

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : G : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.4980/Del/2016  
Assessment Year: 2012-13

Tikaula Sugar Mills Ltd.,  
25-B, Gher Khattii,  
Muzafarnagar.

Vs ACIT,  
Circle-1,  
Muzaffarnagar.

PAN: AACCT5815B

(Appellant)

(Respondent)

Assessee by	:	Shri Akhilesh Kumar, Advocate
Revenue by	:	Shri Prakash Dubey, Sr. DR
Date of Hearing	:	25.03.2021
Date of Pronouncement	:	18.06.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 30<sup>th</sup> June, 2016 of the CIT(A), Muzaffarnagar, relating to assessment year 2012-13.

2. The grounds of appeal raised by the assessee are as under:-

Ø1. That Learned CIT(A) is wrong and unjustified in confirming the addition of Rs. 10342904/- in 115JB holding that the profit and loss account has not been prepared in accordance with part II & part III of Schedule VI of the Companies Act, and in not adjudicating the decisions of Honøble Allahabad High Court and of Honøble Supreme Court. The addition is on account of Administrative charges on transfer of Molasses from Sugar Mill to Distillery which provisions have been declared as invalid as per order of

Honøble Allahabad High Court dated 17/3/2011 and 20/5/11 and when the provisions have been declared as invalid there was no liability of making provisions year after year and provision in the year under consideration was made for all the year as per direction of Honøble Supreme Court

2. That the learned CIT(A) is wrong and unjustified in not adjudicating on the decision of Honøble Supreme Court in the case of Apolo Tyres Ltd vs.CIT(2002) 255 ITR 223 wherein it has been held that AO must accept authenticity of amount certified by the Statutory Auditor.

3. That Learned CIT(A) is wrong and unjustified in directing to follow the decision of his predecessor in assessee's own case for A.Y. 2009-10 and in directing to adopt the generation of Scrap @10% after reducing the amount on which no scrap is generated.

4. That the Assessment order and appellate order are against the law and facts of the case.ö

3. At the time of hearing, the Id. Counsel for the assessee did not press the ground of appeal No.3 for which the Id. DR has no objection. Accordingly ground of appeal No.3 is dismissed as -not pressed.ø Ground of appeal No.4 being general in nature, is dismissed.

4. So far as grounds of appeal No.1 and 2 are concerned, the facts of the case, in brief, are that the assessee is a company and derives income from manufacturing of sugar, alcohol and power. It filed its return of income on 25<sup>th</sup> September, 2012 declaring gross total income at Rs.2,07,36,601/-. After claiming deduction u/s 80IA (4)(iv) of the IT Act, 1961, it filed the return of income at Rs.1,24,33,055/-. However, the book profit u/s 115JB was declared at Rs.3,30,05,823/- after providing for liability of excise department, administrative charges on molasses of

Rs.1,39,18,374/- which is part of rates & taxes out of which a sum of Rs.1,03,42,904/- is related to earlier F.Y. 2007-08 to F.Y. 2008-09.

5. On being questioned by the AO, it was submitted that it has made the provision after the order of 18.10.2011 of Honøble Supreme Court. It has prepared the accounts as per the Companies Act, 1956. The assessee relied upon the decision of Honøble Supreme Court in the case of Apollo Tyres 255 ITR 273 by stating that the A.O. has powers only to examine whether the books of account have been maintained in accordance with the Companies Act. However the A.O. was of the opinion that he was empowered to examine whether the Book Profit has been computed by preparing P&L a/c in accordance with Part-II and Part -III of Schedule-VI of the Companies Act, 1956. Further the A.O. noted that the assessee has been following accrual method of accounting. Rejecting the various explanations given by the assessee and in view of detailed discussion as made in the assessment order the A.O. reached to the conclusion that the P&L a/c has not been prepared by the assessee in accordance with part-II and Part-III of Schedule - VI of the Companies Act. Therefore, the A.O. increased the book profit by Rs.1.03 crore u/s 115JB of the Act.

6. Before the CIT(A), it was explained that the Administrative Charges on transfer of molasses to the distillery were being charged by the Excise Department of UP Govt. @ 11 per unit w.e.f. 1.8.2007. The assessee did not make such payment of the Administrative charges from 1.8.2007 and filed writ petition before

Honorable Allahabad High Court. The Honorable Allahabad High Court vide order dated 09-03-2007 stayed the realization of administrative charges by the Excise Department and, therefore the assessee did not make any provisions in the books of account for the administrative charges. Further the Honorable Allahabad High Court vide order dated 20-05-2011 held that the provisions for charging of administrative charges by the Excise Department were invalid. The Excise Department filed an SLP before the Honorable Supreme Court and the Honorable Supreme Court vide its interim order dated 30.9.2011 directed the assessee to file an undertaking within 4 weeks stating that the assessee shall continue to maintain complete account of molasses transferred to their own distillery and shall file an undertaking to make the payment of the entire amount as may be due to the State in case the assessee fails in the petition within 30 days from the date of the decision. Therefore, the assessee made necessary provisions during the F.Y. 2011-12 in the books of account for the provisions of administrative charges w.e.f. 1.8.2007. The assessee has made provisions in compliance of the directions of Honorable Supreme Court. The assessee relied upon the decision of Honorable Supreme Court in the case of Apollo Tyres in its support that the A.O. must accept the account certified by the Auditors as maintained in a manner provided by the Companies Act, approved by the Company in the AGM and filed before the ROC.

7. However, the Id.CIT(A) was not satisfied with the explanation given by the assessee. He noted that in this case the Hon,ble Allahabad High Court vide order

dated 09.03.2007 has directed that the respondent i.e. the Excise Department shall not compel the petitioner i.e. appellant to pay administrative charges in respect of supply of molasses transferred from its own sugar mills to its own distillery and the same directions were issued again on 02.08.2007. Further vide order dated 27.5.2009 the Hon,ble Allahabad High Court has directed that no administrative charges shall be realized from the sugar mill till the next date of hearing and the petitioner i.e. Sugar Mill shall however maintain an account of the molasses transferred to their own distillery and sugar mill shall pay within 30 days from the date of decision of the òwrit petitionö along with interest in case the petition fails. Subsequently the Honøble Allahabad High Court vide its order dated 20.5.2011 has observed that such imposition of administrative charges was altogether illegal. The Excise department has filed an SLP before the Honøble Supreme Court against the order of the Honøble Allahabad High Court.

8. The Id. CIT(A) observed that the Honøble Allahabad High Court has directed the petitioner to maintain the account of molasses transferred by the appellant to their own distillery and has only restrained the Excise Department from making recovery of Administrative charges. Further, the Honøble Allahabad High Court vide order dated 20.5.2011 i.e. in the financial year 2011-12 relevant to A.Y. 2012-13 has quashed the imposition of Administrative charges. Therefore, it cannot be said that the appellant was not required to make provisions of administrative charges in its books of account for all the financial year prior to

20.5.2011. Therefore, the appellant has not maintained its books of accounts for Various' financial years prior to 20.5.2011 in accordance with the provisions of the Companies Act. It has made provisions for various financial year from FY 2007-08 to FY. 2010-11 i.e. for the prior period and for FY.2011- 12 only when the Honøble Supreme Court has directed again the appellant to make complete account of molasses transferred. According to Id.CIT(A), as per provisions of section 115JB of the IT Act, 1961, MAT is to be charged upon book profit and for this purpose the appellant shall prepare P&L a/c for the relevant previous year in accordance with the provisions of part-II and part-III of schedule-VI of the Companies Act. He noted that the appellant has not prepared its account accordingly and, therefore, the A.O. was justified to compute book profit in accordance with the provisions of the Companies Act read with section 115 JB of the I.T. Act, 1961. He accordingly upheld the action of the AO in computing the book profit u/s 115 JB of the Act by increasing the same by Rs. 1,03,42,904/-on account of provisions relating to the prior years.

9. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

10. The Id. counsel for the assessee submitted that the assessee company is running a sugar mill which became operational in the month of October, 1999. Referring to page 20 of the paper book, he submitted that return of Income with audited Balance sheet/ P&L a/c etc. for the assessment year 2012-13 was filed on

25.09.2012 declaring book profit of Rs. 3,30,05,823/- after providing for liability of excise deptt. Administrative charges on mollasses of Rs. 1,39,18,374/- which is part of rates & taxes sch.21 out of which a sum of Rs. 1,03,42,904/- is related to earlier FY 07-08 to FY 08-09. Referring to page 5 and 12 of the paper book, he submitted that provision is made after order dt. 18.10.2011 of Honøble Apex Court. He submitted that the accounts are audited under Companies Act, 1956 and in terms of auditorø report statement of profit & loss a/c comply with the accounting standards in terms of S. 211(3C) of said Act and the same give true & fair view of book profit which are prepared as per schedule VI of the said Act. Referring to page 51 of the paper book, he submitted that ultimately the Apex Court decided in favour of assessee vide order dt. 18.10.11. Referring to paper book pages 68,73 and 74, he submitted that the assessee has transferred the amount to income as per note 18 to P&L A/c for AY 14-15 which is accepted u/s 143(3).

11. Relying on the following decisions, he submitted that Book profit as per accounts maintained in terms of part II & III of Schedule VI of Companies Act, 1956 as certified by accountant is binding on AO who canø recompute book profit in terms of S.115JB:

1. Malayala Manorama Co. Ltd. v/s CIT 300 1TR 251 (SC) affirming Apollo Tyres Ltd. v/s CIT (2002) 255 ITR 273 ( SC)
2. CIT v Hindustan Pipe Udyog Ltd. (2014) 360 ITR 437 31 taxmann.com 351 (All.)

3. CIT V ACC Ltd. (2020) 113 taxmann.com 168(SC)

12. Relying on the following decisions, he submitted that prior period expenses/liabilities are to be adjusted in computing the net profit u/s 115JB:

1. Tamil Nadu Cements Corporation Ltd v JCIT [2012] 349 ITR 58 (Mad)
2. CIT v Khaitan Chemicals & Fertilizers Ltd. [2008] 307 ITR 150 (Del)
3. Southern Power Distribution Company of AP Ltd v DCIT [2018] 170 ITD 1 (Hyd ITAT) 169 (Del-ITAT)
4. DCIT v Railtel Corpn of India Ltd [2019] 103 taxmann.com 438(Del-A) 45-70

13. He accordingly submitted that the order of the CIT(A) be set aside and the return filed by the assessee be allowed.

14. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

15. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, is running a sugar mill which became operational in the month of October, 1999. The assessee filed return of income declaring total income at Rs.2,07,36,601/- and book profit of Rs.3,30,05,823/-, after providing for liability of Excise Department, administrative charges of molasses of Rs.1,39,18,374/- which is part of rates & taxes. A sum of



Rs.1,03,42,904/- is related to the two earlier assessment years i.e., A.Y. 2007-08 and 2008-09. We find, the submissions of the assessee before the AO was that the administrative charges of transfer of molasses to distillery were being charged by the Excise Department @ 11 per quintal w.e.f. 01.08.2007 onwards and the administrative charges were not paid by the assessee as a Writ Petition was filed and the realization of administrative charges on transfer of molasses to distillery was stayed by the Honøble High Court. Accordingly, no provision was being made in respect of administrative charges. The assessee ultimately won the case and the Honøble Allahabad High Court has held that the provision for charging the administrative charges was invalid. The Petition of the assessee was allowed and the amount paid by other sugar mills was refunded to them. However, the Honøble Allahabad High Court directed to maintain the accounts year after year. The assessee has maintained the account according to which the administrative charges as on 31.03.2012 was Rs.1,39,18,373.70. The AO disallowed the amount of Rs.1,03,42,904/- pertaining to earlier years which has been upheld by the CIT(A). It is the submission of the Id. Counsel for the assessee that the Excise Department had filed SLP before the Honøble Supreme Court and the Honøble Supreme Court, vide its order dated 30<sup>th</sup> September, 2011, directed the sugar mill to file an undertaking within four weeks stating that the sugar mills shall continue to maintain the complete account for molasses transfer to their own distilleries for captive consumption and shall file an affidavit before it undertaking to make payment of the entire amount as may be due to the State in case they fail in the

petition, within 30 days from the final decision of the Petition. Accordingly, the assessee made necessary provision in its books of account in respect of the administrative charges of Rs.1,39,18,373.70 which includes Rs.35,75,467.50 for A.Y. 2012-13. It is the submission of the Id. Counsel that before the directions for furnishing an undertaking, the assessee was not admitting any liability and no provision was being made though the account of each year was kept as per the direction of the Honøble Allahabad High Court and it is only on the direction of the Honøble Supreme Court the provision was made being the liability as ascertained liability. It is also his submission that the book profit as per accounts maintained in terms of Part II and III of Schedule VI of Companies Act, 1956 as certified by the Accountant is binding on the AO and he cannot recompute the book profit in terms of section 115JB. It is also his submission that prior period expenses/liabilities are to be adjusted in computing the net profit u/s 115JB of the IT Act.

16. We find some force in the above arguments of the Id. Counsel. The accounts of the assessee are audited under the Companies Act, 1956 and, in terms of Auditorø Report, statement of Profit & Loss Account complied with the Accounting Standards in terms of section 211(3C) of the said Act and the same give true and fair view of book profit which are prepared as per Schedule VI of the Companies Act. The prior period expenses/liabilities have been provided on the basis of the direction of the Honøble Supreme Court since this provision has been

made after the order dated 18<sup>th</sup> October, 2011 of the Hon'ble Supreme Court. We find, a somewhat identical issue had come up before the Hon'ble Allahabad High Court in the case of CIT, Kanpur vs. J.K. Synthetics Ltd., 143 ITR 771. In that case, the assessee made provision for payment of Excise Department in a year 1967-68. It however disputed the liability before the High Court, which decided the issue in favour of the assessee. The Excise Department went in appeal before the Hon'ble Supreme Court and the depute was pending before the Supreme Court at the time of assessment of assessee's income of assessment year 1967-68. The ITO held that it had been decided by the Court that the assessee was not liable for payment in respect of Excise duty no deduction was allowable in respect of said provision made for payment of Excise duty in computing its income. In appeal before the AAC the assessee contended that as the Excise Authority had taken the matter in appeal before the Hon'ble Supreme Court the assessee was entitled to claim the deduction or in respect of provision so made in the assessment year 1967-68. The AAC accepted the contention of the assessee and allowed its appeal. On further appeal the Tribunal affirmed the order of AAC. On a reference the Hon'ble Allahabad High Court held that- notwithstanding the decision of the High Court the assessee was entitled to claim the deduction in respect of provision made for payment of Excise duty in the relevant year in as much as the Excise Department had gone up in appeal to the Supreme Court and questioned the correctness of the decision of the High Court.

16.1 The facts of the present case are identical and parallel to the case mentioned above from all the four corners and thus in view of the above decision the P& L account prepared are in accordance with provision of part II & III of Schedule VI of Companies Act. Similar view has been taken by the Honøble Gujarat High Court in the case of CIT Vs. Gandhi Silk Mill Ltd.(2005) 274 ITR(Guj). The only difference is that in this case Bank Guarantee was furnished and in the present case the undertaking was given.

16.2 The Honøble Supreme Court in the case of Apollo Tyres vs. CIT, 255 ITR 373, has held that while computing the book profit u/s 115JA of the Companies Act, the jurisdiction of the assessing officer is limited to examine whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The AO, thereafter has limited powers of making increases and reductions as provided for in the Explanation to section 115JA. Thus, when once the assessment is sought to be made u/s 115JA, the said provision does not empower the assessing officer to embark on a fresh query in determining the book profit so as to arrive at a recomputation. We find the above position was once again reiterated in the decision of the Apex Court in the case of Malayala Manorama (supra).

16.3 Further, since the Profit & Loss has been computed for the year under consideration after taking into consideration the prior year expenses as given under Schedule XXI is also covered by the decision of the Honøble Delhi High Court in

the case of CIT vs. Khaitan Chemicals & Fertilizers Ltd., 307 ITR 150 where it has been held that prior period expenses/liabilities are to be adjusted in computing the net profit u/s 115JB. In that case, the assessee prepared its net profit as per Profit & Loss Account after reducing the prior period expenses/extraordinary items and thus, arrived at the resultant book profit. The Revenue contested the claim of the assessee for reducing the prior period expenses on the ground that such expenses did not find mention in any of the clauses (i) to (ix) of the Explanation to 115JA(2) of the Companies Act. Dealing with such contention, the Honøble High Court pointed to Accounting Standards AS-5 and stated that Accounting Standards clearly stipulates that prior period items are income or expenses which arrives in the ÷current periodø as a result of errors or omissions in the preparation of the financial statement of one or more prior periods. Referring to para 7 of AS-5, it pointed out that no profit or gains comprises of extraordinary items and the same should be disclosed in the face of the statement of profit and loss. The Honøble High Court further held as follows:-

øí í from this, it is clear that both prior period items as well as extraordinary items are to be included in the determination of net profit or loss. If a prior item is an expense, it is obvious that it will go towards reducing the net profit or increasing the loss, as the case may be. On the other hand, if the prior period item is an income, it would go towards increasing the net profit or reducing the loss, as the case may be. The same is the position with extraordinary items which may be income or expense. The conclusion that one can arrive at from this discussion is that prior period items and extraordinary items form part of the net profit or loss.ö

17. Similar view has been taken in the various other decisions relied on by the ld. Counsel that prior period expenses/liabilities are to be adjusted in computing the net profit u/s 115JB of the IT Act. Since the assessee in the instant case has prepared its Profit & Loss Account after providing for liability of Excise Department, administrative charges on molasses, as per the directions of the Honøble Supreme Court, therefore, we are of the considered opinion that there is no mistake in the accounts of the assessee and the lower authorities are not justified in rejecting the book profit as per the accounts maintained in terms of Part II and III of Schedule VI of the Companies Act, 1956 as certified by the Accountant and, thereby, recomputing the book profit in terms of section 115JB. The order of the CIT(A) is accordingly set aside and the grounds raised by the assessee are allowed.

18. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 18.06.2021.

Sd/-

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 18<sup>th</sup> June, 2021

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi