

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO. 1971/MUM/2023 (A.Y. 2018-19)

Polygel Industries Pvt. Ltd., 321, The Great Eastern Galleria Plot No. 20, Sector – 4 Nerul (West), Navi Mumbai Thane - 400706 PAN: AAACK4105F	v.	PCIT – Mumbai – 2 Aayakar Bhavan, M.K. Road Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Himanshu Gandhi
Department Represented by	:	Shri K.C. Selvamani
Date of Conclusion of Hearing	:	28.08.2023
Date of Pronouncement	:	11.10.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the order of Learned Principal Commissioner of Income Tax, Mumbai -2 [hereinafter in short "Ld. Pr.CIT"] **dated** 29.03.2023 for the A.Y.2018-19 passed u/s. 263 of the Income-tax Act, 1961 (in short "Act").

2. Brief facts of the case are, assessee is engaged in the business of manufacturing of adhesive, sealant and construction chemical etc. The Return of Income for the A.Y. 2018-19 was filed declaring total income of ₹.Nil. The return was processed u/s.143(1) of the Act and income was assessed at ₹.Nil. Subsequently, the case was selected for scrutiny under Faceless E-Assessment Scheme, 2019 for the reasons discussed in Assessment Order. Accordingly, notices u/s. 143(2) and 142(1) of the Act were issued and in response Ld. AR of the assessee submitted relevant information as called for. The assessment u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act was passed on 11.02.2021 assessing total income at ₹.50,67,670/- by making addition of ₹.55,301/- on account of disallowance u/s 14A of the Act, disallowance of ₹.4,37,499/- u/s 43B of the Act and disallowance of ₹.45,74,868/- u/s 36(1)(vii) of the Act.

3. Ld. Pr.CIT, Mumbai – 2 while verifying the assessment records observed certain errors in Assessment Order rendering the same as erroneous in so far as it is prejudicial to the interest of the Revenue. Accordingly, he issued notice u/s. 263 of the Act dated 21.03.2023. the contents of the notice are as under: -

"1. *"In your case, the relevant case records were called for the AY 2018-19 and examined. It is seen from the examination of the said records that the Return of Income was filed for the year on*

27.11.2018 declaring Nil total income. The assessment was completed u/s 143(3) r.w.s. 143(3A) & 143(38) of the Act on 11.02.2021 accessing the income under normal provision at Rs.50,67,670/-.

2. On perusal of the case records, it is noticed that in the computation sheet the book profit was shown at Rs.68,53,323/-, however the correct book profit after incorporating the addition/disallowance of the assessment order is Rs. 1,80,91,596/-

3. It is prima facie noticed that the above issue has not been inquired/verified during the course of assessment proceedings and the consequent assessment order is erroneous in so far as it is prejudicial to the interest of the revenue."

4. In response, assessee vide letter dated 24.03.2023 submitted its submissions. After considering the submissions of the assessee, Ld.Pr.CIT observed that assessee has contended that computation u/s 115JB is correctly made and there is no error in it. The assessee also expressed surprise on the figure of Book Profits at ₹.1,80,91,596/- mentioned for the above said notice as the same is not appearing in the profit and loss account of the assessee company.

5. In contradiction to the above view of the assessee, Ld. Pr.CIT vide letter dated 28.03.2023 explained that the figure of ₹.1,80,91,596/- is, in fact, the figure of book profits of the Consolidated Financial Statements of Polygel Industries Pvt. Ltd., and the amount which the assessee was speaking of, pertains to the Standalone Financial Statements of Polygel Industries Pvt. Ltd. Thus, the assessee has contradicted themselves on

the impugned issue. He observed that there is no clarity and explicit statement on the issue.

6. Ld. Pr.CIT observed that the assessee has submitted two different versions as appearing in their submissions that the assessee is not categorical on its submission. The figure of Book Profits has been taken by the department from the copy of the Profit and Loss Account uploaded in the system by the assessee. Therefore, the contention of the assessee is not found acceptable. Accordingly, he held that assessment order dated 11.02.2021 is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, he observed that Assessing Officer has failed in examining the impugned issue by way of enquiries/verification that were required in this case, has rendered the assessment order erroneous in so far as, it is a prejudicial to the interests of the revenue. Accordingly, he directed the Assessing Officer to conduct the requisite enquiries along the lines discussed above and frame the Assessment Order denovo.

