

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.3695/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2016-17)

National Stock Exchange of India Exchange Plaza, Bandra Kurla Complex, Bandra East, Mumbai-400051.	बनाम/ Vs.	DCIT-Circle-7(1)(1) Room No.126, 1 st Floor, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN1797L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Shailesh S. Shah Shri Vijay Bhatt	
Revenue by:	Shri S. Srinivasu (DR)	

सुनवाई की तारीख / Date of Hearing: 06/03/2024

घोषणा की तारीख /Date of Pronouncement: 20/03/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi, dated 17.08.2023 for AY. 2016-17.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) upholding the action of the AO passed u/s 154 of the Income Tax Act, 1961 (hereinafter "the Act") wherein he increased the book profit u/s 115JB of the Act by making an adjustment of Rs.7,61,52,00,000/- [*statutory contribution towards Core Settlement Guarantee Fund (Core SGF)*] by holding that such a contribution to Core SGF is to meet an unascertained liability.

3. Brief facts are that the assessee filed its return of income on 01.09.2016 declaring total income of Rs.416,34,29,186/- and claimed refund of Rs.228,09,76,940/-. Later on, the case of the assessee was



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selected for scrutiny; and pursuant to notice, the assessee filed revised return of income of Rs.408,40,30,220/- on 31.03.2018. And thereafter, the AO disallowed lease premium amortized to the tune of Rs.1,29,52,158/- and disallowed on account of contribution to Core SGF amounting to Rs.761,52,00,000/-. Thus, the AO computed the total income at Rs.1171,21,82,378/- in place of assessee's revised ITR of Rs.408,40,30,220/-. Aggrieved, the assessee preferred appeals which travelled to this Tribunal; and the Tribunal vide order dated 26.10.2023 was pleased to restore the amortization of lease premium back to the file of AO and was pleased to allow the assessee's appeal in respect of contribution made by the assessee to Core SGF to the tune of Rs.761,52,00,000/- as expenses allowable u/s 37(1) of the Act and deleted the addition.

4. Meanwhile, the AO passed the rectification order u/s 154 of the Act on 01.02.2019, wherein he noted from the perusal of the P & L Account that the assessee has claimed an expense of Rs.761.52 cr under the head "*Other Expenses*" on account of its contribution to the Core SGF. According to the AO, in the original assessment u/s 143(3) of the Act dated 30.12.2018 (supra), the same was disallowed as expenses and held it to be contingency reserve to meet contingent liability. Therefore, according to the AO as per section 115JB of the Act, the said amount should have been added to the "*book profit*" while computing the MAT liability as well. According to the AO, the AO in the original assessment had omitted to add the same in the book profit which omission (*in the original assessment*) is a mistake apparent from record. Therefore, exercising his power u/s 154 of the



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Act, he issued notice on 15.01.2019 and after taking note of the objection raised by assessee against exercising the power u/s 154 of the Act as well as it's contention that contribution towards Core SGF was ascertained liability and hence, no adjustment is required, the AO rejected the same and was of the opinion that contribution made by assessee towards Core SGF was unascertained liability and therefore needs to be added while computing book profit u/s 115JB of the Act by holding as under: -

“6. The objections raised by the assessee have been dealt in detail in the assessment order passed in the case of assessee for AY 2016-17. It has been established that the contribution to the Core SGF made by the assessee is not in the nature of expense. The funds are held by the Core SGF on behalf of the assessee only to meet any liability that may arise in case of default by any clearing member. The above view of revenue is clearly supported by the SEBI circular dated 24.08.2014.

7. Circular of SEBI dated May 04, 2016 (SEBI/HO/MRD/DRMNP/DRMNP/CIR/P/2016/54) in point 4 (C) (IV) clearly states as follows-

“The unutilized portion of contribution made by the stock exchange towards the Core SGF, for any segment(s), maintained by the Clearing Corporation, as available with the Clearing Corporation, shall be refunded to the stock exchange, in case the stock exchange decides to close down its business or decides to avail the clearing and settlement services of another Clearing Corporation for that segment(s), subject to its meeting all dues of the clearing corporation.”



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Therefore, in accordance with the reasoning of the revenue in the Assessment Order in assessee's case for AY 2016-17 and also in accordance with above extracts of SEBI circular, it is clear that the contention of assessee that it has irretrievably parted away from the said money is not true.

8. Therefore, the "book profit" is increased by the contribution made by the assessee to the Core SGF totaling Rs.761.52 cr as per sec. 115JB(2) Explanation (1)(c)."

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the same. Aggrieved by the impugned action of the Ld. CIT(A), the assessee is before us.

6. We have heard both the parties and perused the records. According to the Ld. AR, there was no mistake apparent on record for AO to invoke jurisdiction u/s 154 of the Act. Therefore, the action of the AO for making an adjustment u/s 115JB of the Act is *per-se* unsustainable in law. Moreover, according to the Ld. AR, the action of the AO to add Rs.761.52 cr as per clause (c) of Explanation to section 115JB(2) of the Act being an unascertained liability [for computing the book profit u/s 115JB of the Act] is erroneous. According to the Ld. AR, the contribution to Core SGF is mandatory and statute prohibits from utilizing this contribution for any purpose other than that mandated by SEBI. According to the Ld. AR, the contribution made to Core SGF is debited to Profit and Loss Account, therefore, according to the Ld. AR, the liability of payment to Core SGF is certain and so, it cannot be added back as per clause (c) of Explanation-1 to section 115JB(2) of the Act. We find force in the submission of the Ld. AR for



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the simple reason that this issue as to whether the assessee's contribution to Core SGF is certain or uncertain liability is no longer res-integra. This Tribunal in assessee's own case for AY. 2016-17 & AY 2017-18 (ITA. No.730 & 731/Mum/2023) vide order dated 26.10.2023 had held that such a contribution is not in the nature of any deposit/contingency/reserve. Therefore, the AO/Ld. CIT(A) erred in holding that the contribution made by assessee to Core SGF was in the nature of contingent/unascertained liability. It would be gainful to reproduce the relevant portion of the Tribunal on this issue, which reads as under: -

“25. We have also considered the findings of the coordinate bench in the case of BSE Ltd. at para 12 of this order on the issue of similar statutory contributions made by the Bombay Stock Exchange to the Core Settlement Guarantee Fund in accordance with the circular of the SEBI holding that assessee is able to prove beyond doubt that the contribution to Core SGF is not in the nature of any deposit/contingency/reserve. In that decision it is further held that the contribution to the Investor Service Fund was made by the BSE from 1992 onwards claimed as deduction u/s 37 of the Act which had been allowed by the department till date. Further in terms of the circular dated 27th August, 2014 issued by SEBI as reproduced supra in this order it is beyond any doubt that the assessee is governed by the rules and regulations framed by the SEBI for carrying on its business of stock exchange in India. The assessee is bound by the mandatory Rules and Regulations issued by the SEBI. Therefore, following the findings of the coordinate bench, rules/regulations of the SEBI and the provisions of section 10 as discussed supra, we consider that statutory contributions made



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by the assessee to the Core SGF on which it had no control is allowable u/s 37(1) of the Act as the same has been incurred exclusively in the course of carrying on its business. Therefore, this ground of appeal of the assessee is allowed.”

7. From the aforesaid decision of the Tribunal it can be noticed that in assessee’s own case for AY 2016-17 this Tribunal had allowed the claim made by assessee on account of contribution made to the Core SGF u/s 37(1) of the Act as expenditure incurred exclusively in the course of carrying on its business and the Tribunal also held that the contribution made by the assessee stock exchange to Core SGF is not in the nature of any deposit/contingency/reserve. And therefore, the AO/Ld. CIT(A) erred in holding that contribution made by the assessee to Core SGF is an unascertained liability. Since the liability of payment to Core SGF by assessee is certain it cannot be added back as per clause (c) of Explanation-1 to section 115JB(2) of the Act. Therefore, the assessee succeeds on merits and therefore, we are not going into the issue of jurisdiction u/s 154 of the Act.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 20/03/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 20/03/2024.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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