

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH  
MUMBAI**

**BEFORE: SHRI C.N. PRASAD, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.2753/Mum/2014  
(Assessment Year :2010-11)**

|                                                                                                                                                                                                                     |           |                                                  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|--------------------------------------------------|
| M/s. Lupin Investments Private Limited<br>(earlier known as Rahas Mercantile Pvt Ltd.,)<br>(earlier known as Synchem Investments Private Limited)<br>159, C.S.T. Road<br>Kalina, Santacruz (East)<br>Mumbai- 400098 | Vs.       | Deputy Commissioner of Income Tax, 10(1), Mumbai |
| <b>PAN/GIR No.AAEC5576Q</b>                                                                                                                                                                                         |           |                                                  |
| <b>(Appellant)</b>                                                                                                                                                                                                  | <b>..</b> | <b>(Respondent)</b>                              |
|                                                                                                                                                                                                                     |           |                                                  |

**ITA No.3365/Mum/2014  
(Assessment Year :2010-11)**

|                                                  |           |                                                                                                                                                                                                                     |
|--------------------------------------------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Deputy Commissioner of Income Tax, 10(1), Mumbai | Vs.       | M/s. Lupin Investments Private Limited<br>(earlier known as Rahas Mercantile Pvt Ltd.,)<br>(earlier known as Synchem Investments Private Limited)<br>159, C.S.T. Road<br>Kalina, Santacruz (East)<br>Mumbai- 400098 |
| <b>PAN/GIR No.AAEC5576Q</b>                      |           |                                                                                                                                                                                                                     |
| <b>(Appellant)</b>                               | <b>..</b> | <b>(Respondent)</b>                                                                                                                                                                                                 |
|                                                  |           |                                                                                                                                                                                                                     |

|                              |                      |
|------------------------------|----------------------|
| Assessee by                  | Shri Rajan Vora      |
| Revenue by                   | Shri Sanjeev Kashyap |
| <b>Date of Hearing</b>       | <b>15/04/2021</b>    |
| <b>Date of Pronouncement</b> | <b>21/04/2021</b>    |
|                              |                      |

### **आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

These cross appeals in ITA No.2753/Mum/2014 & 3365/Mum/2014 for A.Y.2010-11 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-21, Mumbai in appeal No.CIT(A)-21/IT/188/2013-14 dated 28/02/214 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2013 by the Id. Dy. Commissioner of Income Tax-10(1), Mumbai (hereinafter referred to as Id. AO).

2. The revenue has raised the following grounds of appeal :-

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not applying the principle laid down by the Hon’ble ITAT in the case of Sudhakar Shetty (130 ITD 197(Mum) and thereby treating the amount of Rs.1,35,38,77,722/- as capital receipt not chargeable to tax u/s.45.*
2. *“On the facts and circumstances of the case and in law Ld. CIT(A) erred in deleting an amount of Rs.1,34,68,82,688/- as alleged long term capital gains on retirement from erstwhile from PLA-1 treating the same as not transfer u/s.2(47) and not chargeable to tax.*

3. *“On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in allowing the deduction of Rs.1,35,57,86,616/- while computation of book profit u/s.115JB.*
4. *“On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred deleting the addition of Rs.1,19,85,18,833/- as alleged undisclosed / unaccounted out of books income/investment.”*
5. *“On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in treating the rent received as business income instead of income from house property.”*
6. *“On the facts and circumstances of the case and in the law, the Ld. CIT(A) erred in deleting the addition of notional interest on interest free deposit received by the assessee on Ankleswar factory and Santacruz property.”*

7.1. *“On the facts and circumstance so the case and in the law, the Ld. CIT(A) failed to appreciate that the notional interest added by A.O. was nothing but estimation of fair rent for which property might reasonably be expected to be let out as the actual rent received was very nominal and much less than fair rent”*

7.2. *“On the facts and circumstances of the case and in the law, the Ld. CIT(A) failed to apply the ratio of the decision in the case of Moni Kumar Subba Rao (240 CTR 97(FB) (Del) and Tirolu Investments (130 ITD 521) (Mum), wherein it has been held that A.O. has powers to determine the fair rent when he finds that actual rent received is much less than amount for which property might be reasonably let out from year to year.”*

8. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.*

9. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.”*

3. The first issue to be decided in the appeal of the revenue is as to whether the Id CITA was justified in treating the amount received by the assessee partner in the sum of Rs 135,38,77,722/- from the partnership

firm as capital receipt not chargeable to tax , in the facts and circumstances of the case.

4. We have heard the rival submissions and perused the materials available on record. We find that the assessee is engaged in investment, financing , dealing in shares and securities and renting of premises and related (allied) activities. For the year under consideration, the assessee had filed its return of income declaring total income of RS 1,70,26,883/- after claiming exemption of Rs 135,38,77,723/- u/s 10(2A) of the Act and book profit of Rs 89,03,928/- u/s 115JB of the Act. We find that the assessee had claimed share from partnership firm as under:-

|                                                                                          |                |
|------------------------------------------------------------------------------------------|----------------|
| Share of surplus on revaluation of investment of<br>M/s Pranik Landmark Associates (PLA) | 135,38,77,723  |
| Share of loss from PLA                                                                   | (24,31,82,466) |
| Share of profit from M/s Bharat Steel Fab.<br>Engineering Works                          | 51,88,277      |
| Share of Loss from M/s D B Promoter                                                      | (7,969)        |
|                                                                                          | -----          |
| Total                                                                                    | 111,58,75,565  |
|                                                                                          | -----          |

Though the share of surplus on revaluation of investment of PLA was mentioned at Rs 135,38,77,723/-, we find that the assessee was actually paid only Rs 92,18,852/-. We find that the total income of the firm PLA including the capital gains was Rs 153,33,50,024/- and the assessee's share in total income for claim u/s 10(2A) of the Act was Rs 148,73,49,523/-. However, this amount of Rs 148,73,49,523/- was not paid to the assessee. The firm PLA utilised the consideration of Rs 220,00,00,000/- as follows:-

- a) Discharge of loan liability of Rs 160 crores
- b) Other expenditure of Rs 11 crores
- c) Tax on sale of property of Rs 30 crores

d) Brokerage paid of Rs 1.25 crores

4.1. We find that on 1.4.2007, PLA firm had revalued its capital asset and increased the amount of investment by Rs 262,12,92,699/-. On 6.11.2009, PLA firm had devalued the same asset by Rs 119,85,18,833/-. The effect of accounting entries was reflected in firm PLA's audited accounts in the Asst Years 2008-09 and 2010-11 respectively. But we find that the assessee company gave net effect of the aforesaid revaluation and devaluation in its books in Asst Year 2010-11 when the profits were realised by the firm PLA on sale of the immovable property. On 3.3.2010, the firm PLA sold the land development rights to firm PLA-2 for Rs 220,00,00,000/- . The erstwhile firm PLA filed its return of income showing capital gains for this sale of property and paid taxes on such gains.

4.2. While passing assessment order u/s 143(3) of the Act, the Id AO denied the claim of exemption u/s 10(2A) of the Act in respect of Rs 135,38,77,723/- received from the firm PLA. Further the Id AO computed capital gain tax on the said amount u/s 45(4) of the Act by holding it as receipts from 'transfer of rights in favour of other partners in the partnership firm'. The Id AO also added back an amount of Rs 134,68,82,688/- while computing the book profit u/s 115JB of the Act. The Id AO held that the affairs of business was designed in two ways, first by executing two separate deeds in respect of admission and retirement happened on the same day creating a façade of mere change in constitution of the firm to evade stamp duty and other state duties applicable on such transaction relating to real estate and second by artificially devaluing the land property to benefit other partners of the firm and with the purpose to obtain undisclosed/ unaccounted / out of books

income/ investment thereby defrauding the revenue by evading taxes. Accordingly, the Id AO made an addition of Rs 119,85,18,833/- , while assessing the total income of the assessee for the Asst Year 2010-11.

4.3. Aggrieved, by the said order, the assessee had preferred an appeal before the Id CITA. We find that the Id CITA held in its order as under:-

- a) upheld the action of the Id AO in denying exemption u/s 10(2A) of the Act;
- b) held that share of revaluation and devaluation were in the nature of capital receipt not chargeable to tax and therefore, should not be taxed u/s 45(1) or 45(4) of the Act ;
- c) held that second condition of clause (iib) of Explanation 1 to section 115JB of the Act is not applicable to the assessee and hence, revaluation reserve cannot be taxed u/s 115JB of the Act;
- d) deleted the addition of RS 119,85,18,833/- as undisclosed / unaccounted/ out of books income / investment ;

4.4. We find that the revenue had filed an appeal before us in respect of :-

- a) Treating the amount of Rs 135,38,77,722/- as capital receipt not chargeable to tax.
- b) Deletion of long term capital gains of Rs 134,68,82,688/- assessed in the hands of the assessee.
- c) Allowing deduction of Rs 135,57,86,616/- while computing book profits u/s 115JB of the Act.
- d) Deletion of the addition of Rs 119,85,18,833/- as undisclosed / unaccounted out of books income/investment.

4.4.1. We find that the share of assessee being surplus on revaluation of investment of firm PLA amounted to Rs 135,38,77,7238/- which was determined pursuant to revaluation of the investment on 1.4.2007 by Rs 262,12,92,699/- and devaluation of the same on 6.11.2009 by Rs 119,85,18,833/-. On 3.3.2010, the firm PLA sold the said investments to firm PLA-2 and duly offered income to capital gains tax. The assessee gave net effect of the aforesaid revaluation and devaluation in its books in the Asst Year 2010-11 (i.e the year under consideration) when the profits were realised by the firm PLA on sale of the immovable property. The assessee retired from the firm PLA on 3.3.2010. Upon retirement, Rs 92,18,852/- was paid to the assessee by the firm. While computing total income, the assessee claimed Rs 135,38,77,722/- as exempt u/s 10(2A) of the Act . Further the said amount was also reduced in computing book profits as per clause (ii) to Explanation 1 of section 115JB of the Act. During the assessment proceedings, the Id AO denied the exemption u/s 10(2A) of the Act and held that the amount received by the assessee from the firm is Rs 135,38,77,722 and levied capital gains tax on the same. However, the said amount is not the correct amount and the same is accepted by the Id CITA as the amount received on retirement by the firm is only Rs 92,18,852/-. We find that the Id CITA also held that the amount received on retirement from firm PLA being Rs 92,18,852/- is not liable to capital gains tax.

4.4.2. We find that at the outset, on the ground of amount received by partner on retirement from a firm, a similar ground of appeal was raised in the case of co-partner of the said firm PLA, M/s Rahas Investments Private Limited (now merged with the assessee i.e Lupin Investments Private Limited) vs DCIT in ITA Nos. 2752 & 3366/Mum/2014 dated

5.2.2020 for Asst Year 2010-11. For the sake of convenience, the relevant operative portion of the said tribunal order is reproduced below:-

*“9. We have heard rival submissions and perused the materials available on record. The primary facts stated hereinabove remain undisputed and hence, the same are not reiterated herein for the sake of brevity. Accordingly, we proceed directly to adjudicate the issue in dispute before us in the appeal of the revenue. We find that the Hon'ble High Court had restored the matter to the file of this Tribunal to decide the issue in light of the following decisions:-*

*a. Decision of Hon'ble Gujarat High Court in the case of CIT vs. Mohanbhai Pamabhai reported in 91 ITR 393 (Guj) b. Decision of aforesaid Gujarat High Court affirmed by Hon'ble Supreme Court in 165 ITR 166 (SC) c. Decision of Hon'ble Supreme Court in the case of Sunil Siddharthbhai vs. CIT reported in 156 ITR 509 (SC) d. Decision of Hon'ble High Court in the case of CIT vs. R. Lingmallu Raghukumar reported in 247 ITR 801(SC)*

*10. We find that during the impugned assessment year, the assessee retired from the partnership firm and received amount standing to its credit in the books of the partnership firm. Much prior to the retirement i.e. on 01/04/2007, the firm re-valued its asset i.e "Development rights in land" which resulted in appreciation of Rs.262,12,92,699/- and correspondingly credited partner's current account in their respective profit sharing ratio in the books of that firm. The assessee's share thereon worked out to Rs.10,48,51,708/-. In response to this revaluation, no entry was passed in the books of the assessee firm as on 31/03/2008, by correspondingly increasing the investment made in Pranik Landmark Associates with corresponding credit to current account of the partners of the assessee firm. The assessee passed this entry belatedly only in the year of receipt of actual money from Pranik Landmark Associates i.e. during the F.Y.2009-10 relevant to A.Y.2010-11 in which year, it retired from Pranik Landmark Associates. Pursuant to assessee passing this entry during A.Y.2010-11 in its books for the revaluation, the amounts ultimately received by the assessee from the partnership firm exactly matched with the investments made in the partnership firm. In other words, the assessee did not receive any sum over and above the value of its investments from Pranik Landmark Associates. Hence, there cannot be any levy of capital gains or any levy in the nature of income within the meaning of [Section 2\(24\)](#) of the Income Tax Act in the hands of the assessee.*

*11. Decision of Hon'ble Gujarat High Court in the case of [CIT vs. Mohanbhai Pamabhai](#) reported in 91 ITR 393 (Guj) which has been approved by Hon'ble Supreme Court in the same case reported in 165 ITR 166(SC):-*

*In the aforesaid case, the taxability of amount received by retiring partner of retirement from the firm was subject matter of adjudication. The Court held that when the partner retires from the firm, there is no transfer of interest to*



the existing partners by the retiring partner and it is not a transfer u/s 2(47) of the Act. Further, the Hon'ble Gujarat HC held that capital gains should not be levied on any amount paid to the partners for their net partnership assets and goodwill. We find reliance was also placed on the earlier decision of Hon'ble Supreme Court in the case of [Tribhuvandas G. Patel vs. CIT](#) reported in 236 ITR 515 (SC) wherein the Hon'ble Supreme Court over ruled the decision of Hon'ble Bombay High Court in the same case reported in 115 ITR 95(Bom).

11.1. Decision of Hon'ble Supreme Court in the case of [Sunil Siddharthbhai vs. CIT](#) reported in 156 ITR 509(SC) The Hon'ble Supreme Court in the said case was considering the question of taxability of transfer when a capital asset has been introduced as capital contribution by the partner into the partnership firm. The Court held that when the individual partner parts with his absolute right over the property by offering the said property as capital contribution to the firm, then such property becomes the common property of the partnership firm wherein the other partners also would be entitled for a share in proportion to their profit sharing ratio. This transaction was accepted as a transfer by the Hon'ble Supreme Court. Hence, it could be seen that the facts before us and the facts before the Hon'ble Supreme Court are factually distinguishable.

11.2. Decision of Hon'ble High Court in the case of [CIT vs. Lingamallu Raghukumar](#) reported in 247 ITR 801(SC) We find that the Hon'ble Supreme Court in the said case held that when a partner of a firm retires and the amount of his share in the partnership assets after deduction of liabilities and prior changes is determined on taking accounts, there is no element of transfer of interest in the partnership assets by the retired partner to the continuing partners. The amount received by the retiring partner is not liable to tax as 'Capital Gains' under [Section 45](#) of the Act.

12. We find that this Tribunal had originally placed reliance on the decision in the case of Sudhakar Shetty reported in 130 ITD 197 which decision was reversed by this Tribunal in the case of his wife i.e. in the case of [Hemalata S Shetty vs. ACIT](#) in wherein it was held as under:-

"9. In this connection, we find that decision of the jurisdictional High Court in the case of CIT vs. Shri Riyaz A. Sheikh (2014) 41 taxman.com 455 (Bom) which is on similar issue, was not available when the appeal of Shri Sudhakar Shetty was decided by ITAT.....

.....We were made aware by Ld. Authorized Representative that after the decision of Hon'ble Bombay High Court in the case of Riyaz A. Sheikh (supra) ITAT "E" Bench, Mumbai by following the said decision has taken a view wherein the decision in the case of Shri Sudhakar Shetty has been reversed. In view of this the issue in the case of present assesses has to be decided in its favour by following the decision of jurisdictional High Court in the case of Riyaz A. Sheikh (supra). In view of above legal discussion, we hold that the

amount received by assessee on retirement from partnership firm is not taxable under the head 'capital gains'. The Assessing Officer is directed accordingly."

12.1. As could be seen from the above, the decision rendered by this Tribunal in the case of Shri Sudhakar Shetty was reversed by the decision of Ms. Hemalata S Shetty (wife of Shri Sudhakar Shetty) by following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Riyaz A Sheikh reported in 41 Taxmann.com 455(Bom).

12.2. We also find further that the decision rendered by this Tribunal in the case of Ms. Hemalata Shetty supra has been subsequently upheld by the Hon'ble Jurisdictional High Court in ITA No.1755 of 2016 dated 05/03/2019 wherein it was held that the amount received by a partner on retirement is not subject to tax in the hands of retiring partner in view of [Section 45\(4\)](#) of the Act and liability, if any, to pay the tax is of the partnership firm.

12.3. We also find that the Co-ordinate Bench of this Tribunal in the case of [DCIT vs. Thakur Estate](#) in ITA No.4651/Mum/2016 and CO No.311/Mum/2017 dated 09/05/2019 and also in the case of [ITO vs. Ramal P Advani](#) in ITA Nos.6491 and 6963/Mum/2016 dated 27/08/2018 had held that excess amount received by a partner on retirement from partnership firm is not liable to capital gain tax as there is no transfer of any asset u/s.2(47) of the Act.

12.4. We find that the Id. DR vehemently argued that this is not a case of simple retirement of a partner from the partnership firm. He argued that assessee had relinquished its interest in the partnership firm vide retirement deed dated 06/11/2009 w.e.f. 01/04/2009 and the same tantamount to transfer eligible for levy of capital gains. The Id. DR argued that pursuant to the revaluation made in the books of the firm, the capital of the assessee had been notionally increased and assessee had received excess consideration over and above the amounts actually invested by it in partnership firm and hence, the said excess would have to be brought to tax as capital gains. The Id. DR vehemently relied on the decision of this Tribunal in the case of Shri Sudhakar Shetty reported in 130 ITD 197 and also on the Co-ordinate Bench decision of Pune Tribunal in the case of [Shevantibhai C Mehta vs ITO](#) reported in 83 TTJ 542. We find that in the case before the Pune Tribunal referred to supra, the retiring partner had assigned his interest in partnership firm specifically by a deed of retirement executed in writing to continuing partners and consideration for the same was agreed to be paid to him in lumpsum. In that circumstance, the amount received by the assessee on retirement from firm was held to be liable to be taxed as long term capital gain. Hence, the facts of the case before the Pune Tribunal are clearly distinguishable from the facts of the instant case before us.

12.5. We also find that in the case of Shri Sudhakar Shetty referred to by the Id. DR, the retiring partner thereof relinquished his share / rights in the

partnership and its assets in favour of continuing partners and had received a lumpsum consideration in respect of the same. Whereas, in the facts of the instant case before us, there was no transfer of relinquishment of rights in favour of the continuing partners thereby making it squarely distinguishable.

12.6. We also find that the ld. DR placed the reliance on the Co-ordinate Bench decision of Bangalore Tribunal in the case of Savitri Kadur in ITA No.1700/Bang/2016 dated 03/05/2019 in support of his proposition. We find that in the said decision, the order of Assessing Officer was upheld and capital gain tax was levied on the excess amount paid over and above the amount standing to the credit of the capital account of the partner. We find that in the instant case also the firm i.e. Pranik Landmark Associates had only paid the amounts lying to the credit of the partner i.e. the assessee and had not paid even a penny more than the amount lying in the credit of the partner's current account. Hence, the reliance placed by the ld. DR on the decision of Bangalore Tribunal actually supports the case of the assessee herein.

12.7. In view of the aforesaid observations and respectfully following the various judicial precedents, relied upon hereinabove, the ground Nos.1.1 and 1.2 raised by the revenue are dismissed.

13. The ground No.2.1 raised by the revenue is challenging the action of the ld. CIT(A) wherein the sum of Rs.10,48,51,708/- being the share of profit from the partnership firm was sought to be excluded while computing the book profits u/s.115JB of the Act by treating it as capital receipt.

13.1. We have heard rival submissions and perused the materials available on record. We find that the ld. CIT(A) had deleted the addition made by the AO while computing book profits under [Section 115JB](#) of the Act by stating that since the amount received by retiring partner is a pure capital receipt and is not taxable u/s 115JB of the Act for the reason that clause (iib) of Explanation 1 to [Section 115JB](#) stipulates two conditions namely, (a) amount has to be withdrawn from the revaluation reserve and (b) it should not exceed the amount of depreciation on account of revaluation of assets. In assessee's case, value of assessee's share in the revaluation was credited to assessee's profit and loss account. This amount being in the nature of revaluation reserve had to be reduced from profits while computing book profits. The second condition is not applicable as the loss is not depreciable asset where depreciation is allowed.

13.2. We find that revaluation by the partnership firm of its capital asset was an unilateral act yielding notional profits and not real profits. Accordingly, the amounts received thereon by the assessee from the partnership firm cannot contain any element of income. In such scenario, the same ought to be construed only as a capital receipt.

13.3. The inclusion of a capital receipt in the sum of Rs.10,48,51,708/- while computing book profits u/s.115JB of the Act was the subject matter of adjudication by various Tribunals and High Courts and we find that the Hon'ble Calcutta High Court in the case of Ankit Metal and Power Ltd. in ITA No.155 of 2018 dated 09/07/2019 had held that when a capital receipt does not fall within the definition of "income" u/s.2(24) of the Act, then the same cannot form part of the book profits u/s.115JB of the Act. The copy of the said decision had been placed on record by the Id AR. From the said decision, it could be safely concluded that first the nature of receipt should fall within the definition of income u/s.2(24) of the Act so as to fall within the ambit of book profit u/s.115JB of the Act. If a particular receipt from the inception does not have any element of income u/s.2(24) of the Act, the same would be automatically outside the scope of inclusion as book profits u/s.115JB of the Act.

13.4. We find that the Co-ordinate Bench of this Tribunal in the case of [Karanja Terminal & Logistics Pvt. Ltd. vs. DCIT](#) in ITA Nos. 2472, 2473 & 5752/Mum/2018 dated 20/03/2019 had held as under:-

"20. ...In the case of Indo Rama Synthetics (I) Ltd. V/s. CIT, 330 ITR 363(SC) the Hon'ble Apex Court has held that the object of MAT provisions is to bring out the real profit of the companies. The thrust is to find out the real working results of the company. Inclusion of receipt in the computation of MAT would defeat two fundamental principles, it would levy tax on receipt which is not in the nature of income at all and secondly it would not result in arriving at real working results of the company. The real working result can be arrived at only after excluding this receipt which has been credited to P&L a/c and not otherwise. The case of the assessee is supported by the following decisions:

- In the case of Shivalik Venture Pvt. Ltd. V/s. Dy. CIT, 43 ITR(Mum Trib) 187
- In the case of DCIT Circle-1 V/s. McNally Bharat Engineering Co. Ltd., ITA No.100/Kol/2011, Dated 01/03/2017(Kol Trib).
- In the case of ACIT, Range-2, V/s. M/s. L. H. Sugar Factory Ltd., ITA NO.417 & 418/LKW/2013 (Lucknow Trib).
- In the case of DCIT, c.c-XXVIII V/s. Binani Industries Ltd., 178 TTJ 658(Kol)
- In the case of ACIT, Circle-2 V/s. Shree Cement Ltd., ITA NO.614, 615 & 635/JP/2010 (Jaipur ITAT) the issue is as to whether sales tax subsidy received which was admittedly capital in nature can be subjected to MAT. The ITAT held that there was never any intention behind introduction of section 115JB to tax something which is not taxable at all."

