

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 137/Asr/2020**  
Assessment Year: 2012-13

G. E. Conductors Pvt. Ltd.,  
D-29, Focal Point,  
Jalandhar

Vs. Asstt. Commissioner of Income  
Tax, Central Circle-II,  
Jalandhar

[PAN: AAECM 9822H]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Sandeep Vijh, CA

Respondent by: Sh. Manpreet Singh Duggal, Sr. DR

Date of Hearing: 29.06.2022

Date of Pronouncement: 08.08.2022

**ORDER**

**Per Dr. M. L. Meena, AM:**

The appeal has been filed by the assessee against the impugned order dated 12.06.2019 passed by the Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana in respect of the Assessment Year 2012-13.

2. The sole issue agitated in the grounds of the appeal is that the Ld. Commissioner of Income Tax (Appeals) has erred in holding that while giving appeal effect the Assessing Officer, could not resort to the provisions of section 115JB for the first time, as while framing assessment u/s 143(3)

the provisions of section 115JB was not even referred to. In support, the Ld. AR filed a brief synopsis which reads as under:

1. *The first and the only ground of appeal is that the Id. Commissioner Of Income Tax (Appeals) has erred in holding that while giving appeal effect, the Assessing Officer could resort to the provisions of section 115JB for the first time. While framing assessment u/s 143(3) the provisions of section 115JB were not even referred to.*

*At the outset it is submitted that the scheme of taxation for companies during the year under consideration was that taxable income was to be computed under the regular provisions of the Income Tax and thereafter, tax thereon was computed. Then following the provisions of section 115JB, the tax on book profits @ 18.50 % was to be computed. Section 115JB entails making adjustments to the profits as per the audited annual accounts, both in terms of additions and reductions to the profit as per the audited annual accounts which are specified in the section itself. The section is being enclosed at page no. 46 to 49 for ready reference. Both the figures of taxes were then to be compared and the one which was higher was the amount of tax actually due/ payable by the assessee.*

*In the above case, the computation of tax liability u/s 115JB was made and after comparing the tax liability under the normal provisions, higher of the two was adopted in the return. Copy of the complete return of income is enclosed at page no. 20 to 42 of the paper book. The computation of income u/s 115JB is at page no. 40. While framing assessment through the order u/s 143(3) dated 21/3/2014, the assessing officer did not make any reference to section 115JB or give any working of section 115JB in the assessment order or the accompanying documents. Copy of the assessment order is enclosed at page no. 3 to 10 of the paper book. This can be described as a mistake in the assessment order which could have possibly been rectified through an order section 154 or section 263 but no such remedial action was taken by the revenue.*

*The assessee has filed an appeal with the Id. CIT(A) against the order u/s 143(3) which was disposed off through order dated 8/5/2018. Section 115JB was not the subject of any ground of appeal. Copy of the order is enclosed at page no. 11 to 19 of the paper book. While giving effect to the order of the Id. CIT(A), the successor assessing officer has applied the provisions of section 115JB for the first time and taxed the assessee on the basis of section 115JB. The main contention is that section 115JB not having been applied or even considered in the assessment order dated 21/3/2014, rectification of the assessment order u/s 154, if permissible, could have been carried out up to 31/3/2018 i.e. four years from the end of the year in which the order sought to be rectified was passed. The issue had thus become time barred and could not be allowed back door entry while giving effect to the order of the Id. CIT(A).*

*The above factual and legal position was submitted before the Id. CIT(A) through written submission dated 8/6/2019 which is at page no. 1 & 2 of the paper book. The submission also stand incorporated at para no. 3 at page no. 2 & 3 of the impugned order. The finding of the Id. CIT(A) is contained in the first para at page no. 4 of the impugned order. It has been stated by the Id. CIT(A) that after giving appeal effect, the assessed income got converted into loss however the book profit u/s 115JB was Rs. 52,28,858 which was higher than the assessed income. And hence the AO rightly calculated the tax liability u/s 115JB in the order giving appeal effect. The Id. CIT(A) has not appreciated the submissions made that even if there was a mistake, the same could not be rectified while giving appeal effect. The remedy available to the revenue had become time barred as stated above and invoking section 115JB through order giving appeal effect was not justified.*

