IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

ITA NO.453/2015

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
LTU, JSS TOWERS,
BSK III STAGE,
BANGALORE – 560 085.

2. THE DY. COMMISSIONER OF INCOME TAX,
LTU, JSS TOWERS,
BSK III STAGE,
BANGALORE – 560 085.

... APPELLANTS

(By SRI. K. V. ARAVIND, ADV.)

AND:

M/S. SANSERA ENGG. PVT. LTD.,
NO.261/C, BOMMASANDRA,

INDUSTRIAL AREA, HEBBAGODI,
ANEKAL TALUK,
BANGALORE-560 099.
PAN: AAEECS 2440M. ... RESPONDENT

(By SRI. CHYTHANYA K. K., ADV.)

THIS ITA IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 21/11/2014 PASSED IN ITA NO. 303/BANG/2014, FOR THE ASSESSMENT YEAR 2008-2009.

THIS ITA COMING ON FOR ADMISSION THIS DAY, ***JAYANT PATEL J.,*** DELIVERED THE FOLLOWING:

J U D G M E N T

The present appeal has been preferred by the appellants – Revenue on the following substantial questions of law :

> "1. Whether the Tribunal was correct in holding that prohibition mentioned in section 40(a)(ic) of the act does not apply to the computation of the book profit for the purpose of section 115JB and according to that the FBT is an allowable deduction ?

2. Whether the tribunal was correct in deleting the addition made by the assessing officer holding that the rectification is neither permissible u/s.154 nor u/s.115JB (explanation-1) in respect of exclusion of prior period expenditure ?

3. Whether the tribunal was correct in deleting the addition made by the assessing officer in respect of addition of STT holding that none of the 9 items listed in explanation 1 to section 115JB(2) was included and hence, it could not have used this to enhance the book profit ?"

2. The relevant discussion by the Tribunal in the impugned order is at paras 4 to 7 which reads as under:

"4.The learned CIT (A) has excluded the Fringe Benefit Tax (FBT) included by the Assessing Officer in the book profit. According to the CIT (A), the Board has issued

a circular No.8/2005 dated 29.08.2005 wherein it was explained that for the purpose of computing the income under the head "profits and gains of profession", the FBT would not be claimed as deduction because it is an expenditure laid out extending wholly and exclusively for the purpose of business or profession of the employer. Section 40(a)(ic) specifically prohibit the claim of its deduction for the purpose of computing the income under the regular provisions. However, for the purpose of section 115JB, this prohibition would not apply. The question and reply read as under:

"Q.103. Whether FBT would be allowable deduction while computing 'book profit' u/s 115JB?

FBT is a liability qua employer. It is an expenditure laid out or expended wholly and exclusively for the purposes of the business or profession of the employer . However, sub-clause (ic) of clause (a) of section 40 of the income tax Act expressly prohibits the *deduction of the amount of FBT paid, for the purpose of computing the income under the 'profits and gains of business or profession'. This prohibition does not apply to the computation of the 'book profit' for the purpose of section 115JB. Accordingly, the FBT is an allowable deduction in the computation of 'book profit' for the purpose of section 115JB. Accordingly, the FBT is an allowable deduction in the computation of 'book profit' u/s 115JB of the income tax Act".*

5. On due consideration of the above, we are of the view that the learned CIT (A) has rightly excluded the FBT from the computation of book profit.

6. The next item is prior period expenditure. According to the learned CIT (A), Explanation-1 attached to section 115JB(2) does not provide for adjustment of this expenditure in the book profit. With the assistance of the learned representatives, we *have considered this issue. The learned CIT (A) has relied upon the order of the ITAT Mumbai in the case of Shivshashi Punarvasan Prakalpa Ltd vs. ITI 135 ITD 51 which is based on the judgment of the Hon'ble Supreme Court in the case of Apollo Tyres Ltd, 254 ITR 273. For the purpose of section 115JB, the book profit is the profit disclosed as per P&L a/c prepared in accordance with the provisions of Part-II and Part-III of Schedule VI of the Company's Act, 1956, laid before the company in its AGM. The adjustment to that profit can only be made qua, the items provided in Explanation-1 to section 115JB i.e. a to f. On perusal of clause a to f, under explanation-1, we find that no adjustment on account of prior period expenses is to be made. The Hon'ble Supreme Court in the case of Apollo Tyres has observed that except the adjustment provided in Explanation-1 to section 115JB (2), the Assessing Officer cannot tinker with the book profit computed* *by the assessee and approved in the AGM. The leaner CIT(A) has held that this type of expenditure cannot be adjusted. We are of the view that such type of rectification is neither permissible u/s. 154; nor u/s 115JB (Exp-1), therefore, the CIT (A) has rightly deleted this addition format he book profit. Similar is the position with regard to third aspect, the learned CIT (A) has observed as under:*

"5. In respect of Security Transaction Tax(STT), the appellant pointed out that it is not included in any of the 9 items listed in Explanation 1 to section 115JB(2) and, hence, could not be used to enhance the book profit. This is an argument based on a correct understanding of the prevailing legal provisions and it is admitted. The addition by the Assessing Officer to the book profit in this regard is directed to be deleted".

7. On due consideration of the order of the CIT (A), we find no error in it. The adjustment *made by the Assessing Officer cannot be made in an order passed u/s. 154. Therefore, we do not find any merit in this appeal of the Revenue, it is dismissed."*

3. The aforesaid shows that so far as Fringe Benefit Tax (F.B.T.) is concerned, the Tribunal has not interfered with the view taken by the CIT(A), which was based on the Board circular dated 29-08-2005. When the Board has issued the circular and the FBT is found to be allowable while computing book profit, we do not see that any substantial question of law would arise on such aspect as sought to be canvassed. Same is the situation for the other two items, one for prior period expenditure and another for Security Transaction Tax, but on a different scrutiny that such amounts were already excluded for the purpose of computation of book profit at the time when the assessment order under Sec.

143 was passed. Thereafter, in the purported exercise of power under Sec. 154, such could not be upset.

4. However, Mr. Aravind, the learned Counsel appearing for the appellants – Revenue contended that only one view was possible and no deliberation was required to disallow the amount under the head of prior period expenditure and Security Transaction Tax.

5. After hearing him at length, we do not find that such would fall in the arena of mistake on the face of record within the scope and ambit of Sec. 154 of the Act, which is limited to rectification of the mistake or error. When the initial order of rectification is found to be beyond the scope of Sec. 154, as has been rightly held by the Tribunal, everything would fall to ground. The Tribunal has rightly held that such type of rectification is neither permissible under Sec. 154 read

with Sec. 115JB. Hence, we do not find that any substantial question of law would arise for consideration.

Hence, the appeal is dismissed.

SD/-
JUDGE

SD/-
JUDGE

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