

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Dated this the 13th day of January 2015

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B. VEERAPPA

ITA No.217 of 2009

BETWEEN:

1. The Commissioner of Income Tax
C. R. Building
Queens Road
Bangalore

2. The Assistant Commissioner of
Income Tax, Circle – 11(3)
C. R. Building
Queens Road
Bangalore

...Appellants

(By Sri K. V. Aravind, Advocate)

AND:

M/s. ICICI Venture Funds
Management Co. Ltd.,

'Prestige Obelish'
10th Floor
No.3, Kasturba Road
Bangalore – 560 001

...Respondent

(By * Sri Chythanya K.K., Advocate)

This ITA filed U/s. 260A of I.T. Act, 1961 arising out of order dated 12-12-2008 passed in ITA No.378/Bang/2008 for the Assessment year 1999-2000, praying to (i) formulate the substantial questions of law stated therein; (ii) allow the appeal and set aside the order passed by the ITAT, Bangalore in ITA No.378/Bang/2008 dated 12-12-2008 confirming the order of the Appellate Commissioner and confirm the order passed by the Assistant Commissioner of Income Tax, Circle-11(3), Bangalore.

This ITA coming on for hearing this day, **N. KUMAR J.**, delivered the following:

J U D G M E N T

The Revenue has preferred this appeal against the order passed by the Tribunal up holding the order passed by the First Appellate Authority, where it was held that the 'lease equalization charges' could not be regarded as an

** corrected vide chamber order dated 30/03/2015*

amount transferred to reserve as investment in Explanation (b) to Section 115JA(2).

2. The assessee Company is in the business of asset management. They filed return of income declaring the income of Rs.2,15,24,933/- under the provisions of Section 115JA and Rs.1,94,02,036/- under the Regular provisions of the Act. Since tax payable as per the provisions of Section 115JA was higher than the tax payable as per regular provisions, the same was adopted. The return was processed under Section 143(1) of the Income Tax Act, 1961 resulting in refund Rs.1,11,60,156/-. Subsequently, an Order under Section 154 of the IT Act was passed by adding back provision for doubtful debt, provision for advances and provision for interest, totaling Rs.10,60,370/-, arriving at a total Book Profit at Rs.7,28,10,148/- and determining a refund of Rs.1,13,16,279/-.

3. Proceedings were initiated under Section 147 of the Act by issuing notice under Section 148 of the Act. In

the said proceedings, it was pointed out that assessee had credited an amount of Rs.57,70,000/- as 'lease rental' after reducing an amount of Rs.55,56,947/- as 'Lease Equalization Account'. According to the Assessing Authority, the lease equalization is in the nature of reserve, he added back the said amount while computing Book Profits and accordingly framed the assessment order. Aggrieved by the same, the assessee preferred an appeal to the Commissioner of Income Tax (Appeals).

4. The Commissioner after carefully considering the entire material on record as well as the submissions, held that the provisions made for lease equalization charges could not be regarded as amount transferred to reserve as envisaged in Explanation (b) to Section 115JA(2). Therefore, the order of the Assessing Authority was set aside and he was directed to delete the addition made. Aggrieved by the said order, the Revenue preferred an appeal to the Tribunal.

5. The Tribunal held that the adjustment made by the Assessing Authority by adding the amount of lease equalization charges to compute the Book Profits under Section 115JA was not permissible since the said amount was not covered within any of the clauses to Explanation below Section 115JA(2) including clause (b), and that the judgment rendered in the case of **G.E. CAPITAL TRANSDPORTATION FINANCIAL SERVICES LTD Vs. ACIT**, reported in **17 SOT 173**, is squarely applicable and therefore it dismissed the appeal. In fact, the said judgment of the Tribunal in *G.E. CAPITAL TRANSPORTATION* case is upheld by the Delhi High Court in the case of **COMMISSIONER OF INCOME-TAX, LARGE TAXPAYERS UNIT Vs. INDIAN RAILWAY FINANCE CORPORATION LTD** reported in **(2014) 226 TAXMAN 184**.

6. This appeal was admitted to consider the following substantial questions of law:

“Whether the Appellate Authorities were correct in reversing the finding of the Assessing Officer that a sum of Rs.55,56,947/- as ‘lease equalization account’ is in the nature of a reserve and the same had to be added back when computing the Book Profits as per Explanation u/s 115JA(2) of the Act.?”

7. The learned Counsel appearing for the Revenue submitted that the aforesaid amount of Rs.55.56.947/-, the ‘lease equalization account’ is in the nature of reserve and therefore it has to be added back when computing the book profits as per Explanation under Section 115JA(2) of the Act. Therefore he submits that a case for interference is made out.

8. Per contra, the learned Counsel appearing for the assessee supported the impugned order.

9. The Assessing Authority has added a sum of Rs.55,56,937/- to the Book Profits of the assessee on the ground that the transfer of lease equalization account was in the nature of reserve and hence needed to be adjusted to the Book Profits as per the requirement of Explanation to Section 115JA of the Act.

10. The 'lease equalization charges' is not one of the amounts which is covered under any of the clauses to Explanation to Section 115JA(2). It cannot be treated as a reserve. As the name suggest, this 'lease equalization charges' is nothing but the difference between the statutory depreciation on rentals and the recovery of cost of capital. Therefore, merely because the said amount entered in the P&L account, in effect, makes no difference. At any rate, it cannot be treated as a reserve. Therefore, both the Appellate Authorities were justified in directing deletion of the said amount.

Accordingly, we answer the substantial question of law in favour of the assessee and against the Revenue. ***No merit, appeal is dismissed.***

**Sd/-
JUDGE**

**Sd/-
JUDGE**

ksp/-