



Global Business Tax Alert

Sharp Insights

The Mumbai Tribunal in the case of Goldgerg Finance Pvt. Ltd. v. ACIT (I.T.A. No. 7496/Mum/2013), held that while computing book profit under section 115JB of the ITA, the deduction in respect of the share of the taxpayer in the income of an AOP, inserted vide Finance Act, 2015 w.e.f. 1 April 2016, shall be applicable retrospectively as it is curative in nature.

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Background

- The tax payer is a private limited company and member of two Association of Persons ('AOP').
- During the Assessment Year 2009-10, the tax payer received share of income from AOPs and claimed the said income as not taxable as per section 86 of the Income Tax Act, 1961 ("ITA"). Further, also claimed that the share of income from the AOP credited to the profit and loss account should be excluded while computing book profit under section 115JB of the Act.
- The Assessing Officer ("AO") held that the share of income is taxable in the hands of the tax payer on the ground that the total income of AOP after claiming tax deduction under section 8-IB(10) of ITA was Nil. Therefore the income from AOP was chargeable to tax in the hands of taxpayer under section 86 of the Act. Further, in absence of any specific provision for deducting the share of income from AOP credited to the Profit & Loss Account, it should be considered for computing book profits under section 115JB of ITA.
- The CIT(A) upheld the order of the AO.

Ruling of the Tribunal

- As regards non-taxability of the share of income from AOP for computing income under the normal provisions of the ITA, the Tribunal noted that the entire income on which deduction under section 80IB(10) of the ITA was claimed, has been taxed. Thus the entire premise of taxing the amount in the tax payers hand gets vitiated. In any case, the Tribunal relying on the tax payers own case passed for assessment year 2008-09 allowed exemption for the same.
- Further, as regards exclusion of the share of income of AOP while computing book profit under section 115JB of ITA, the Tribunal considered the amendment inserted by Finance Act, 2015 w.e.f. from 1 April 2016. As per the amendment, the amount being the share of the tax payer in the income of an AOP, on which no income tax is payable in accordance with the provisions of section 86 of ITA and is credited to the Profit and Loss account, shall be deducted for computing the book profits under section 115JB of ITA.
- The Tribunal observed that the intention of the legislature can be gauged by the explanatory notes to the amending Act. The partners' share of income from the profits of firm is not liable to Minimum Alternate Tax ('MAT'). If a provision has been brought to extend the benefit to certain class of assessees which was earlier applicable to other class of assessees on similar circumstances and is remedial in nature, then, the same has to be reckoned retrospective.
- It is quite a trite proposition that the explanatory Act which is curative in nature or any remedial statute is brought in the statute either to remedy unintended consequence or to provide benefit which is applicable to particular class of assessee and is extended to other class of assessee, then, on reasonable interpretation it should be declared as retrospective in operation even though it has not been stated specifically by the amending Act. This was also never the purpose of section 115JB of ITA to tax any income or receipts which were otherwise not taxable under the ITA.
- The Tribunal also took support of the decision of the Supreme Court in the case of Allied Motors (P) Ltd. Etc. v CIT (224 ITR 677) and CIT v Alom Extrusions Ltd. (319 ITR 306).

- The Tribunal therefore held that on a reasonable interpretation, the clause (iic) inserted in Explanation 1 to section 115JB of the ITA relating to the deduction of the share of the taxpayer in the income of an AOP, should be considered as remedial and curative in nature and hence is to be held retrospectively.

Conclusion

The Tribunal held that any remedy brought by an amendment to remove the disparity and curb mischief has to be reckoned as curative in nature and hence, is to be held retrospective.

This case can also be helpful where the amendment is introduced to remove the unintended consequences and bring about the remedial actions.

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