

FBT not to be added back in book profit for computation of MAT: ITAT

Summary – The Mumbai ITAT in a recent case of Rashtriya Chemicals & Fertilizers Ltd., (the Assessee) held that Employee benefit cost, i.e., Fringe Benefit Tax, not being part of income-tax, not required to be added back while arriving at Book Profits under section 115JB

Facts

- The assessee engaged as *manufacturer of fertilizers and chemical products* was assessed under section 143(3) and the income of the assessee was determined at Rs. 198.12 crores under normal provisions and Rs. 365.02 crores under section 115JB as against returned income of Rs. 193.66 crores & Rs. 365.02 crores under normal provisions and under section 115JB respectively.
- Subsequently, the said assessment order was subjected to exercise of revisional jurisdiction under section 263 by Commissioner *vide* show cause notice on the premises that corresponding adjustment of certain *employee benefits expenses* of Rs. 11.91 crores being tax borne by the assessee on deemed perquisites on the value of accommodation provided to employees which were not admissible under section 40(a)(v), was omitted to be carried out while arriving at book profits under section 115JB. Therefore, the order being erroneous and prejudicial to the interest of the revenue, required revision under section 263. Accordingly, after providing due opportunity of being heard to the assessee, Commissioner directed Assessing Officer to re-compute *Minimum Alternative Tax [MAT]* under section 115JB and raise demand against the assessee for the same.
- The assessee had by way of the appeal, challenged invocation of revisional jurisdiction under section 263.

Held

- The said item of expenditure *viz.* taxes borne by the assessee on deemed perquisites on the value of accommodation provided to the employees was not allowable to assessee while arriving at income under normal provisions in terms of provisions of section 40(a)(v) which is evident from the fact that the assessee himself has added the same while computing income under the normal provisions. There is absolutely no quarrel on this point.
- Upon perusal of the quantum assessment order and assessee's submissions, computation of '*Book Profits*' was neither provided by the assessee during hearing before Assessing Officer nor discussed in any manner. The quantum order reveals that Assessing Officer has picked up the figures of '*Book Profits*' as per '*Return of Income*' without applying any mind thereupon and adopted the same as such without any *iota* of discussion in the quantum assessment order. *Prima facie*, this is a case of '*no inquiry*' by Assessing Officer and not the case of '*inadequate inquiry*' or '*Lack of Inquiry*' or '*adoption of one of the possible views*' as stressed by assessee and therefore the statutory provisions as contained in section 263 including *Explanation-2* creates a deeming fiction that the order of

Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue if, in the opinion of Commissioner the order is passed without making inquiries or verification which should have been made.

- Computation of *book profits* under section 115JB has to be made in the manner as provided in *Explanation-1* to section 115JB. The *Minimum Alternate Tax [MAT] provisions* as contained in section 115JB, as per well-settled law, are a complete code in itself and creates a deeming fiction which is to be construed strictly and therefore, whatever computations/adjustments are to be made, they are to be made strictly in accordance with the provisions provided in the code itself. The clause (a) of *Explanation-1* envisages add-back of *the amount of Income Tax paid or payable and the provision therefor* while arriving at *book profits*. Further, in terms of *Explanation-2* to section 115JB, the *amount of Income Tax* specifically includes the following components any tax on distributed profits under section 115-O or on distributed income under section 115R; any interest charged under this Act; surcharge, if any, as levied by the Central Acts from time to time; Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.
- *Explanation-2* was inserted by the Finance Act, 2008 with retrospective effect from 01-04-2011. The legislative intent to insert the same could be traced from the *Memorandum Explaining the provisions of Finance Bill, 2008*.
- Taxes borne by the assessee on non-monetary perquisites provided to employees forms part of *Employee Benefit* cost and akin to *Fringe Benefit Tax* since they are certainly not 'belows the line' items since the same are expressly disallowed under section 40(a)(v), the same do not constitute *Income Tax* for the assessee in terms of *Explanation-2*. Therefore, without there being any corresponding amendment in the definition of *Income Tax* as provided in *Explanation-2* to Section 115JB, *Fringe Benefit Tax* was not required to be added back while arriving at *Book Profits* u/s. 115JB.
- Therefore, the adjustment of impugned item as suggested by CIT was not legally tenable in law which leads to inevitable conclusion that the omission to carry out the said adjustment did not result into any loss of revenue. Therefore, one of the prime conditions viz. *prejudicial to interest of revenue* to invoke the revisional jurisdiction under the provisions of Section 263 has remained unfulfilled in the present case and therefore, the impugned order could not be sustained in law.