

## For MAT Computations P&L account to be prepared as per Schedule VI of Companies Act if business has commenced

**Summary – The Panaji ITAT in a recent case of South West Port Ltd., (the Assessee) held that once it is concluded that assessee has set up business during year, profit and loss account has to be prepared in accordance with Part II & III of Schedule VI of Companies Act and has to be certified by auditor.**

### Facts

- During relevant year, the assessee commenced cargo handling operations on trial run basis and net trial run income was reduced from the capital work-in-progress in audited balance sheet.
- The Assessing Officer took the view that the assessee had commenced business of providing services and had operated along commercial lines in the impugned assessment year and therefore, the receipt being revenue in nature was liable for taxation. He accordingly, computed the book profit at Rs. 5.10 crores.
- In appellate proceedings, the assessee did not challenge the finding of the Assessing Officer that the business had commenced during the impugned assessment year even though the assessee challenged the computation of the book profit under section 115JB.
- The Commissioner (Appeals) reduced the amount of book profit after allowing certain deduction for various expenditure incurred by assessee.
- On second appeal:

### Held

- It was noted that the assessee had not prepared any Profit and Loss account on the presumption that it has not commenced the business during the year. Once it is held that the assessee had set up the business during the year, the profit and loss account had to be prepared in accordance with Part II & III of Schedule VI of the Companies Act and has to be certified by the auditor.
- Both the terms 'commencement of business' and 'set-up of business' are different. Under the Act, once business is set-up, the income earned by the assessee is chargeable to tax and it cannot be regarded that no business profit is earned.
- Thus, the company must prepare its Profit and Loss account for the impugned assessment year in accordance with the provisions of Part II and III of Schedule VI to the Companies Act and whatever profit is arrived at in the profit & loss account, the said profit will be their book profit subject to the adjustment to be made under *Explanation 1* to section 115JB.
- Therefore, the order of Commissioner (Appeals) is set aside and this issue is restored to the file of the Assessing Officer with the direction that the Assessing Officer shall re-decide this issue keeping in view the provisions of section 115JB(1) & (2) and *Explanation 1* thereto as was existing during the

impugned assessment year and asking the assessee to furnish the Profit and Loss account as has been prepared in accordance with Part II & III of Schedule VI to the Companies Act, 1956 as certified by the assessee's Chartered Accountant. The assessee is also directed to comply with the obligations as are entrusted on it under the provisions of section 115JB.

- In the result, the appeal filed by the revenue is allowed for statistical purpose.