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

INCOME TAX APPEAL NO.775 OF 2016

Pr.Commissioner of Income Tax-14 … Appellant

V/s.

New Holland Fiat (India) Pvt. Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : DECEMBER 04, 2018.

P.C.:-

1. Revenue has filed this appeal against the judgment of Income Tax Appellate Tribunal dated 31st July, 2015. Following questions are presented for our consideration.

> "a) Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the disallowance of warranty provision made by AO while computing book profit Under section 115JB of the IT Act 1961?
> b) Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the disallowance of warranty amounting to Rs.4,91,77,891/- made by the AO while computing the deduction under section 115JB

of the IT Act 1961?"

2. The issue pertains to the disallowance of warranty provision made by the Assessing Officer while computing the book profit under Section 115JB the Income Tax Act, 1961 ("the Act" for short). We notice that the Tribunal in the impugned judgment has relied on the decision in case of this very assessee for earlier assessment years. A copy of the judgment passed by the Tribunal in the earlier assessment year is made available to us by the counsel for the Revenue. He stated that the Revenue had filed appeal against the said judgment also. However, the appeal was dismissed for non-removal of office objections.

3. Notwithstanding the manner of disposal of the Revenue's earlier appeal, we have perused the materials on record with the assistance of learned counsel for the Revenue. We notice that the Tribunal in the earlier judgment in a detailed consideration held that the warranty liability was ascertained liability and therefore, could not have been added while computing the assessee's book profit. In the process, the Tribunal referred to and relied upon the

judgment of Supreme Court in case of **Rotork Controls India Private Limited**[1]. The Tribunal also placed reliance on the decision of the Gujrat High Court in case of **Inox Leisure Limited**[2] and the decision of Himachal Pradesh High Court in case of **H P Tourism Development Corporation Ltd.**[3]. In the concluding portion the Tribunal had in the earlier year observed as under :

> "3.3 We have heard the rival submissions and perused the material before us. We are aware that Section 115JB of the Act was incorporated in the statute with a specific purposes and it deals with special provision for payment of tax by certain companies. Explanation to section 2 provides the list of the items that are to be included or excluded while computing book profit. As per explanation the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities have to be included while computing book profit. In other words if ascertained liabilities are there same cannot be added while computing alternate minimum tax. In the case under consideration, provisions made under the head gratuity, warranty and leave encashment are not contingent/unascertained and therefore same cannot be adjusted while computing book-profit u/s. 115JB of the Act.
>
> We find that in the case of Indian Oil Tanking Ltd. (supra) Mumbai Tribunal has held that provision for warranty is an ascertained liability and cannot

1 314 ITR 62
2 84 CCH 70
3 35 taxmann.com 450

be added back for computing book profit u/s. 115JB of the Act. Dealing with the issue of provision for gratuity to be considered for MAT purposes, Hon'ble Gujarat HC in the case of Inox Leisure Ltd.(supra) has held that addition of gratuity as unascertained liability under clause (c) to explanation 1 to section 115JB was not warranted. We further find that the Hon'ble HP High Court has decided the issue, of leave encashment with reference to the computation of book profit, in favour of the assessee. In that matter AO had held that provision towards leave encahsment of employees was unascertained liability and added it book profit. FAA upheld his order. In the appeal filed by the assessee, Tribunal reversed his order. Dismissing the appeal filed by the Revenue, Hon'ble High Court held that the Tribunal had rightly held that provision for leave encashment could not be considered contingent liability for computing book-profit u/s 115JB of the Act. Respectfully following the above judgments of the Hon'ble High Courts and the decision of coordinate Bench we decide Grounds of appeal no.2,3 and 4 against the AO."

4. It can thus be seen that the warranty was an ascertained liability and allowable deduction. No question of law arises. Tax Appeal is dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

....