7. Aggrieved with the above order assessee is in appeal before us raising following grounds in its appeal: -

"1) The Ld. PCIT erred in considering order of AO being erroneous and prejudicial to the interest of revenue and setting aside the same. On the facts and circumstances of the case; order is not liable to be quashed

2) *The Ld. PCIT erred in holding that the order u/s 143(3) dated 11/02/2021 has been passed by the Ld. AO without examining the impugned issue by way of enquiries/verification that were required in this case.*

3) *The Ld. PCIT erred in considering the books profit to be Rs.1,80,91,596/- (book profits as per consolidated financials of the appellant) instead of Rs.68,53,323/- (actual book profits of the appellant as per the standalone financials of the appellant) which was even submitted to the Ld. PCIT in submission dated 28/03/2023, however, it was not considered by the Ld. PCIT.*

4) *The appellant craves leave to amend, alter or add a new ground which may be necessary at the time of hearing.*

B. *Tax effect relating to each Ground of appeal:*

NIL since the appeal is filed against very order of PCIT ordering reopening of assessment.

8. At the time of hearing, Ld. AR brought to our notice relevant facts on record and findings of the Ld. Pr.CIT. In this regard, he submitted that the book profit adopted by the Assessing Officer is proper book profit adopted from the Profit and Loss Account of the company declared as per the financial statements prepared under Companies Act. He submitted that Ld. Pr.CIT has taken balance sheet and Profit and Loss Account from the consolidated Profit and Loss Account, in this regard, he brought to our notice Page No. 70 of the Paper Book wherein assessee has submitted standalone balance sheet of the company wherein assessee has declared **profit of ₹.68,53,323/-** for the year under consideration.

9. Further, he brought to our notice that assessee being the holding company, it has to prepare the consolidated financial statements along with its subsidiaries and associate companies which are incorporated in India as on 31.03.2018 and to report in conjunction with its standalone balance sheet prepared for the current period. He brought to our notice shareholding of the assessee company and its subsidiaries and associate companies wherein assessee declared consolidated profit for the period at ₹.1,80,36,295/-.

10. Ld. AR submitted that Ld. Pr.CIT has considered the consolidated profit declared by the assessee which is not proper and he has to adopt the profit declared by the assessee in its standalone Profit and Loss Account as per the provisions of section 115JB of the Act. He prayed that the profit declared by the assessee in its standalone balance sheet which is adopted by the Assessing Officer is just and proper. Therefore, there is no mistake apparent on record and also there is no prejudicial to the interest of the Revenue.

11. On the other hand, Ld. DR relied on the order passed by the Ld.Pr.CIT u/s. 263 of the Act.

12. Considered the rival submissions and material placed on record, we observe that while examining the assessment records Ld. Pr.CIT has observed that the profit declared by the assessee in its standalone **financial statements is ₹.68,53,323/-** whereas the profit declared in the **consolidated financial statements is ₹.1,80,91,596/-**, since he is not convinced with the submissions of the assessee and the profit adopted by the Assessing Officer for the purpose of section 115JB is not proper, he came to the conclusion that the order passed u/s. 143(3) is erroneous in so far as it is prejudicial to the interest of the Revenue.

13. On careful perusal of the submissions made by both the parties, we observe that the assessee has declared its book profit in its standalone Profit and Loss Account which was offered for taxation under Income-tax Act for the purpose of computation of income under normal provisions as well as to determine the book profits u/s. 115JB of the Act. As per the requirement under Companies Act, assessee has to submit the consolidated financial statements of the assessee company where assessee has stepdown subsidiaries and associate companies. Accordingly, assessee has submitted along with its financial statements, a consolidated financial statements of the group company being a holding company of its subsidiaries and its associates.

14. The stepdown subsidiaries and other associate companies are independent assesseees in the eyes of law and they have declared their financial statements and profits independently and filed the relevant return of income. Therefore, the Profit and Loss declared by the subsidiaries and associate companies cannot be assessed to tax in the hands of the assessee second time. Therefore, the observation of the Ld.Pr.CIT to reassess the declared profit by the subsidiaries and other associates in the hands of the assessee is not proper. Therefore, he has merely remitted the issue back to the file of the Assessing Officer to redo the assessment without giving a finding that the profit declared by the assessee is erroneous in so far as it is prejudicial to the interest of the Revenue. Accordingly, order passed u/s. 263 of the Act is set-aside and the grounds raised by the assessee is accordingly allowed.

15. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 11th October, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 11.10.2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum