



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

INCOME TAX APPEAL NO.407 OF 2003

M.J. Exports Private Limited

a company registered under the
Companies Act, 1956 and having
its Registered Office at 113,
Jolly Maker Chambers No.2,
11th floor, Nariman Point,
Mumbai 400 021.

....Appellant

Versus

1 The Joint Commissioner of Income Tax

Special Range-23 Mumbai,
having his office at Aayakar Bhavan,
M.K. Marg, Mumbai – 400 020.

2 The Commissioner of Income Tax,

Bombay City V, Mumbai,
having his address at Aayakar
Bhavan, M.K. Marg,
Mumbai – 400 020.

....Respondents

Mr. Vipul B. Joshi with Ms. Drinkle Hariya and Mr. Prashant
Ghumare i/b Mr. Ashok Patil, *for the Appellant-Assessee.*

Mr. Prakash Chhotaray, *for Respondent-Revenue.*

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

RESERVED ON : 03 JULY 2025.

PRONOUNCED ON : 09 JULY 2025.

J U D G M E N T: (Per : Sandeep V. Marne, J.)

1. The Assessee has filed the present Appeal under provisions of Section 260A of the Income Tax Act, 1961 (**the Act**) challenging the judgment and order dated 31 December 2002 passed by the Income Tax Appellate Tribunal, Mumbai Bench, rejecting the Appeal filed by it to the extent of addition of amount of Rs.2,49,73,218/- in the book profit under clause (b) of Explanation to Section 115JA of the Act. The Income Tax Appellate Tribunal (**ITAT**) has confirmed the order passed by the Commissioner of Income Tax (Appeals) [**CIT(A)**], who in turn had confirmed the order of the Assessing Officer by treating the provision made by the Assessee towards doubtful debt/advances as 'reserves' under clause (b) instead of treating the same as 'provision' made for meeting liabilities under clause (c) by modifying the order of the Assessing Officer to this limited extent.

2. The Appeal has been admitted by order dated 2 November 2004 on following substantial question of law:

“Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in coming to the conclusion that the provision for doubtful debts/advances of Rs.2,49,73,218/- was a “Reserve” and therefore, the book profit had to be increased by the said amount under clause (b) of the Explanation to section 115JA of the Act?

3. The Assessee was an Export House recognized by the Ministry of Commerce and engaged *inter alia* in the business of export of medicines, bulk drugs, pesticides and agricultural

products to the countries belonging to erstwhile Russian Federation. The Assessee had exported medicines to Regal International Inc. of USA between November 1995 to May 1996 and out of sum due of Rs.3,82,11,388/-, the said concern had paid only an amount of Rs. 1,46,83,760/- to the Assessee upto 31 March 1997. The balance due amount of Rs.2,35,27,628/- remained unpaid *inter alia* on the ground that the goods did not conform to the warranty contracted for the quality of the goods and the quality of goods were not acceptable to the Russian Test Labs. The Appellant filed Civil Suit against Regal International Inc. in the Superior Court of New Jersey for recovery of said amount of Rs.2,35,27,628/- corresponding to US \$ 6,88,948.29. In the above background, the Assessee Board decided to treat the sum of Rs.2,49,73,218/-, including the sum due from Regal International Inc., and some other debts, as doubtful recovery and for making a provisions for diminution in the value of the debts, it created a provision for doubtful debts/advances in respect of the said amount. Accordingly, in the Profit and Loss Account prepared for the concerned year, the Assessee debited an amount of Rs.2,49,73,218/- as "provision for doubtful debts/advances". The Assessee's accounts were audited by the statutory auditors and were filed with the Registrar of Companies without raising of any objection by anyone. The settlement was arrived at between the Assessee and Regal International Inc., under which Assessee received various amounts in the assessment years 2000-2001, 2001-2002 and 2002-2003, which was approximately 50% of the amount actually due.

4. The Assessing Officer however passed Assessment Order dated 28 February 2000 holding that provision for doubtful debts/advances was neither proved to be bad nor was written off as irrecoverable from the debtors and therefore, added the amount of Rs.2,49,73,218/- to the book profits under clause (c) of the Explanation to Section 115JA of the Act and also levied interest under Sections 234B and 234C of the Act. In Appeal, CIT(A) upheld the addition order of the Assessing Officer, however instead of applying clause (c), the CIT(A) treated the amount as 'Reserves' under clause (b) of Explanation to Section 115JA of the Act. The ITAT has upheld the order passed by the CIT(A) by its judgment and order dated 31 December 2002, which is the subject matter of challenge in the present Appeal.

5. Mr. Joshi, the learned counsel appearing for the Appellant/Assessee has canvassed following broad submissions in support of the Appeal:

- a) That the Assessing Officer has no jurisdiction to make any adjustments in the "book profit" which is arrived at on the basis of accounts prepared as per provisions of Companies Act, 1956 and certified as correct by the statutory authorities, except as specifically provided in Explanation to 115JA of the Act. He would rely upon judgment of the Apex Court in *Apollo Tyres Ltd. vs. Commissioner of Income Tax*¹

1 (2002) 255 ITR 273 (SC)

b) Clause (c) of Explanation to Section 115JA of the Act does not cover provision made for bad or doubtful debt. That the Assessing Officer had erred in treating the amount as provision made for meeting liabilities ignoring the position that the said amount was not the liability of the Assessee but actually its asset. He would rely upon judgment of the Apex Court in *Commissioner of Income Tax, Delhi vs. HCL Comnet Systems & Services Ltd.*² in support of his contention that a debt which is amount receivable by the Assessee cannot be covered by clause (c) of Explanation to Section 115JA of the Act. That the provision made by the Assessee for doubtful debts/advances cannot be treated as amounts carried to any reserve under clause (b) to the Explanation to Section 115JA of the Act.

c) That the ITAT has held that under clause 7(2) of Part III of Schedule VI of the Companies Act, the amount of provision resulting into diminution in value of asset is required to be treated as reserve ignoring the position that the amount set aside as provision for diminution in value of asset came to be included in separate clause (g) by way of amendment with effect from 1 April 1998. That clause (g) was not available in respect of the relevant assessment year 1997-1998.

d) That if amount set aside as provision for diminution in value of asset was already covered by clause (b), there was no

² (2008) 174 Taxman 118 (SC)

reason for Legislature to amend the Act by introducing clause (g) in Explanation to 115JA of the Act. He would rely upon judgment of the Delhi High Court in *Commissioner of Income-tax vs. Eicher Ltd.*³ in support of his contention that the provision for doubtful debts made in respect of specific debts needs to be treated as a provision for ascertainment of liability and cannot be treated in the nature of reserve.

e) He would rely upon definition of the terms “provision” and “reserve” in the Guidance Note on Terms Used In Financial Statements in support of his contention that the amount made as provision for diminution in value of assets is excluded from definition of the term ‘reserve’.

On above broad submissions, Mr. Joshi would pray for allowing the Appeal by answering the question of law in favour of Assessee.

6. Mr. Chhotaray, the learned counsel appearing for Revenue would oppose the Appeal by canvassing following submissions:

i) That three authorities have concurrently held against the Assessee and there is no warrant for interference in the concurrent findings recorded by the three authorities.

ii) That Assessee erroneously raised a claim of making a ‘provision’ in respect of its alleged debts contrary to the

³ (2007) 159 Taxman 293 (Delhi)

provisions of Foreign Exchange Regulation Act, 1973, according to which, only an amount pending for over 360 days could be shown as 'provision' and in the present case the said statutorily prescribed period was yet to be over for treatment of the said amount as a 'provision'. That the amount could be written off as bad debt only after expiry of period of two years.

iv) That the findings recorded by CIT(A) and ITAT make detail analysis of the statutory scheme and there is absolutely no warrant for interference in the same in exercise of the Appellate jurisdiction by this Court.

v) Referring to clause (b) of Explanation to Section 115JA of the Act, he would submit that the provision uses the expression "by whatever name called". That therefore the CIT(A) and ITAT have rightly treated the amounts shown as provision as 'reserves' for the purpose of adding the said amount in the book value.

vi) He would also rely upon provisions of clause 7(2) of Part III of Schedule VI of the Companies Act, 1956 in support of his contention that the provision of amount which results into diminution of value of assets has to be treated as 'reserve' and not as a 'provision'. That none of the case laws relied upon by the Assessee are applicable to the facts and circumstances of the present case.

vii) That though the amount was clearly recoverable and receivable by the Assessee's from its supply abroad and though the same has actually been recovered by the Assessee, the same was erroneously sought to be excluded from the book value and has rightly been added back by the Assessing Officer, CIT(A) and ITAT.

On above broad submissions, Mr. Chhotaray would pray for dismissal of the Appeal.

7. Rival contentions of the parties now fall for our consideration.
8. The short issue that arises for consideration in the present Appeal is whether the amount of Rs.2,49,73,218/- shown by the Assessee as "provision for doubtful debts/advances" can be added back to the book profit for the purpose of application of provisions of Section 115JA of the Income Tax Act?
9. Under provisions of Section 115JA of the Act, an Assessee, which is a Company, becomes liable to pay tax in amount equal to 30% of the book profit, if the total income computed for a particular year is less than 30% of its book profit. Under sub-section 2 of Section 115JA of the Act, every company is required to prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI of the

Companies Act, 1956. Under Explanation to Section 115JA of the Act, the book profit means net profit shown in the profit and loss account for the relevant previous year, which is required to be increased by amounts indicated in clauses (a) to (g) to the Explanation. The relevant part of provisions of Section 115JA of the Act are extracted below:

“115JA. (1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, 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, 1997 [but before the 1st day of April, 2001] (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit,

(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 profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account 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 a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation 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 (2), 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 whatever name

called; 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 any of the provisions of Chapter III applies;

(g) the amount or amounts set aside as provision for diminution in the value of any asset,

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

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(emphasis added)

10. Before proceeding further, it must be clarified that clause (g) appearing in Explanation in Section 115JA of the Act came to be inserted by Finance Act No.II of 2009 with effect from 1 April 1998. Since the Appeal pertains to Assessment Year 1997-1998, provisions of clause (g) are not applicable to the relevant assessment year.

11. As observed above, the Assessee indicated amount of Rs.2,49,73,218/- under the head 'provision for doubtful debts/advances' as an amount of Rs.2,35,27,628/- was due and recoverable by it from the Regal International Inc. and for recovery of which the Assessee had filed a Civil Suit in the US Court. The balance amount was recoverable towards other debts. This was done on the Assessee's belief that an amount of Rs.2,49,73,218/- which was recoverable as debts was a doubtful recovery. The Assessee believed that there was likely to be a diminution in the value of the said debt and therefore, decided to reflect the said amount as "provision for doubtful debts/advances" in the profit

and loss account for the relevant financial year ending 31 March 1997. There is no dispute to the position that the profit and loss account of the Assessee for the relevant period has been certified by the statutory auditor and filed with the Registrar of Companies and there has been no objection raised to the said entry in the account book of the Assessee.

12. The Assessing Officer however formed an opinion that the said amount of Rs.2,49,73,218/- was required to be increased in the book profit of the Assessee by invoking provisions of clause (c) of Explanation of Section 115JA of the Act. The Assessing Officer has recorded the following findings in his order for adding back the said amount in the book profit of the Assessee:

“In view of the above clause (a), the income tax of earlier years of Rs.1,07,321/- is to be added for computation of book profit. Similarly, as regard the amount of Rs.2,49,73,218/- in addition to the argument made in para 4 above, it is seen that the exemption provided in the clause (c) to explanation to sec. 115JA relates only to ascertained liabilities. In this case, provision for doubtful debt/advances has neither been proved to be bad nor has it been written off irrecoverable from the accounts. The said provision is also not towards ascertained liabilities as the assessee is still making efforts to recover the amount. Therefore, the said provision is to be added for determination of book profit u/s 115JA by virtue of clause (c) to Explanation to section 115JA”

13. In Appeal preferred by the Assessee, though the CIT(A) upheld the finding of Assessing Officer for adding back the amount of Rs.2,49,73,218/-, he deferred with the Assessing Officer in respect of the clause under which the said amount was required to be increased in the book profit. The CIT(A) held that the said amount could not be treated as provision made for meeting liabilities, but is required to be treated as “reserve” under clause (b). The relevant

finding recorded by CIT(A) are as under:

“15. So far as deduction of Rs. 2,49,73,218 is concerned, I may also refer to Explanation to Sec. 115JA(2) of I.T. Act. It has narrated various items which had to be added to the book profits. For disallowing deduction of Rs. 2,49,73,218, the assessing officer has invoked the provision of Clause c to this Explanation inter alia on the ground that this provision is not towards any ascertained liability. However, in my opinion, Clause (b) of the Explanation should be invoked for making this addition. Under this clause, the amount carried to any reserve by whatever name called has to be added to the Book Profit. The words ‘provision’ and ‘reserve’ have been explained in part III of Schedule VI of the Companies Act 1956. As per this where any amount retained for providing any known liability is in excess of the amount which in the opinion of the directors is reasonable and necessary for the purpose, the excess shall be treated for the purpose of this schedule as a reserve and not as a provision. Obviously, the amount of Rs. 2,49,73,218 has been provided towards bad debts pre-maturely and the whole of this amount is unnecessary for the purpose. It has therefore to be treated as a Reserve and added to the Book Profit under Clause (b) to Expln. Of Section 115JA(2)”

14. The ITAT has upheld the findings recorded by CIT(A) and has held as under:

“... The crux of the matter in this appeal is therefore as to whether or not the CIT(A) has correctly applied Explanation (b) to section 115JA(2) that reads as under

“(b) the amounts carried to any reserves by whatever name called

During the course of hearing before us, the learned Counsel for the assessee has argued that both the expression “provision” and ‘reserve’ have been defined in Part III of Schedule VI to the Companies Act, 1956 and therefore, no different meaning or interpretation should be assigned to these terms. For this purpose, the learned Counsel has placed reliance on the judgement in the case of Vazir Sultan Tobacco Vs. CIT (Supra). We find, in the first instance, the expression reserves” appearing in Explanation(b) has been qualified to be “by whatever name called” It is therefore clear that the Assessing Officer while proceeding to make an adjustment under Explanation (b) has power to examine whether any “provision” created in the accounts of the assessee may be considered or construed to be a ‘reserve’ and not ‘provision’ Further, we find that such a course of action has been contemplated in clause 7(2) of Part III of Schedule VI to the Companies Act itself. This clause 7 reads as under.-

“7 (1) For the purpose of Parts I and II of this Schedule, unless the context otherwise requires,-

(a) the expression “provision” shall, subject to sub-clause (2) of this clause, mean any amount written off or retained by way of providing for depreciation renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy.

(b) the expression “reserve” shall not, subject as aforesaid, include any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets or retained by way of providing for any known liability:

(c) the expression “capital reserve” shall not include any amount regarded as free for distribution through the profit and loss account and the expression “revenue reserve” shall mean any reserve other than a capital reserve:

and in this sub-clause the expression “liability” shall include all liabilities in respect of expenditure contracted for and all disputed or contingent liabilities.

(2) Where

(a) any amount written off or retained by way of providing for depreciation, renewals in value of assets, not being amount written off in relation to fixed assets before the commencement of this Act:
or

(b) any amount retained by way of providing for any known liability: is in excess of the amount which in the opinion of the directors is reasonably necessary for the purpose the excess shall be treated for the purpose of this Schedule as reserve and not a provision”

