



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1 OF 2020

Commissioner of Income Tax- LTU .. Appellant

Versus

ACC Limited .. Respondent

Adv. Suresh Kumar, for the Appellant.

*Adv. Saurabh Soparkar, Sr. Advocate (through V.C.), a/w
Adv. Atul K. Jasani, for the Respondent.*

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: MARCH 16, 2026**

P. C.

1. Heard Shri Suresh Kumar, learned counsel for the Appellant/Revenue and Shri Saurabh Soparkar, learned Senior Advocate, with Shri Atul Jasani, Advocate for the Respondent/Assessee.

2. The Appellant has raised the following substantial questions of law in this appeal for our consideration for the Assessment Year 2003-04:

i. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the

decision of the Ld. CIT(A) deleting the disallowance of capital investment subsidy received from the Govt. of West Bengal failing to appreciate that the amount is not allocable towards any capital asset and the same is in the nature of incentive and therefore is a taxable receipt?

ii. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in holding that the Corporate Tax is not debited in the P&L a/c. and therefore the amount did not enter the stream of income for the purpose of determining net profit at all and therefore clause (b) of Explanation-1 is not applicable failing to appreciate that the assessee has credited the fees received from Saudi Arabia net off corporate taxes and therefore in effect is claimed in the P&L a/c. and therefore ought to have been added to the computation of book profit u/s 115JB?

iii. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition of expenditure on Jukehi Road at Kymore failing to appreciate that the same is a capital expenditure as the assets is of enduring nature and the decision relied upon by the ITAT is distinguishable on facts from that of the assessee?

iv. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the disallowance on account of Sales Tax subsidy in computation of Book Profit as well as in computing total income under normal provisions of the Act, failing

to appreciate that the same is in the nature of revenue receipt and not capital in nature?

v. *Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) allowing the claim of Long term Capital Gain in respect of sales of land at Kaza mines and Nimabur at Kaza South?*

vi. *Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition in respect of provision for bad and doubtful debts in computing book profit u/s 115JB of the Act, failing to appreciate that as per clause (c) of Explanation-1 to Section 115JB all provisions made for meeting liabilities other than ascertained liabilities have to be added to the book profit?*

vii. *Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition in respect of expenditure on Jukehi Road at Kymore while computing the book profits failing to appreciate that the same is falling within the ambit of Section 115JB?*

viii. *Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition of deferred revenue expenditure of earlier years in computing Book Profit u/s*

115JB of the Act, failing to appreciate that the same does not pertain to the assessment year under consideration?

ix. *Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made in respect of revenue generated from trial run production at Rs. 15,71,82,196/- in computation of book profit u/s 115JB of the I.T. Act, failing to appreciate that the assessee itself has recognized income in respect of the same and has added to the computation of income under the normal provisions of the Act?*

x. *Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition of Rs. 65,11,045/- on account of foreign exchange, capital subsidy received towards purchase of assets and state capital investment received from W.B.I.D.C. for computation of Book profit u/s 115JB of the Act, failing to appreciate that the same are incentives in the nature of revenue and are not capital in nature?*

xi. *Whether, on the facts and in the circumstances of the case and in law the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition of provision for Wealth Tax in computing Book Profits failing to appreciate that the same falls within the ambit of Section 115JB of the Act?*

xii. *Whether, on the facts and in the circumstances of the case and in law the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition of provision for additional gratuity in computing book profits u/s.115JB failing to*

appreciate that unascertained liabilities has to be added to the book profits as per Explanation-1 to Section 115JB?

xiii. Whether, on the facts and in the circumstances of the case and in law the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) allowing the claim of exclusion of write back of excess provisions made in earlier years in computing book profit u/s 115JB of the Act, failing to appreciate that the assessee has not been able to substantiate that these amounts has been added back in the computation of Book Profit u/s 115JB in earlier years?

xiv. Whether, on the facts and in the circumstances of the case and in law the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the addition made in respect of amount withdrawn from Share Premium account in computation of Book Profit failing to appreciate that the same is not an allowable deduction u/s 115JB of the Act?