13.5. We find that the Id. DR had placed reliance on the decision of Hon'ble Karnataka High Court in the case of [B & B Infratech Ltd. vs. ITO](#) reported in 396 ITR 420 (Kar) to drive home that the provisions of [Section 115JB](#) of the Act have an overriding effect upon other provisions of the Act. We have no quarrel with regard to this proposition. However, a receipt from the inception should have an element of income so as to fall within the ambit of inclusion as

book profits u/s.115JB of the Act. Once, a receipt is classified as income then, the same would be liable for inclusion in book profits u/s.115JB of the Act even though the said income is exempt or otherwise deductible under other specific provisions of the Act. In our considered opinion, this is a subtle distinction, which needs to be understood. In other words, the profits and gains that are otherwise deductible u/s.10A/10B/[Section 80IA](#) / [80IB](#) of the Act under normal provisions of the Act would still be liable for book profits u/s.115JB of the Act, since the provisions of [section 115JB](#) of the Act have an overriding effect over other provisions of the Act. But where a particular receipt from its inception is not at all income such as capital receipt as is present in the instant case, then, the said capital receipt would be outside the scope of inclusion as book profits u/s.115JB of the Act.

13.6. The Id. DR also placed reliance on the following decisions in support of his proposition:-

a. Decision of Special Bench of Hyderabad Tribunal in the case of [Rain Commodities Ltd vs. DCIT](#) reported in 40 SOT 265.

b. Decision of Chennai Tribunal in the case of [DCIT vs. Western India Cashew Co. Pvt. Ltd.](#) reported in 155 ITD 356 13.7. In view of the elaborate observations, the aforesaid decisions relied upon by the Id. DR would not come to the rescue of the revenue. We also find that all these decisions were subsequently considered by various decisions of this Tribunal in several other cases reported in 178 TTJ 658 (Kol), authored by the undersigned.

13.7. In view of our aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we hold that the amount received from partnership firm in the sum of Rs.10,48,51,708/- requires to be reduced while calculating the book profits u/s.115JB of the Act. Accordingly, the ground No.2.1 received by the revenue is dismissed.

4.4.3. Respectfully following the said decision, the Ground Nos 1 to 3 raised by the revenue are dismissed as the facts are exactly identical.

5. The Ground No. 4 raised by the revenue is challenging the action of the Id CITA in deleting the addition of Rs 119,85,18,833/- as alleged undisclosed / unaccounted /out of books income / investment.

5.1. We have heard the rival submissions and perused the materials available on record. We find that on 1.4.2007, PLA firm had revalued its capital asset and increased the amount of investment by Rs 262,12,92,699/- and on 6.11.2009, PLA firm had devalued the same asset by Rs 119,85,18,833/-. The effect of accounting entries was reflected in firm PLA's audited accounts in the Asst Years 2008-09 and 2010-11 respectively. The assessee gave net effect of the aforesaid revaluation and devaluation in its books in the Asst Year 2010-11 when the profits were realised by the firm PLA on sale of the immovable property. During the assessment proceedings, the Id AO held that the affairs of business was designed in two ways, first by executing two separate deeds in respect of admission and retirement happened on the same day creating a façade of mere change in constitution of the firm to evade stamp duty and other state duties applicable on such transaction relating to real estate and second by artificially devaluing the land property to benefit other partners of the firm and with the purpose to obtain undisclosed/unaccounted/out of books income /investment thereby defrauding the revenue by evading taxes. Accordingly, the Id AO made an addition of Rs 119,85,18,833/- while assessing the total income of the assessee for the Asst Year 2010-11. We find that the Id CITA had accepted the contentions of the assessee and held that :-

a) The firm PLA had devalued the assets at Rs 119,85,18,833/- and the share of the assessee was 97% ie. Rs 116,25,63,268/-.

b) The revaluation is effected in the books of the erstwhile PLA firm and it has nothing to do with the assessee's chargeable income. There is no reason to treat the revaluation as giving rise to income chargeable to tax under the Act.

c) The Id AO had not brought any iota of evidence on record that any unaccounted money has flown to the assessee as consideration for the alleged transfer. The transaction in question has been assessed to tax in



the hands of firm PLA as capital gains on which tax has already been paid by the firm PLA u/s 45(1) of the Act.

d) The revaluation / devaluation of asset is a capital receipt; since it is capital in nature, no tax can be levied on such amount – such view is affirmed by Hon'ble Supreme Court and various other courts such as in ITO vs Paru D Dave reported in 303 ITR (AT) 569 and hence, the Id AO could not consider this capital receipt as undisclosed income / investments.

e) The amount cannot be said to be taxed u/s 69B of the Act as in the instant case, the assessee had property which was existing in the accounts, it was recorded in the books of accounts and the assessee had made no investment in the current year under question i.e Asst Year 2010-11.

f) The amount cannot be said to be taxed u/s 158B(b) of the Act as in the instant case, the assessee had previously recorded the revaluation profit from the property in its books and thereafter again recorded the loss on devaluation of the property in its books of accounts.

g) The devaluation resulted into a capital loss for the assessee and hence cannot be considered as undisclosed income / investments.