It Is therefore seen that u/s 7(2) any excess amount of provision, even if resulting into diminution in value of assets has to be treated as a ‘reserve’ and not as a ‘provision’ In the impugned order the learned CIT(A) has on the basis of admitted facts of the case held that the assessee’s claim of provision for bad and doubtful debts was premature He has held that where the amounts had become bad become bad or doubtful the assesses had proceeded to write the same off in the ledger account and in other cases, the assesses simply created a provision without affecting the accounts of the parties in any manner whatsoever. The learned CIT(A) has also taken note of the fact that under the provisions of Foreign Exchange Manual, the assesses was not entitled to write off these amounts for want of expiry of prescribed period of time. The learned CIT(A) has also taken note of the fact that as at the end of the accounting year, the assesses had reasonable hopes of recovery of the

amount and such hopes indeed materialized in subsequent accounting periods. In our opinion, the learned CIT(A) has arrived at the conclusion that the whole of the amount of the provision was unnecessary on valid and cogent reasons. That being so, the learned CIT(A) had the jurisdiction under Explanation (b) as well as the sanction of clause 7(2) of Part III of Schedule VI to the Companies Act for treating the amount as 'reserve and not as provision' and thereby adding the same back in accordance with Explanation (b) to Section 1115JA(2) of the Act. We, therefore, uphold the order of the learned CIT(A) in this respect"

15. It is the contention of the Assessee by relying upon judgment of the Apex Court in *Apollo Tyres Ltd.* (supra) that the Assessing Officer while assessing the Company for income tax under Section 115JA of the Act, cannot question the correctness of profit and loss account prepared by the Company and certified by the statutory Auditor. The Apex Court has held as under:

"The above speech shows that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that section 115J was introduced in the Income-tax Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent. of its book profits as shown in its own account. For the said purpose, section 115J makes the income reflected in the company's books of account the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an Assessing Officer under the Income-tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinized and certified by the statutory auditors and will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act."

"Therefore, we are of the opinion, the Assessing Officer while

computing the Income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, 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."

16. The issue here, however, is slightly different. The issue is whether the amount of Rs.2,49,73,218/- indicated by the Assessee under the head 'provision for doubtful debts/advances' in its profit and loss account could be added back to its book profit under any of the clauses of Explanation to Section 115JA of the Act. As observed above, the Assessing Officer initially proceeded to add back the said amount by having recourse to provisions of clause (c) by treating the said amount as a 'provision made for meeting liabilities'. In our view, the Assessing Officer grossly erred in doing so. The Assessing Officer ignored the fact that the said amount was not debt payable by the Assessee but the same was debt receivable by it. Therefore, the amount did not represent liability of the Assessee but in fact was its asset. This issue is no more *res integra* and is squarely covered by the Apex Court's judgment in ***CIT Delhi vs. HCL Comnet Systems & Services Ltd.*** (supra) in which the issue was formulated in paragraph 2 of the judgment as under:

"2. The short question which arises for determination in this civil appeal filed by the department is : whether Assessing Officer was justified in adding back the provision for doubtful debts of Rs.92,15,187 to the net profit under clause (c) of the *Explanation* to section 115JA of the Income-Tax Act, 1961.

17. The issue is answered by the Apex Court in paragraph 8 as under:

“8. As stated above, the said Explanation has provided six items, ie, Item Nos. (a) to (f) which if debited to the profit and loss account can be added back to the net profit for computing the book profit. In this case, we are concerned with Item No. (c) which refers to the provision for bad and doubtful debt. The provision for bad and doubtful debt can be added back to the net profit only if Item (c) stands attracted. Item (c) deals with amount(s) set aside as provision made for meeting liabilities, other than ascertained liabilities. The assessee's case would, therefore, fall within the ambit of Item (c) only if the amount is set aside as provision, the provision is made for meeting a liability; and the provision should be for other than ascertained liability, ie. it should be for an unascertained liability. In other words, all the ingredients should be satisfied to attract Item (c) of the Explanation to section 115JA. In our view, Item (c) is not attracted. There are two types of "debt". A debt payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case "debt" under consideration is "debt receivable" by the assessee. The provision for bad and doubtful debt, therefore, is made to cover up the probable diminution in the value of asset, ie, debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for liability, because even if a debt is not recoverable no liability could be fastened upon the assessee. In the present case, the debt is the amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, in our view Item (c) of the Explanation is not attracted to the facts of the present case. In the circumstances, the Assessing Officer was not justified in adding back the provision for doubtful debts of Rs. 92,15,187 under clause (c) of the Explanation to section 115JA of the 1961 Act.”

18. Applying the ratio of the Apex Court's judgment in *CIT Delhi vs. HCL Comnet Systems & Services Ltd.* (supra), we are of the view that Assessing Officer grossly erred in invoking clause (c) of Explanation to 115JA of the Act for the purpose of adding back the amount of Rs.2,49,73,218/- in the book profit of the Assessee.

19. However, the CIT(A) corrected the error committed by the Assessing Officer and invoked the provisions of clause (b) of Explanation to Section 115JA of the Act by holding that the said amount represented 'reserves' and deserves to be added back to the book profit of the Company. The ITAT has upheld the finding recorded by CIT(A).

20. Perusal of the findings recorded by ITAT while upholding the findings of CIT(A) would indicate that the ITAT has considered the provisions of clause 7(2) of Part III of Schedule VI of the Companies Act, 1956. As observed above, under sub-section 2 of Section 115JA of the Act, the Assessee Company is required to prepare profit and loss account in accordance with provisions of Parts II and III of Schedule VI to the Companies Act, 1956.

21. The ITAT proceeded to extract the provisions of clause 7 and held that under clause 7(2), any excess amount of provision, even if resulting in diminution in value of assets, has to be treated as 'reserve' and not as a 'provision'. In our view, the ITAT has grossly erred in treating the amount of provision resulting in diminution in value of assets as 'reserve'. Provisions of clause (g) of Explanation to Section 115JA of the Act would indicate that the Legislature made provision for adding back the amount set aside as provision for diminution in the value of any asset by amending Section 115JA of the Act vide Finance Act, 2009 with effect from 1 April 1998. During the assessment year 1997-1998, clause (g) was absent in the Explanation to Section 115JA of the Act. If the amount set aside as

provision for diminution in the value of any asset formed a part of 'reserves' under clause (b), there was no necessity for the Legislature to include such amount in a separate category under clause (g). Clause (g) appears to have been added by the Legislature after noticing that there was no provision in Section 115JA of the Act for adding back the amount set aside by the Assessee for diminution in the value of any assets.

22. In the present case, the Assessee had set aside the amount of Rs.2,49,73,218/- under a belief that though the same was its assets, its value was likely to be diminished. It actually diminished as the Assessee ended up in recovery less than 50% of the due amount from its supply in the USA. After insertion of clause (g) in Explanation to Section 115JA of the Act with effect from 1 April 1998, such amount set apart in the profit and loss account towards provision for diminution in the value of assets, became addable in the book profit of the Company with effect from 1 April 1998. This position is also borne out in the two judgments relied upon by Mr. Joshi in *Commissioner of Income Tax vs. Peerless General Finance & Investment Company Limited*⁴ and *M/s. EID Parry (India) Ltd. vs. Assistant Commissioner of Income Tax, Company Circle-II(1) Chennai*⁵ where clause (g) is held to be inapplicable to the amount set apart as bad and doubtful debt for assessment year 1997-1998 on account of introduction of clause (g) with effect from 1 April 1998.

4 (2016) 385 ITR 130 (Calcutta)

5 (2020) 425 ITR 508 (Madras)

23. In our view therefore, the Assessing Officer, CIT(A) and ITAT grossly erred in adding back the amount of Rs.2,49,73,218/- indicated in the profit and loss account as provision for doubtful debts/advances by resorting to either clauses (b) or (c) of Explanation to Section 115JA of the Act. The said amount was not a “Reserve” and therefore, the book profit could not be increased by the said amount under clause (b) of the Explanation to section 115JA of the Act.

24. The question of law formulated is accordingly answered in the negative. The orders passed by the ITAT, CIT(A) and Assessing Officer to the extent of adding back the amount of Rs.2,49,73,218/- in the book profit of the Assessee for the assessment year 1997-1998 are set aside. The Appeal is **allowed** in above terms.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)