3. Question (i) relates to taxability of a State capital investment subsidy of Rs.27,03,565/- received by the Respondent from West Bengal Industrial Development Corporation Ltd. in terms of the 'West Bengal Incentive Scheme 1993' for (i) setting up a Microwave Ferrite manufacturing Unit; (ii) setting up a Ready Mix Concrete Plant at Haldia; and (iii) setting up a Ready Mix Concrete Plant at Salt Lake. Apart from the above, the appellant also received a capital subsidy of Rs. 1,13,605/- towards the purchase of specific assets at the Jamul Regional Training Centres. The Assessing Officer

made an addition of these receipts to the total income of the Respondent, holding it to be revenue in nature. The Commissioner of Income-tax (Appeals) held it to be a capital receipt as it was received as an incentive for industrialisation. The Commissioner of Income-tax (Appeals) deleted the addition by placing reliance on the decisions in ***CIT v. P.J. Chemicals Ltd. (1994) 210 ITR 830 (SC)***, ***DCIT v. Reliance Industries Ltd. (2004) 88 ITD 273 (Mum.) (SB)***. The Tribunal declined to interfere with the order of the Commissioner of Income-tax (Appeals). Before us, both the parties are ad idem that this issue is no more *res integra* in view of the decision of this Court in ***Bajaj Auto Ltd v DCIT (ITXA No. 505 of 2003 dated 3rd July, 2025)***, and thus does not give rise to any substantial question of law.

4. Question (ii) relates to addition of corporate tax of Rs.2,05,75,346/- paid in Saudi Arabia whilst computing book profit under Section 115JB of the Act. The Respondent had offered the net income earned from a contract with Yanbu Cement Company Limited, Saudi Arabia. According to the Assessing Officer, the Respondent ought to have offered the gross receipts/ income and therefore added the said amount expended as receipt in computing the book profits under Section 115JB. The Commissioner of Income-tax (Appeals) confirmed the addition to the book

profits made by the Assessing Officer. The Tribunal noted that the Commissioner of Income-tax (Appeals) had however deleted the addition made in computing the total income of the Respondent under the normal provisions of the Act. The Tribunal, following the decision of the Apex Court in ***Apollo Tyres Ltd v CIT (2002) 255 ITR 273 (SC)*** and ***National Hydroelectric Power Corporation Ltd v CIT (2010) 187 Taxman 193 (SC)*** deleted the adjustment made to the book profits by observing that under the provisions of Section 115JB of the Act, the Assessing Officer, while computing the income under the said Section, only has the power of the examining whether the books of account are certified by the authority under the Companies Act and have been properly maintained in accordance with the provisions of the Companies Act. The Assessing Officer thereafter has a limited power of making additions or reductions as provided for in the *Explanation* to the said section. The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the *Explanation* to Section 115JB of the Act. Since the amount of corporate tax had been reduced from the income and there was no debit in profit and loss account, the amount had therefore not entered the stream of the income for the purpose of determining of net profit at all and, therefore, clause (b) of Explanation 1 was not applicable to the present case.

5. Section 115JB as it stood during assessment year 2003–04 reads as follows:-

"115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company, the income-tax, Payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2001, is less than seven and one-half per cent of its book profit, [such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half per cent].

(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956).

Provided that while preparing the annual accounts including profit and loss account,

(i) *The accounting policies;*

(ii) *The accounting standards adopted for preparing such accounts including profit and loss account;*

(iii) *The method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956):*

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act,

- (i) *The accounting policies;*
- (ii) *The accounting standards adopted for preparing such accounts including profit and loss account;*
- (iii) *The method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.*

Explanation.- For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub- section (1A), as increased by-

- (a) the amount of income-tax paid or payable, and the provision therefor; or*
- (b) the amounts carried to any reserves, by whether name called [other than a reserve specified under section 33AC] or*
- (c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or*
- (d) the amount by way of provision for losses of subsidiary companies; or*
- (e) the amount or amounts of dividends paid or proposed; or*
- (f) the amount or amounts of expenditure relatable to any income to which section 10 or section 10A or section 10B or section 11 or section 12 apply,*

if any amount referred to in clauses (a) to (f) is debited to the profit and loss account, and as reduced by-

(i) *the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise that by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:*

Provided *that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or]*

(ii) *the amount of income to which any of the provisions of section 10 or section 10A or section 10B or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or*

(iii) *the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.*

Explanation.-For the purposed of this clause,-

(a) *the loss shall not include depreciation;*

(b) *the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is Nil; or]*

(iv) *the amount of profits eligible for deduction under section 80HHC, computed under clause (a) or clause (b) or clause (c) or sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or*

(v) *the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in that section; or*

