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T.C.A.No.636 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.03.2026

Pronounced on :20.03.2026

CORAM

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**T.C.A.No.636 of 2016
and
C.M.P.No.13244 of 2016**

M/s PVP Corporate Parks Pvt.Ltd.,
KRM Centre, 9th Floor,
2, Harrington Road, Chetpet,
Chennai 600 031,
PAN:AAACS3101P

..Appellant/Appellant

/versus/

The Deputy Commissioner of Income Tax,
Corporate Circle-5(2)
Chennai 600 034.

..Respondent/Respondent

Tax Case Appeal has been filed 260A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, Chennai Bench "C",
Dated 01.08.2016 in ITA No.497/Mds/2018.

For Appellant :M/s R.Sivaraman

For Respondent :Mrs.V.Pushpa, Senior Standing Counsel



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JUDGMENT

(Judgment was made by Dr.G.JAYACHANDRAN,J.)

Tax Case Appeal is filed by the Assessee on being aggrieved by the concurrent finding of the Income Tax Appellate Tribunal (ITAT), confirming the order of the Commissioner of Income Tax(Appeal)-3 preferred against the assessment order dated 29/03/2013.

2. The Appellant/Assessee, a Private Limited Company is engaged in the business of leasing and renting of amenities and buildings. For the Assessment Year 2010-2011, the Appellant filed income tax return on 06.10.2010 declaring a loss of Rs.4,88,52,174/- under the normal computation of income and a loss of Rs.1,01,69,416/- as per the books. The return was selected for scrutiny and notice under Section 143(2) was issued on 29.08.2011. On completion of enquiry, it was found that the Assessee Company had sold its fixed asset and derived a capital profit of Rs.32,11,24,002/-, as detailed below:-

Property	Amount of profit on sale of properties
100 ft. Road, Saligramam, Vadapalani	30,18,74,253
KRM Centre, No.2, Harrington Road, Chetpet	1,92,49,749
Total Profit	32,11,24,002



3. The capital profit has been directly absorbed in its balance sheet without routing it through the Profit and Loss Account. Therefore, alleging that the book profit of the company has been under stated by direct absorption in the balance sheet and has not been routed through the Profit and Loss Account, the Assessing Officer passed an order on 29.03.2013, assessing the Income Tax, after completing the rework of the book profits under Section 115JB of the Income Tax Act, 1961 and the capital loss under normal computation as below:-

I. Consideration received for Vadapalani Property	Rs.140,00,00,000
Cost excluding unproved additional construction	Rs.100,62,26,490

	Rs.39,37,73,510
Less:Consideration towards furniture & fittings, electrical fitting and plant & machinery	Rs. 6,42,30,910

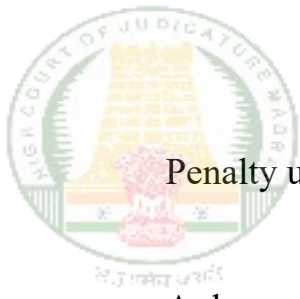
Profit on sale of Vadapalani Property	Rs. 32,95,42,600

II. Consideration received for Harrington Road Property	Rs. 4,00,00,000
Less:Selling Expenses-Brokerage	Rs. 9,50,000
Less:Cost including improvement	Rs. 2,67,69,474

	Rs. 1,22,80,526
Less:Consideration towards Furniture & Fittings	Rs. 6,36,609

	Rs. 1,16,43,917
Total profit on sale of properties (I+II)	Rs. 34,11,86,517
Book Profit before tax as per the P&L Account audited by the Statutory Auditor (-)	Rs. 1,01,69,416

Add: Profit on sale of properties	Rs.34,11,86,517
Reworked book profit	Rs.33,10,17,101



Penalty u/s 271(1)(c) is initiated separately.

A demand notice under Section 156 of the Income Tax Act, 1961 issued to the Assessee as per the above calculation.

4. Being aggrieved, the Assessee filed Appeal before the Commissioner of Income Tax (Appeals)-3, and raised the following grounds:

“(1)The learned Assessing Officer erred in making an addition of Rs.34,11,86,517/-

(being capital profits transferred directly to capital reserve (actual amount transferred being Rs.32,11,24,002/-)

(2)The learned assessing officer erred in adopting a sum of Rs.34,11,86,517/- in place of Rs.32,11,24,002/- which was actually credited to the capital reserve.

(3)The learned Assessing Officer erred in not allowing the cost of improvement of Rs.3.10 crores in the computation of book profits placing reliance on the statement recorded from the buyer of the property and telephonic conversation with the NHAI authorities without granting opportunity of cross examination requested by the appellant and contrary to the stand taken by him, by not making any disallowance in the normal computation.”



5. After considering the material placed by the Assessee and the grounds of the appeal, the Commissioner of Income Tax (Appeals)3, Chennai, dismissed the appeal vide order dated 26.02.2016 holding that the Assessing Officer has rightly recomputed book profit under Section 115 JB by bringing profit, on sale of assets to Profit and Loss Account. Thus, the additional of Rs.34,11,86,517/- was confirmed. Further appeal before the Income Tax Appellate Tribunal in I.T.A.No.497/Mds/2016 challenging the order of the CIT (Appeals) 3, dated 26.02.2016 in ITA No.104/CIT(A)-3/2013-14 passed under Section 143(3) r/w Section 250(6) of the Income Tax Act, 1961, came to be dismissed confirming the order of the First Appellate Authority and confirming the Assessment Order passed by the Assessing Officer.

6. This Court has admitted the appeal for hearing on framing the following Substantial Question of Law:-

(1)Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the capital profit on the sale of the Fixed Assets of the Company cannot be taken directly to the Reserves & Surplus in the Balance Sheet and the same has to be routed through the Profit & Loss Account to arrive at the correct book profits u/s 115 JB of the Act?



(2) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in reworking the profits u/s 115 JB as Rs.34,11,36,517/- on the ground that the profit on the sale of Fixed Assets credited to the capital reserves by the Appellant are to be treated as normal profit for arriving at book profits u/s 115 JB?

7. The learned counsel for the appellant, as a preliminary ground, at the outset, claimed that the order of Tribunal suffers lack of reasoning. The grounds of appeal raised before him were not answered by the Tribunal. That apart, the learned counsel submitted that the assessee is involved in the trade of leasing and renting of buildings and amenities. The sale of fixed asset was rightly brought in the Balance Sheet as part of reserves and surplus of the assessee company for the financial year ending 31.03.2010. The same was disclosed in the Audit Report. As per the Companies Act, Schedule VI, Part II the amount of income derived from investment or in respect of business transaction alone need to be routed through Profit and Loss Account. Therefore, the Tribunal erred by holding that there is no provision in the Companies Act to directly absorb any Profit and Loss in the Balance Sheet, other than routing it through the Profit and Loss Account of the assessee.



8. The learned counsel, referring to Section 115 JB of the IT Act, submitted that, under this Section, every company has to prepare its Profit and Loss Account in accordance with the provisions of Part II and Part III of Schedule VI of the Companies Act, 1956. Receipt in respect of sale of land and building will not constitute revenue relating to the working of the company and also cannot be treated as a part of any business transactions of the company. Therefore, the profit on sale of land and building will not be required to be disclosed in the Profit and Loss Account of the company.

9. Per contra, the learned Senior Standing Counsel representing the Revenue, submitted that the Assessee company involved in the business of leasing and renting buildings, had sold its fixed assets. Receipt in respect of sale of land and building will constitute revenue relating to the business transactions of the company. The capital gain over the said transaction ought to be routed through its Profit and Loss Account as per the Accounting Standard as well as in terms of the provisions of Companies Act and Income Tax Act. This has been recorded expressly in the Auditor's Report of the company. By not auditing the profit on sale of fixed assets of Rs.32.11 crores to Profit and Loss Account and not providing for Income Tax liability of Rs.5.32 crores, the Assessee had under



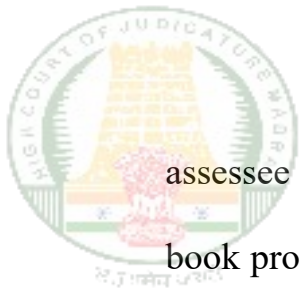
stated the profit of the year by Rs.26.82 crores. Crediting the capital profits to reserves and surplus directly instead of routing through the Profit and Loss Account, the assessee had deviated the accounting policy. This is in violation of Accounting Standard (AS) 10 mandated by Institute of Chartered Accountants of India (ICAI). To arrive at the correct book profits under Section 115JB, the sale of fixed assets has to be necessarily routed through profit and loss account. The explanation to Section 115JA defines the word, “book profits” which means “net profit” as shown in the Profit and Loss Account of the previous year. Explanation to Section 115 JB makes it clear that unless the profit made on sale of the land and building is brought into the Profit and Loss Account, the net profit cannot be arrived at. By including the profit of sale of fixed asset directly in Reserves & Surplus in the Balance Sheet, the assessee had understated the profit of that year.

10. The learned Senior Standing Counsel for the Income Tax Department further submitted that the dictum of *Appollo Tyres Ltd., v. CIT* reported in [2002 (255) ITR 273] and *The Commissioner of Income Tax, Delhi v. HCL Comnet Systems & Services Ltd., reported in [(2008 (305) ITR 409 (SC))]*, on facts, are distinguishable from the facts of the case in hand. Section 115 J considered in the Apollo Tyres case (cited supra), was later by way of amendment got supplemented by Sections 115JA and 115JB. The proviso to Section 115JB and



the Explanation thereto alone are applicable to the instant case. A reading of these provisions is sufficient to hold that the Assessee is not entitled for the Minimum Alternate Tax (in short “MAT”) benefit as contemplated under Section 115JA. In *Dynamic Orthopaedics (P) Ltd., v. Commissioner of Income tax, Cochin, Kerala* reported in [(2010)190 Taxman 288(SC)], the Apex Court has held that Section 115 J does not make any distinction between Private and Public Limited Companies. By a deeming fiction, the provisions of Parts II and III of Schedule VI to the Companies Act, are incorporated. If a Company is a MAT company for the purpose of Section 115J, it has to prepare the Profit and Loss Account in accordance with Part II and Part III of Schedule VI only. Therefore, without routing through the Profit and Loss Account, the receipt on sale of fixed asset cannot be taken directly under Reserves and Surplus in the balance sheet. Thus, the understatement of book profits found and after reworking the Book Profits as per Section 115JB the assessee was ordered to pay a Sum of Rs.7,93,29,890/- as tax.

11. In *Dynamic Orthopaedics (P) Ltd case*(cited supra), the Hon'ble Supreme Court upheld the contention of the Revenue that the assessee Company has to prepare its profit and loss account only in accordance with Part II and Part III of Schedule VI to Companies Act, 1956. The reference to Larger Bench was on the point of allowing the claim of depreciation made by the



assessee as per the Income Tax Rules, 1962, for the purpose of computing the book profit under Section 115 J of the Income Tax Act and the distinction made between Public and Private Limited Company in *Malayala Manorama Co.Ltd., v. Commissioner of Income Tax* reported in [(2002) 169 Taxman 471(SC)] for the purpose of Section 115 J of the Income Tax Act. After the disposal of the case by the Larger Bench on 08.08.2019 citing circular No.17 of 2019, the same was reopened for further hearing and clarification. The order of reference yet to be answered by the Larger Bench of the Hon'ble Supreme Court. In any event, the point of reference to the Larger Bench has lost its relevance, in view of Amendment to Section 115J and the consequential circular by Central Board of Direct Tax (in short "CBDT").

12. Heard the submissions and records perused.

13. The cardinal knot in this case is the mechanism adopted by the Assessee/Appellant in computing its book profits. The Assessee company had sold two of the assets during the month of May 2009 and March 2010 which falls in the Assessment Year 2010-2011. The first property consists of 90 grounds along with building, equipments, fixtures, plant and machineries for a consideration of Rs.140,04,00,000/-(Rupees one hundred forty crores and four



lakhs only) on 19.05.2009. The second property consists of 8000 sq.ft., of built up area together with 1437.31 sq.ft of undivided share of land, 4 numbers of car park space, 3 numbers of open to sky car park and other amenities for Rs.4,00,00,000/- on 31.03.2010. These two properties of the Assessing company engaged in leasing and renting were its assets, earning rental income. On the perusal of the balance sheet of the assessee company for the relevant year ending 31st March 2010, we find, the total sale consideration of the fixed asset is shown as cash from investment activities. In their notes on account they have declared that the profit/loss on sale of fixed asset are included in Reserves & Surplus in the balance sheet being capital account transactions. In this regard, the Report of the Statutory Auditor gains significance. In the said report, it is observed that the deviation in the accounting policy and its impact is to understate profit.

14. The relevant portion of the Statutory Auditor's report are extracted as below:-

“(iv)In our opinion, the balance sheet, profit and loss account and cash flow statement dealt with by this report comply with the accounting standards referred to in sub-section (3C) of Section 211 of the Companies Act, 1956 except for the change in accounting policy for including profit on sale of fixed assets Rs.32.11 crores directly in Reserves & Surplus in Balance Sheet instead of through Profit and Loss Account as detailed in



paragraph 4(vi)(a) below.

(v)....

(vi)in view of

(a)not crediting the profit on sale of fixed assets Rs.32.11 crores to profit and loss account and not providing for income tax liability of Rs.5.29 crores and the net impact of this is to understate profit for the year by Rs.26.82 crores

15. Though it is contented by the Learned Counsel appearing for the Appellant/assessee that the deviation is in tune with the Accounting Standard and as per Part II and Part III of Schedule VI in the Companies Act read with Section 115 JB of the IT Act, the reading of these provisions proves otherwise. The provisions of these Acts does not enable the assessee to bring its profit from fixed asset directly into Reserves & Surplus Account without routing through profit and loss account, it being a gain through sale of asset used in the business for earning income. For seeking the benefit of MAT first the assessee has to prepare its profit and loss account and ascertain its net profit. Only thereafter, the eligibility to opt for MAT will arise. This position of law is affirmed by the Supreme Court in Dynamics Orthopaedics (P) Ltd case cited supra.



16. For easy reference, the relevant portions of Section 115 JA and 115

JB with its explanation are extracted below:-

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Deemed income relating to certain companies

115JA-(1) Notwithstanding anything contained in any other provisions of this Act, where in the case of an assessee, being a company, the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 but before the 1st day of April, 2001 (hereafter in this section referred to as the relevant previous year) is less than thirty per cent of its book profit, the total income of such assessee chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(2) Every assessee, being a company, shall, for the purposes of this section prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956):

Provided that while preparing profit and loss account, the depreciation shall be calculated on the same method and rates which have been adopted for calculating the depreciation for the purpose of preparing the profit and loss account laid before the company at its annual general meeting in accordance with the provisions of section-210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under the Act, the method and rates for calculation of depreciation shall correspond to the method and rates which have been adopted for calculating the depreciation for such financial year or part of



such financial year falling within the relevant previous year.

Explanation.—For the purposes of this section, "**book profit**" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

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

(b) the amounts carried to any reserves by whatever name called; or

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

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies;

(g) the amount or amounts set aside as provision for diminution in the value of any asset,

if any amount referred to in clauses (a) to (g) is debited to the profit and loss account, and as reduced by,—

(i) the amount withdrawn from any reserves or provisions if any such amount is credited to the profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 ³²[but ending before the 1st day of April, 2001] shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said



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amount was withdrawn) under this Explanation; or

(ii) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account; or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,— (a) the loss shall not include depreciation; (b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or]

(iv) the amount of profits derived by an industrial undertaking from the business of generation or generation and distribution of power; or

(v) the amount of profits derived by an industrial undertaking located in an industrially backward State or district as referred to in 34[subsection (4) and sub-section (5) of section 80-IB], for the assessment years such industrial undertaking is eligible to claim a deduction of hundred per cent of the 35[profits and gains under sub-section (4) or sub-section (5) of section 80-IB]; or

(vi) the amount of profits derived by an industrial undertaking from the business of developing, maintaining and operating any infrastructure facility 36[as defined in the Explanation to sub-section (4) of section 80-IA and subject to fulfilling the conditions laid down in that subsection]; or

(vii) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes



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equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, “net worth” shall have the meaning assigned to it in clause (ga)37 of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);

(viii) the amount of profits eligible for deduction under section 80HHC, computed under clause (a), (b) or (c) of sub-section (3) or sub-section (3A), as the case may be, of that section, and subject to the conditions specified in sub-sections (4) and (4A) of that section;

(ix) the amount of profits eligible for deduction under section 80HHE, computed under sub-section (3) of that section.]

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

Special provision for payment of tax by certain companies.

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012 is less than eighteen and one-half percent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of incometax at the rate of eighteen



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and one-half per cent.

(2) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI of the Companies Act, 1956 (1 of 1956) :

Provided that while preparing the annual accounts including profit and loss account,—

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956)

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956), which is different from the previous year under this Act—

- (i) the accounting policies;
- (ii) the accounting standards adopted for preparing such accounts including profit and loss account;
- (iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation-1.—For the purposes of this section, “book profit” means the net profit as shown in the profit and loss



account for the relevant previous year prepared under sub-section (2), as increased by—

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

(b) the amounts carried to any reserves, by whatever name called other than a reserve specified under section 33AC; or

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

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed ; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account, and as reduced by,

(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under



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this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or

(ii) the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof)] or section 11 or section 12 apply, if any such amount is credited to the profit and loss account; or

(iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or

(iv) to (vi) -omitted by Finance Act 2011

(vii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Explanation.—For the purposes of this clause, “net worth” shall have the meaning assigned to it in clause (ga) of sub-section (1) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or



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(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.

Explanation 2.— For the purposes of clause (a) of Explanation 1, the amount of income-tax shall include—

(i) any tax on distributed profits under section 115-O or on distributed income under section 115R;

(ii) any interest charged under this Act;

(iii) surcharge, if any, as levied by the Central Acts from time to time;

(iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and

(v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

(3) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A.

(4) Every company to which this section applies, shall furnish a report in the prescribed form from an accountant as defined in the Explanation below subsection (2) of section 288, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed under sub-section (1) of section 139 or along with the return of income furnished in response to a notice under clause (i) of sub-section (1) of section 142.

(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.

(6) The provisions of this section shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any



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business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.”

(provided that the provisions of this sub section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April 2012)

17. Part II of Schedule VI of the Companies Act, 1956, lays down the requirement for profit and loss account and in clause (2) it mandates the assessee to disclose every material feature including credits or **receipts** and debits of expenses in respect of non recurring transactions or transaction of an exceptional nature. Clause xi (a) mandates the amount of income from investments, distinguishing between trade investments and other investments must be disclosed. In the financial statement of the assessee, we find in the cash flow statement the receipt of sale of fixed asset is shown under cash from investment activities however had not brought it in the profit and loss account as it is required under part II of the Schedule VI to the Income Tax Act. The deviation from the accounting policy for under statement of profit is noted and recorded by the Statutory Auditor however, no justifiable reasoning placed by assessee for the said deviation.



18. The decision of the Hon'ble Supreme Court in *M/s Dynamics Orthopaedics (P) Ltd. Case (cited supra)* has clearly held that Assessee Companies has to necessarily prepare its profit and loss Account only in terms of Part II and Part III of Schedule VI in the Companies Act and being a deeming fiction, there cannot be any liberal interpretation to the Section 115 J. As rightly contented by the Learned Senior Standing Counsel for the Department, this point of law has reached finality and this is not the point of reference to the larger bench.

19. The relevant portion of the judgment rendered in *Dynamic Orthopaedics Pvt.Ltd. v. CIT reported in [(2010) 190 Taxman 288(SC)]* is extracted below for better clarity:-

“5. In our view, with respect, the judgement of this Court in Malayala Manorama Company Limited vs. Commissioner of Income Tax, reported in [2008] 300 I.T.R.251 needs re-consideration for the following reasons: Chapter XII-B of the Act containing "Special provisions relating to certain Companies" was introduced in the Income Tax Act, 1961, by the Finance Act, 1987, with effect from 1st April, 1988. In fact, Section 115J replaced Section 80VVA of the Act. Section 115J [as it stood at the relevant time], inter alia, provided that where the total income of a company, as computed under



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the Act in respect of any accounting year, was less than thirty per cent of its book profit, as defined in the Explanation, the total income of the company, chargeable to tax, shall be deemed to be an amount equal to thirty per cent of such book profit. The whole purpose of Section 115J of the Act, therefore, was to take care of the phenomenon of prosperous 'zero tax' Companies not paying taxes though they continued to earn profits and declare dividends. Therefore, a Minimum Alternate Tax was sought to be imposed on 'zero tax' Companies. Section 115J of the Act imposes tax on a deemed income. Section 115J of the Act is a special provision relating only to certain Companies. The said section does not make any distinction between public and private limited companies. In our view, Section 115J of the Act legislatively only incorporates provisions of Parts II and III of Schedule VI to 1956 Act. Such incorporation is by a deeming fiction. Hence, we need to read Section 115J(1A) of the Act in the strict sense. If we so read, it is clear that, by legislative incorporation, only Parts II and III of Schedule VI to 1956 Act have been incorporated legislatively into Section 115J of the Act. Therefore, the question of applicability of Parts II and III of Schedule VI to 1956 Act does not arise. If a Company is a MAT Company, then be it a private limited company or a public limited company, for the purposes of Section 115J of the Act, the assessee-Company has to prepare its profit and loss account in accordance with Parts II and III of Schedule VI to 1956 Act alone. If, with respect, the judgement of this Court in Malayala Manorama Company Limited [supra] is to be accepted, then the very purpose of enacting Section 115J of the Act would stand defeated,



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particularly when the said section does not make any distinction between public and private limited companies. It needs to be reiterated that, once a Company falls within the ambit of it being a MAT Company, Section 115J of the Act applies and, under that section, such an assessee-Company was required to prepare its profit and loss account only in terms of Parts II and III of Schedule VI to 1956 Act. The reason being that rates of depreciation in Rule 5 of the Income Tax Rules, 1962, are different from the rates specified in Schedule XIV of 1956 Act. In fact, by the Companies (Amendment) Act, 1988, the linkage between the two has been expressly de-linked. Hence, what is incorporated in Section 115J is only Schedule VI and not Section 205 or Section 350 or Section 355. This was the view of the Kerala High Court in the case of Commissioner of Income Tax vs. Malayala Manorama Company Limited, reported in [2002] 253 I.T.R. 378 (Kerala), which has been wrongly reversed by this Court in the case of Malayala Manorama Company Limited (cited supra).”

20. For the reasons discussed above, we hold, the capital profit on the sale of the Fixed Assets of the Company cannot be taken directly to the Reserves & Surplus in the Balance Sheet and the same has to be routed through the Profit & Loss Account to arrive at the correct book profits under Section 115 JB of the Act and it is absolutely right in law to rework the profits under Section 115 JB of the Act and assess the tax on the ground that the profit on the sale of Fixed Assets credited to the capital reserve by



**the Appellant are to be treated as normal profit for arriving at book profits
u/s 115 JB.**

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21. The Substantial Questions of Law as framed are answered as above in favour of the Revenue. Accordingly, this Tax Case Appeal stands dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

(Dr.G.JAYACHANDRAN, J.)

(R.SAKTHIVEL, J.)

30.03.2026

Neutral Citation: Yes
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To

The Deputy Commissioner of Income Tax,
Corporate Circle-5(2)
Chennai 600 034.



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T.C.A.No.636 of 2016



**Dr.G.JAYACHANDRAN, J.
AND
R.SAKTHIVEL, J.**

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Judgment made in
T.C.A.No.636 of 2016
and
C.M.P.No.13244 of 2016

30.03.2026