

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5112/MUM/2016
Assessment Year: 2012-13**

M/s Sovika Aviation
Services Pvt. Ltd.
B/2 Parekh Mahal, 80, Veer
Nariman Rd.
Mumbai-400020

Vs.

DCIT 1 (3) 1,
Aayakar Bhavan, M.K. Road,
Mumbai-400020

PAN No. AALCS3724K

(Appellant)

(Respondent)

Assessee by:
Revenue by:

Shri Jayesh Dadia, AR
Ms. Arju Garodia, DR

Date of Hearing : 31/05/2017
Date of pronouncement: 31/05/2017

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order of the Commissioner of Income Tax (Appeals) – 3, Mumbai and arises out of the order u/s 143(3) of the Income Tax Act, 1961 (the 'Act').

2. The ground raised by the assessee in this appeal is that the Ld. CIT(A) erred in confirming the action of the AO in making addition u/s 36(1)(iii) of the Act of Rs.12,15,887/- by applying 12% on the amount of outstanding interest free advance without appreciating the fact that :

(i) out of total interest expenses of Rs.16,49,377/-, interest of Rs.15,79,184/- pertains to term finance taken in earlier year for purchase of office premises which cannot be utilized for making advance to sister concerns.

(ii) the balance amount of interest of Rs.70,193/- pertains to interest overdraft facilities from bank against bank own fixed deposit on which appellant has earned interest income of Rs.2,01,211/- resulting in no cost in respect of interest on OD.

2.1. The assessee also raised an additional ground of appeal stating that the Assessing Officer (AO) should not have made an addition of Rs.12,15,887/- to book profit which is not permissible under the Act. We find that the AO has made the assessment u/s 143(3) on a total income u/s 115JB of Rs.1,85,33,926/-. As it is a question of law arising in assessment proceedings although not raised earlier, following the judgment of the Hon'ble Supreme Court in *NTPC Ltd. vs. CIT* (1998) 229 ITR 383, 386 (SC) we admit the additional ground of appeal filed by the assessee.

3. Briefly stated, the facts of the case are that the assessee-company filed its return of income for the A.Y. 2012-13 on 28.09.2012 declaring total income at Rs.45,66,510/-. It also declared book profit of Rs.1,73,18,039/- u/s 115JB of the Act.

The AO, during the course of assessment proceedings, found that the assessee had given short term loans and advances of Rs.1,01,32,389/- as on 31.03.2012. Further, interest expenses on borrowings amounting to Rs.16,49,377/- was claimed in the profit and loss account in respect of loans borrowed from banks and other unsecured loans. As the assessee failed to establish one to one relationship between interest free loan received and interest free loan given, the A.O. disallowed proportionately Rs.12,15,887/- (Rs.1,01,32,389 X 12%).

4. Aggrieved by the order of the A.O. the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) agreed with the reasons given by the AO and sustained the disallowance of Rs.12,15,887/- made u/s 36(1)(iii) of the Act.

5. Before us, the Ld. Counsel of the assessee submits that the AO should not have disallowed Rs.12,15,887/- u/s 36(1)(iii) to the book profit assessed u/s 115JB of the Act. On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant material on record. As mentioned earlier, the assessee-company filed its return of income on 28.09.2012 declaring book profit of Rs.1,73,18,039/- u/s 115JB of the Act. The AO has made an addition to the book profit by disallowing Rs.12,15,887/- u/s 36(1)(iii). In *Apollo Tyres Ltd. vs. CIT* (2002) 255 ITR 273 (SC), it is held by the Hon'ble Supreme Court that 'Where the profit and loss account has been prepared in accordance with Part II and III of Schedule VI to the Companies Act and which has been scrutinized and certified by the statutory auditors and relevant authorities, the Assessing Officer has no power to scrutinise net profit in profit and loss account except to the extent provided in *Explanation* to 115J.'

In view of the above, the disallowance of Rs.12,15,887/- made by the A.O. u/s 36(1)(iii) is deleted.

7. In the result, the appeal is allowed.

Order pronounced in the open Court on 31/05/2017.

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai:

Dated: 31/05/2017

*Rahul Sharma, Sr. P.S.***Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai