



2025:DHC:122-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: 13.01.2025*

+ **ITA 199/2020 & CM APPL. 9846/2020**

DCIT, CIRDE-25(1), NEW DELHIAppellant

Through: Mr. Gaurav Gupta, SSC, Mr. Shivendra Singh and Mr. Yojit Pareek, JSCs

versus

TATA POWER DELHI DISTRIBUTION LTD.Respondent

Through: Mr. Shashi M Kapila, Mr. Pravesh Sharma and Mr. Sushil Kumar, Advocates

CORAM

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The Revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 [hereafter '*the Act*'] impugning an order dated 14.06.2019 [hereafter '*the impugned order*'] passed by the learned Income Tax Appellate Tribunal [hereafter '*the learned ITAT*'], in ITA No. 2785/Del/2013, in respect of the assessment year (AY) 2007-08.

FACTUAL BACKGROUND

2. The respondent – M/s Tata Power Delhi Distribution Limited – [hereafter '*the assessee*'] is a joint venture between Tata Power



Company Limited and the Government of NCT of Delhi, wherein Tata Power Company Limited, along with Tata Sons Limited, holds 51% of the shares, while the remaining 49% of the shares are held by the Government of NCT of Delhi. The assessee is engaged in the power generation and distribution of electricity in North and North West Delhi.

3. For the AY 2007-08, the assessee filed its return of income declaring a total income of ₹6,49,98,060/- under the normal provisions, and ₹187,24,36,245/- as book profits under Section 115JB of the Act. Subsequently, revised computation was filed, declaring the book profits at ₹192,54,68,053/-. The return was processed under Section 143(1) of the Act at the declared returned income. The return was thereafter selected for scrutiny, and a notice under Section 143(2) of the Act was issued to the assessee on 16.09.2008, which was duly served upon the assessee. Subsequently, further notices under Sections 143(2) and 142(1) of the Act, accompanied by detailed questionnaires, were issued to the assessee.

4. On 29.12.2009, the learned Assessing Officer [hereafter '*the AO*'] passed an order under Section 143(3) of the Act, assessing the total income of the assessee at ₹132,73,84,883/-, and computing the book profit under Section 115JB of the Act at ₹318,78,54,880/- The AO's findings on the computation of book profit under Section 115JB of the Act indicate that though the assessee had computed book profits at ₹192,54,68,053/-, a total amount of ₹126,23,86,823/- was to be



added to the said amount on certain accounts. The relevant findings of the AO are as under:

7. With these remarks, the total income of the assessee company is computed as follows:

TOTAL INCOME DECLARED IN Rs 6,49,98,060
COMPUTATION

Add : Rs 114,39,00,000

A. Addition on account of derecognizing of revenue (as per para 3)

B. Excess Claim of depreciation on UPS Rs 26,36,870 disallowed (as per para 4)

C. Provision for Bad & Doubtful Debts (as per para 5) Rs 23,41,192

D. Energy Tax disallowed u/s 43 B (as per para 7) Rs 10,17,86,761

E. Disallowance u/s 14A of the Act/Rule 8 D (as per para 8) Rs 1,17,22,000

TOTAL INCOME Rs 132,73,84,883

TOTAL INCOME Rs 132,73,84,883
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II. COMPUTATION OF BOOK PROFIT

Book Profit declared u/s 115 JB in the revised computation Filed vide Annexure 2 to letter dated 18.12.2009 Rs 192,54,68,053

Addition made to profit of business as discussed in body of order appearing as A,B,C,D & E in the pre-page computation (page 18) Rs 126,23,86,823

BOOK PROFIT Rs 318,78,54,876

Rounded off Rs 318,78,54,880/-

Tax on Total Income (I) is higher than the tax on book profit (II), hence the Total Income of Rs 132,73,84,883/- (I) is taken as Assessed Income for this year.

Assessed at Total Income of Rs 132,73,84,883/- . Issue demand notice and challan. Issue necessary forms. Charge Interest u/s 234 B, 234 C, 234 D & 244A(3) of the Act. Penalty proceedings u/s 271 (1)(c) of the Act have been initiated separately.



5. Aggrieved by the assessment order, the assessee filed an appeal before the learned Commissioner of Income Tax (Appeals)-XVI [hereafter '*the CIT(A)*'] on 29.01.2010. The CIT(A), by way of order dated 22.02.2013, allowed the appeal of the assessee on some of the grounds raised by it. The CIT(A) noted that the additions made by the AO on account of de-recognition of revenue, excess depreciation on UPS, energy tax disallowed under Section 43B of the Act, and disallowance made under Section 14 of the Act were not covered by provisions of Section 115JB of the Act. The CIT(A) also observed that addition made by the AO on account of difference in provision for doubtful debts (energy tax) was erroneous and could not be sustained. The relevant findings of the CIT(A) are reproduced below:

“6.1 Ground no. 8 of appeal is directed against additions made by the A.O. to the book profit computed for the purpose of section 115JB of the IT Act, on account of de-recognition of revenue amounting to Rs. 114,39,00,000/-, excess depreciation on UPS amounting to Rs. 26,36,870/-, provision for doubtful debts amounting to Rs. 23,41,192/-, energy tax disallowed u/s 43B amounting to Rs. 10,17,86,761/- and disallowance u/s 14A amounting to Rs. 1,17,22,000/-. The Assessing Officer while computing the income of the assessee under the normal provision had made the above addition to the total income of the assessee. Consequent to the above said additions the Assessing Officer also recomputed the book profits under section 115JB of the Act by making the above additions of Rs. 126,23,86,823/- to the book profit shown by the assessee under section 115JB of the Act.

6.2 The Hon'ble Supreme Court in Apollo Tyres Ltd. 255 ITR 273 (SC) had laid down the principle that the Assessing Officer while computing income under section 115J had the power to examine whether the books of account were properly



maintained in accordance with the Companies Act and further had limited power of making additions/deductions as provided for in the Explanation to the said section. In view of the principle laid down by the Hon'ble Supreme Court the Assessing Officer has limited jurisdiction while computing the book profits under section 115JB of the Act i.e. there is no jurisdiction to go beyond the net profit shown in the Profit & Loss Account except to the extent provided in the Explanation to section 115JB of the Act. As per the Explanation to section 115JB of the Act, book profit is defined to be the net profit shown in the Profit & Loss Account for the relevant previous years as increased/reduced by the amounts specified in the clauses mentioned thereunder. The additions made by the A.O. on account of de-recognition of revenue amounting to Rs. 114,39,00,000/-, excess depreciation on UPS amounting to Rs. 26,36,870/- and energy tax disallowed u/s 43B amounting to Rs. 10,17,86,761/- in the hands of the assessee are not covered by the aforesaid clauses.

6.3 Regarding the disallowance made by the A.O. u/s 14A, no actual expenditure was debited in the profit & loss account relating to the earning of exempt income. Section 14A contains subsection (2) and sub-section (3), which do not find a place in the clause (f) of explanation to Sec 115JB. Therefore, insofar as computation of adjusted book profit is concerned, provisions of subsection (2) and sub-section (3) of section 14A cannot be imported into clause (f) of explanation to Sec 115JB. Therefore, the disallowance made u/s 14A are also not covered under the clauses of explanation to sec 115JB.

