[DCIT vs. Bombay Diamond Co (ITAT Mumbai)]

The assessee earned a capital profit of Rs. 10.38 crores on sale of rights to immovable property. **The said profit was directly credited to the capital reserves in the balance sheet instead of being routed through the Profit & loss account**. The accounts of the assessee company were duly certified by the auditors and were also adopted in the AGM. The audited accounts were filed with ROC. In the computation of "book profits" for s. 115JB, the said capital profits were not included. The AO took the view that **by not crediting the capital profit to the P&L A/c, the assessee had contravened sub-clause (xi)(a) of clause (3) of Part II of the Schedule VI** to the Companies Act and that he was, therefore, entitled to add the capital profit to the "book profit". On appeal, the CIT (A) reversed the AO on the ground that the AO had no jurisdiction to go beyond the net profit shown in the P&L A/c except to the extent provided in the Explanation to s. 115JB. On appeal by the Revenue, HELD reversing the CIT (A):

(i) Part II of Schedule VI to the Companies Act requires that the P&L A/c of a company shall disclose every material feature including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of exceptional nature also. The company is also required to set out the various items relating to the income and expenditure of the company arranged under most convenient heads and disclosing profit or loss in respect of transactions of a kind not usually undertaken by the company or undertaken in circumstances of exceptional or non-recurring nature if material in amount.

(ii) **As the assessee had not routed the capital profits through the Profit and Loss A/c. and directly credited it to the Balance Sheet, its accounts were not prepared in the manner provided in Part II and Part III of Schedule VI to the Companies Act**. The fact that the auditors had certified the accounts is not relevant.

(iii) In **Apollo Tyres Ltd** 265 ITR 273 and **[Kinetic Motor Co. Ltd]** 262 ITR 340 it was held that if the accounts were prepared in accordance with Schedule VI, the AO had no jurisdiction to make adjustments beyond what was provided in s.

115JB. However, **as the assessee had bypassed the provisions of Schedule VI and directly credited the capital profit to the reserve account, these judgements did not apply and the AO had the power to rework the book profit**.