5.2. We hold that it cannot be said that the purpose behind restructuring of the partnership firm (i.e admission and retirement) was done primarily for tax avoidance as contended by the Id AO. In fact the firm PLA held the property as its owner which was also reflected in its audited accounts. When the said property was sold as a result of the said restructuring to the new firm PLA-2 , the due tax was paid by the firm and this cannot be re-taxed in the hands of the assessee as tax avoidance. As stated above, the said amount of Rs 119,85,18,833/- is the amount of devaluation of the investment which is forming part of the books of accounts. Hence, it is completely misconceiving to treat the same amount as undisclosed income / investments. We find that the Id CITA had duly appreciated the contentions of the assessee and had rightly deleted the addition made in

this regard, on which, we do not find any infirmity. Accordingly, the Ground No. 4 raised by the revenue is dismissed.

6. The Ground No. 5 raised by the revenue is challenging the action of the Id CITA in treating the rent received as business income instead of income from house property.

6.1. We have heard the rival submissions and perused the materials available on record. We find that in 1992, the assessee acquired all rights, titles and interest in a factory premises which pertained to M/s Synchem Chemicals Laboratories in Ankleshwar. In 1996, the assessee entered into a 'Business Conducting Agreement' with Lupin Laboratories Limited (later on amalgamated with Lupin Ltd) wherein the manufacturing facility including factory building and plant and machinery was leased out for conducting the business of the assessee. The agreement was renewed from time to time. On 9.8.2007, the assessee renewed the agreement for another period of 36 months for a monthly consideration of Rs 500. Lupin Ltd also paid Rs 18 crores as interest free refundable deposit to the assessee vide a separate deposit agreement. Though the business conducting agreement is entered for Rs 500 per month, the assessee, in its return of income has offered Rs 12,00,000/- as 'income from business and profession' being composite rent for leasing out the said premises for its own business purposes. We find that further, vide letter dated 25.2.2013, the assessee submitted before the Id AO that the said income has been accepted in the past assessments as business income. The Id AO considered the amount of Rs 500 per month as income from house property as the business was being conducted by M/s Lupin Ltd on behalf of the assessee by utilising the plant and machinery and other amenities under the 'Business Conducting Agreement'. Further, the Id



AO proceeded to hold that the balance amount of Rs 99,500 per month (1,00,000 – 500) should be treated as rent in respect of factory premises used by Lupin Ltd for conducting their business and taxed the same under the head 'income from house property' instead of 'income from business',

6.2. We find that the Id AR vehemently argued that the Id AO in the assessment order had made a wrong finding that the assessee has long back stopped the manufacturing operations. The Id AO was of the opinion that the intention behind leasing of the property was not of exploiting the property for commercial business activities, but for earning a fixed income by granting M/s Lupin Ltd the right of using the said premise, plant and machinery and other facilities. The assessee contended before the Id CITA that the assessee had not let out a house property but a manufacturing facility vide Business Conducting Agreement dated 1.11.200. Composite rent was received for factory building and letting of machinery, plant etc though it would have not made much difference had the sum receivable for the two lettings were fixed separately. Further, the conduct of the assessee to lease the Ankleshwar premises was all along to earn lease income from commercial exploitation of the commercial assets which were not temporarily required by the assessee for its own business purposes. The assessee submitted before the Id CITA that during the year under appeal, the assessee has earned income of Rs 14.72 lakhs when compared to that in Asst Year 2009-10 of Rs 49.20 lakhs , from manufacturing operations.

6.3. We find that the assessee placed reliance on the following decisions in support of its contentions:-

*a) Decision of Hon'ble Supreme Court in the case of CEPT vs Shri Lakshmi Silk Mills Ltd reported in 20 ITR 451 (SC)*

*b) Decision of Hon'ble Supreme Court in the case of Sultan Bros (P) Ltd vs CIT reported in 51 ITR 353 (SC)*

*c) Decision of Hon'ble Gujarat High Court in the case of CIT vs New India Industries reported in 201 ITR 208 (Guj)*

*d) Decision of Hon'ble Supreme Court in the case of New Savan Sugar & Gur Refinery Co. Ltd vs CIT reported in 74 ITR 7 (SC)*

