., at the threshold, however, would not operate to circumvent the satisfaction of the basic qualifying condition for the application of the provision. We are, at the same time, also conscious

of the fact that the legislature has specifically provided for the reduction of the amount of withdrawal made out of the provision(s) (which, as aforesaid, by definition, only go to reduce the profits for the relevant year), so that they cannot go to increase the same, as in the case of, or in contradistinction to, the reserves, i.e., treated the two at par. The only meaningful way to harmonize this apparent anomaly is to increase the book profit of the relevant year(s); the provision of s. 115JB (or even s. 115JA) being applicable, by the amount of write back. To the extent the same does not lead to invocation of s. 115JB (s. 115JA), the amount written back can be validly reduced from the current year's profit, the balance not, as it would, if added to the book profit for that year, result in book profit tax, which stands not paid. For example, Rs. 3,68,008 written back for asst. yr. 1997-98, on its add back, results in the book profit for that year to increase to Rs. 15.39 lacs, the tax (including surcharge @ 13 per cent) on which works to Rs. 1,30,449, as against the tax liability for the year, which stands assessed at Rs. 4,32,146 (paper book pp. 16-19), so that s. 115JB does not get invoked. As such, the entire amount written back in that year (Rs. 3.68 lacs) could rightly be claimed as a reduction under the proviso to cl. (i) of Explan. 1, and so forth for the other years.'

It is respectfully submitted that the facts of this case are exactly similar to the Srinivas Synthetics Packers P Limited case and as such depreciation write back of Rs 53761180.00 be reduced from the book profit as provided in cl. (i) of Explan. 1 of the Income Tax Act."

The learned CIT(A)'s concurred with the above submission. He concluded as under :-

"The appellant has contested the action of the Assessing Officer on the ground that the appellant has rightly taken the books profit at Rs. 5,33,28,194/- as per the Form No. 29B, u/s. 155JB of the I.T. Act, 1961. The figures of depreciation written back of the earliest years for the A.Y. 2001-02 to 2010-11 for Rs. 5,37,61,180/- are not liable to be considered for the purpose of book profit or deductible as per the clause (i) of the explanations to the provision of section 115JB. The appellant has written back the excess depreciation as per the provisions of The Companies Act, 1956 which is generally accepted practice of providing depreciation for Companies and when there was change in the depreciation method as per Accounting Standard-6 (AS-6) issued by the Institute of Chartered Accountants of India, the appellant as such reduced the provisions of depreciation of the earlier years and credited the same to the appropriation part of the profit and loss account i.e. credited to the profit and loss as appropriation account and the said treatment has been given as per the Guidance Note issued by the Institute of Chartered Accountants of India.

The Id. AR has further submitted that the issue in the present case is fully covered by the decision in the case of the Hon'ble IT AT, Agra in the case of ACIT v/s Srinivas Synthetic Packers (P) Limited (supra) and accordingly the same is deductible from the book profit as per the clause (i) of the

explanations to the provisions of the section 115JB. In this case, the Hon'ble Tribunal held as under:

"Held that Explanation 1 to section 115JB is very clear. Unless it is shown that the provision written back, reduction in respect of which, in the computation of book profit, is being sought under Explanation 1 to section 115JB, having been credited to the profit and loss account for the year, had, in fact, gone to increase the 'book profit' for the relevant year, the said reduction would not be allowed. The assessee had, with reference to the return for each of the four preceding years, shown that the tax for those years stood computed under the regular provisions, even as the MAT provision (section 115JB) was applicable for the said years, implying that there had been no claim of tax reduction qua the amount of book profit represented by the excess depreciation relating to those years, i.e., as now written back. To the extent the same does not lead to invocation of section 115JA the amount written back can be validly reduced from the current year's profit, the balance not, as it would, if added to the book profit for that year, result in book profit tax, which stands not paid. The write back of the provision in the instant case was genuine. In the present case, no reservation was expressed by the revenue in this regard, and the assessee had explained it as in pursuance to the change in the method of accounting for depreciation with effect from the current year, consequent to the corresponding Accounting Standard (AS-6) (revised), the Accounting Standards issued by the ICAI having statutory recognition (section 211 of the Companies Act, 1956). Accordingly, the Commissioner (Appeals) was justified in deleting the addition."

After considering the facts of the case and the stand of the AO as well as submission of the Appellant and also considering the decision in the case of ACIT v/s Srinivas Synthetic Packers (P) Limited, (supra), it is found that even the depreciation as per the changed method i.e. Straight Line Method, as prescribed under the Companies Act, 1956, which could had been charged to all the respective earlier assessment years, the appellant would not have been liable or required to pay the Minimum Alternate Tax [MAT] as per the provisions of the section 115JB time to time, for any assessment years of 2001-02 to 2010-11. Accordingly in view of the decision of the above referred judgment of the Hon'ble Tribunal in the case Srinivas Synthetic Packers (P) Ltd. (supra), the sum of Rs.5,37,61,180/- added to the book profit for the purpose of determination of the book profit u/s 115JB, by the AO cannot be held to be justified and therefore, the same is directed to be deleted for the purpose of book profit. Accordingly, the A.O. is directed to verify from the record with regard to the revised computation of total income for the AYs. 2001-02 to 2010-11 with the revised figure of depreciation and modify the figures accordingly.

With the above observations and directions, the grounds of appeal are to be treated as Allowed."

5. Against the above order, Revenue is in appeal before us.
6. We have heard both the counsel and perused the records. Learned Departmental Representative relied upon the order of the Assessing Officer.
7. Per contra, learned Counsel of the assessee reiterated the submissions made before learned CIT(A). He further relied upon the decision of Agra Bench of the ITAT in the case of ACIT Vs. Srinivas Synthetics Packers (P) Ltd. (122 TTJ 832).
8. Upon careful consideration, we find that identical issue has been considered by the Agra Bench of the ITAT as above. The ITAT after careful analyzing found that the entire amount written back can be claimed as a reduction under the proviso to clause (i) of Explanation (1). No contrary decision has been shown. Hence we affirm the order of learned CIT(A).
9. In the result, Revenue's appeal is dismissed.

Order has been pronounced in the Court on 23.7.2019.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 23/7/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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