



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"H" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA no.4293/Mum./2016  
(Assessment Year : 2011-12)

Income Tax Officer  
Ward-7(2)(2), Mumbai

..... Appellant

v/s

Meritus Analytics India Ltd.  
Commerz International Business Park  
Oberoi Garden City, Western Express  
Highway, Goregaon (East)  
Mumbai 400 063 AAACO8471E

..... Respondent

Assessee by : Shri Varun Sankeshesara a/w  
Shri Nikhil Lund  
Revenue by : Shri V. Vidhyadhar

Date of Hearing - 26.10.2017

Date of Order - 03.11.2017

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal by the Revenue is directed against the order dated 18<sup>th</sup> March 2016, passed by the learned Commissioner (Appeals)-13, Mumbai, deleting penalty imposed of ₹ 28,65,839, for the assessment year 2011-12.

2. Brief facts are, the assessee a company is engaged in the business of providing data analytics services to marketing companies

in India and abroad using statistical techniques. For the assessment year under consideration, the assessee filed its return of income on 29<sup>th</sup> September 2011, declaring nil income after set-off of brought forward loss. During the assessment proceedings, the Assessing Officer while verifying the return of income of the assessee found that all though the assessee was having book profit as per Profit & Loss account, however, it has declared nil income under section 115JB of the Act. When the Assessing Officer called upon the assessee to explain the reason for not offering income under section 115JB, the assessee admitting its mistake submitted a revised computation offering to tax the book profit under section 115JB and accordingly, assessment was completed by assessing the tax liability of the assessee on the book profit determined under section 115JB of the Act at ₹ 1,43,79,163. While doing so, the Assessing Officer initiated proceedings for imposition under section 271(1)(c) alleging concealment of income. In response to the show cause notice issued under section 274 r/w section 271(1)(c), though, the assessee submitted its explanation stating that the omission to offer book profit was due to an inadvertent error, however, the Assessing Officer rejecting the explanation of the assessee passed an order imposing the penalty of ₹ 28,65,839 under section 271(1)(c) of the Act. The

assessee challenged the levy of penalty before the first appellate authority.

3. The learned Commissioner (Appeals) after considering the submissions of the assessee in the context of facts material on record as well as the decisions relied upon deleted the penalty by holding that the assessee has not concealed his income.

4. Learned Departmental Representative relying upon the observations of the Assessing Officer in the penalty order submitted that since the assessee had failed to offer income under section 115JB knowingly, imposition of penalty was proper.

5. Learned Authorised Representative on the other hand submitted that the failure to offer the book profit for taxation was due to a bonafide mistake due to incorrectly computing the book profit. It was submitted, though, as per the provisions of section 115JB, the lesser amount between brought forward loss and unabsorbed depreciation is to be deducted, however, inadvertently brought forward business loss was deducted while computing book profit. He submitted, this is the first assessment year wherein the assessee had a book profit under section 115JB. Therefore, the mistake in offering income under section 115JB was an inadvertent computational error which is bonafide. He submitted, the assessee has disclosed full particulars of the book

profit, hence, there cannot be any concealment of income or furnishing of inaccurate particulars of income.

6. We have heard rival contentions and perused the material available on record. Undisputedly, the assessee, as per the Profit & Loss account has shown book profit. However, while computing the book profit for taxation purpose, the assessee has deducted the brought forward loss instead of unabsorbed depreciation which is deductible as per the provisions of the Act. When this mistake was pointed out in the course of assessment proceedings, the assessee has filed a revised computation of income offering the correct book profit to tax and has also discharged its tax liabilities along with interest. Thus, from the aforesaid facts, it can be concluded that offering nil income under section 115JB was due to inadvertent error committed by the assessee without properly understanding the provisions of law as it was the first year, wherein the assessee had a book profit. In this context, the reliance placed by the learned Commissioner (Appeals) on the decision of Brahma Bajaj Hospitals Ltd. v/s ACIT, appears to be appropriate. It is relevant to note that the aforesaid decision of the Tribunal, Pune Bench, was upheld by the Hon'ble Jurisdictional High Court while dismissing the Revenue's appeal in ITA(L) no.705/2011, order dated 8<sup>th</sup> August 2011. In view of the aforesaid, we uphold the

order of the learned Commissioner (Appeals) by dismissing the ground raised by the Revenue.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 03.11.2017

**Sd/-**  
**RAMIT KOCHAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 03.11.2017**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai