

**innovative Tech Pack Ltd. Vs. Assistant Commissioner of Income**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** Sep-29-2000

**Judge :** S Khan, D Singh

**Appellant :** innovative Tech Pack Ltd.

**Respondent :** Assistant Commissioner of Income

**Judgement :**

1. In this appeal the assessee has contested the computation of higher total income at Rs. 1,03,59,205 by making prima facie adjustment under Section 143(1)(a) of the IT Act, 1961, for the asst. yr. 1997-98 which was confirmed by the learned CIT(A) in the first appeal.

2. The assessee filed return showing income as per MAT under Section 115JA at Rs. 10,01,856. This was shown as 30 per cent of the book profit of Rs. 33,39,518. This book profit was arrived at by the assessee by making adjustment in the book profit as per P&L a/c as under : 3. The AO did not accept the aforesaid profit of Rs. 10,01,856 declared under Section 115JA on the ground that the assessee had not worked out 30 per cent of the real and correct book profit of Rs. 1,03,59,205. He noted that the adjustments made in the real and correct book profit before arriving at the book profit of Rs. 33,39,518 were not correct and permissible. He, therefore, ignored the aforesaid adjustment made by the assessee and making prima facie adjustment under Section 143(1)(a) of the Act, he took the book profit at Rs. 1,03,59,205. 30 per cent of this was worked out by the AO at Rs. 31,07,762 which was determined as the taxable income under Section 115JA of the Act.

4. Aggrieved the assessee preferred first appeal before the learned CIT(A). It was argued before him on behalf of the assessee that the AO was not justified in determining the book profit at Rs. 1,03,59,205 instead of Rs. 33,39,518 shown by the assessee and as such the determination of the taxable income under Section 115JA of the Act by the AO was wrong. It was contended that the book profit means the net profit as shown in the P&L a/c and hence the book profit shown by the assessee should have been accepted. The assessee had enclosed the computation of book profit with the return of income and the AO was not justified in making prima facie adjustment on account of previous years interest decapitalised and previous year excess depreciation written back in the book profit declared in the computation enclosed with the return.

5. The learned CIT(A) was not satisfied and convinced with the aforesaid submissions and contentions. He observed that the assessee was not justified in deducting Rs. 99,94,101 on account of previous year interest decapitalised. In the earlier years the interest paid was capitalised and not charged to P&L a/c and the entire amount was debited in the previous year relevant to the assessment year in question. He added that it was not understandable how this could be considered as prior period expenses. He further added that in principle the purpose of adjustment on account of prior period expenses was to claim expenses of earlier year which could not be claimed on account of the fact that the assessee became aware of the liability after the close of the accounting period though it related to earlier years but the adjustment made by the present assessee was on account of decision to reverse the earlier year accounting practice which could not be said to be a liability of earlier year which arose during the year under consideration. He further added that the narration was clear that it was reversal of previous year interest decapitalised and therefore, it was not prima facie allowable. He

held that the AO was correct in adopting the first figure which was the book profit for the year under consideration.

6. Aggrieved the assessee has come up in second appeal before this Tribunal.

7. The learned authorised representative of the assessee submitted that the assessee-company had been capitalising the interest pertaining to term loans and giving a note on account as per the recommendations of the Research Committee of the Council of the Institute of Chartered Accountants as under : "Interest pertaining to term loans availed during the year 1991-92 for fixed assets installed acquired for the entire contracted period of loans are capitalised as a part of the acquisition cost of the said assets on the basis that this expenses accrue at the time of availment of loans. For the purpose of this computation it has been assumed that loans shall be repaid on due date and adjustment on account of future fluctuation in the amount of interest owing to change in the interest will be accounted for in the years in which such changes occur. As a result of the above, loss after depreciation is lower by Rs. 29,38,067.41 and net fixed asset are higher by Rs.1,73,03,618.15 and accumulated losses are lower by Rs. 29,38,057.41." 8. The above note was given in the balance sheet for the asst. yr.

1993-94. Similar notes appeared in the balance sheets of the financial year 1994-95 and 1995-96 and in the financial year 1996-97 relevant to the asst. yr. 1997-98 covered under the present appeal. Change in the method of accounting with regard to the above interest was made and the following note appeared : "To comply with the generally accepted accounting principles and the guidelines issued by the Institute of Chartered Accountants of India, the company has from current year changed its policy of charging interest pertaining to term loans from capitalising the same to fixed assets to charging the same to P&L a/c. Due to this change profit for the year has been decreased by Rs. 73,11,131.58 and net fixed assets has been reduced by Rs. 1,52,62,224.65." It is thus apparent that the appellant company realised the mistake of showing an inflated state of affairs as much as by capitalising the interest which showed an inflated amount of profit and so also inflated the amount of results. This mistake was sought to be corrected in the asst. yr. 1997-98 by decapitalising the interest to the extent of Rs. 99,94,101 and consequently writing that the depreciation to the extent of Rs. 29,74,415." 9. The learned authorised representative further submitted that the matter in question was covered within the definition of prior period items as given in Annexure-A-55 of the accounting policy of the Institute of Chartered Accountants. He, therefore, contended that the learned CIT(A)'s observation that the amount in question could not be treated as prior period expenses was unwarranted and uncalled for.

10. The learned authorised representative further submitted that the book profit for the purpose of Section 115JA had to be calculated strictly in accordance with the provisions of Section 115JA of the Act and the AO was not competent to calculate the book profit otherwise according to his sweetwill. In this connection he referred to the Explanation below Sub-section (1) of Section 115JA, Sub-section (2), Clauses (a) to (f) and (i) to (ix) of the Explanation of the IT Act. He also referred Section 211, Sub-section (1) and Sub-section (2) of the Companies Act, Part II of the Schedule-VI of the Companies Act and contended that the book profit shown by the assessee, was unconformity with these provisions and therefore, the AO was not justified in ignoring the same and substituting his own book profit after making prima facie adjustment on account of the above. He relied on the following decisions : 1. AM Ltd. v. Asstt. CIT (1999) 64 TTJ (Ahd) 741 : (1999) 69ITD 187 (Ahd); 2. Sipani Automobiles Ltd. v. Dy. CIT (1994) 48 TTJ (Bang) 577 : (1993) 46 ITD 280 (Bang); 4. Khatau Junkar Ltd. v. K.S. Pathania and Anr. (1992) 196 ITR 55 (Bom); 5. Mahalakshmi Glass Works Ltd. v. Sunil Gupta, Asstt. CIT (1993) 203 ITR 658 (Bom); 6. Challapalli Sugar Ltd. and Ors. v. CIT (1975) 98 ITR 167 (SC); and 7. Bombay Steam Navigaton Co. (1953) Ltd. v. CIT (1965) 56 ITR 52 (SC).

11. The learned authorised representative further submitted that the impugned prima facie adjustment by the AO to arrive at higher book profit would also be found to be unwarranted and uncalled for on the ground that in the assessment made under Section 143(3) for the assessment year in question the taxable income was determined at Rs. 44,24,953 and this was higher than the 30 per cent of the book profit as determined by

the AO at Rs. 33,39,518 and hence the book profit was ignored. He added that it was a different thing that subsequently the taxable income was reduced but that was the subsequent development which was not relevant at the time of assessment. Thus, according to the AO in the assessment made under Section 143(3), the provisions of Section 115JA of the Act were not applicable. He, therefore, contended that the higher book profit determined by the AO under Section 143(1)(a) of the Act was unwarranted and irrelevant.

12. The learned authorised representative further submitted that even if there were two possible interpretations, with regard to the determination of the book profit in question the interpretation favourable to the assessee should be accepted. He relied on the Supreme Court decision in the case of CIT v. Vegetable Products Ltd. (1973) 88 ITR 192 (SC) and CIT v. Kullu Valley Transport Co. (1970) 77 ITR 518 (SC).

13. He further submitted that the bona fide of the assessee as established by the fact that he did not reduce the taxable income by interest of past years for the purpose of computation of total income.