(vi) *the amount of profits eligible for deduction under section 80HHF, computed under sub-section (3) of that section, and subject to the conditions specified in that section; or*

(vii) *the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.*

Explanation.-For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

(3) *Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or year under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.*

(4) *Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below sub-section (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.*

(5) *Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.*

6. The Apex Court in *Apollo Tyres Ltd v CIT (supra)* has held that the Assessing Officer does not have the jurisdiction to go behind the net

profit shown in the profit and loss account except to the extent provided in the *Explanation* to Section 115J of the Act. The provisions of Section 115J, which the Supreme Court was considering, are *pari materia* to Section 115JB reproduced by us above. In these circumstances, the Tribunal has correctly followed the decision of the Apex Court to hold that the Corporate Tax paid in Saudi Arabia does fall in any of the clauses of Explanation 1. Before us, Shri Suresh Kumar, the learned Counsel for the Appellant, was unable to distinguish as to how the ratio of the aforesaid decision of the Apex Court in *Apollo Tyres Ltd v CIT (supra)* would not apply to the facts of the present case. Thus, this issue also does not give rise to any substantial question of law.

7. Question (iii) relates to the deductibility of the expenditure of Rs.39,00,000/- incurred on construction of Jukehi Road at Kymore which belonged to the Government of Madhya Pradesh. The said road was constructed to facilitate smooth conduct of the business of the appellant. The Assessing Officer disallowed the same treating it as a capital expenditure and allowed depreciation @ 5%. The Commissioner of Income-tax (Appeals) deleted the addition holding that the expenditure did not result in creation of any asset of an enduring nature to the Appellant since the ownership vests with the Government of Madhya Pradesh. He further directed the Assessing

Officer to withdraw the depreciation of 5% allowed by him. The Commissioner of Income tax (Appeals) followed the decision of Hon'ble Apex Court in the case of ***Associated Cement Companies Ltd. (1988) 172 ITR 257 (SC)*** and the appellate orders in the Appellant's own case for other assessment years. The Tribunal after noting the facts the decisions of the Apex Court in *Associated Cement Companies Ltd. (supra)* and in ***L. H. Sugar Factory and Oil Mills (P) Ltd v CIT (1980) 125 ITR 293 (SC)*** declined to interfere with order of the Commissioner of Income-tax (Appeals). We find that the Commissioner of Income-tax (Appeals) and the Tribunal by concurrent orders deleted the addition that the Appellant was not the owner of the asset and that the expenditure had been incurred to facilitate smooth conduct of the business. Also, the Apex Court in the Appellant's own case (*Associated Cement Companies Ltd. (supra)*) for the Assessment Year 1959-60 in respect of a similar expenditure at Shahabad had allowed the same as revenue expenditure. The relevant paragraphs of the said judgment giving the facts and reasons are as under:-

"4. The assessee, the Associated Cement Companies Ltd. had a chain of factories manufacturing cement all over the country. The assessment year in question is the year 1959-60 and the corresponding previous year was ended on 31-7-1958. One of the factories of the assessee was situated at Shahabad, which is now in the State of Karnataka, but was at the relevant time forming part of the then State of Hyderabad. In September 1956, the Government of Hyderabad had decided to include the area on which the said factory at Shahabad was situated within the

municipal limits of the Shahabad Town Municipality. A tripartite agreement between the Government of Hyderabad, the assessee-company and the Municipality was arrived at on 30-10-1956 between the aforesaid three parties. Under the agreement, the assessee undertook to supply water to the Shahabad town and village. It further agreed to put up a high tension electric transmission line and to supply electricity for the street lighting of the Shahabad town. It also agreed to concrete free of charge the existing main road from the factory up to the railway station via the main bazar. During the relevant previous year, the only work done was with respect to provision of water supply to the said town and village. Under the agreement, the assessee initially agreed to supply certain quantity of water to the Shahabad town at a concessional rate and for the purpose of such supply the assessee-company was to undertake and complete at its own cost the water supply scheme for the town and village, involving laying of the main water pipelines. The assessee-company was to be the owner of the pipelines, installations and other accessories pertaining to the water supply lying within the company's premises and on the land a little outside the premises. The Shahabad Municipal Committee was to take over possession of the remaining pipelines, installations and accessories and it was declared to be the owner thereof. These pipelines, installations, etc., had to be maintained by the Municipal Committee in future. Under clause 23, in consideration of the assessee-company having agreed to provide these amenities, supply and services, the Government of Hyderabad undertook not to include any of the properties of the company comprising the cement factory, the main workshop, the housing colony, quarries and the limestone bearing lands within the limits of the Shahabad Municipality or the village panchayat or like body for a period of 15 years from the date of the agreement.

5. *According to the assessee, a sum of Rs. 2,09,459 was spent during the year of account under this agreement and this amount pertained to the laying of pipelines, installations and accessories of which the Shahabad Municipality became the owner under the agreement and this amount was claimed as a deduction. The ITO disallowed this amount, holding that it was a capital expenditure on the basis that as a result of this expenditure the company derived an advantage of an enduring nature, namely, that it would not have to pay municipal taxes for a period of 15 years. On an appeal by the company, the AAC allowed the deduction holding that the amount was the payment of a composite sum of the*

revenue outgoing for the following 15 years. The revenue preferred an appeal to the Tribunal passed an order directing the ITO to scrutinize the expenditure and allowed the deduction of the expenditure to the extent that it did not result in the company becoming the owner of any asset.

6. Before the High Court it was contended on behalf of the company that the entire amount of Rs. 2,09,459 pertained to expenditure on pipelines installations and other accessories which under the agreement came to ownership of the Shahabad Town Municipality and did not pertain to any increase of the assets of the company. The Division Bench which decided the reference has pointed out that it had not been disputed by the revenue before the Tribunal that the entire expenditure concerned was laid out for the purpose of business and the only question was whether it was capital expenditure or revenue expenditure. The only ground on which the claim of the assessee for deduction of the said expenditure under section 10(2)(xv) of the Act was resisted that it was capital expenditure. After exhaustively considering several decisions of the Supreme Court and several English decisions, the Division Bench of the Bombay High Court came to the conclusion that the expenditure in question was revenue expenditure and was liable to be allowed as deduction. On the basis of these conclusions the Bombay High Court decided the question referred to in affirmative and in favour of the assessee.

...

10. Mr. Manchanda, the learned counsel for the appellant has raised only two contentions before us. The first contention was that, since, as a result of the expenditure incurred, certain water pipelines were laid which could be regarded as capital assets the expenditure could only be regarded as capital expenditure. In our view, there is no substance in this contention. It is true that certain water supply lines did come to be laid as a result of the expenditure incurred, but the facts on records, which we have referred to above, clearly show that these water pipelines on which the expenditure in question was incurred were not assets of the assessee, but assets of the Shahabad Municipality and hence it was not as if the expenditure resulted in bringing into existence any capital asset for the company. The only advantage derived by the assessee by incurring the expenditure was that it obtained an

absolution or immunity, under normal conditions, from levy of certain municipal rates and taxes and charges. In view of this the first contention of Mr. Manchanda must be rejected.

11. *The next submission made by Mr. Manchanda was that the advantage of not being liable to pay municipal rates, taxes, etc., which the assessee-company secured by reason of making the expenditure in question was for a period of 15 years and hence it could be said to be an advantage of an enduring nature, so that the expenditure incurred in acquiring the same would be regarded as capital expenditure. In our view It is difficult to accept this submission either. As observed by the Supreme Court in the decision in Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 that there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principles laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more effectively or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. In that case the appellant, a company carrying on the business of manufacture of jute, was a member of the Indian Jute Mills Association, which was formed with the objects, inter alia, of protecting the trade of its members, including imposing restrictive conditions on the conduct of the trade and adjusting the production of the mills of its members. A working time agreement was entered into between the members restricting the number of working hours per week for which the mills were entitled to work their looms. Clause 4 of the working time agreement provided that no signatory shall work for more than 45 hours per week. Clause 6(b) provided that the signatories shall be entitled to transfer, in part or wholly, their allotment of hours of work per week to any one or more of the other signatories. Under this clause the appellant purchased 'looms hours' from four other mills for the aggregate sum of Rs. 2,03,255 during the previous year relevant to the assessment year 1960-61 and claimed to deduct that amount as revenue expenditure. The Tribunal held*

that the expenditure incurred by the appellant was revenue in nature and hence deductible in computing the appellant's profits. The High Court reversed this decision, but on appeal, the Supreme Court allowed expenditure as deductible expenditure on the basis of the principle set out earlier. If this principle is applied to the facts of the case before us, what we find is that the advantage which was secured by the assessee by making the expenditure in question was the securing of absolution or immunity from liability to pay municipal rates and taxes under normal conditions for a period of 15 years. If these liabilities had to be paid, the payments would have been on revenue account and hence the advantage secured was in the field of revenue and not capital. As a result of the expenditure incurred, there was no addition to the capital assets of the assessee-company and no change in its capital structure. The pipelines, etc., which might have been regarded as capital assets and which came into existence as a result of the expenditure incurred did not belong to the assessee-company but to the municipality. In these circumstances, applying the principles laid down in Empire Jute Co. Ltd.'s case (supra) the expenditure is clearly liable to be allowed as deductible from the profits under section 10(2)(xv). In the result, the appeal fails and is dismissed with costs."

Thus, this issue having been concluded by the Apex Court in the Appellant's own case in Assessment Year 1959-60, does not give rise to any substantial question of law.

8. Question (iv) relates to denial of the Appellant's claim to exclude following sales tax subsidy/exemption received during the year and included the sales turnover and from the book profit-

1.	Tikaria, Uttar Pradesh	170,92,379
2.	Sindri, Bihar/ Jharkhand	136,749,257

3.	Chanda, Maharashtra	173,119,321
4.	New Wadi, Karnataka	352,788,814
5.	Kymore, Madhya Pradesh	15,318,631
6.	Gaga, Himachal Pradesh	<u>76,876,446</u>
	Total	<u>925,044,848</u>

9. The Commissioner of Income-tax (Appeals) allowed the relief by placing reliance on the decisions in ***DCIT v. Reliance Industries Ltd. (2004) 88 ITD 273 (Mum.) (SB)*** (under the normal provisions of the Act) and in ***ITO v Frigsales (India) Ltd (2005) 4 SOT 376 (Mum)*** (in computing book profits) and first appellate orders passed for Assessment Years 2001-02 and 2002-03. The Tribunal refused to interfere in the matter in view of the findings of the Commissioner of Income-tax (Appeals) and the orders passed in the Appellant's own case and in ***Shree Balaji Alloys v CIT (2011) 333 ITR 335 (J&K)*** and ***CIT v Shree Balaji Alloys (Civil Appeal No. 10061 of 2011)***. Before us, both the parties agree that the question as to the inclusion of the sales tax subsidy in computing the book profits have been admitted in the Appellant's own case for the Assessment Year 2002-03 by this Court in Income Tax Appeal No.1658 of 2016 vide order dated 4th March, 2019. However, the inclusion of the same in computing

total income under the normal provisions would not arise in view of what has been held in paragraph 3 hereinabove. **The appeal is therefore admitted on the following reframed question of law:-**

“Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in upholding the decision of the Ld. CIT(A) deleting the disallowance on account of Sales Tax subsidy in computation of Book Profit under Section 115JB of the Act?”

10. Question (v) relates to the computation of long term capital gains in respect of sale of lands at Kaza mines and Nimabur at Kaza South. The Appellant had transferred land situated at Kaza Mines and Nambur and Kaza South for an aggregate sale consideration of Rs. 6,31,00,000/-. Pending the valuation report determining fair market value of the land as on 01-04-1981, in the return of income, long term capital gain was computed without considering the cost of acquisition. During the course of assessment proceedings, the Appellant vide letter dated 28-02-2006, furnished the fair market value as on 01-01-1981, which was valued by a registered valuer at Rs. 1,16,34,663/-. However, the Assessing Officer in his assessment order, computed long term capital gain as shown in the return of income without taking cognizance of the said valuation report and without assigning any reason. According to the Commissioner of Income-tax (Appeals), as per the provisions of Section 55(2)(b) of the Act, the appellant has an option to

consider the fair market value of the land as on 01-04-1981 as the cost of acquisition for the purpose of computing long term capital gain. CIT (Appeals) further held that the appellant is also entitled to reduce indexed cost of improvement as per the provisions of the second proviso to Section 48 of the Act in computing the long term capital gain. The Commissioner of Income-tax (Appeals) therefore directed the Assessing Officer to recompute the long term capital gain on sale of land by considering the fair market value as on 01-04-1981 as well as the indexed cost of improvement as submitted by the Appellant after verification of the correctness of the facts as well as the registered valuer's report. The Tribunal agreed with the Commissioner of Income-tax (Appeals) that the Appellant was entitled to deduct the cost of acquisition in computing the capital gains. These are all findings of facts. We fail to see that how does a question of law arise from this issue. The same is therefore not entertained.

11. Question (vi) relates to deletion of an addition in respect of provision for bad and doubtful debts of Rs.8,64,03,258/- in computing the book profits under section 115JB of the Act. The Commissioner of Income-tax (Appeals) deleted the addition *inter alia* following his own order in the Appellant's case for Assessment Year 2002-03. The Tribunal declined to interfere with the order of the Commissioner of Income-tax (Appeals). Before

us, both the parties agree that the question as to the inclusion of the provision for bad and doubtful debts in computing the book profits under section 115JB of the Act have been admitted in the Appellant's own case for Assessment Year 2002-03 in Income Tax Appeal No.1658 of 2016 vide order dated 4th March, 2019. **The appeal is therefore admitted on the aforesaid question of law.**

12. Question (vii) relates to deletion of an addition in respect of expenditure of Rs.39,00,000/- incurred on construction of Jukehi Road at Kymore which belonged to the Government of Madhya Pradesh in computing the book profits under section 115JB of the Act. In view of the findings given in paragraph 5 hereinabove deleting the addition made under the normal provisions of the Act, while dealing with Question (iii), the said question cannot be said to give rise to any substantial question of law.

13. Question (viii) relates to deletion of an addition of deferred revenue expenditure of Rs.2,16,46,865 in computing book profits under section 115JB of the Act. The Commissioner of Income-tax (Appeals) deleted the addition by following the decision of the Apex Court in *Apollo Tyres (supra)* holding that it does not fall in any of the clauses of Explanation to section 115JB of the Act. The Tribunal confirmed the order of the Commissioner of Income tax (Appeals). Before us, Shri Suresh Kumar, the

learned Counsel for the Appellant was unable to distinguish as to how the ratio of the aforesaid decision of the Apex Court in *Apollo Tyres Ltd v CIT (supra)* would not apply to the facts of the present case. As such, the said question does not give rise to any substantial question of law.

14. Question (ix) relates to deletion of the addition of Rs.15,71,82,196/- made in respect of revenue generated from a trial run production in computing book profit under section 115JB of the Act. The Commissioner of Income-tax (Appeals) deleted the addition in view of the "Guidance Note on Treatment of Expenditure during Construction Period" issued by the Institute of Chartered Accountants requiring it to be capitalized and by relying on the decision of the Apex Court in ***CIT v Bipin Chandra Magan Lal (1961) 41 ITR 290 (SC)*** wherein it has been held that there is a distinguishable relationship between the assessable income and the profits of the business in a commercial sense. The Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) following its order in the Appellant's own case for Assessment Year 2002-03. Before us, both the parties agree that the question as to the inclusion of revenue generated from a trial run production in computing book profit under section 115JB of the Act has been admitted in the Appellant's own case for Assessment Year 2002-

03 in Income Tax Appeal No.1658 of 2016 vide order dated 4th March, 2019.

The appeal is therefore admitted on the aforesaid question of law.

15. Question (x) relates to deleting the addition of Rs. 65,11,045/- on account of foreign exchange, capital subsidy received towards purchase of assets and state capital investment received from W.B.I.D.C. for computation of Book profit under section 115JB of the Act. The Commissioner of Income - tax (Appeals) deleted the addition holding that the foreign exchange gain of Rs.37,07,480/- and capital subsidy received towards purchase of assets of Rs.1,13,605/- had been adjusted against the cost of the fixed assets in view of the provisions of Section 43A and Explanation 10 to Section 43(1) respectively. Further, State Capital Investment Subsidy received from WBIDC of Rs.26,90,000/- constituted capital receipt in the hands of the appellant, hence, not taxable and therefore the same could not be added back in computing book profit under Section 115JB of the Act. The Tribunal agreed with the findings of the Commissioner of Income-tax (Appeals). As the question deletion of the of addition of sales tax subsidy in computing the book profits under Section 115JB is admitted for the reasons set out in paragraphs 9 and 10 hereinabove [reframed question (iv)], **the appeal is admitted on the aforesaid question of law also.**

16. Question (xi) relates to the deletion of the provision for wealth tax in computing book profits under Section 115JB of the Act. The Commissioner of Income-tax (Appeals) deleted the addition following the decision of this Court in *CIT v Echjay Forgings (P) Ltd (2001) 251 ITR 15 (Bom)*. The Tribunal declined to interfere with the order of the Commissioner of Income-tax (Appeals).

