Chapter 3 : Extent of non-compliance of MAT provisions

3.1 This chapter addresses the issues relating to the compliance of the special provisions; whether there was compliance to the provisions relating to payment of taxes under special provisions and whether the tax credit allowed to the assessees was as per special provisions of the Act.

During audit, we came across several issues/instances where non-compliance to the provisions of Act/Rules were noticed. Broad category wise details of mistakes noticed during the performance audit shown in the Table below are discussed in ensuing paragraphs:

Table 3.1: Extent of non-compliance of MAT provisions

Para No.	Nature of Mistakes	Assessment cases	Tax effect (₹ in crore)
3.2	Items not added to net profit in computation of book profit	181	1993.19
3.3	Incorrect deduction from net profit in computation of book profit	28	48.60
3.4	Irregular allowance of MAT credit	277	1559.21
3.5	Incorrect allowance of brought forward business loss/ unabsorbed depreciation as per books of account	37	22.97
3.6	Incorrect reduction of the amount withdrawn from the reserve	13	15.08
3.7	Non-observance of procedure laid down for allowing exemption to sick industrial companies from computation of book profit	9	0
3.8	Non selection of case for scrutiny	1	75.51
3.9	Other instances of non compliance of special provisions of MAT	43	88.91
	Total	**589**	**3803.47**

3.2 Items not added to net profit in computation of book profit

We noticed 181 assessment cases where the book profit was not increased by prescribed adjustments involving short levy of tax of ₹ 1993.19 crore.

3.2.1 Income tax paid or payable and provision thereof not considered for book profit

For computing book profit, the net profit as shown in the profit and loss account for the relevant previous year shall be increased[50] by the amount of income tax paid or payable and the provision thereof where amount of the 'income tax' shall include any tax on distributed profits/ distributed income[51], any interest charged under this Act, surcharge, education cess and secondary

[50] Clause (a) to Explanation 1 of section 115JB(2)
[51] Section 115-O and section 115R

and higher education cess on income tax, if any, levied by the Act from time to time. Further, it has been judicially held[52] that the 'income tax' paid in foreign countries has to be added for computation of book profit.

We noticed 28 assessment cases in 12 states[53] where income tax paid to the extent of ₹ 64.98 crore were considered for disallowance under normal provision but not considered for computing book profit involving tax effect of ₹ 13.28 crore **(Appendix 19)**.

Box 3.1: Illustrative cases on income tax paid or payable and provision thereof not considered for book profit

(a) Charge: Pr. CIT 1 Mumbai
Assessee: M/s Hindustan Petroleum Corporation Ltd.
Assessment Year: 2010-11 to 2013-14
PAN: AAACH1118B

Assessee had added back ₹ 4.84 crore, ₹ 5.76 crore, ₹ 4.97 crore and ₹ 5.40 crore debited towards tax paid on non monetary perquisites of employees in computation of income under normal provisions for the above AYs respectively which were accepted by the ITD. However, AO did not consider the same for computation of book profit under MAT. Omission resulted in short computation of book profit of ₹ 20.97 crore involving tax effect of ₹ 4.05 crore including excess set off of MAT credit of ₹ 99.43 lakh for AY 2012-13. Reply of the ITD was awaited.

(b) Charge: Pr. CIT-LTU, Mumbai
Assessee: M/s Nuclear Power Corporation of India Ltd.
Assessment Year: 2011-12 and 2012-13
PAN: AAACN3154F

Assessee had added back ₹ 4.34 crore and ₹ 8.75 crore debited towards tax paid[54] on non monetary perquisites of employees in computation of income under normal provisions for the two AYs respectively which were accepted by the ITD. However, AO did not consider the same for computation of book profit under MAT. Omission resulted in short computation of book profit of ₹ 13.09 crore involving tax effect of ₹ 2.62 crore. ITD did not accept the observation stating that the book profit are different from taxable income under normal provisions and merely because some additions are made under the normal provision does not follow that

[52] Authority of Advance Rulings in the case of Bank of India (AAR No. 732 of 2006)
[53] Andhra Pradesh and Telangana (3), Chhattisgarh (1), Haryana (1), Karnataka (2), Madhya Pradesh (1), Maharashtra (13), Odisha (2), Rajasthan (1), Tamilnadu (2), Uttar Pradesh (1) and West Bengal (1)
[54] Section 40(a)(v) read with section 10(10CC)

the same additions are also to be made under MAT provisions. Further, the tax referred to in section 40(a)(v) was not an income tax for the assessee company and hence could not be added back under MAT computation in absence of any specific provision (February 2017). Reply was not tenable as the ITD had not disputed the fact that the tax paid on behalf of employees was 'income tax'. The only dispute is that such income tax is not related to the assessee company but on behalf of employees. Explanation 1(a) below section 115JB(2) of the Act does not specify whether income tax paid by the assessee on its own income only is to be added back while computing book profit.