6.4. We find that the Id CITA rightly observed that the assessee had leased the factory premises along with plant & machinery to Lupin Ltd for which it was paid rental income of Rs 500 per month. Further , the assessee was offering Rs 12 lakhs per annum as tax under the head income from business. However, the Id AO computed this income as income from house property. The Id CITA by placing reliance on following decisions held that rental income in letting factory building and plant and machinery would be business income for exploitation of commercial assets and this was also accepted in the past assessment years :-

*a) Decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs Anand Rubber & Plastics (P) Ltd reported in 178 ITR 301 (P&H)*

*b) Decision of Hon'ble Madras High Court in the case of CIT vs Kongarar Spinners Pvt Ltd reported in 208 ITR 645 (Mad)*

6.5. We find that the Id CITA also applied the rule of consistency by stating that assessee offering business income in this regard has been accepted by the revenue since Asst Year 2006-07 and there was absolutely no change in facts and circumstances of the instant case for the year under consideration. Hence, we do not find any infirmity in the order of the Id CITA in this regard. Accordingly, the Ground No. 5 raised by the revenue is dismissed.

7. The Ground Nos. 6 to 7.2 raised by the revenue are challenging the action of the Id CITA in deleting the addition made on account of notional interest to interest free deposit received by the assessee on Ankleshwar factory premises and Santacruz property.

7.1. We have heard the rival submissions and perused the materials available on record. We find that the Id AO sought to add notional interest income of Rs 1,08,00,000/- calculated at 6% on interest free deposit of Rs 18 crores and treated the same as 'income from house property' for Ankleshwar property. Additionally, in respect of Santacruz property, the Id AO computed an amount of 6% of the security deposit of Rs 54,86,400/- i.e Rs 3,29,184/- as notional interest on the deposit and after allowing standard deduction of 30%, added an amount of Rs 2,30,428/- to 'income from house property'. We find that the assessee raised objections for the same by pointing out that before considering the notional interest, the Id AO is duty bound to find the municipal value or rent / market rent/rent fetched by the similar property in the similar area. Without undertaking this exercise, the Id AO is precluded from considering the notional interest on interest free deposit. It was also pointed out that the Id AO has failed to appreciate that in each of the cases, it is also held that in no circumstances, notional interest on interest free deposits can be considered for the purpose of computing annual value. We find that the assessee placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs J K Investors (Bombay ) Ltd reported in 248 ITR 723 (Bom) wherein it was pointed out that computation of property income was concerned with annual value or actual rent and not notional interest on interest free deposits. The assessee also placed reliance on the Full Bench decision of Hon'ble Delhi High Court in the case of CIT vs Moni Kumar Subba reported in 333 ITR

38 (Del) (FB) wherein it was categorically held that notional interest on interest free deposit cannot be taken as determinative factor to arrive at the 'fair rent'.

7.2. We find that the it is duty of the Id AO to find out or bring on record the reasonable or fair rent or standard rent and then compare the same with the actual rent received or receivable to find out the Annual Value. This should be done after due inquiries being conducted by the Id AO. None of these facts have been brought on record by the Id AO in the instant case. Hence we find that the Id CITA had rightly deleted the notional interest on interest free deposit. Accordingly, the Ground Nos. 6 to 7.2. raised by the revenue are dismissed.

8. The Ground Nos. 8 & 9 raised by the revenue are general in nature and does not require any specific adjudication.

9. In the result , the appeal of the revenue is dismissed.

Let us take up the assessee appeal in ITA No. 2753/Mum/2014

10. The Ground No. 1 raised by the assessee is challenging the denial of exemption of Rs 135,38,77,722/- u/s 10(2A) of the Act. The Ground No. 2 raised by the assessee is challenging the action of the Id CITA in treating the amount of Rs 135,38,77,723/- as capital receipts and thereby taxing capital gains on Rs 92,18,852/- being the amount received on retirement from firm. The Ground No. 3 raised by the assessee is with regard to the computation of book profit u/s 115JB of the Act with regard to the capital receipt of Rs 135,38,77,723/-.

10.1. We have heard the rival submissions and perused the materials available on record. We find that all the aforesaid issues had already been dealt in detail hereinabove while adjudicating the revenue appeal for the Asst Year 2010-11. Accordingly, we hold that the amount of Rs 135,38,77,723/- received from the firm PLA by the assessee is eligible for exemption u/s 10(2A) of the Act. We hold that the capital gains tax of Rs 92,18,852/- is not leviable and the Id AO is directed to delete the same. We hold that the amount received from the firm PLA is a capital receipt and hence the addition of Rs 135,38,77,723/- made while computing the book profits u/s 115JB of the Act is hereby directed to be deleted. Accordingly, the Grounds 1 to 3 raised by the assessee are allowed.

11. The Ground Nos. 4 & 5 raised by the assessee are general in nature and does not require any specific adjudication.

**12. In the result, the appeal of the revenue is dismissed and appeal of the assessee is allowed.**

Order pronounced on 21/04/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(C.N. PRASAD)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 21/04/2021  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**