UNREPORTED JUDGMENTS:

<u>Before the Income Tax Appellate Tribunal</u>
Bench 'C', Ahmedabad
Hon'ble Shri R.P. Garg, Vice President and
Hon'ble Shri R.P. Tolani (Judicial Member)

<u>I.T.A. No.94/Ahd/2004</u>
(Asst. Year: 2000-01)

In the matter of

Parle International Ltd., Ahmedabad ….. Appellant

Vs.

Income tax Officer, Ward 5(2),
Ahmedabad. ….. Respondent

<u>Date of order : 30.11.2004</u>

<u>Order</u>

Per Shri R.P. Garg (Vice President):

<u>FACTS:</u>

The dispute in this appeal is for including in book profit, a sum of Rs.29,28,84,059/- being capital gains on sale of its capital assets. The assessee invested the consideration and claimed exemption under sec.54E. The gain instead of being routed through the Profit and Loss Account was carried by the assessee directly to Capital Reserve Account. The assessee's plea was that it was a capital receipt and not necessarily to be taken through profit and loss account. The Assessing Officer and C.I.T.(Appeals) held that capital gain is part of profit and as per part II and III of Schedule to the Companies Act, it was to be shown in the Profit and Loss Account, and therefore, it was a part of book profit.

HELD:

Following the Supreme Court decision in Apollo Tyres Ltd. vs. C.I.T. 255 ITR 273, the Tribunal stated that, “The facts of the instant case do not give any different picture to decide the issue within the ratio of the decision of the Supreme Court in the case of Apollo Tyres Ltd. (supra). In view of the legal position that the Assessing Officer does not being have the jurisdiction to go behind the net profit shown in the Profit and Loss Account as audited by the Chartered Accountant and not objected to by the Authority under the Companies Act, we do not feel it necessary to discuss the merit of the case as to whether the capital gain was a part of book profit or whether it can be directly taken to Capital Reserve Account. The order of the C.I.T.(Appeals) as well as the Assessing Officer is accordingly vacated and the Assessing Officer is directed to compute the book profit as per the books prepared by the qualified Chartered Accountant under the Companies Act.”

In the result, appeal was allowed.