

# TAX FLASH NEWS

10 February 2020



## Non-taxable income under a tax treaty cannot be reduced from book profits for the computation of MAT

Recently, the Delhi bench of Income-tax Appellate Tribunal (the Tribunal) in the case of IRCON International Limited<sup>1</sup> (the taxpayer) held that the taxpayer is not entitled to claim reduction in respect of non-taxable income under a tax treaty while computing book profits under the provisions of Minimum Alternate Tax<sup>2</sup>.

### Facts of the case

During the Assessment Year, the taxpayer excluded income earned from its project in Bangladesh, Malaysia and United Kingdom from the computation of MAT, on the ground that the income earned in foreign countries was not taxable in India under the tax treaty and consequently, the taxpayer was not obliged to pay tax under MAT on the said income.

The Assessing Officer (AO) observed that adjustment required to be done are specified in the provisions of Section 115JA of the Act and there is no provision under the said section to reduce book profit from the tax treaty. The AO observed that similar adjustments were made in previous AY which were confirmed by the Commissioner of Income-tax (Appeals) [CIT(A)]. The CIT(A) upheld the order of the AO.

### Tribunal's decision

The Tribunal followed the order of CIT(A) wherein it was held as follows:

- The provisions of Section 115JA of the Act override all other provisions of the Act, since sub-section (1) thereof begins with the 'non-obstante clause'.

- The decision of the Madras High Court in the case of VRSRM Firm and others<sup>3</sup> relied on by the taxpayer was distinguishable on facts of the present case. In that case, the High Court was examining the legal status of the tax treaty when it was held that tax treaties have to be considered to be mini legislations containing in themselves all the relevant aspects or features which are at variance with the general taxation laws of the respective countries. The observations of the High Court were in relation to the computation of 'total income' under the provisions of the Act, taking into consideration the provisions of the relevant tax treaty.
- None of the tax treaties provide for computation of book profit under the provisions of Section 115JA of the Act. For this reason alone, as held by the High court, the basic tax laws in force in the country (Section 115JA of the Act) will get attracted since there was no specific provision in the tax treaty as regards the computation of book profit for the purpose of levy of MAT.
- Perusal of Section 115JA of the Act indicates that none of the clauses (i) to (ix) of the Explanation thereto provide for reduction in respect of the income which may be exempt by virtue of the application of the tax treaty.
- The Supreme Court in the case of Apollo Tyres Limited<sup>4</sup> have held that the book profit as computed from the books of accounts maintained in accordance with the Companies Act is sacrosanct and it can be adjusted only for making increases and reductions as specifically

<sup>1</sup> IRCON International Ltd v. DCIT - ITA No. 977/Del/2010 (AY 2004-05) – Taxsutra.com

Note – The Tribunal in this decision has dealt with several other issues. However, this flash news only deals with the issue of applicability of MAT provisions with respect to the income covered by the tax treaty

<sup>2</sup> Under Section 115JA of the Act

<sup>3</sup> CIT v. VRSRM Firm and others [1994] 208 ITR 400 (Mad)

<sup>4</sup> Apollo Tyres Limited v. CIT [2002] 255 ITR 273 (SC)

provided in the Explanation to the Section 115JA. It has been categorically held that apart from the adjustment as provided in the Explanation, no adjustments can be made to the book profit as per the Companies Act.

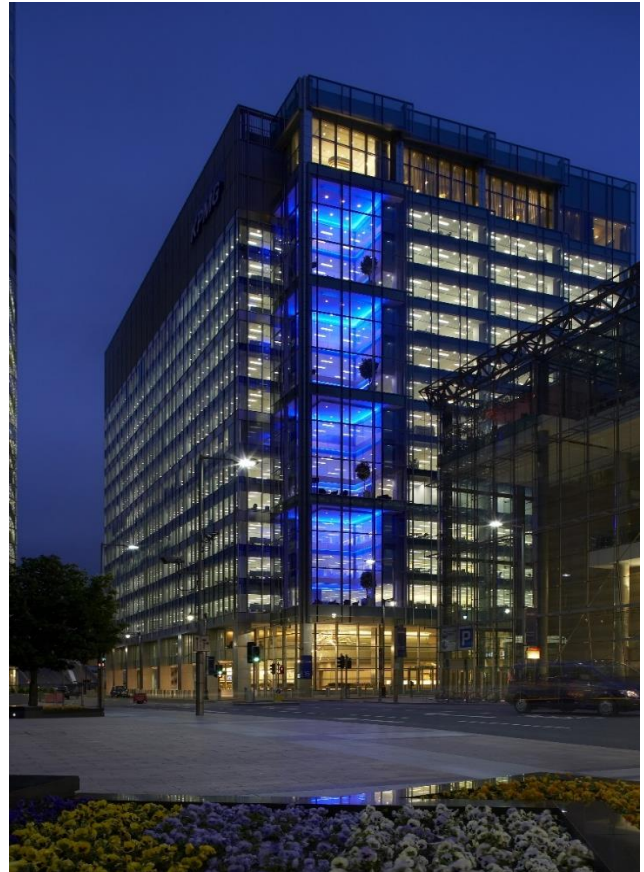
- The exclusion of income under the tax treaty is nowhere provided in the said Explanation. If it were the intention of the legislature to provide reduction in respect of the income under the tax treaty, it would have been specifically provided in the said Explanation to the Section 115JA of the Act.

## Our comments

The issue with respect adjustments relating to items which are not covered in the addition and deletions provided in the provisions of MAT has been a matter of debate before the Courts/Tribunal.

The Supreme Court in the case of Apollo Mills as well as the Tribunal in various cases<sup>5</sup> have held that when a company prepares its profit and loss account as per the Companies Act and the financial statements are placed at its annual general meeting, the AO cannot tinker with such accounts or go behind the profit shown in the profit and loss account, except for certain additions/deletions, as provided for under the section itself.

The Tribunal in the present case has held that the exclusion of income under the tax treaty is nowhere provided in MAT provisions. If it was the intention of the legislature to provide reduction in respect of the income under the tax treaty, it would have been specifically mentioned in the Explanation to Section 115JA of the Act.



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<sup>5</sup> DCIT v. Railtel Corporation of India Ltd (ITA No 2743/Del/2016), Tata Realty & Infrastructure Ltd v. PCIT (I.T.A. Nos. 7135, 7136/Mum/2017 & 7137/Mum/2018), Cash Edge India Private Ltd v. ITO (ITA No. 64/Del/2015), Forever Diamonds Pvt. Ltd v. DCIT (ITA No.5720/Mum/2011)

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