

## **AO's order held as erroneous as he failed to enquire into provisions for loss on assets for disposal**

**Summary – The Ahmedabad ITAT in a recent case of Hitachi Home & Life Solution (India) Ltd., (the Assessee) held that where assessee besides other provisions had provided provision of Rs. 40 lakhs in profit and loss account towards loss on assets for disposal and AO while computing book profit had not made enquiry on said provision and accepted same, assessment order erroneous and prejudicial to interest of revenue**

### **Facts**

- For the assessment year 2007-08, the Assessing Officer computed the book profit of the assessee under section 115JB.
- Subsequently the Commissioner on verification of the record found that the assessee had provided several provisions of Rs. one crore in the profit and loss account, which included provision of Rs. 40 lakhs towards loss on assets for disposal, which was disallowed by the Assessing Officer and added to the total income but the same was not added to the book profit computed under section 115JB. Therefore, the book profit assessed by the Assessing Officer suffered from the error which was prejudicial to the interests of the revenue inasmuch as the book profit remained under assessed to the extent of Rs. 40 lakhs. Consequently he invoked the revisional power under section 263 and set aside the assessment order in respect of the aforesaid issue for reframing the assessment.
- On appeal to Tribunal:

### **Held**

- The assessee has agitated the action of the Commissioner in invoking revisional power vested under section 263 towards alleged under statement of book profit under section 115JB. It is the case of the assessee that the provision for loss of assets held for disposal amounting to Rs. 40 lakhs represents actual loss towards impairment and is not in the nature of provision. It is further case of the assessee that the power under section 263 cannot be invoked in the instant case. In this regard, at the outset, the Bench refers to the financial statement for the accounting year March, 2007 and fixed assets schedule annexed thereto. As per the fixed assets schedule prepared by the assessee, the assessee itself has reflected the aforesaid amount of Rs. 40 lakhs towards loss of assets under the head 'provision'. No explanation about the nature of provision is discernible from financial statement. The impairment policy reflected in the schedule of financial statement merely narrates the policy adopted by the assessee. While it spells out that the impairment policy is to be followed year after year, it no where gives reference to the aforesaid amount of provision in dispute. The nature of provision and explanation of the assessee on merits is also not discernible from the financial statement. No explanation on the assertion that the impugned amount is in the nature of actual write off contrary to revelation of it being provision in financial statement is available on the

record before the Commissioner while exercising power under section 263. The Assessing Officer while making enquiry about host of provisions made by the assessee has omitted to make any reference to impugned provision of Rs.40 lakhs appearing in the financial statement. Thus the Assessing Officer has failed to make any enquiry on the aforesaid provision in the course of the assessment and has merely accepted the provision made perfunctorily and without any application of mind. This is not to say that the claim of the assessee is incorrect or otherwise.

- The pertinent question here is whether when there is total absence of enquiry on an adjustment declared in the nature of 'provision' which has a bearing on the ultimate book profit, is it open to the Commissioner to invoke jurisdiction under section 263 or not. The answer is clearly in affirmative. The assessee has claimed the aforesaid adjustment under the head 'provision' which when understood on ordinary and natural sense will give rise to presumption of it being a provision. It was for the assessee to rebut the presumption by proper explanation which has not been done. No enquiry on it being different from mere provision has been conducted by the Assessing Officer. In the circumstances, the order passed by the Assessing Officer in discharge of his quasi judicial functions is clearly erroneous and prejudicial to the interests of the revenue. Certain explanation has been given by the assessee on merits to justify that it is actual diminution and not mere provision. However, that will become relevant only at the stage of making assessment therein after requisite enquiry in this regard.
- The assessee has also argued that clause (i) had been inserted in section 115JB by the Finance (No. 2) Act, 2009 with retrospective effect from 1-4-2001 and the said amendment had been made after filing of the return of income and, therefore, the assessment order passed based on the return of income as per the law as stood at the time of filing of the return could not have been disturbed by the Commissioner. There is no merit in this line of argument either. The record for the purpose of section 263 as per Explanation 1 thereof would mean all records relating to assessment proceedings available at the time of examination by the Commissioner. Therefore, any development in law which has taken place even after the assessment also can be taken cognizance of by the Commissioner in exercise of power under section 263. Unlike penalty proceedings, the assessment is required to be framed in accordance with law after taking the cognizance of retrospective amendment in law, if any. Thus the assessment order passed in conflict with the retrospective amendment in law would be erroneous in so far as prejudicial to the interests of the revenue and would thus be amenable to revision under section 263.