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Friday Tax Alert

If the taxpayer has not commenced business and has no taxable income, then the provisions relating to Specified Domestic Transactions (SDTs) and concessional tax rates under Section 115BAB are not applicable: Delhi ITAT

Brief Summary:

In a landmark decision dated September 3, 2025, the Delhi Bench of the Income Tax Appellate Tribunal (ITAT) ruled in favour of the taxpayer and its group entities, quashing transfer pricing (TP) adjustments and rejecting the application of Section 115BAB. The Delhi ITAT held that since the taxpayer had not commenced business and had no taxable income, the provisions relating to Specified Domestic Transactions (SDT) and concessional tax rates under Section 115BAB were not applicable.

FACTS OF THE CASE:

1. The taxpayer had received loans from its Associate Enterprises (AEs) - Avaada Energy Pvt. Ltd. (AEPL) and Viraj Solar Maharashtra Pvt. Ltd. (VSMPL). The Transfer Pricing Officer (TPO) noted that no interest was charged on the loan from AEPL and that the interest paid to VSMPL was below the arm's length rate. The TPO alleged that the holding company was shifting profits to its subsidiary, which was subject to a lower tax regime and proposed an ALP adjustment of INR 9.88 lakh. This included INR 8.75 lakh for interest shortfall on the VSMPL loan and INR 1.13 lakh for the AEPL loan.
2. The Revenue contended that the taxpayer's AEs extended capital without charging interest, thereby earning less than ordinary profits. Invoking Section 115BAB, the TPO argued that the concessional tax regime incentivised profit shifting. The interest rate was benchmarked using the marginal cost of lending plus a 425 basis point margin, arriving at 11.311%.
3. The Dispute Resolution Panel (DRP) upheld the TPO's findings, stating that even if the taxpayer did not claim the benefit of Section 115BAB due to losses, the provision still applied within the broader framework of the Income Tax Act. The DRP maintained that adjustments were valid to reduce the excess loss claimed.
4. The taxpayer argued that it had not commenced operations during the year under consideration; all expenses were capitalised as work-in-progress; no revenue was earned; Section 115BAB applies only when income is earned and the concessional rate is opted for; TP adjustments based on hypothetical profit shifting were unjustified in a pre-operational phase. The taxpayer emphasised that the loans were short-term and partially repaid and interest was paid to VSMPL for only 32 days. No interest was paid to AEPL and the Company had not benefited from any tax arbitrage.

FINDINGS & DECISION OF ITAT:

The ITAT ruled that the taxpayer had not commenced business and had no taxable income, rendering the provisions of Section 115BAB and SDT inapplicable. The ITAT held that the

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concept of profit shifting does not arise when no profits exist and that TP adjustments based on such assumptions were invalid.

Avaada Mhkhangaon Private Ltd [TS-519-ITAT- 2025(DEL)-TP]

No TP adjustment to be added to book profits u/s 115JB: ITAT

Brief Summary:

While computing book profits under section 115J/115JB, the Assessing Officer, cannot go beyond the net profit shown in the profit and loss account prepared in accordance with the Companies Act, save for the adjustments expressly provided in the Explanation to the section. Further, the transfer pricing adjustments do not fall within the ambit of Explanation 1 to section 115JB(2).

FACTS OF THE CASE:

1. Innovative Textiles Limited filed its return of income for the Assessment Year 2017-18, declaring a business loss of INR 8,54,00,730 and book profits under section 115JB of INR 93,55,782. The case was referred to the Transfer Pricing Officer (TPO) for examining the international transactions entered into with associated enterprises.
2. The principal transaction under review was the purchase of cotton amounting to INR 27,14,55,905 from its associated enterprise. The TPO, after carrying out a benchmarking analysis, proposed a transfer pricing adjustment of INR 84,95,443. The Assessing Officer, while completing the final assessment pursuant to the directions of the Dispute Resolution Panel (DRP), incorporated this adjustment in the regular computation of income, thereby reducing the returned business loss to INR 7,69,05,287.
3. In addition, the AO also added the transfer pricing adjustment to the book profits while determining liability under section 115JB. Aggrieved by these adjustments, the assessee preferred an appeal before the Income Tax Appellate Tribunal (ITAT).
4. The appellant, argued that the addition of a transfer pricing adjustment to book profits was beyond the scope of section 115JB. It was submitted that the law, as settled by the Supreme Court in the case of *Apollo Tyres Ltd. v. CIT* (255 ITR 273), clearly restricts the Assessing Officer from altering the net profit prepared under the Companies Act except to the extent of adjustments specifically provided in the Explanation to section 115J/115JB.
5. It was further pointed out that the ITAT, Delhi Bench, in the case of *Cash Edge India Pvt. Ltd.* (ITA No. 64/Del/2015) had already adjudicated on an identical issue and held that transfer pricing adjustments cannot be added back while computing book profits. Reliance was also placed on judicial precedents, including *Malayalam Manorama Co. Ltd.* (300 ITR 251) and *DCIT v. Bisleri Sales Ltd.* (151 TTJ 285). The appellant stressed that there was no allegation by the AO of any irregularity in the preparation of accounts under the Companies Act and, therefore, no justification existed for any such adjustment. Based on these submissions, the appellant urged the Tribunal to direct the deletion of the transfer pricing addition from the MAT computation.

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FINDINGS & DECISION OF ITAT:

- ✓ The Tribunal held that the controversy is squarely covered by binding judicial precedents. It observed that the Hon'ble Supreme Court in *Apollo Tyres Ltd. v. CIT* (255 ITR 273) has categorically held that the Assessing Officer, while computing book profits under section 115J/115JB, cannot go beyond the net profit shown in the profit and loss account prepared in accordance with the Companies Act, save for the adjustments expressly provided in the Explanation to the section. The Tribunal further noted that in *Cash Edge India Pvt. Ltd. (ITA No. 64/Del/2015)*, the Delhi Bench had applied this principle and specifically held that transfer pricing adjustments do not fall within the ambit of Explanation 1 to section 115JB(2).
- ✓ In the present case, there being no allegation of any defect in the preparation of accounts, the action of the Assessing Officer in adding the transfer pricing adjustment of INR 84,95,443 to the book profits was held to be without authority of law. Accordingly, the appeal was and the said adjustment was directed to be excluded from book profit computation under section 115JB.

Innovative Textiles Limited [TS-560-ITAT-2025(DEL)-TP]

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