

Deduction under section 80-IB(10) not permissible while computing book profit under MAT

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In brief

In a recent Mumbai bench of the Income-tax Appellate Tribunal (Tribunal) ruling,¹ it was held that the benefit of deduction under section 80-IB(10) of the Income-tax Act, 1961 (the Act) would be granted while computing “total income”, but would not be permissible while computing “book profits” under section 115JB of the Act.

In detail

Facts

- The taxpayer was engaged in the construction and sale of buildings. The taxpayer claimed the benefit of deduction under section 80-IB of the Act while computing “total income” and “book profits”.
- In the assessment proceedings, the tax officer (TO) had granted the benefit of deduction under section 80-IB of the Act, while computing “total income” under the normal provisions of the Act. However, the TO while computing “book profits” under section 115JB of the Act did not permit the

deduction.

- On appeal, the Commissioner of Income-tax (Appeals) upheld the TO’s order by placing reliance on various judicial precedents². Aggrieved, the taxpayer preferred an appeal before the Tribunal.

Issue before the Tribunal

Whether deduction under section 80-IB(10) of the Act is allowed while computing “book profits” under section 115JB of the Act?

Taxpayer’s contention

- Taxpayer contended that the deduction benefit prescribed under section 80HHC of the Act has to be granted relying on the decision of Gujarat High

Court (HC)³.

- The taxpayer contended that receipts which was not in the nature of “income” could not be taxed under section 115JB of the Act relying on the ruling of Mumbai bench of the Tribunal⁴.
- It was also contended that the exemption⁵ under section 80-IB(10) of the Act, represents the income which is not taxable and hence the same should be deducted while computing “book profits” relying on the Supreme Court (SC)⁶ judgement.
- The taxpayer referred to the intention behind the introduction of section 115JB which was to bring

¹ ITA No. 5125/ Mum/ 2016

² Sankhla Polymers Private Limited v. ITO [2013] 257 CTR 185 (Karnataka), Ganesh Housing Corporation Limited v. ACIT [2009] 32 SOT 207 (Ahmedabad ITAT)

³ CIT v. Indian Petrochemicals Corporation Limited [2016] 74 taxmann.com 163 (Gujrat)

⁴ ITO v. Frigsales (India) Limited [2005] 4 SOT 376 (Mumbai ITAT)

⁵ As mentioned in the order of the Tribunal. To be read as ‘deduction’.

⁶ CIT v. D.P. Sandhu Brothers Chamber Private Limited [2005] 273 ITR 1 (SC)

“certain companies” within the tax net which were showing profits in books of account and not paying any tax.

- The taxpayer placed reliance on various other judicial precedents⁷ to support its contention that the deduction benefit of section 80-IB would be granted while computing “book profits” under section 115JB of the Act.

Revenue’s contention

- The provisions of section 115JB of the Act prescribes the method of computation of “book profits”, wherein certain items debited and credited to the profit and loss account have to be considered. The provision also provides that all other provisions shall be applicable to the companies specified in that section, except for the items specifically provided for in the aforesaid section.
- The Revenue placed reliance on the decision rendered by the Karnataka HC⁸, wherein it was held that deduction under section 80-IB of the Act would be permissible while computing “book profits” under section 115JB

of the Act. It also relied on the ruling of the Ahmedabad bench of the Tribunal⁹, which also held a similar view.

Tribunal’s ruling

- The Tribunal observed that section 115JB of the Act was brought into the statute to prescribe a methodology to compute “book profits” to tax “net profits” as disclosed in the financial statements. Section 115JB provides for a list of items to be added/reduced while arriving at the “book profits”, but deduction under section 80-IB(10) was not listed therein.
- The Tribunal observed that the taxpayer overlooked the expression “save as otherwise provided in this section” under section 115JB(5) of the Act and has wrongly contended that it does not fall within the ambit certain “zero tax companies”.
- The Tribunal, referring to text of section 115JB(5), held that the provisions of this section protects the methodology of computation of book profits, which provides that except for the provisions specifically provided in section 115JB, all other the provisions of the Act shall apply. However, there was no occasion for the

SC⁶ to interpret the words “save as otherwise provided in this section”.

- The Tribunal confirmed the reliance placed by the Revenue on the Karnataka HC⁸ decision and the ruling of Ahmedabad bench of the Tribunal⁹ to hold that the methodology prescribed under section 115 JB does not provide for deduction under section 80-IB(10) of the Act.
- Further, the above decisions clarify the distinction between the term “total income” and “book profits,” wherein “book profits” was required to be computed in accordance with the provision of section 115JB, which does not permit the granting of the deduction benefit under section 80-IB(10) of the Act.

The takeaways

This ruling reaffirms the position that the deduction benefits specified under Chapter-VIA of the Act would not be granted while computing “book profits” under section 115JB of the Act.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

⁷ JCIT v. Rolta India Limited [2011] 330 ITR 470 (SC), CIT v. Indian Petrochemicals Limited [2016] 74 taxmann.com 163 (Gujrat), ITO v.

Frigsales (India) Limited [2005] 4 SOT 376 (Mumbai ITAT)

⁸ Sankhla Polymers Private Limited v. ITO [2013] 352 ITR 452 (Karnataka)

⁹ Ganesh Housing Corporation Limited v. Assistant CIT [2009] 32 SOT 207 (Ahmedabad ITAT)

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