Similarly, a consequential adjustment on account of depreciation was also ignored. He contended that the assessee had been wrongly subjected to additional tax in terms of Section 143(1A) of the Act on the basis of computation of book profit by the AO.<sup>14</sup> The learned Departmental Representative on the other hand, supported the orders of the AO and the learned CIT(A). He submitted that the Clause (iii) of first proviso to Section 143(1)(a) says as under : "Provided that in computing the tax or interest payable by or refundable to the assessee the following adjustments shall be made in the income or loss declared in the return namely--  
fin) and loss carried forward, deduction allowance of relief claimed in the return, which on the basis of the information available in such return, accounts or documents, is prima facie inadmissible shall be disallowed....." <sup>15</sup>. He contended that the adjustment made by the assessee in the book profit for prior period adjustments were not admissible in terms of the aforesaid proviso to s, 143(1)(a) of the Act. He added that since depreciation as well as interest pertained to earlier previous years and not to the previous year relevant to the assessment year in question the AO was justified in making prima facie adjustment under Section 143(1)(a) of the Act.

16. He further submitted that Section 115JA speaks of preparation of P&L a/c for the purpose of this section for the relevant previous year in accordance with the provision of Parts II & III of Schedule VI of Companies Act. Schedule VI, Part II, Sub-Part 2 reads as under : "The P&L a/c shall be so made out as clearly to disclose the result of the working of the company during the period covered by this account." He added that the prima facie examination of the computation of book profit as made by the assessee showed that in arriving at book profit the assessee had claimed interest pertaining to several previous years and depreciation also pertaining to several previous years which was not in conformity with above provisions of the Companies Act, and the IT Act. He referred to the observations in the case of Simpani Automobiles Ltd. (supra) that if book profit is wrongly stated then the AO can make adjustment under Section 143(1)(a) of the Act. He added that the facts of the present case were similar to those of the aforesaid decided case. He referred to the Tribunal Delhi Bench 'E' decision in the case of Care Heart India Ltd. v. Dy. CIT (1999) 65 TTJ (Del) 345 wherein it was held that while computing the book profit under Section 115JA the AO can correct errors in accounts and book profit is to be taken on the basis of the corrected account. It was held that it was open for the AO to examine whether book profit is computed in accordance with the law. The amount reflected in the P&L a/c was not sacrosanct. He also referred to the legislative background of introduction of Section 115JA of the Act, and added that the assessee must pay tax on 30 per cent of real book profit in accordance with the provisions of Section 115JA of the Act instead of dodging the provisions.

17. He also referred to the following observations in the case of J.K.Cotton Spg. & Wvg. Mills Ltd- v. CIT (1997) 57 TTJ (All) 433 : (1997) 60 ITD 99 (All) para 30 as under: "The deduction of prior period expenses is not in accordance with the principles of accountancy, since the income of the previous year under consideration alone is to be computed. It has rightly been added. This ground is accordingly rejected." <sup>18</sup>. In the light of the above submissions, the learned Departmental Representative contended that the findings of the learned CIT(A) were correct and deserved to be upheld.<sup>19</sup> We have considered the rival submissions and the

materials on the file. We are of the view that on the facts and in the circumstances of the case and for the reasons given in the impugned order, the learned CIT(A) was justified in upholding the action of the AO. The book profit declared by the assessee after making aforesaid adjustment for previous year interest decapitalised and previous year excess depreciation written back was not the real and correct book profit in terms of the provision of Section 115JA, or even in terms of Parts II & III of Schedule VI of the Companies Act and the accounting practice.

Admittedly the aforesaid adjustment on account of interest and depreciation did not pertain to the period relevant to the asst. yr.

1997-98 covered under the present appeal The book profit for the period relevant to the assessment year under consideration was to be determined with reference to the income and expenditure of the relevant period. Expenditure of earlier year could be debited in the account for the period under consideration only if the liability of such expenditure was known during the period relevant to the assessment year in question and not earlier. In the present case, there was no such situation. Admittedly, it was not the assessee's case that it was not aware of the interest and depreciation in question earlier and that it became aware of the same only during the period relevant to the assessment year in question. The assessee was fully aware of the interest and depreciation in question in the earlier year and had made deliberate decision to deal with the said interest and depreciation in particular manner in the earlier year. The assessee had deliberately decided after due consideration of the recommendations of the Research Committee of the Council of Institute of Chartered Accountants, to capitalise the interest pertaining to the term loans. In respect of asset purchased on deferred credit basis for the period after commencement of production and had been giving a note of account as reproduced above in terms of the advice of the Research Committee of the Council of Institute of Chartered Accountants. It was only when subsequently the assessee wanted to come out of the clutches of Section 115JA of the Act or reduce its liability under Section 115JA drastically that alter so many years it decided to reverse the practice under the shelter of the current accounting practice. We are of the view that the subsequent reversal of the accounting practice and the claim of adjustment on account of interest and depreciation from the real and correct book profit as above, was not with bona fide intention but was prompted with the intention of reducing the tax liability under Section 115JA of the Act. It will be totally wrong and against the provisions of Section 115JA to allow such an action of the assessee.

