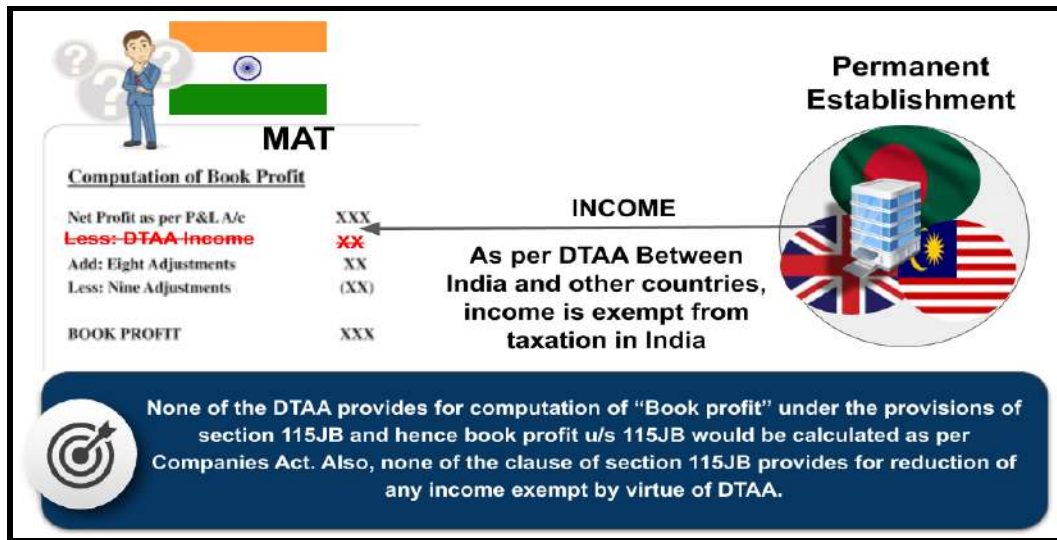


**SATURDAY INTERNATIONAL TAX GYAN !!!**  
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**IRCON International Limited v. DCIT**

**MAT provision is a separate code in itself, Income not taxable by virtue of DTAA shall not be reduced from book profit to calculate MAT.**



**Facts:**

- The assessee excluded DTAA income earned from its project in Bangladesh, Malaysia and United Kingdom and therefore did not pay under Minimum Alternate Tax "MAT"<sup>1</sup> on the said income.
- The AO and CIT(A) added the said income and computed tax on the same on MAT rate.

**Assessee's contention:**

- Income earned from PE in foreign countries i.e. DTAA income is exempt from taxation in India by virtue of DTAA between India and those countries.
- Hence, the income is not required to include the same while calculating book profit and tax under MAT.

**Revenue's contention:**

- Only the adjustments mentioned in Explanation 1 of 115JB can be made to book profit and since such transactions (Income not taxable as per DTAA) were not mentioned therein, such adjustment cannot be made.

<sup>1</sup> Section 115JB

## Ruling:

- Section 115JB overrides all other provisions of the Income Tax act since it starts with a non-obstante clause.
- **None of the DTAA provides for computation of “Book profit” under the provisions of section 115JB and hence book profit u/s 115JB would be calculated as per Companies Act.**
- Also, none of the clauses of section 115JB provides for the reduction of any income exempt by virtue of DTAA.

## Our comments:

- Section 90 of Act, provides that Act or treaty whichever is beneficial for the assessee will be applicable.
- As per Act, Income of the said assessee has been charged as per MAT Provisions.
- **The provisions do not provide for deduction of any such DTAA income and hence one has to pay tax under MAT provisions on such income.**
- Treaty benefits cannot be taken as non of the DTAA provides for the distribution of taxing rights on book profit. Therefore the country of residence will have the sole right to tax the same as per its own Income Tax Act.

<b>Section</b>	<b>115JB</b>
<b>DTAA/Country</b>	<b>India - UK/ Malaysia/ Bangladesh</b>
<b>Court</b>	<b>Delhi Tribunal</b>
<b>Date of decision</b>	<b>28.01.2020</b>

**Note:** Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

### Refer our previous case laws editions:

**ACIT (IT) -4(1)(1), Mumbai vs. Reliance Jio Infocomm Ltd:** <https://rb.gy/ly3hf2>, **Union of India vs. U.A.E. Exchange Centre-** <https://rb.gy/k8mkao>, **Majestic Auto Ltd. v. CIT1-** <https://rb.gy/hpozez>, **Regen Powertech (P.) Ltd. v. DCIT, (International Taxation)-2(1)-** <https://rb.gy/ymdnhc> etc.

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**Thank you**