

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 1261/Ahd/2019
Assessment Year : 2013-14

Corrtech Energy Ltd., 22, Dhara Centre, Near Vijay Cross Roads, Navrangpura, Ahmedabad-380009 PAN : AAACI 8838 F	Vs	Dy. Commissioner of Income-tax, Circle 1(1)(2), Ahmedabad
(Appellant)		/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr Advocate & Shri Parimalsinh B. Parmar, AR	
Revenue by :	Shri Mukesh Thakwani, Sr. DR	

/Date of Hearing : 14/07/2022
/Date of Pronouncement: 03/08/2022

आदेश/ORDER

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-1, Ahmedabad [“CIT(A) in short]” dated 07.06.2019 and the grounds raised therein by the assessee read as under:-

“1. The Ld. CIT(A) has erred in law and on fact while upholding the reassessment u/s. 143(3) r.w.s. 147 of the Act as valid and justified without appreciating the fact that the same was bad in law and invalid in as much as the same being based on invalid notice issued u/s. 148 of the Act on mere change of opinion.

2. The Ld. CIT(A) has erred in law and on facts in confirming the adjustment of Rs. 6,03,098/- in respect of provisions of doubtful debts to the “Book Profit” u/s. 115JB of the Act without proper consideration and appreciation of the facts and the legal decisions relied upon. In view of the fact that provision for doubtful debt made by the appellant is an ascertained liability, the adjustment made by the AO to the “Book Profit” u/s. 115JB of the Act is contrary to the provision as well as settled legal position relied upon by the appellant, and accordingly, the Ld. CIT(A) ought to have deleted the adjustment of Rs. 6,03,098/- in respect of provisions of doubtful debts while computing the book profit u/s. 115JB of the Act.

3. The Ld. CIT(A) has erred in law and on facts in confirming the adjustment of Rs. 31,00,000/- in respect of provisions for diminution in the value of investments to the “Book Profit” u/s. 115JB of the Act without proper consideration and

appreciation of the facts and the legal decisions relied upon. In view of the fact that provision for diminution in the value of investment made by the appellant is permanent in nature, the adjustment made by the AO to the "Book Profit" u/s. 115JB of the Act is contrary to the provision as well as settled legal position relied upon by the appellant, and accordingly, the Ld. CIT(A) ought to have deleted the adjustment of Rs. 31,00,000/- in respect of provision of diminution in the value of investments while computing the book profit u/s. 115JB of the Act."

2. At the time of hearing, the learned Counsel for the assessee has not pressed ground No.1 raised by the assessee in this appeal, the same is accordingly dismissed as not pressed.

3. Apropos the issues raised in Ground Nos. 2 & 3, the relevant facts of the case are that the assessee is a company which is engaged in the business of manufacturing of gas turbine blades, engineering services, contract of gas turbine and trading of spare parts. The return of income for the year under consideration was filed by it on 14.10.2013 declaring a total income of the assessee at Rs.1,56,89,960/-. In the assessment originally completed under Section 143(3) of the Act vide an order dated 28.12.2015, the total income of the assessee was determined by the Assessing Officer at Rs.2,43,30,933/- after making certain additions and disallowances. Thereafter, it was noticed by the Assessing officer that the assessee-company in its Profit and Loss Account had debited Rs.6,03,098/- and Rs.31,00,000/- on account of provision for doubtful debts and provision for diminution in value of investment respectively. Since both these provisions, according to the Assessing Officer, were liable to be added for the purpose of computation of book profit under Section 115JB of the Act, which was neither done by the assessee in its return of income nor even by the Assessing Officer in the assessment originally completed under Section 143(3) of the Act, the assessment was reopened by the Assessing Officer and a notice under Section 148 of the Act was issued by him to the assessee after recording the reasons and after taking approval of the competent authority. During the course of assessment proceedings before the Assessing Officer, the following contentions were raised on behalf of the assessee in support of its case that the provision for doubtful debts

and provision for diminution in value of investment were not required to be added while computing book profit under Section 115JB of the Act:-

“That so far as provisions for doubtful debts of Rs.6,03,098/- is concerned, the assessee has relied upon the decision of the Hon’ble High Court in the case of CIT-IV vs. Vodafone Essar Gujarat Ltd.

That the assessee has written off the provisions for doubtful debts of Rs.6,03,098/- for the year ended on 31.03.2013.

That so far as the provision of diminution in the value of investment of Rs.31,00,000/- is concerned, the assessee has put it reliance on the decision of the Hon’ble ITAT “D” bench, Mumbai in the case of ACIT vs. M/s. Reliance Welfare Association Circle (ITA No.5976/Mum/2012).

That the assessee has written off the provisions diminution in the value of investment of Rs.31,00,000/- for the year ended on 31.03.2013.”

4. The stand of the assessee was not found tenable by the Assessing Officer. According to him, the amount(s) set aside for provision made for meeting liability was liable to be added for the purpose of computing book profit. He also relied on the amendment made in Section 115JB of the Act by the Finance Act, 2009, with retrospective effect from 01.04.2001, whereby it was made clear that the amounts set aside as provision for diminution in value of the asset was required to be added to the book profit. He accordingly added the provision for doubtful debts amounting to Rs.6,03,098/- and the provision for diminution in the value of investment amounting to Rs.31,00,000/- to the book profit under Section 115JB of the Act in the assessment completed under Section 143(3) r.w.s. 147 of the Act vide an order dated 28.09.2018.

5. Against the order passed by the Assessing Officer under Section 143(3) r.w.s. 147 of the Act, an appeal was preferred by the assessee before the learned CIT(A) challenging both the additions made by the Assessing Officer to the book profit under Section 115JB of the Act on account of provision for doubtful debts and provision for diminution in the value of investment. During the course of appellate proceedings before the learned CIT(A), a detailed submission was made on behalf of the assessee relying mainly on the decision of Hon’ble Gujarat High Court in the case of CIT vs. Vodafone Essar Gujarat Ltd, [2017] 397 ITR 55 (Guj.),

to contend that it was not the case of mere provision made by the assessee for doubtful debts and diminution in the value of investment but such provision was actually reduced from the corresponding amounts of debts and investments as appearing on the asset side of the balance-sheet. The learned CIT(A) did not find merit in this submission of the assessee and proceeded to confirm both the additions made by the Assessing Officer to the book profit of the assessee-company under Section 115JB of the Act on account of provision for bad debts and provision for diminution in the value of investment for the following reasons given in paragraph Nos. 4.3 and 5.4 of his impugned order:-

"4.3 I have carefully considered the facts of the case, assessment order and submission of the appellant. The Assessing officer has made the addition of provision for doubtful debts of Rs.6,03,908/- in the book profit. The appellant contended that the provision for doubtful debts is ascertained liability and therefore, no adjustment as per clause (c) to explanation 1 can be made in the computation of book profit u/s. 115JB. The appellant has relied upon the decision of Hon'ble Gujarat High Court in the case of CIT-4 V/s Vodafone Essar Gujarat Ltd. It is seen from the computation submitted by the appellant that the appellant had opening balance of provisions for doubtful debts of Rs.14,43,781/-. It has added the provisions for doubtful debt of Rs.6,03,098/- and reversed provision for Rs.8,94,380/- and carried provision for doubtful debt of Rs.11,52,499/-. It is evident from the computation itself that provision is not ascertained liability as the appellant has been carrying out the old provisions of doubtful debts and reversing certain debts which have been recovered and therefore, provision for doubtful debts is clearly not ascertained liability. The appellant has relied on the decision of Gujarat High Court in the case of Vodafone Essar Gujarat Ltd. In the above case relied upon by the appellant, the Hon'ble High Court while deciding the Revenue's appeal on the substantial question of law "whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.6,28,14,653/- being provisions for bad debts to the book profit for computation of MAT liability even when such adjustment was provided for by inserting clause (i) to Explanation (1) to Section 115JB w.e.f. 01/04/2001" has held that there is no conflict between the decision of Division Bench in the case of CIT-1 V/s Deepak Nitrate Ltd. (Tax Appeal No. 1918/2009, order dated 17/08/2011) and the decision in the case of CIT-1 V/s Indian Petro Chemicals Corporation Ltd. The provision for doubtful debt in appellant case is clearly unascertained liability and the facts are similar to the case decided by the Hon'ble Gujarat High Court in the case of Deepak Nitrate Ltd. and therefore, the addition made by the Assessing Officer is upheld."

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"5.4 It is seen that Section 115JB has been amended by Finance Act, 2009 with retrospective effect from 01/04/2001 by which Clause (i) has been added as per which the amount set aside as provision for diminution in the value of any asset is

to be added in the book profit to be computed u/s. 115JB. The Assessing Officer, therefore, has correctly made the adjustment in the book profit. The appellant relied upon the decision of Hon'ble ITAT "D" Bench in the case of Reliance Welfare Association Circle which is not applicable in the appellant's case as the facts are different. The Hon'ble Tribunal in the above cited case has noted that the diminution in the value of investment in the above case is actually charged as the assessee had credited the difference between the sale price and fair value as on 31/03/2008 to Profit & Loss Account and not the difference between sale price and its cost. In view of the above, the adjustment made by the Assessing Officer is upheld."

6. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned Counsel for the assessee, at the outset, has submitted that none of the two provisions made by the assessee-company is for any liability. He has contended that the same in fact were not provisions made by the assessee by merely debiting the profit and loss account and crediting the provision for bad and doubtful debts and diminution in the value of investment. He has invited our attention to page Nos. 39 & 40 of paper-book to show that the provision for doubtful debts and provision for diminution in the value of investment was actually reduced by the assessee from the corresponding amounts of trade receivables and investments as appearing on the asset side of the balance-sheet of the assessee-company. He submitted that the trade receivables and investments at the end of the year as reflected on the asset side of the balance-sheet thus were net of the provisions and since it was a case of actual write off; it would not be hit by clause (i) of the *Explanation* to Section 115JB of the Act as held by the Hon'ble Gujarat High Court in the case of Vodafone Essar Gujarat Ltd (supra). In the said case, the amendment made to Section 115JB of the Act by inserting clause (i) to *Explanation* with retrospective effect was taken note of by the Hon'ble Gujarat High Court whereby any amount set aside for provision for diminution in the value of asset made by the assessee was liable to be added back for computation of book profit under Section 115JB of the Act. Hon'ble Gujarat High Court, however, made a distinction between a mere provision and actual write off and held that actual write off could not be hit by clause (i) of the *Explanation* to Section 115JB of the Act. Explaining further, it was held by the

Hon'ble Gujarat High Court that a mere provision is made by merely debiting the Profit and Loss Account and crediting the provision for bad and doubtful debts; but if such provision is simultaneously obliterated by the assessee from its account by reducing the corresponding amount from the loans and advances on the asset side of the balance-sheet thereby showing the loans and advances on the asset side of the balance-sheet as net of the provision at the end of the year, it would amount to a write off and such actual write off could not be hit by clause (i) of the *Explanation* to Section 115JB of the Act.

7. As demonstrated by the learned Counsel for the assessee from the annual account of the assessee-company, the provision made for doubtful debts as well as for diminution in the value of investment was reduced by the assessee from the corresponding amount of trade receivables and investments as reflected in the balance-sheet at the end of the year and this being so, we hold, respectfully following the decision of the Hon'ble Gujarat High Court in the case of Vodafone Essar Gujarat Ltd that it is not merely a case of provision but an actual write off which would not be hit by clause (i) of *Explanation* to Section 115 JB of the Act. We accordingly delete both the additions made by the Assessing Officer and confirmed by the learned CIT(A) to the book profit of the assessee-company under Section 115JB of the Act on account of provision for doubtful debts and provision for diminution in the value of investment and allow ground Nos. 2 & 3 of the assessee's appeal.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 3rd August, 2022 at Ahmedabad.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad, Dated 03/08/2022

*B/

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)-
5. DR,ITAT, Ahmedabad,
6. Guard file.

TRUE COPY

BY ORDER,

(Asstt. Registrar)

ITAT,

Ahmedabad