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

INCOME TAX APPEAL NO. 592 OF 2003

The Ravalgaon Sugar Farm Ltd. ....*Appellant*

: Versus :

Commissioner of Income Tax,
City-II, Aayakar Bhavan, Mumbai ....*Respondent*

Mr. S. Sriram *with Mr. B. V. Jhaveri & Mr. Dinesh Kukreja, for Assessee-Appellant.*

Ms. Samiksha R. Kanani, *for Revenue-Respondent.*

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

JUDGMENT RESERVED ON : 31 JULY 2025

JUDGMENT PRONOUNCED ON : 5 AUGUST 2025

JUDGMENT : *(Per Sandeep V. Marne, J.)*

1) The Assessee has preferred this Appeal under Section 260A of the Income Tax Act, 1961 **(the Act)** assailing the order dated 24 January 2003 passed by Income Tax Appellate Tribunal, Mumbai Bench **(ITAT)** in I.T.A. No. 871/Bom/94, by which the Appeal preferred by the Assessee has been dismissed. The Assessee had challenged the order of Commissioner of Income Tax (Appeals) upholding the order of the Assessing Officer deducting the additional

cane price of Rs.78,86,857/- from the profits of the Assessee for AY 1990-91 while allowing the benefit under Section 32AB of the Act.

2) The issue involved in the appeal is whether it is permissible for an Assessee to seek benefit of 20% deduction under Section 32AB of the Act on profits as reflected in the Profit & Loss Account finalized under Part II and III of the VI Schedule of the Companies Act, 1956 **(Companies Act)** or whether they must be determined with reference to the actual profits for the purposes of the Income Tax Act. The issue arises in the peculiar circumstances where the additional sugarcane price is required to be paid by the Assessee *(as determined by the Director of Sugar)* after finalization of the accounts under Parts II and III of the VI Schedule of the Companies Act, but the Assessee can still claim the said amount as expenses while filing the return on income. The Assessing Officer has proceeded to deduct the said additional amount of sugarcane from the amount of profits for the relevant AY while computing the 20% deduction admissible under Section 32AB of the Act.

3) The Assessee is a manufacturing company carrying on the business of manufacturing toffees, confectionery and sugar candy. The Assessee is required to purchase sugarcane from farmers for the purpose of manufacturing toffees, confectionery and sugar candy. For various Co-operative Sugar Factories, the Director of Sugar, State of Maharashtra, determines the final price of sugarcane to be paid to farmers, which is decided after the end of sugarcane season by taking into account various factors like production cost of sugarcane, cost of sugarcane to farmers, etc. In order to incentivize the farmers to sell sugarcane, the Assessee had formed a policy of paying them certain

amount in addition to the final price of sugarcane determined by the Director of Sugar for the neighboring Co-operative sugar factories *(M/s. Vasantdada Patil Sahkari Sakhar Karkhana Ltd. and M/s. Girna Co-operative Sakhar Karkhana Ltd.).* For sugarcane seasons of 1988-89, 1989-90 and 1990-91, the Assessee announced the policy of paying Rs. 15/- per metric ton which was in addition to the final price of sugarcane determined by the Director of Sugar.

4) The Director of Sugar determined the final price of sugarcane for the season of 1989-90 at Rs.376.50 per metric ton vide letter dated 4 October 1990. The Assessee had paid price of sugarcane as per tentative price determined by the Government at the time of purchase of sugarcane during every season. On determination of final price by the Director of Sugar, the Assessee used to pay additional sugarcane price to the farmers as per its policy of paying more than the final price determined by the Director of Sugar.

5) During the year commencing from 1 October 1987 and ending on 31 March 1989 (18 months) relevant to the Assessment Year 1989-90, the Assessee had paid additional sugarcane price of Rs.30,56,352/- on the sugarcane purchased for the season 1986-87. Therefore, while computing the total income for Assessment Year 1989-90, the said amount of additional sugarcane price of Rs. 30,56,352/- was added back to the net profit of Rs.41,11,514/- computed as per Profit and Loss account. The said additional sugarcane price of Rs. 30,56,352/- was claimed as an expenditure of the Assessee in the Assessment Year 1988-89. However, while computing deduction under Section 32AB of the Act for Assessment Year 1989-90, the Assessee started with the net profit of Rs.

41,11,514/- as per the Profit and Loss account prepared as per Parts II and III of Schedule VI of the Companies Act. The said net profit of Rs. 41,11,514/- was arrived at after debiting the additional sugarcane price of Rs. 30,56,352/- to the Profit and Loss account which was paid for the sugarcane purchased for the year 1986-87. Thus, deduction under Section 32AB for Assessment Year 1989-90 was computed by the Assessee as under:-

Net profit as per P&L A/c	Rs. 41,11,514/-
Add: Depreciation as per accounts	Rs. 45,82,900/-
	Rs. 86,94,414/-
Add: Provision for taxation	Rs. 35,00,000/-
	Rs. 1,21,94,414/-
Less: Depreciation as per I.T. Act	Rs. 78,98,251/-
Profit for section 32AB	Rs. 42,96,163/-
Proportion of eligible business profit @ 51.15%	Rs. 21,97,487/-
Investment Deposit account u/s. 32AB @ 20% of profit	Rs. 4,39,297/-

6) This is how the Assessee added Rs. 30,56,352/- being the additional sugarcane price paid for season 1986-87 in the year ended 31 March 1989 to the net profit of Rs. 41,11,514/- and paid tax thereon. However, while computing deduction under Section 32AB of the Act the said additional sugarcane price paid for the season 1986-87 was not added to the net profit of Rs. 41,11,514/- as the said net

profit was determined as per the Profit and Loss account prepared as per Parts II and III of Schedule VI of the Companies Act. For following this practice, the Assessee relies on the instructions issued by Central Board of Direct Taxes bearing No. 1347 dated 27 August 1980.

7) For the purpose of Companies Act, the Assessee was following the Accounting Year ending on 30 September and therefore, its accounts were closed on 30 September 1988. Thereafter, the Assessee decided to close its accounts on 31 March every year so as to match the accounting year for the purposes of the Companies Act and Income Tax Act. Accordingly, it closed its accounts for the Companies Act on 31 March 1990, which was a period of 18 months commencing from the 1 October 1988 and ending on 31 March 1990. Assessee's account of this 18 months period was added and approved in the A.G.M. For the purposes of Income-tax, the accounts for the year 1 April 1989 to 31 March 1990 were audited under Section 44AB of the Act on 26 December 1990. Similarly, audit report under Section 32AB(5) of the Act was also signed by the Auditor on 26 December 1990. As per the said audited accounts for the period of 12 months ending on 31 March 1990, the Assessee filed its return of income for Assessment Year 1990-91 on 31 December 1990 computing the total income at Rs. 32,72,754/- wherein it claimed deduction under Section 32AB of the Act at Rs. 9,75,192/-. This was done on the basis that the Assessee had claimed deduction of additional sugarcane price of Rs. 78,86,857/- paid after October, 1990 as per final determination of sugarcane price by the Director of Sugar in respect of sugarcane purchased prior to 31 March 1990. This amount of additional sugarcane price of Rs. 78,86,857/- was not

debited to the Profit and Loss account for the year ended 31 March 1990 prepared as per Part II of Schedule VI of the Companies Act since the final determination of the sugarcane price was made by the Director of Sugar only in the month of October 1990 whereas the amounts for the year ended 31 March 1990 were audited for the purposes of the Companies Act on 27 July 1990. As per the policy previously followed by the Assessee, the additional sugarcane price of Rs. 78,86,857/- which was pertaining to the sugarcane purchased prior to 31 March 1990 was claimed as an expenditure for the year ended 31 March 1990 by claiming deduction in the computation of total income. However, while computing deduction under Section 32AB of the Act which was made as per audited accounts dated 27 July 1990, the said additional sugarcane price of Rs. 78,86,857/- was not considered as the same was not debited to Profit and Loss account prepared as per Part II of Schedule VI of the Companies Act. This is how Appellant Company computed deduction under Section 32AB of the Act as under :-

1.	Gross Turnover for the year ended 31st March 1990	
	As per the Audited Accounts submitted herewith	28,34,76,673
2.	Turnover of confectionary being non eligible for Section 32AB of I. Tax Act	13,82,19,856
3.	Turnover of Eligible Business	14,52,56,817
4.	Proportion of eligible business turnover to Total Turnover	51.24%
5.	Total profit of business as per the profit and loss accounting	56,96,748
	Add: Depreciation as per accounts	51,83,534
		1,08,80,282
	Add. Tax Provision as per accounts	45,00,000
		1,53,80,282
	Less: Depreciation allowable as per I. T. Act	58,64,343

	Profit for Section 32 AB	95,15,939
6.	Proportion of eligible business profit @ 51.24% as per point 4 above	48,75,967
7.	Investment deposit amount u/s. 32 AB @ 20% of profit of Rs. 48,75,967/-	9,75,193

8) However, the Assistant Commissioner of Income-tax Central Circle 22, Mumbai **(Assessing Officer)** computed the total income of Rs. 46,10,441/- wherein the Assessing Officer allowed deduction under Section 32 AB at Rs. 1,66,948/- as against the claim of the Assessee of Rs. 9,75,193/-. The Assessing Officer computed the deduction under Section 32 AB as under :-

Net Profit as per P&L A/c. as shown by the assessee		Rs.	56,96,748/-
Less: Additional cane price paid in the previous year		Rs.	78,86,857/-
	(-)	Rs.	21,90,109/-

However, computation of eligible profit for the purpose of deduction u/s. 32AB as per the Assessing Officer is as under:

Net loss as per P & L account	(-)	Rs.	21,90,109/-
Less: i) Depreciation		Rs.	51,83,534/-
ii) Provision for taxation		Rs.	45,00,000/-
		Rs.	96,83,534/-
	(+)	Rs.	74,93,425/-
Less: Depreciation as per I. T. Act		Rs.	58,64,343/-
Balance profit		Rs.	16,29,082/-

Profit attributable to the eligible business as per Certificate in Form No. 3AA was 51.24%

of Rs.16,29,082/-	Rs.	8,34,741/-
Admissible deduction u/s. 32AB being 20% of Rs. 8,34,741/-	Rs.	1,66,948/-

9) This is how the Assessing Officer reduced the additional sugarcane price of Rs. 78,86,857/- paid by the Assessee after the end of the previous year from the net profit computed as per Profit and Loss account which was prepared as per Part II of Schedule VI of the Companies Act.

10) The Assessee preferred an appeal before Commissioner of Income-Tax (Appeals) contending that for the purposes of computing deduction under Section 32AB of the Act, additional sugarcane price of Rs. 78,86,857/- paid by the Assessee after 31 March 1990 which was not debited to Profit and Loss account *(prepared as per Part II of Schedule VI of the Companies Act)* cannot be reduced from the net profit computed as per the aforesaid Profit and Loss account. It was further contended that for the purposes of deduction under Section 32AB of the Act the profits of the business shall be an amount arrived at after depreciation under Section 32(1) from the amounts of profits computed in accordance with the requirements in Parts II and III of Schedule VI of the Companies Act. The CIT(A), however, passed order on 9 December 1993 and rejected the Assessee's contention and approved the decision of Assessing Officer. The Assessee preferred appeal before ITAT being Appeal No. I.T.A. No. 871/Bom/94 and the Revenue filed cross-appeal I.T.A. No.1407/Bom/94. The Assessee's Appeal is however dismissed by the ITAT by order dated 24 January 2003, which is the subject matter of challenge in the present Appeal.

11) The Appeal was admitted on 26 October 2004 on following substantial question of law:-

> "Whether on the facts and in circumstances of the case as well as in law, the Tribunal, while computing the deduction under Section 32AB of the Act, was right in altering the profit of the eligible business computed as per the requirements of Parts II and III of Schedule VI to the Companies Act, 1956 for the purpose of providing the liability of the additional sugarcane price which was determined in the month of October, 1990?"

12) Mr. Sriram, the learned counsel appearing for the Assessee would submit that the scheme of Section 32AB is a separate Code by itself. That plain reading of the section particularly sub-section (3) and subsection (5), clearly indicates that the allowance under Section is not dependent upon profits or losses otherwise computed under the Act but solely on the profits disclosed in the audited annual accounts. That objects and reasons behind introduction of Section 32AB needs to be borne in mind as explained in Circular No.461 dated 9 July 1986, which makes it clear that profit needs to be determined in accordance with the Books of Accounts prepared under Part-I and II of Schedule-VI of the Companies Act for the purpose of Section 32AB. That the issue involved in the present Appeal is squarely covered by judgment of Karnataka High Court in ***Jindal Aluminium Ltd. Versus. Deputy Commissioner of Income-tax (Asst.) Special Range II, Banglore***[1]. That the judgment of the Madras High Court in ***Commissioner of Income-tax Versus. Tamil Nadu Mercantile Bank Ltd.***[2] also takes a view that profits of business compared to income under the provisions of the Act is of no assistance for the purpose of determining the extent of benefit under Section 32AB. That these judgments are followed in numerous other

[1] [2016] 68 TAXMAN 111 (KARNATAKA)
[2] [2003] 126 TAXMAN 45 (MADRAS)

judgments and he would rely upon the judgment in ***Carborandum Universal Ltd. Versus. Commissioner of Income-tax***[3], ***Commissioner of Income-tax Versus. Macmillan India Ltd.***[4], ***South India Sugars Limited Versus. Deputy Commissioner of Income-tax***[5], ***Commissioner of Income-tax Versus. Tirupattur Co-operative Sugar Mills Ltd.***[6] *and* ***Deputy Commissioner of Income-tax Versus. United Nilgiris Tea Estate Co. Ltd.***[7]

13) Mr. Sriram would further submit that similar provision under Section 115-J of the Act has been interpreted by the Hon'ble Apex Court in ***Apollo Tyres Ltd. Versus. Commissioner of Income Tax***[8]**.** That following of peculiar method of accounting by the Assessee and claiming deduction consistently follows the word and spirit of law and does not violate it. That in computing its income under the normal provisions of the Act, the Assessee had made other numerous adjustments which had enhanced the income under the normal provisions substantially. That the Revenue has not adjusted the eligible profits to enhance the profits by such sum. That the Assessee has followed the system as provided under Section 32AB consistently over the years. The methodology adopted by the Assessee in the subsequent years has not been questioned. On the above broad submissions, Mr. Sriram would pray for answering the question of law formulated in favour of the Assessee.

14) The Appeal is opposed by Ms. Kanani, the learned counsel appearing for the Revenue. She would submit that the Assessee follows the mercantile accounting system and therefore the

[3] [2004] 265 ITR 372 (MADRAS)
[4] [2007] 295 ITR 67 (MADRAS)
[5] [2008] 214 CTR 205 (MADRAS)
[6] [2009] 310 ITR 360 (MADRAS)
[7] [2005] 273 ITR 470 (MADRAS)
[8] [2002] 255 ITR 273 (SC)

actual trading expenses including additional sugarcane price must be considered while computing the profits. That excluding additional sugarcane price of Rs.78,86,857/- while computing 20% deduction under Section 32AB would inflate the eligible profits contrary to law. She would rely upon judgment of the Apex Court in ***Commissioner of Income-tax, Bombay Versus. Tasgaon Taluka S.S.K. Ltd.***[9] in support of the contention that the additional price paid to sugarcane growers is not distribution of profits but a purchase price determined under the Statute. She would therefore submit that it is a revenue expenditure deductible in computing taxable income and must therefore be considered while computing the real business profits under Section 32AB. She would distinguish the judgment of Karnataka High Court in ***Jindal Aluminium Ltd.*** (supra). She would also rely upon judgment of Kerala High Court ***Parry Agro Industries Ltd. Versus. Commissioner of Income-tax, Cochin***[10]. She would submit that Section 32AB is intended to permit investment based on actual profits. That inclusion of unrealised and artificial inflated profits by ignoring real trading expenditure would defeat the object of the provision. She would further submit that Revenue's action of deducting Rs.78,86,857/- additional sugarcane price from the trading account is justified. She would pray for dismissal of the Appeal.

15) Rival contentions of the parties now fall for our consideration.

16) In the present case, a unique conundrum got created on account of fixation of statutory minimum price by the Controller of Sugarcane after closure of accounts of the Assessee pertaining to the

[9] [2019] 262 TAXMAN 176 (SC)
[10] [2006] 156 TAXMAN 184 (KERALA)

Assessment Year 1990-91 *(Financial Year 1989-90).* It appears that similar problem had arisen in the previous year as well, as discussed while narrating the facts. The Assessee appears to have added the additional sugarcane price of Rs.30,56,352/- relating to Assessment Year 1989-90 in the profits for the subsequent Assessment Year. When it came to Assessment Year 1990-91, the Assessee attempted to follow the same practice of adjusting the additional sugarcane price of Rs.78,86,857/- paid in October 1990 *(after closure of the Accounts as on 31 March 1990)* in the subsequent year. The Assessee thus followed the practice of claiming deduction of additional sugarcane price for income tax purposes in one year but taking into consideration the figure of profit without such deduction for calculating the 20% benefit under Section 32AB and thereafter subtracting the said amount of additional sugarcane price in the subsequent year's profit. This is done by the Assessee ob account of enabling provision in Section 32AB which permits consideration of profits reflected in the accounts finalized under Parts II and III of VI Schedule of Companies Act for the purpose of computing the benefit under Section 32AB of the Act. It is Assessee's contention that this practice is consistently followed by it. It is not in dispute that in the succeeding years, though same practice was followed, the same was not objected to by the Revenue. However, for Assessment Year 1990-91, the Assessing Officer selectively did not agree to the action of the Assessee in not adjusting the additional cane price of Rs.78,86,857/- against the profits in Assessment Year 1990-91.

17) For resolution of the question of law formulated while admitting the Appeal, it would be necessary to make reference to the provisions of Section 32AB of the Act as it stood at the relevant time.

Section 32AB is a beneficial provision inserted by Finance Act, 1986 w.e.f 1 April 1987. The provision provides an incentive to an Assesee who is carrying on business or profession by allowing deduction of 20% of the profits and gains of business. The condition is that the amount needs to be deposited with the development bank or utilized for purchase of new Plant & Machinery. There is no dispute about eligibility of the Assessee to take benefit of provisions of Section 32AB of the Act. The only dispute is about the exact quantum of profit in respect of which 20% deduction is admissible to the Assessee under Section 32AB of the Act.

18) Section 32AB of the Act, as it stood at the relevant time, provided thus :-

> **32AB. Investment deposit account.—**
> (1) Subject to the other provisions of this section, where an assessee, whose total income includes income chargeable to tax under the head "Profits and gains of business or profession", has, out of such income,—
>
> (a) deposited any amount in an account (hereafter in this section referred to as deposit account) maintained by him with the Development Bank before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier; or
>
> (b) utilised any amount during the previous year for the purchase of any new ship, new aircraft, new machinery or plant, without depositing any amount in the deposit account under clause (a), in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) to be framed by the Central Government, or if the assessee is carrying on the business of growing and manufacturing tea in India, to be approved in this behalf by the Tea Board, the assessee shall be allowed a [deduction (such deduction being allowed before the loss, if any, brought forward from earlier years is set off under section 72) of]—
>
> (i) a sum equal to the amount, or the aggregate of the amounts, so deposited and any amount so utilised; or
>
> (ii) a sum equal to twenty per cent. of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with sub-section (5), whichever is less:
>
> [Provided that where such assessee is a firm, or any association of persons or any body of individuals, the

deduction under this section shall not be allowed in the computation of the income of any partner, or as the case may be, any member of such firm, association of persons or body of individuals:]

[Provided further that no such deduction shall be allowed in relation to the assessment year commencing on the 1st day of April, 1991, or any subsequent assessment year.]

(2) ….

(3) The profits of business or profession of an assessee for the purposes of sub-section (1) shall] be an amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of sub-section (1) of section 32 from the amounts of profits computed in accordance with the requirements of Parts II and III of the [Schedule VI] to the Companies Act, 1956 (1 of 1956), [as increased by the aggregate of —

(i) the amount of depreciation;

(ii) the amount of income-tax paid or payable, and provision therefor;

(iii) the amount of surtax paid or payable under the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(iv) the amounts carried to any reserves, by whatever name called;

(v) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities;

(vi) the amount by way of provision for losses of subsidiary companies; and

(vii) the amount or amounts of dividends paid or proposed,

if any debited to the profit and loss account; and as reduced by any amount or amounts withdrawn from reserves or provisions, if such amounts are credited to the profit and loss account.

(4) …..

(5) The deduction under sub-section (1) shall not be admissible unless the accounts of the business or profession of the assessee for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant:

Provided that in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this sub-section if such assessee gets the accounts of such business or profession audited under such law and furnishes the report of the audit as required under such other law and a further report in the form prescribed under this sub-section.

(5A) …

(5AA) ….

(5B) …

(6) ….

(7) …

(8) …

(9) ….

(10) …

19) Thus, a sum equal to 20% profits of eligible business as computed in the accounts of the Assessee audited in accordance with sub-section (5) is admissible if the Assessee has either deposited any amount in the Development Bank or utilized any amount during previous year for purchase of new plant or machinery. Under sub-section (3) of Section 32AB, the methodology of determining the profits for the purpose of allowance of deduction under sub-section (1) is dealt with. Under clause (a) of sub-section (3) of Section 32AB, the profits of eligible business would be the amount arrived at after deducting an amount equal to the depreciation computed in accordance with the provisions of Section 32(1) from the amounts of profits computed in accordance with the requirements of Parts-II and III of VI Schedule to the Companies Act.

20) An issue arose before the Division Bench of Karnataka High Court as to whether which of the profits *(determined in accordance with the provisions of the Income Tax Act or determined in accordance with the provisions of Parts-II and III of Schedule-VI of Companies Act),* need to be taken into consideration for allowing deduction under Section 32AB of the Act. The Karnataka High Court in ***Jindal Aluminium*** (supra) relied upon judgment of the Apex

Court in ***Apollo Tyres Ltd.*** (supra) and held in paras-8, 9, 10, 14, 15, 16 and 17 as under :-

> 8. The said provision provides an incentive to an assessee who is carrying on business or profession, a deduction out of the total income 20 per cent of the profits and gains of business or profession. If the said amount is deposited with the Development Bank or utilised for the purchase of any new machinery or plant without depositing any amount in an account under clause (a), how the profits of business or profession to be calculated for the purpose of section 32AB of the Act is found under sub-section (3), which is extracted above.
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> 9. From a reading of the aforesaid provision it is clear that the profits of business or profession of an assessee for the purposes of sub-section (1) is to be arrived at on the basis of the profits computed in accordance with the requirements of Part II of the Sixth Schedule to the Companies Act. Therefore, it is clear, the said profits of business or profession is not computed in accordance with the provisions of the Income-tax Act. Further, it provides, for deduction of an amount equal to the depreciation computed in accordance with the provisions of sub-section (1) of section 32 from the amounts of profits computed in accordance with the requirements of Part II of the Sixth Schedule to the Companies Act. To that income, the amounts mentioned in clauses (i) to (vii) has to be added. One such amount to be added is the amount or amounts set aside as the provisions made for meeting liabilities, other than ascertained liabilities. Therefore, the contingent liability or unascertained liability has to be added to the profits for the purpose of section 32AB.
>
> 10. Part II of Sixth Schedule to the Companies Act deals with the requirements as to the profit and loss account. Clause (3) of Part II provides that the profit and loss account shall set out the various items relating to the income and expenditure of the company arranged under the most convenient heads; and in particular, shall disclose the information mentioned therein in respect of the period covered by the account. One such information to be disclosed is the expenditure incurred on the items mentioned therein, separately for each item which includes rates and taxes, excluding taxes on income. Therefore, the requirement of law is, profit and loss account should disclose the information regarding expenditure incurred in respect of rates and taxes. It does not provide that the rates and taxes incurred as expenditure is to be deducted from the income.
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> 14. The apex court in the case of Apollo Tyres Ltd. v. CIT reported in MANU/SC/0422/2002 : [2002] 255 ITR 273 (SC) dealing with the object of introducing section 115J in the Income-tax Act held that section 115J makes the income reflected in the company's books of account the deemed income for the purpose of assessing the tax. The words "in accordance with the provisions of Part II 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 scrutinised 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 account of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, they found it difficult to accept the argument of the Revenue that it is still open to the Assessing Officer to rescrutinise this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. Sub-section (1A) of section 115J do not empower the authority under the Income-tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes, one for the purpose of the Companies Act and another for the purpose of income-tax both maintained under the same Act. If the Legislature intended the Assessing Officer to reassess the company's income, then it would have stated in section 115J that "income of the company as accepted by the Assessing Officer". In the absence of the same and on the language of section 115J, it will have to be held that the view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal. 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.

15. Therefore, while deciding the benefit to which the assessee is entitled to under section 32AB of the Act, the Assessing Officer has only power to examine 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. Therefore, he cannot apply the principles under the Income-tax Act for the purpose of determining the profit of the assessee from business or profession for the purpose of section 32AB. **In other words, there cannot be two incomes one for the purpose of the Companies Act and another for the purpose of the Income-tax Act maintained under the same Act for the purpose of section 32AB.** After arriving at profits of business or profession of the assessee, as stipulated in sub-section (3) of section 32AB, the said provision also

> provides for addition to such income as stipulated therein. After such additions, the authority has to determine the profits of business or profession for the purpose of extending the benefit under section 32AB.
>
> 16. Dealing with the provision for tax liability when the same is disputed, it is observed that where a company disputes its liability on valid and bona fide reasons in regard to the tax demand raised, it is not probable that a liability has been incurred on the balance-sheet date; and it is not necessary to provide for the liability. A disclosure thereof by way of a note to the accounts would be sufficient. A note regarding the disputed tax liability can be explanatory in nature if the auditor is satisfied about the validity of the reasons of the company for contesting the liability.
>
> 17. In the instant case, even if in the profit and loss account a sum of Rs. 32,22,067 paid as customs duty had been deducted by virtue of sub-section (3) of section 32AB as it is a contingent liability and not a ascertained liability, it has to be added. In the instant case, as the said amount was not deducted, the question of adding would not arise. The assessing authority was justified in upholding the claim of the assessee who had not excluded the same from the profit of business or profession. Hence, the orders passed by the revisional authority as well as the appellate authority are not in accordance with law and they are required to be set aside, accordingly set aside. All the three substantial questions of law framed are answered in favour of the assessee and against the Revenue.
>
> *(emphasis added)*

21) Thus, in ***Jindal Aluminium Ltd.*** (supra), the Division Bench of Karnataka High Court has held that for the purpose of deciding the benefit under the provisions of Section 32AB of the Act, the Assessing Officer needs to take into consideration only the profits of business as stipulated under sub-section (3) of Section 32AB, which means the profits as reflected in the Accounts finalized as per Parts-II and III of VI Schedule to the Companies Act.

22) A similar provision exists in Section 115-J of the Act which has been interpreted by the Apex Court in ***Apollo Tyres Ltd.*** (supra) wherein it is held that the Assessing Officer does not have jurisdiction to go beyond the profits shown in the Profit and Loss Account, except to the extent provided in the Explanation to Section

115-J. The Division Bench of Karnataka High Court has applied same analogy to the provisions of Section 32AB of the Act and has held that the benefit under Section 32AB of the Act needs to be determined only on the basis of profits reflected in the Books of Accounts of the Company maintained as per the provisions of Part-II and III of VI Schedule of the Companies Act. In ***Commissioner of Income-tax Versus. Tamil Nadu Mercantile Bank Ltd.*** (supra) the same issue has been dealt with and it is held in paras-4 to 7 as under :-

> 4. The claim so made was not accepted by the Assessing Officer, who took the view that the limit of 20 per cent, of the profits of the business or profession as computed in the accounts of the assessee audited in accordance with Sub-section (5) of Section 32AB, as prescribed in Section 32AB(1)(ii) was to be ascertained with reference to the business income as per the provisions of the Income Tax Act and not with reference to the computation of the profit and computed in accordance with Schedule VI to the Companies Act. His view was upheld in appeal but reversed by the Tribunal on further appeal and, in our view, rightly so.
>
> 5. What has been done by the assessee is not strictly in accordance with the requirement of the statutory provision. Section 32AB(3) nowhere refers to the computation of the income under the provisions of the Income Tax Act. No such requirement can be imported into it. The view adopted by the Assessing Officer and the appellate authority would find no support whatever from any part of Section 32AB.
>
> 6. Section 32AB provides a benefit to the assessee. The benefit so provided is an incentive to an assessee, who deposits any amount in a development bank before the expiry of six months from the end of the previous year or before furnishing the return of his income, whichever is earlier. That incentive is also available if the assessee utilises any amount during the previous year for the purchase of any new ship, new aircraft, new machinery or plant, without depositing any amount in the deposit account with a development bank. The benefit is given by way of deduction, such deduction being allowed before the loss, if any, brought forward from earlier years, is set off under Section 72 of-
>
> > (i) a sum equal to the amount or the aggregate of the amounts, so deposited and any amount so utilised ; or
> >
> > (ii) a sum equal to twenty per cent, of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with Sub-section (5), whichever is less. The manner in which the profits of the business should be computed is

> dealt with in Sub-section (3), which, as noticed earlier, requires computation to be in accordance with the requirement of Parts II and III of Schedule VI to the Companies Act. The computation so made is to be increased by the aggregate of the amounts set out in Sub-clauses (i) to (vii) therein. It is thereafter to be reduced by any amount or amounts withdrawn from reserves or provisions if such amounts are credited to the profit and loss account. It is thus amply clear that it is the computation made in accordance with Sub-section (3) of Section 32AB, which is to be the basis for determining the twenty per cent, of the profits of the business for the purpose of Section 32AB(1)(ii).
>
> 7. **The computation of income under the provisions of the Income Tax Act is of no relevance for the purpose of determining the extent of benefit under Section 32AB(1) or (2).** The computation under the Income Tax Act is relevant after the ascertainment of the amount of the deposit and the twenty per cent, of the profits of the business calculated in accordance with Section 32AB(3), and the amount to be allowed in the computation under the Income Tax Act is the lower of the two figures and the deduction is to be allowed in the manner provided in Section 32AB(1) of the Act.
>
> *(emphasis added)*

23) In ***Carborandum Universal Ltd.*** (supra), it is held in paras-6 and 10 as under :-

> 6. Section 32AB does not require the profit for the purpose of Section 32AB(1) to be calculated in accordance with the provisions of the Income Tax Act. All that it provides is that the calculations should first be made in accordance with the Companies Act and the requirements more specifically required of Parts II and III of the Sixth Schedule to the Companies Act.
> There is, therefore, no scope at all for importing the concept of different heads of income found in the Income Tax Act, into the calculation of profit required to be made in terms of Section 32(3) of the Act which makes the calculations made in accordance with the Companies Act, the starting point for making the deductions and additions provided for in Section 32(3) after which the sum of 20 per cent, referred to in Section 32AB(1) is to be ascertained.
>
> 10. Having regard to the content of Section 32AB(3) and the scheme of the whole section, it is clear that it is the computation made in terms of Schedule VI of the Companies Act that has to be the starting point, and all the things included in that computation are required to be taken note of and not to be disregarded except to the extent specifically provided for in Section 32AB(3).

24) In ***Commissioner of Income-tax Versus. Macmillan India Ltd.*** (supra), it is held as under :-

> With regard to the second question of law, it is settled that the calculations required to be made for the purpose of Section 32AB of the Income Tax Act, 1961, are to commence with the figure representing the profits of the eligible business as computed in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act, 1956. From that figure the amount equal to the depreciation computed in accordance with Section 32(1) of the Income Tax Act, 1961, is to be deducted. After such deduction, that amount is to be increased by the aggregate of the amounts set out in Clauses (i) to (vii) of Section 32(3). A sum equal to 20 per cent of that amount is to be allowed as a deduction under Section 32AB(1)(ii). The determination of the profit required to be made in accordance with Parts II and III of Schedule VI to the Companies Act is required to be made after taking into account all the activities of the assessee governed by the Companies Act, as the profit and loss account required to be drawn up by a company must necessarily reflect all the income and all the expenditure incurred by the company in that year. Section 32AB does not require the profit for the purpose of Section 32AB(1) to be calculated in accordance with the provisions of the Income Tax Act. All that it provides is that the calculations should first be made in accordance with the Companies Act and the requirements more specifically required of Parts II and III of Schedule VI of the Companies Act. There is, therefore, no scope at all for importing the concept of different heads of income found in the Income Tax Act, into the calculation of profit required to be made, vide Carborandum Universal Ltd. v. CIT MANU/TN/1764/2003 : [2004]265ITR372(Mad) .

25) In ***South India Sugars Limited*** (supra), it is held in para-13 as under :-

> 13. In respect of the second question of law, learned Counsel on either side submitted and agreed that the issue is covered in favour of the assessee by the decision of this Court in the case of Commissioner of Income Tax v. Tamil Nadu Mercantile Bank Limited reported in MANU/TN/0640/2001 : [2002]255ITR205(Mad) and Carborandum Universal Limited v. Commissioner of Income Tax reported in MANU/TN/1764/2003 : [2004]265ITR372(Mad) , wherein this Court has held that the calculations required to be made for the purpose of Section 32AB of the Income Tax Act, 1961, are to commence with the figure representing the profits of the eligible business as computed in

> accordance with the requirements of Parts II and III of Schedule VI to the Companies Act, 1956. From that figure the amount equal to the depreciation computed in accordance with Section 32(1) of the Income Tax Act, 1961, is to be deducted. After such deduction, that amount is to be increased by the aggregate of the amounts set out in Clauses (i) to (vii) of Section 32(3). A sum equal to 20 per cent. of that amount was to be allowed as a deduction under Section 32AB(1)(ii). The determination of the profit required to be made in accordance with Parts II and III of Schedule VI to the Companies Act was required to be made after taking into account all the activities of the assessee governed by the Companies Act, as the profit and loss account required to be drawn up by a company must necessarily reflect all the income and all the expenditure incurred by the company in that year. Section 32AB does not require the profit for the purpose of Section 32AB(1) to be calculated in accordance with the provisions of the Income Tax Act. All that it provides was that the calculations should first be made in accordance with the Companies Act and the requirements more specifically required of Parts II and III of Schedule VI to the Companies Act. There was, therefore, no scope at all for importing the concept of different heads of income found in the Income Tax Act, into the calculation of profit required to be made.

26) In ***Commissioner of Income-tax Versus. Tirupattur Co-operative Sugar Mills Ltd.*** (supra), the Madras High Court has followed the judgment in ***Commissioner of Income-tax Versus. Tamil Nadu Mercantile Bank Ltd.***

27) *In* ***Deputy Commissioner of Income-tax Versus. United Nilgiris Tea Estate Co. Ltd.*** (supra) it has been held as under :-

> Section 32AB does not require the profit for the purpose of section 32AB(1) to be calculated in accordance with the provisions of the Income-tax Act. All that it provides is that the calculations should first be made in accordance with the Companies Act and the requirements more specifically required of Parts II and Iii of the Sixth Schedule to the Companies Act.
>
> Therefore there is no scope at all for importing the concept of different heads of income found in the Income-tax Act, into the calculation of profit required to be made in terms of section 32(3) of the Act which

> makes the calculation made in accordance with the Companies Act, the starting point for making the deductions and additions provided for in section 32AB after which the sum of 20 per cent referred to in section 32AB(1) is to be ascertained.

28) Thus, there appears to be a consistent view taken by different High Courts by relying on judgment of the Apex Court in ***Apollo Tyres Ltd.*** that the profits for the purpose of grant of benefit under Section 32AB of the Act can only be the one determined in accordance with Parts-II and III of Schedule-VI of the Companies Act. It has repeatedly held that Section 32AB does not require the profit to be calculated in accordance with the provisions of the Income Tax Act. There can be no two incomes, one for the purpose of Companies Act and another for the purpose of Income Tax Act for the purpose of applicability of provisions of Section 32AB. In our view, therefore the issue involved in the present Appeals is squarely covered by the judgments referred to above.

29) Reliance by Ms. Kanani on judgment of the Apex Court in ***Commissioner of Income-tax, Bombay Versus. Tasgaon Taluka S.S.K. Ltd.*** (supra) does not assist the case of the Revenue. The issue involved before the Apex Court was entirely different. The Apex Court has dealt with the issue of difference of amount between the minimum statutory price and additional purchase price as an element of profit or one of the components of profit. The judgment therefore has no relevance to the issue of interpretation of provisions of Section 32AB of the Act.

30) Reliance by Revenue on judgment of Kerala High Court in ***Parry Agro Industries Ltd.*** (supra) again does not assist the case of

the Revenue as the issue before the Kerala High Court was entirely different. The issue was whether the income from other sources such as rent, interest, sundry receipts etc. would also be taken into consideration for determining the amount of profit for determination of benefit under Section 32AB of the Act.

31) In our view, therefore the Assessing Officer has grossly erred in deducting an amount of Rs.78,86,857/- while computing the amount of profits of the Assessee for Assessment Year 1990-91. The Assessee was justified in claiming the benefit of deduction under Section 32AB of the Act on the basis of the amount of profit as reflected in the Profit & Loss Account prepared in accordance with Parts-II and III of the VI Schedule to the Companies Act. It is also seen that this method is consistently followed by the Assessee where the amount of additional sugarcane price paid after the end of the Financial Year is considered while determining profits of the following year. Therefore, though the amount of additional sugarcane price of Rs.78,86,857/- is not deducted from the amounts of profits for the Financial Year 1989-90 (Assessment Year 1990-91), the same has been deducted from the amount of profits for the following year. As can be seen from the narration of facts above, similar practice was followed during Assessment Years 1989-90 when Assessee paid additional sugarcane price of Rs.30,56,352/- which, though was claimed as an expenditure in the Assessment Year 1989-90, was deducted from the amount of profits in the subsequent year. There can thus be no revenue loss for the department. Though it may appear to an Assessing Officer while assessing accounts of a particular year that the Assessee is taking benefit by showing expenses of additional sugarcane price paid to farmers but hiding the same while computing

profits for the purpose of 20% benefit of deduction under Section 32AB, however the Assessee deducts the very same amount from profits of the subsequent year. Thus the 20% additional benefit received under Section 32AB in one year gets neutralized in the subsequent year. This pattern is followed on account of peculiar provisions of Section 32AB(3) of the Act which permits profits indicated in the Profit & Loss accounts finalized as per Parts II and III of the VI Schedule of the Companies Act for the purpose of computing the benefit under Section 32AB of the Act.

32) The question of law formulated while admitting the Appeal is accordingly answered in favour of the Assessee and against the Revenue. It is held that while computing the benefit under Section 32AB of the Act, the profit of the eligible business computed as per the requirement of Parts-II and III of Schedule-VI to the Companies Act can alone be taken into consideration and that therefore the additional sugarcane price paid in the month of October, 1990 could not have been deducted as expenditure while considering the profits for the purpose of grant of benefit under Section 32AB of the Act.

33) Consequently, the orders passed by the Assessing Officer, CIT(A) and ITAT to the above extent are set aside. The Appeal is accordingly **allowed.**

[SANDEEP V. MARNE, J.] **[CHIEF JUSTICE]**