



Preface

In the case of every Assessee, being the company covered as per section 115JB of the Act, two parallel computations are contemplated under the provisions of the Income-tax Act, 1961 (for brevity 'the Act'). One is the computation of total income in accordance with the normal provisions of the Act and, another is the computation of book profit as stipulated as per section 115JB of the Act. Apropos to this, if the income-tax payable on the total income is less than eighteen and one-half per cent of book profit, then the book profit so computed shall be deemed to be total income, and accordingly the Assessee shall be liable to pay tax at the rate of eighteen and one-half per cent thereon. And such tax shall be increased by Surcharge (as per applicable rate) and Health and Education Cess.

While presenting the Budget (No. 2) 2019, the Hon'ble Finance Minister Nirmala Sitharaman has further extended the benefit of reduced corporate tax rate @ 25%, which is applicable to the companies having turnover or gross receipts up to INR 400 Cr. in the previous year 2017-18. As per the data of finance ministry, 99.3% of the companies will take the advantage of this reduced rate. Since the gap of 25% and 18.5% has been reduced against the earlier gap of 30%/29% and 18.5%, thus more companies would now be falling under the purview of MAT provisions of the Act. Also, since the above amendment is applicable for the financial year 2019-20 and the tax is required to be paid through advance tax during the previous year in which income is earned, thus it is a good time to analysis the MAT provisions during financial year instead of at the filing of income tax return.

Finance Act, 2017 has amended the MAT provisions of the Act by providing the framework for computation of book profit in case of the Companies, which are adopting Ind-AS. Therefore, such companies are required to analyse the computation of book profit by bearing in

mind the amended MAT provisions in the year in which Ind-AS first time adopted and thereafter.

Further, sometimes the Assessee does not compute at all or sometimes, the computation is not prepared by following all the MAT adjustment to the tax liability as per section 115JB under an impression that ultimately, it is liable to pay tax as per the normal provisions of the Act. Also, if the return of income of the Assessee is selected under assessment proceeding and any addition is made by the Income-tax Officer (hereinafter referred to as 'the AO') while computing the book profit as per section 115JB, the said AO also initiate the penalty proceeding in pursuance to completion of assessment proceeding. However, for dropping the penalty proceeding, the Assessee plea that the addition is made in repercussion to the computation of book profit, in the meanwhile the Assessee is ultimately liable to pay tax under the normal provisions of the Act. Thus, the mentioned addition in book profit does not lead to tax evasions and the same cannot fall under the scanner of concealment of particulars of income; accordingly, penalty proceeding should be dropped in such cases.

To defeat the aforementioned contention of the Assessee and to compute the tax which is sought to be evaded, the statute was amended vide the Finance Act, 2015 with effect from assessment year 2016-17 by bringing out a formula in Explanation 4 to section 271 of the Act. Further, the penalty provisions were amended by the Finance Act, 2016 with effect from assessment year 2017-18 by inserting a new section 270A of the Act. In pursuance to new section 270A of the Act, the things have been moved from concealment of income to under-reporting and misreporting of income. Section 270A(2) of the Act defines the under-reporting of income as, inter alia, the difference between the deemed total income assessed/reassessed calculated by the AO and the deemed total income determined as per processed return under section 143(1) of the Act or the assessment/reassessment is reducing the loss determined as per processed return under section 143(1) of the Act or the assessment/reassessment is converting the loss determined as per processed return under section 143(1) of the Act into income. Thus, under the stringent provisions of section 270A of the Act, penalty will be imposed irrespective of the fact that the addition is made in book profit and the ultimate liability to pay tax fall under normal provisions of the Act or vice versa, unless

the addition is proved as not being as the under-reporting of income as per section 270A(6) of the Act.

Further, the aforementioned formula as per Explanation 4 to section 271, also mentioned in section 270A(3) of the Act, whereby, the intention was to calculate aggregation of the under-reported income, as per normal provisions of the Act and as per MAT provisions, but no aggregation if the under-reported income, in both the provisions, is on the same issue. By giving this, it is apposite that an Assessee must prepare the computation of book profit and compute the tax liability as per the provisions of section 115JB of the Act, which is in compliance to the provisions of the Act, otherwise any addition in book profit computation is resultant, to face the draconian penalty provisions of the Act. Therefore the judgments of Supreme Court in case of CIT v. Nalwa Sons Investment Ltd. [2012] 21 taxmann.com 184 and in case of CIT v. Reliance Petroproducts (P.) Ltd. would not be helpful now.

Coming back to the MAT provisions of the Act, it is trite law that section 115JB of the Act is self-contained code, which needs to be construed strictly. Thus the computation of book profit is required to be prepared strictly in accordance with section 115JB of the Act only. There are various judgments of the Tribunal and Hon'ble Courts, which interpret the provision of section 115JB of the Act with reference to the applicability, delineated adjustments, power of the AO to tinker the profit as per statement of profit and loss and taxable or non-taxable transactions. The captivating thing is this that the judgments are having conflicting views as well, either with same facts or with minute change in facts. These judgments are discussed in this book to help the readers to pick and apply the helpful judgment based upon the facts in the available case.

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