3.2.2 Expenditure relatable to any exempt income not considered for book profit

For computing book profit, the net profit as shown in the profit and loss account for the relevant previous year shall be increased[55] by the amount or amounts of expenditure relatable to any income under section 10 to 12. Further from AY 2008-09 onward, the computation of expenses relatable to income not forming part of total income[56] shall be computed as per Rule 8D of Income Tax Rules.

We noticed 84 assessment cases in 15 states[57] where expenses relatable to income not forming part of total income was not added back to book profit which involved tax effect of ₹ 102.03 crore **(Appendix 20)**.

Box 3.2: Illustrative cases on expenditure relatable to any exempt income not considered for book profit

(a) Charge: Pr. CIT-2, Mumbai
Assessee: M/s Bank of India
Assessment Year: 2014-15
PAN: AAACB0472C

AO restricted the disallowance under section 14A at ₹ 65.48 lakh being one percent of the exempt income relying on decision[58] of AY 2001-02 delivered in assessees' own case whereas expenses relatable to income not forming part of total income for the year worked out to ₹ 166.02 crore as per Rule 8D and should have disallowed accordingly. Omission resulted in short computation of book profit of ₹ 165.37 crore involving tax effect of ₹ 34.66 crore. Reply of the ITD was awaited.

[55] Clause (f) to Explanation 1 to section 115JB(2)
[56] Section 14A
[57] Andhra Pradesh and Telangana (6), Assam (1), Chhattisgarh (5), Delhi (4), Gujarat (5), Haryana (6), Karnataka (22), Kerala (1), Madhya Pradesh (7), Maharashtra (12), Rajasthan (2), Tamilnadu (9), Uttar Pradesh (1) and West Bengal (3)
[58] ITA No. 1498/M/2011

(b) Charge: CIT Gandhinagar
Assessee: M/s Gujarat Power Corp. Ltd.
Assessment Year: 2013-14
PAN: AAACG5596J

AO, while computing income under normal provisions, disallowed expenses of ₹ 5.25 crore relating to exempt income under section 14A. However, the same was not considered for computation of book profit under section 115JB by the AO. Omission resulted in short computation of book profit of ₹ 5.25 crore involving tax effect of ₹ 1.42 crore. Reply of the ITD was awaited.

3.2.3 Amount set aside as provision for diminution in the value of any asset not considered for computation of book profit

One of the specified adjustments[59] to be made to book profits is towards the 'Provision for Diminution in the value of any Asset' debited to the profit and loss account which needs to be added for computation of the book profit. This amendment to section 115JB by the Finance Act 2009 was made effective retrospectively from 1 April, 2001.

We noticed 47 assessment cases in 12 states[60] where amount set aside as provision for diminution in value of asset was not added while computing book profit involving tax effect of ₹ 1827.86 crore **(Appendix 21)**.

Box 3.3: Illustrative cases on amount set aside as provision for diminution in value of asset not considered for computation of book profit

(a) Charge: Pr. CIT-2, Mumbai
Assessee: M/s Bank of India
Assessment Year: 2014-15
PAN: AAACB0472C

While computing book profit, AO did not add the provisions of ₹ 4461.54 crore for diminution in value of asset (NPA) as well as various other provisions. Besides, profit of ₹ 813.47 crore pertaining to foreign branches was also reduced, which was not an allowable adjustment under special provisions. Omission resulted in short computation of book profit of ₹ 5275.01 crore involving tax effect of ₹ 1105.67 crore. Reply from the ITD was awaited.

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59 Clause (i) to Explanation 1 to section 115JB(2)

60 Andhra Pradesh and Telangana (7), Bihar (3), Delhi (8), Gujarat (3), Haryana (7), Karnataka (5), Kerala (1), Maharashtra (6), Odisha (1), Tamil Nadu (3) and Uttar Pradesh (3)

(b) Charge: CIT-7, New Delhi
Assessee: M/s Oriental Bank of Commerce
Assessment Year:2011-12, 2013-14 and 2014-15
PAN: AAACO0191M

While computing book profit, AO, interalia, did not add the provisions of ₹ 1866.58 crore for diminution in value of assets for the above three AYs. Omission resulted in short computation of ₹ 1866.58 crore involving tax effect of ₹ 293.90 crore. Reply from the ITD was awaited.

(c) Charge: Pr. CIT-1, Bhubaneswar
Assessee: M/s Grid Corporation of Orissa Ltd.
Assessment Year: 2014-15
PAN: AABCG5398P

While computing book profit, AO did not add provision of ₹ 210 crore for bad and doubtful debts debited to profit and loss account. Omission resulted in short computation of book profit of ₹ 210 crore involving tax effect of ₹ 56.07 crore. Reply from the ITD was awaited.

(d) Charge: Pr. CIT-5, Hyderabad
Assessee: M/s Dr. Reddy's Laboratories Ltd
Assessment Year: 2011-12
PAN: AAACD7999Q

While computing book profit, AO did not add ₹ 73.10 crore as provision for inventory obsolescence debited under the head material cost[61] as this being a provision for diminution in the value of asset. Omission resulted in short computation of book profit of ₹ 73.10 crore involving tax effect of ₹ 20.31 crore. Reply from ITD was awaited.

(e) Charge: Pr. CIT-1, Patna
Assessee: M/s Alkem Laboratories Ltd.
Assessment Year: 2010-11 to 2012-13
PAN: AABCA9521E

While computing book profit, AO did not add the provision for bad and doubtful debts of ₹ 6.43 crore, ₹ 19.34 lakh and ₹ 76.28 lakh for the above AYs respectively. Besides, disallowance of ₹ 44.21 lakh under section 14A was also not considered for computation of book profit for AY 2012-13. Omission resulted in short computation aggregating ₹ 7.82 crore involving tax effect of ₹ 1.73 crore. Reply from ITD was awaited.

[61] Notes to schedule 14 of the profit and loss account

3.2.4 Amount set aside as provision for unascertained liability not added back

Any amount set aside to provisions made for meeting liabilities, other than ascertained liabilities has to be added[62] during computation of book profit if the same is debited to profit and loss account.

We noticed in 22 assessment cases in 11 states[63] that an aggregate of ₹ 301.02 crore was debited as provision for unascertained liability but was not considered for computation of book profit. Omission resulted in tax effect of ₹ 50.02 crore **(Appendix 22)**.

Box 3.4: Illustrative cases on amount set aside as provision for unascertained liability not added back

(a) Charge: CIT 1, Guwahati
Assessee: M/s Assam Power Generation Corp. Ltd.
Assessment Year: 2010-11
PAN:AAFCA4891F

AO disallowed ₹ 11.49 crore on account of provision of revision of pay considering it unascertained liability under normal provisions. However, the same was not added to net profit in the computation of book profit under special provisions of the Act. Omission resulted in short computation of book profit of ₹ 11.49 crore involving tax effect of ₹ 1.95 crore. Reply from ITD was awaited.

(b) Charge: Pr. CIT-IV, Hyderabad
Assessee: M/s Lanco Solar Ltd.
Assessment Year: 2012-13
PAN: AABCL4930G

AO disallowed ₹ 6.05 crore debited to profit and loss account towards 'provision for warranty' treating 'provision for unascertained liability' under normal provisions. However, the same was not added to net profit in the computation of book profit under special provisions of the Act. Omission resulted in short computation of book profit of ₹ 6.05 crore involving tax effect of ₹ 1.87 crore including interest u/s 234B. Reply from ITD was awaited.

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[62] Clause (c) of Explanation 1 below section 115JB(2)

[63] Andhra Pradesh and Telangana (3), Assam (3), Bihar (2), Chhattisgarh (1), Delhi (4), Gujarat (1), Karnataka (4), Maharashtra (1), Odisha (1) and Uttar Pradesh (2)

3.3 Incorrect deduction from net profit in computation of book profit

As per Explanation 1 below section 115JB(2) of the Act, specific deductions are prescribed under sub-clause (i) to (viii) for computation of book profit under MAT.

We noticed 28 assessment cases where book profits were reduced by deductions which are not prescribed in the Act which involved tax effect of ₹ 48.60 crore as given below:

3.3.1 Exempt income or income no longer exempt due to subsequent amendment reduced incorrectly

The net profit as shown in the profit and loss account for the relevant previous year shall be reduced[64] by the amount of income to which any of the provisions of Section 10[65] to 12 apply, if such amount is credited to the profit and loss account.

We noticed in 18 assessment cases in 11 states[66] that exempt income were not correctly reduced from book profit which resulted in short computation of book profit of ₹ 376.44 crore involving tax effect of ₹ 35.87 crore **(Appendix 23)**.

Box 3.5: Illustrative cases on exempt income/income no longer exempt due to subsequent amendment reduced incorrectly

(a) Charge: Pr. CIT 14, Mumbai
Assessee: M/s Hindustan Construction Company Ltd.
Assessment Year: 2011-12
PAN: AAACH0968B

While computing book profit, AO did not add back "Share of loss in Partnership Firm" of ₹ 8.42 crore which was debited to profit and loss account. The loss from firm being exempt under Section 10(2A) is not an allowable deduction under special provisions of the Act. Omission resulted in short computation of book profit of ₹ 8.42 crore involving tax effect of ₹ 1.68 crore. Reply from ITD was awaited.

[64] Clause (ii) of Explanation 1 to Section 115JB(2)
[65] Other than the provisions contained in clause (38) thereof
[66] Andhra Pradesh and Telangana (1), Bihar (1), Jharkhand (1), Karnataka (2), Kerala (1), Maharashtra (2), Rajasthan (1), Tamilnadu (5), Uttar Pradesh (2) and West Bengal (2)

(b) Charge: Pr. CIT, Goa
Assessee: M/s Dempo Brothers (P) Ltd.
Assessment Year: 2010-11
PAN: AAACD2588D

AO allowed deduction of ₹ 5.91 crore under Section 10 on account of "profit on sale of Goa Carbon shares" for computing book profit under special provisions of the Act as claimed. However, the profit on sale of shares is not an allowable deduction under special provisions of the Act. Omission resulted in short computation of book profit of ₹ 5.91 crore involving tax effect of ₹ 1.06 crore. Reply from ITD was awaited.

3.3.2 Incorrect claim of deduction of amounts credited to profit and loss account

As per Finance Act 2015, w.e.f. AY 2016-17, a clause was introduced under section 115JB to reduce the net profit by the amount of share of profit from AOP (Association of Persons) or BOI (Body of Individuals) if credited to profit and loss account on which no income tax is payable under section 86 of the Act.

Though above provision was not applicable prior to AY 2016-17, we noticed in 10 assessment cases in five states[67] where income received from AOP was incorrectly reduced from book profit which resulted in short computation of book profit of ₹ 80.12 crore involving tax effect of ₹ 12.73 crore **(Appendix 24).**

Box 3.6: Illustrative cases on allowance of profit from AOP during computation of book profit

(a) Charge: Pr. CIT(Central)-1, Chennai
Assessee: M/s S.A.S Hotel and Enterprises Ltd.
Assessment Year: 2012-13
PAN: AAECS1194C

AO levied tax of ₹ 10.91 crore on the assessed income of ₹ 39.99 crore, arrived at after reduction of profit from AOP of ₹ 33.46 crore under normal provision. The return of income revealed that the assessee computed book profit of ₹ 41.05 crore after claiming deduction of ₹ 36.07 crore including profit of ₹ 33.46 crore from AOP. As the deduction in respect of profit from AOP was not allowable as per the Act, tax leviable under special provisions was more than the tax levied under normal provisions. Omission resulted in short computation of book profit of ₹ 33.46 crore involving tax effect of ₹ 5.47 crore. Reply from ITD was awaited.

[67] Andhra Pradesh and Telangana (3), Maharashtra (1), Rajasthan (4) and Tamilnadu (2)

(b) Charge: Pr. CIT-3, Hyderabad
Assessee : M/s Soma Enterprises Ltd.
Assessment Year : 2010-11 to 2012-13
PAN: AACCS8242F

AO, while computing book profit, allowed deduction of ₹ 10.53 crore, ₹ 3.43 crore and ₹ 2.03 crore for the above AYs respectively towards 'share of incomes from joint ventures exempt under proviso (a) to section 86', which was not an allowable deduction for computation of book profit as per the Act. Omission resulted in short computation of book profit of ₹ 15.99 crore involving tax effect of ₹ 2.88 crore. ITD did not accept the observation (June 2015) stating that the deduction under section 86 was admissible in view of the provisions of section 115JB(5), as clarified by CBDT[68] that except for substitution of tax payable under the provision and the manner of computation of book profits, all other provisions of the Act including the provisions relating to charge, definitions, recoveries, etc, would apply in respect of the provisions of section 115JB. ITD further stated that amendment to section 115JB vide Finance Act, 2015 by inserting clause (fa) to Explanation 1 to section 115JB(2), effective from 1 April 2016, permitting deduction of AOP profits from computation of book profits, was intended to rationalize the provision which prior to amendment did not permit the deduction in respect of AOP profits from the computation of book profit, and hence the amendment was to be treated as 'retrospective' in nature, as was held in the case of CIT Vs. Alum Extrusions Ltd. 319 ITR 306. The reply was not acceptable as the book profit has to be computed strictly in accordance with the Explanation 1 to the Section 115JB. The amendment brought out by Finance Act 2015 was enacted expressly to be effective from 1 April 2016.

3.4 Irregular allowance of MAT credit

Difference of tax paid under MAT and that would have been payable under normal provisions (if the tax is actually paid under MAT) is carried forward for set off from taxes in subsequent years (maximum 10 years[69]) if the taxes in the subsequent years are paid under normal provisions[70]. Actual set off during the subsequent years shall be restricted to the difference between the tax paid under normal provisions and that would have been payable under MAT during that year[71]. Further, from AY 2012-13, schedule MATC to ITR-6,

[68] Para 2 of circular No.13, of 2001 dt.9.11.2001
[69] Raised to 15 years with effect from 1.4.2017 by Finance Act 2017
[70] Section 115JAA(2) of the Act
[71] Section 115JAA(5) of the Act

applicable to companies, which provided year wise details of availability and set off of MAT credit as per the records of the assessee was introduced.

We noticed in 277 assessment cases in 21 states[72] that incorrect set off/carry forward/non set off of MAT credit of ₹ 1,559.21 crore was allowed without verifying the updated status of the claims of assessee made in the ITR with reference to the assessment records.

3.4.1 Incorrect carry forward of MAT credit

As per section 115 JAA(2A) of the Act, the tax credit to be allowed under sub-section (1A) shall be the difference of the tax paid for any assessment year under sub-section (1) of section 115JB and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of the Act.

We noticed in 88 assessment cases in 15 states[73] where tax credit in respect of tax paid on book profit was irregularly allowed to be carried forward for set off in subsequent years involving tax effect of ₹ 868.21 crore **(Appendix 25)**.

Box 3.7: Illustrative case of incorrect carried forward of MAT credit

(a) Charge: Pr. CIT-2, Mumbai
Assessee: M/s Bank of India
Assessment Year: 2014-15
PAN: AAACB0472C

AO, while finalising the assessment, allowed bad debts written off of ₹ 3834.29 crore under section 36(1)(vii), which was not adjusted against the opening credit balance of provision of ₹ 2039.28 crore available u/s 36(1)(viia) as per AY 2013-14. Omission resulted in underassessment of income of ₹ 1819.68 crore under normal provisions involving tax effect of ₹ 618.51 crore thereby there was excess carry forward of MAT credit of ₹ 214.04 crore. Reply from the ITD was awaited.

(b) Charge: Pr. CIT-LTU, Mumbai
Assessee: M/s Reliance Industries Ltd.
Assessment Year: 2009-10 and 2010-11
PAN: AAACR5055K

AO, while finalising the assessment, allowed ₹ 43.78 crore and

[72] Andhra Pradesh and Telangana (23), Assam (5), Bihar (9), Chhattisgarh (1), Delhi (12), Gujarat (30+7), Haryana (11), Himachal Pradesh (2), Jharkhand (2), Karnataka (41), Kerala (14), Madhya Pradesh (17), Maharashtra (46), Odisha (4), Punjab (1), Rajasthan (11), Tamilnadu (17), Uttar Pradesh (3), Uttarakhand (4) and West Bengal (19)

[73] Andhra Pradesh and Telangana (3), Assam (3), Bihar (3), Delhi (7), Gujarat (15), Haryana (10), Himachal Pradesh (2), Kerala (1), Madhya Pradesh (5), Maharashtra (23), Tamilnadu (2), Uttar Pradesh (2), Uttarakhand (4) and West Bengal (8)

₹ 35.32 crore pertaining to reversal of notional loss of AYs 2008-09 and 2009-10 respectively, which was already allowed to the assessee while giving effect to order of CIT(Appeal) in the respective assessment years. Double allowance of relief resulted in underassessment of income of ₹ 43.78 crore and ₹ 35.32 crore for AYs 2009-10 and 2010-11 respectively involving excess carry forward of MAT credit aggregating ₹ 26.89 crore. Reply from ITD was awaited.

(c) Charge: Pr. CIT-6, New Delhi
Assessee: M/s Modi Rubber Ltd.
Assessment Year: 2012-13
PAN: AAACM2062R

AO, while finalising the assessment, allowed brought forward losses of ₹ 33.44 crore instead of correct amount of ₹ 10.34 crore. Omission resulted in underassessment of income of ₹ 23.10 crore involving excess carry forward of MAT credit of ₹ 5 crore. Reply from ITD was awaited.

(d) Charge: Pr. CIT Central-2, Kolkata
Assessee: M/s MSP Steel and Power Ltd.
Assessment Year: 2007-08
PAN: AACCA2756N

AO while finalising the assessment, determined income of ₹ 1.38 crore after allowing deduction of ₹ 21.16 crore under section 80IA. The deduction was allowed on the income including income of ₹ 12.85 crore from other sources. As the income from other source was not allowable deduction u/s 80IA, the entire amount of ₹ 12.85 crore should have been disallowed. Omission resulted in underassessment of income of ₹ 11.47 crore involving tax effect of ₹ 3.85 crore including excess MAT credit of ₹ 2.13 crore. Reply from ITD was awaited.

3.4.2 Irregular set off of MAT credit

As per section 115 JAA(5) of the Act, set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income under normal provisions and the tax which would have been payable under the provisions of sub-section (1) of section 115JA or section 115JB, as the case may be, for that assessment year.

We noticed 182 assessment cases in 19 states[74] where irregular set off of MAT credit was allowed involving tax effect of ₹ 650.07 crore **(Appendix 26)**.

Box 3.8: Illustrative cases on irregular/non set off of MAT credit

(a) Charge: Pr. CIT-1, Kolkata
Assessee: M/s Bengal Energy Ltd.
Assessment Year: 2011-12
PAN: AADCB1581F

AO, while computing tax liability, allowed set off of tax credit of ₹ 4.45 crore instead of correct amount of ₹ 2.97 crore. Omission resulted in tax effect of ₹ 1.66 crore including interest under section 234B.

(b) Charge: Pr. CIT, Noida
Assessee: M/s Elcomponics Sales Pvt. Ltd.
Assessment Year: 2013-14
PAN: AABCE6120F

AO, while computing tax liability, allowed set off of MAT credit of ₹ 2.54 crore with carry forward of the remaining MAT credit of ₹ 3.45 crore pertaining to AY 2012-13. As the tax was levied under normal provisions for the assessment year 2012-13, no credit under section 115JAA was available for AY 2012-13. Instead, credit of ₹ 40.69 lakh pertaining to AY 2011-12 was available for set off only to the assessee. The mistake resulted in incorrect allowance of MAT credit of ₹ 5.58 crore. Reply from ITD was awaited.

Besides, in seven assessment cases in Gujarat, set off of MAT credit of ₹ 40.93 crore was not allowed to the assessee though the assessees were eligible therefor **(Appendix 26.1)**.

Irregular claims regarding carry forward and set off of MAT credit were allowed without due verification from the relevant records.

3.5 Incorrect allowance of brought forward business loss/unabsorbed depreciation as per books of account

As per section 115JB(2) of the Act, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account, is to be allowed as deduction during computation of book profit.

We noticed in 37 assessment cases in 15 states[75] that brought forward loss or unabsorbed depreciation as per the books of account were not correctly

[74] Andhra Pradesh and Telangana (20), Assam (1), Bihar (6), Chhattisgarh (1), Delhi (5), Gujarat (14), Haryana (1), Jharkhand (2), Karnataka (41), Kerala (13), Madhya Pradesh (12), Maharashtra (23), Odisha (4), Punjab (1), Rajasthan (11), Tamilnadu (15), Uttar Pradesh (1), West Bengal (11),

reduced in computing book profit, which resulted in short computation of book profit involving tax effect of ₹ 22.97 crore **(Appendix 27)**.

Box 3.9 : Illustrative cases on incorrect allowance of brought forward business loss/unabsorbed depreciation as per books of account

Charge: CIT Udaipur
Assessee: M/s American International Health Management Ltd
Assessment Year: 2012-13 and 2013-14
PAN: AADCA5692C

While computing book profit at nil, AO reduced ₹ 1.14 crore to the extent of profit for AY 2012-13 towards unabsorbed depreciation, whereas the assessee had brought forward loss of ₹ 14.59 lakh and unabsorbed depreciation of ₹ 18.25 crore for AY 2012-13. Thus, the assessee was entitled to a deduction of ₹ 14.59 lakh only as per special provisions of the Act. Similarly, the assessee incorrectly claimed deduction of ₹ 4.10 crore to the extent of profit in AYs 2013-14 as against 'nil' brought forward loss/unabsorbed depreciation. Excess allowance resulted in short computation of book profit aggregating ₹ 5.10 crore involving tax effect of ₹ 1.17 crore. Reply from ITD was awaited.

AOs did not have correct and updated status of unabsorbed depreciation/brought forward business loss as per the Companies Act at the time of assessment as it was not verifiable either from the ITR or Form 29B[76] or Form of 3CB/3CD in the above 37 assessment cases leading to incorrect computation of book profit.

3.6 Incorrect reduction of the amount withdrawn from the reserve

Deduction for any amount withdrawn from any reserve and credited to profit and loss account is allowed if such amount has been considered during the computation of book profit in the year of creation of reserve[77].