17. The short question which arose for consideration before this Court in *CIT v Echjay Forgings (P) Ltd (supra)* was as follows:

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the provisions made for doubtful debts, bonus, gratuity, wealth-tax liability and foreign exchange rate difference could not be added to the net profit shown in the profit and loss account within the meaning of Explanation to section 115J(1A) while working out the book profit under section 115J of the Income-tax Act, 1961?"

18. The findings on the issue of provision of wealth tax was as under:

"(I) Addition of wealth-tax paid by the assessee to the net profit -

6. Mr. Desai, the learned senior counsel for the department, fairly concedes that the net profit, as shown in the profit and loss account, will not be increased by the amount of wealth-tax paid because under clause (a) of the Explanation to section 115J(1A), what is contemplated is the amount of income-tax paid. Under the said clause, payment of wealth-tax is not contemplated. Therefore, the net profit shall not be increased by the amount of wealth-tax paid by the assessee."

19. Section 115JB of the Act as it was applicable for the year under consideration is reproduced at paragraph 5 hereinabove. In this provision also under the said clause (a) of the Explanation, payment of wealth-tax is not contemplated. No substantial question of law can therefore be said to arise on this issue.

20. Question (xii) relates to deletion of provision for additional gratuity in computing book profits under section 115JB of the Act. The Commissioner of Income-tax (Appeals) deleted the addition by following the order of the Tribunal for the Assessment Year 1990-91. The Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) following its order in the Appellant's own case for the Assessment Year 2002-03. The Appellant points out that this is a recurring issue since Assessment Year 1990-91 and that the Department has not filed any appeals for the past years. Further, this issue has been considered by this Court in *CIT v Echjay Forgings (P) Ltd (supra)*, the relevant paragraph of which is reproduced below-

“(III) Whether the net profit was required to be increased by an amount of Rs. 5,00,000 being the provision for gratuity -

8. As stated above, no reasons have been given by the Assessing Officer for adding the said amount to the net profit. The assessee has made the provision for gratuity on the basis of actuarial

calculations. Hence, it cannot be said that the provision for gratuity is not an ascertained liability.”

In that view of the matter no substantial question of law can said to arise on this issue.

21. Question (xiii) relates to exclusion of write back of excess provisions made in earlier years in computing book profits under Section 115JB of the Act. The Commissioner of Income-tax (Appeals) found that Mineral Right Tax and Cess on Coal and Limestone was written back in the assessment year which was created prior to 1.4.1997 and hence does not fall under the provisions of clause (i) of Explanation of Section 115JB(2). The Tribunal upheld the order of the Commissioner of Income-tax (Appeals). The relevant extract of Section 115JB of the Act is as under-

“Explanation.- For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub- section (1A),

.... and as reduced by-

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise that by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account.”

22. No fault can be found in the concurrent findings given by the Commissioner of Income-tax (Appeals) and the Tribunal as the reserve was created before 1st day of April, 1997. Hence, no substantial question of law can be said to arise on this issue.

23. Question (xiv) relates to deletion of the addition made in respect of withdrawal from the Share Premium Account in computation of the book profits. According to the Commissioner of Income-tax (Appeals) write back of Share Premium Account was an allowable deduction in view of clause (i) of Explanation to Section 115JB(2). Commissioner of Income-tax (Appeals) deleted the addition following the decision of the Tribunal for Assessment Year 1990-91 as well as the orders of his predecessor for Assessment Years 1997-98 and 1998-99. The Tribunal upheld the order of the Commissioner of Income-tax (Appeals) following its order in the Appellant's own case for the Assessment Years 1990-91 and 1998-99. No appeal is filed by the Appellant for these years. The said issue therefore does not give rise to any substantial question of law.

Conclusion:-

24. The appeal is therefore admitted on questions (iv) (reframed), (vi), (ix) and (x). The appeal may be heard along with Income Tax Appeal No. 1658 of 2016 for the Assessment Year 2002-03.

25. Respondent waives service. This appeal be listed for hearing in due course.

26. The Registrar (Judicial) / Registrar, High Court, Original Side, Bombay to ensure that the original record in relation to this appeal is summoned from the Tribunal and offered for inspection of the parties. This paper-book is treated sufficient for the purpose of admission of this appeal. However, the Registry must further ensure preparation of complete paper-book in accordance with the Rules. The Registry in the first instance must send intimation of admission of this appeal enclosing therewith a copy of this order so as to enable the Tribunal to act accordingly.

27. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]