20. The learned authorised representative of the assessee in his argument before us relied upon the Supreme Court decision in the case of Challapali Sugars (supra) and Supreme Court decision reported in (1965) 56 ITR 52 (SC) (supra) but both these decisions rendered in October, 1974, and October, 1964, respectively, as well as the new accounting practice in the name of which the aforesaid claim of adjustment on account of interest and depreciation was made were already in existence at the time when the assessee had chosen to follow the accounting practice of capitalising the interest with due consideration of the recommendations of the Research Committee of the Counsel of Institute of Chartered Accountants. From these facts it is evident that the claim of adjustment from the book profit made in the assessment year under consideration was not bona fide and was purely with the intention of dodging the provision of Section 115JA of the Act.

21. The learned Departmental Representative rightly referred the decision in the case of J.K. Cotton Spg. & Wvg. Mills (supra) and referred to the Tribunal's observation in para 30 quoted above. He is also correct in referring to the provision of Schedule VI, Part II, and sub-Part 2, of the Companies Act which reads as under : "The P&L a/c shall be made out as clearly to disclose the result of the working of the company during the period covered by this account." 22. It will be seen from the above that Schedule VI, Part I, sub-Part 2 of the Companies Act, require that the P&L a/c should clearly disclose the result of the working of the company during the period covered by the account. Admittedly, the book profit prior to the aforesaid adjustment was the real profit and the book profit worked out by the assessee after the aforesaid adjustment did not truly disclose the result of the working of the company during the relevant period 23. The learned Departmental Representative also rightly referred to the decision in the case of Sipani Automobiles Ltd. (supra) where in para 10 it was held that if the book profit was wrongly stated then the AO can make adjustment under Section

143(1)(a) of the Act. Clearly the aforesaid interest and depreciation adjusted by the assessee against the real and correct book profit did not pertain to the previous year relevant to the assessment year under consideration. Under the circumstances, and in view of the provisions of third proviso to Section 143(1)(a) the AO was required to make prima facie adjustment in the book profit declared by the assessee for the purpose of determining taxable income under Section 115JA of the Act. In this connection the learned Departmental Representative also appropriately referred to the decision of Tribunal Delhi Bench 'E' in the case Care Heart India Ltd. (supra) wherein it was held that while computing the book profit under Section 115JA the AO can correct errors in accounts and the book profit is to be taken on the basis of the corrected amount. While processing the case under Section 143(1)(a) the AO is duty bound to go through the P&L a/c as also the computation of book profit declared under Section 115J of the Act to verify whether the profit declared by the assessee is in accordance with the provisions of law and the accounting principles followed by the assessee from year to year. In the course of this verification, the AO hit upon the wrong adjustment claimed by the assessee with regard to the interest and depreciation which was neither in accordance with the accounting method followed by the assessee in the past nor it was in accordance with the provisions of law. The matter clearly fell within the purview of third proviso of Section 143(1)(a) of the Act. It will be wrong to say that whatever book profit is declared by the assessee for the purpose of Section 115JA of the Act, the same had been accepted in the course of processing of the return under Section 143(1)(a) of the Act. Such a view will be totally in contravention of the requirements of law. Taking recourse to the provision of law and considering the facts of the case, the AO was justified in making the prima fade adjustment and determining the book profit at Rs. 1,03,59,205.

24. We have considered the various decisions relied upon by the learned Departmental Representative of the assessee in the light of the facts and circumstances of the case and the provisions of law. We are of the view that these decisions are not applicable to the present case because the facts were distinguishable. The decisions relied upon by the learned Departmental Representative as mentioned above, support the Revenue's case.

25. In the above view of the matter, we uphold the order of the learned CIT(A) and dismiss the assessee's appeal.

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