We noticed in 13 assessment cases in four states[78] that while computing book profit, AO incorrectly reduced the amount withdrawn and credited to profit and loss account involving tax effect of ₹ 15.08 crore **(Appendix 28).**

[75] Andhra Pradesh and Telangana (1), Assam (1), Bihar (2), Delhi (1), Gujarat (1), Haryana (1), Himachal Pradesh (1), Karnataka (13), Kerala (2), Maharashtra (5), Rajasthan (3), Tamilnadu (3), Uttar Pradesh (2) and West Bengal (1)
[76] Certificate by Chartered Accountant of computation of book profit under MAT has to be submitted in Form 29B.
[77] Section 115JB(2)(i) of the Act
[78] Haryana (1), Karnatka (6), Maharashtra (3) and Tamilnadu (3)

Box 3.10 : Illustrative case of claim of items withdrawn from reserve or provision and credited to profit and loss account not verified

(a) Charge: CIT-LTU, Bangalore
Assessee: M/s Schneider Electric IT Business India (P) Ltd.
Assessment Year: 2011-12
PAN: AACCA6398Q

While computing book profit, AO allowed deduction of ₹ 11.12 crore as amount withdrawn from reserve or provisions on account of bad and doubtful debts, bad debt written off and devaluation of inventory as against ₹ 4.53 crore credited to the profit and loss account towards provision written back. Omission resulted in short computation of book profit of ₹ 6.59 crore involving tax effect of ₹ 1.54 crore. Reply from ITD was awaited.

(b) Charge: Pr. CIT-1, Madurai
Assessee: M/s Golden Weaving Mills Pvt. Ltd.
Assessment Year: 2012-13
PAN: AAACG6671L

AO computed book profit at loss of ₹ 91.35 lakh under special provisions after allowing deduction of ₹ 4.72 crore on account of waiver of interest under One time settlement (OTS) as claimed. The claim under OTS was disallowed under normal provisions which, however, was not considered under MAT provision. Omission resulted in short computation of book profit of ₹ 3.81 crore involving tax effect of ₹ 1.03 crore. Reply from ITD was awaited.

(c) Charge: Pr. CIT-3, Mumbai
Assessee: M/s Jabil Circuit Pvt. Ltd.
Assessment Year: 2011-12
PAN: AACCP7114K

AO, while computing book profit, allowed deduction of ₹ 4.28 crore towards an amount which was withdrawn from a reserve but not credited to the profit and loss account in the year in which such reserve was created. Omission resulted in short computation of book profit of ₹ 4.28 crore involving tax effect of ₹ 85.67 lakh. Reply from ITD was awaited.

There was no proper mechanism to check whether the amount withdrawn from a reserve was actually added during the computation of book profit in the year in which such reserve was created.

3.7 Non-observance of procedure laid down for allowing exemption to sick industrial companies from computation of book profit

Sick Industrial Companies have been allowed exemption from computation of book profit[79] till its net worth becomes equal to or exceeds the accumulated book losses. For this purpose, DGIT (Administration) has been assigned the responsibility[80] to represent the CBDT before BIFR[81] and AAIFR[82] in every case in which Income Tax reliefs is sought under the Draft Rehabilitation Scheme or in the Sanctioned Scheme circulated by BIFR/AAIFR under the Sick Industrial Companies (SICA) Act, 1985 for getting the approval of CBDT and communicating the same to BIFR and the concerned assessing officer. The assessing officer shall give the Income Tax reliefs to sick companies only after obtaining such approval.

We noticed in nine assessment cases in Maharashtra that the AO did not apply the special provisions for computation of book profit stating that the assessees had fulfilled the criteria laid down under section 115JB for having been declared a sick company as per the hearing of the BIFR. There was nothing on record to ensure whether the procedure prescribed for getting the approval of CBDT through DGIT (Administration) for excluding the assessees from application of MAT provisions was followed though the certificate of BIFR for declaring the company sick under section 17(1) of the SICA Act, 1985 was available **(Appendix 29).**

3.8 Non selection of case for scrutiny

As per Instruction issued from No. F. No. 225/93/2009/ITA.II on 8 September 2010 by the CBDT on procedure and criteria for compulsory manual selection of scrutiny cases during 2011-12, one of the criteria was that “cases involving addition in an earlier assessment year in excess of ₹ 10 lakh on a substantial and recurring question of law or fact which is confirmed in appeal or is pending before an appellate authority.”

We noticed in the case of M/s. Interglobe Aviation Ltd in Delhi that the assessee company fulfilled the criteria for being selected for scrutiny assessment but was not selected **(Appendix 30).**

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[79] Item (vii) of Explanation (1) below section 115JB(2) of the Act

[80] CBDT Circular No. 5/2009, Dated 2-7-2009

[81] Board for Industrial and Financial Reconstruction

[82] Appellate Authority for Industrial and Financial Reconstruction

Box 3.11 : Illustrative case on non-selection of case for scrutiny

Charge: CIT-4, New Delhi
Assessee: M/s Interglobe Aviation Ltd.
Assessment Year: 2011-12
PAN: AABCI2726B

The assessee filed return of 'nil' income under normal provisions and offered tax under MAT for AY 2011-12, which was processed in summary manner. The assessee received ₹ 227.39 crore from International Aero Engine (IAE) which was not offered for tax. Such receipt was assessed as income by AO in AYs 2010-11 and 2012-13 in the assessment completed after scrutiny. However, the return for AY 2011-12 was not selected for scrutiny though it was a fit case for scrutiny selection as per CBDT's instructions. Escapement of income of ₹ 227.39 crore from tax under normal provision resulted in excess carry forward of MAT credit of ₹ 75.51 crore. Further, the MAT credit of ₹ 225.10 crore including ₹ 134.55 crore pertaining to AY 2011-12 was claimed as carry forward in AY 2012-13. Out of this, ITD allowed set off of ₹ 136.27 crore during scrutiny proceedings in subsequent years. Reply from ITD was awaited.

3.9 Other instances of non-compliance of special provisions of MAT

Section 143(3) of the Act provides that AOs have to determine and assess the income correctly. CBDT has also issued instructions from time to time in this regard.

We noticed in 43 assessment cases in 13 states[83] where the mistakes in computation of book profit resulted in short levy of tax of ₹ 88.91 crore **(Appendix 31)**.

Box 3.12 : Illustrative cases on other mistakes

(a) Charge: Pr. CIT-LTU, Mumbai
Assessee: M/s Lupin Ltd.
Assessment Year: 2010-11 and 2011-12
PAN: AAACL1069K

AO, while computing book profit, did not add back ₹ 27.86 crore and ₹ 48.28 crore for above AYs respectively pertaining to pre-commencement revenue expenses incurred for SEZ Unit. Omission resulted in short computation of book profit aggregating ₹ 76.14 crore involving tax effect of ₹ 14.36 crore. Reply from the ITD was awaited.

[83] Andhra Pradesh and Telangana (8), Assam (2), Haryana (1), Delhi (3), Gujarat (3), Karnataka (3), Kerala (2), Maharashtra (13), Rajasthan (2), Tamilnadu (2), Uttar Pradesh (2) and West Bengal (2)

(b) Charge: Pr. CIT-LTU, Mumbai
Assessee: M/s The Shipping Corporation of India Ltd.
Assessment Year: 2011-12
PAN: AAACT1524F

Assessee, while computing book profit, reduced ₹ 29.75 crore on account of 'Prior period adjustment', which was accepted by AO though the same was not an item covered under prescribed adjustments. As a result, the tax was levied under normal provisions of the Act. The mistake resulted in short computation of book profit of ₹ 29.75 crore involving tax effect of ₹ 2.25 crore. Reply from ITD was awaited.

(c) Charge: Pr. CIT-6, Chennai
Assessee: M/s Star Health & Allied Insurance Co. Ltd.
Assessment Year: 2010-11
PAN: AAJCS4517L

AO, while computing book profit, started computation with book profit of ₹ 3.92 crore instead of correct figure of ₹ 9.20 crore. Incorrect adoption of figure resulted in short computation of book profit of ₹ 5.28 crore involving tax effect of ₹ 1.22 crore. Reply from ITD was awaited.

3.10 Conclusion

Mistakes in computation of book profit/allowance of MAT credit were noticed in 589 assessment cases, involving tax effect of ₹ 3803.47 crore.

AOs did not have correct and updated status of unabsorbed depreciation/brought forward business loss as per the Companies Act at the time of assessment. It was not verifiable either from the ITR or Form 29B[84] or Form of 3CB/3CD in 37 assessment cases leading to incorrect computation of book profit.

3.11 Recommendations

CBDT may like to append a schedule or an annexure showing year wise bifurcated details of business loss and unabsorbed depreciation as per the Companies Act as well to Form 29B/ Tax Audit Report/ITR 6 so that their updated status is considered at the time of assessment. **(Para 3.5)**

[84] Certificate by Chartered Accountant of computation of book profit under MAT has to be submitted in Form 29B.

The CBDT during exit conference stated that it may be difficult to have a separate annexure /schedule but agreed to have a view in the assessment information system (AST) where the details of brought forward business loss and unabsorbed depreciation as per the Companies Act will also be visible.