6.4 Regarding addition of sum of Rs. 23,41,192/- on account of difference in provision for doubtful debts (energy tax) under the normal provisions as well as under sec 115JB, the provision for doubtful debts for the year under consideration has been shown at Rs. 5,53,73,000/- in the balance sheet. However, in the profit and loss account as well as in the computation of income and book profit, the assessee has shown provision for doubtful debts for a sum of Rs. 5,30,31,808/-. The difference of Rs. 23,41,192/- was added back by the A.O. The provisions for doubtful debts of Rs. 5,30,31,808/- was debited in the profit and loss account of the appellant and in the computation of income as well as in the computation of book profit u/s 115JB the same amount was accordingly added back by the assessee. Therefore, the net effect was nil and no deduction was claimed in respect of provision for doubtful debts. Therefore, it is



immaterial that excess provision of Rs. 23,41,192/- was shown in the balance sheet. So long as provision debited in the profit & loss account is again added back in the computation of income and in the computation of book profit, no addition can be made in respect of excess provisions worked out by the AO from the balance sheet which is not debited in the profit & loss account. Therefore, the above the addition made by the A.O. while computing income under normal provision as well as the book profit u/s 115 JB of the Act is erroneous and cannot be sustained. The appeal is allowed on this ground.”

6. Aggrieved by the order of the CIT(A), both the assessee and the Revenue filed cross-appeals before the learned ITAT, the assessee’s appeal being ITA No. 2785/Del/2013 and Revenue’s appeal being ITA No. 4054/Del/2013. A perusal of the impugned reveals that the assessee had raised an additional ground, that is whether in the facts and circumstances of the case, the AO had erred in law in taxing book profits under Section 115JB of the Act. The learned ITAT, vide the impugned order, allowed the assessee’s appeal and dismissed the Revenue’s appeal. The learned ITAT relied on the decision of the Kerala High Court in ***Kerala State Electricity Board v. Deputy Commissioner of Income-tax: (2010) 329 ITR 91***, and held that the ratio of this decision applied to the present case. The learned ITAT accordingly held that Section 115JB of the Act was not applicable to the assessee. The relevant extract of the impugned order is extracted hereunder:

“7. In so far as question of applicability of provisions of section 115JB of the appellant company is concerned, it has been answered by the Hon'ble Kerala High Court in case of Kerala State Electricity Board 329 ITR 91 favour of the assessee and against the revenue. The Hon'ble High Court has held as under:



* * *

8. Finding parity of facts with facts of the judgment of the Hon'ble Kerala High Court [supra], respectfully following the finding of the Hon'ble High Court, we hold the provisions of section 115JB of the Act are not applicable to the appellant company. The Assessing Officer is directed accordingly. additional ground raised by the assessee is allowed”

7. Aggrieved by the decision of the learned ITAT, the Revenue has preferred the present appeal.

QUESTION OF LAW

8. The present appeal was admitted on the following Question of Law, for this Court's consideration:

“Whether in the facts and circumstances of the case, and in law, the ITAT was justified in deleting the additions made on account of Book Profit under Section 115 JB of the Income-tax Act, 1961?”

THE DECISION

9. The primary issue for our determination is whether Section 115JB of the Act would be applicable to the assessee, who is engaged in the business of electricity generation and distribution, during the period relevant to AY 2007-08.

10. It is apposite to note that the present appeal was heard along with ITA 687/2019, captioned *Pr. Commissioner of Income Tax-9 v. M/s Tata Power Delhi Distribution Ltd. (Formerly known as M/s North Delhi Power Limited)*, filed by the Revenue against the same assessee in respect of AY 2006-07, assailing a similar order passed by



the learned ITAT. These appeals were admitted on the same question of law by this Court.

11. By way of judgment dated 13.01.2025 delivered today in ITA 687/2019, we have answered the question of law in favour of the assessee and against the Revenue, and held that Section 115JB of the Act would be inapplicable to an electricity generation company, prior to its amendment by virtue of Finance Act, 2012.

12. In view thereof, we are of the opinion that the order of the learned ITAT does not suffer from any infirmity or error and, is, therefore upheld.

13. Accordingly, in view of the detailed reasons and conclusion recorded in the judgment delivered in ITA 687/2019, the present appeal also stands dismissed.

14. Pending application also stands disposed of.

SWARANA KANTA SHARMA, J

VIBHU BAKHRU, ACJ

JANUARY 13, 2025/at