*The above contention is also supported by the order of ITAT Mumbai Bench in the case of ITO vs. BFIL Finance Ltd. in ITA No. 3828/Mum/2015 wherein the assessing officer had not computed income u/s 115JB while framing assessment u/s 143(3). The omission was identified at a subsequent date and 115JB was*

*applied while giving appeal effect. It has held that the assessment order was dated 28/12/2007 and the jurisdiction u/s 154 for determining the tax liability u/s 154 expired on 31/3/2012. Since the order passed as an order giving appeal effect was dated 20/1/2014 it was beyond the period of limitation and it was accordingly annulled. Since there was a mistake in the assessment order, the period of limitation was to run from the date of the assessment order only. The order of the CIT(A) allowing relief to the assessee was accordingly upheld. Copy of the order is enclosed at page no. 50 to 54 [please see para no. 7 at page no. 52 and para no. 10 at page no. 53].*

*Simply put, if a major mistake is committed by an Assessing Officer while framing assessment like not allowing a deduction and the assessee does not file an appeal or a rectification application the assessed income will become final and the assessee will not have any remedy. In this case also, the mistake in the assessment order could not have been rectified while passing the order giving appeal effect. Necessary relief may please be allowed.*

3. The Ld. DR stands by the order of Ld. CIT(A), however he has nothing to submit in rebuttal to the legal argument rendered by the Ld. AR.

4. Heard the rival contentions and perused the material on record. Admittedly, while framing the assessment vide order u/s 143(3) dated 21/3/2014, the assessing officer did not make any reference to section 115JB or give any working of section 115JB either in the assessment order or the accompanying documents (APB, Pg. 3 to 10). In our view, it is an apparent mistake in the assessment order which ought to be rectified by way of an order under section 154 or section 263 of the Act. Again, the Ld. CIT(A) disposing off the appeal vide order dated 8/5/2018, wherein the Section 115JB was not an issue in the grounds of appeal before him (APB, Pg.11 to 19). However, while giving effect to the order of the Ld. CIT(A), the

successor assessing officer has applied the provisions of section 115JB for the first time and taxed the assessee on the basis of section 115JB. The main contention of the assessee was that section 115JB not having been applied or even considered in the assessment order dated 21/3/2014, rectification of the assessment order u/s 154, if permissible, could have been carried out up to 31/3/2018 i.e. four years from the end of the year in which the order sought to be rectified was passed. The issue had thus become time barred and could not be allowed back door entry while giving effect to the order of the Id. CIT(A).

5. The Ld. CIT(A) after considering the above factual and legal position furnished by assessee through written submission dated 8/6/2019 (APB, Pg. 1 & 2) and stands incorporated at para no. 3 at page no. 2 & 3 of the impugned order. However, the Id. CIT(A) stated that after giving appeal effect, the assessed income got converted into loss however the book profit u/s 115JB was Rs. 52,28,858 which was higher than the assessed income. And hence the AO rightly calculated the tax liability u/s 115JB in the order giving appeal effect. In our view, the Id. CIT(A) has not appreciated the submissions made that even if there was a mistake, the same could not be rectified while giving appeal effect. Since, the remedy available to the revenue had become time barred as stated above and invoking section 115JB through back door by way of giving appeal effect was not justified. Similar view is held by ITAT Mumbai Bench in the case of "ITO vs. BFIL Finance Ltd.", Supra).

6. Considering the factual matrix of the instant case, we hold that the jurisdiction u/s 154 for determining the tax liability was expired on 31/3/2018 as the assessment order was passed on 21/03/2014. Since, the

order giving appeal effect for the purpose of 115JB was beyond the period of limitation and hence, it is bad in eyes of law and accordingly annulled.

7. In the result, the appeal filed by the assessee is allowed.

*Order pronounced in the open court on 08.08.2022.*

**Sd/-  
(Anikesh Banerjee)  
Judicial Member**

**Sd/-  
(Dr. M. L. Meena)  
Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy  
By Order