

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

I.T.A. NO. 390 OF 2010

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME-TAX
CIRCLE-2(3), HYDERABAD.
3. THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-11(3), C.R. BUILDINGS
QUEENS ROAD, BANGALORE.

... APPELLANTS

(By Sri. R.S.V.S. PAVAN KUMAR, ADV., FOR
Sri. S. PARTHASARATHI, ADV.,)

AND:

GMR INDUSTRIES LTD.,
6-3-866/1/G-2, GREENLANDS
BEGUMPET, HYDERABAD.

... RESPONDENT

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THIS I.T.A IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 31-3-2010 PASSED IN ITA
NO.814/H/2007, FOR THE ASSESSMENT YEAR 2003-2004,
PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW

STATED THEREIN. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE ITAT, BANGALORE IN ITA NO.814/H/2007 DATED 31/3/2010 CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-2(3), HYDERABAD, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been filed by the revenue. The issues, which arises for consideration is whether interest paid for delay in allotment of shares is also an expenditure like brokerage/commission connected with raising of share capital and partakes the character of share capital or the same can be treated as revenue expenditure. The appeal was admitted on 30.05.2011, on the following substantial questions of law:

- (i) *Whether the finding of the appellate Authorities that the payment of interest on share application money is revenue expenditure when share application money was received by the*

assessee as a capital is perverse and arbitrary and contrary to law?

(ii) Whether the Appellate Authorities were correct in dealing the addition made on account of prior period expenditure while computing book profits under Section 115JB of the Act, when the Book Profits has to be computed on the basis of net profits is unsustainable?

2.Facts leading to filing of this appeal in a nutshell are that the Assessee, had debited interest of Rs.395.87/- lakhs as interest on share application money pending allotment of preference shares for the assessment year 2003-2004. The Assessee responded to the query of the Assessing Officer stating that it has received share application money of Rs.75.60/- Crores from one GMR Investments Pvt. Ltd., for allotment of cumulative redeemable preference shares. The company made allotment of preference shares to the tune of Rs.27.5/- Crores on 02.03.2003 and the unallotted amount remained as share application money. As the allotment was not made within specify period, as agreed upon, the assessee

paid interest at the rate of 8% from the date of receipt of share capital money and also subsequent period on the balance share capital money. The assessee claimed the aforesaid amount as business expenditure under Section 36(1)(iii) of the Act.

3. The Assessing Officer by an order dated 31.03.2006 *inter alia* held that share application money was not a borrowed amount and no debtor-creditor relationship existed. It was further held that interest paid for delay in allotment of shares is also an expenditure like brokerage/commission connected with raising of share capital and therefore, all the expenditure including interest on share application money being connected with share capital cannot be allowed as deduction. It was also held that prior period expenses charged to profit and loss appropriation account cannot be deducted from the profit of the year for the purpose of book profit. Being aggrieved, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. The Commissioner of Income Tax (Appeals) by an order dated 16.04.2007 reversed the order of the

Assessing Officer, and while relying on decision of the Income Tax Appellate Tribunal in '**DCIT VS. MANIPAL INDUSTRIES LIMITED**', (1997) 61 ITD 49 held that interest on share application money could be allowed revenue expenditure. The Revenue filed an application before the Income Tax Appellate Tribunal. The Tribunal vide order dated 31.03.2010 dismissed the appeal preferred by the revenue. In the aforesaid factual backdrop, this appeal has been filed.

5. Learned counsel for the revenue submitted that assessee's claim for raising shall capital can not be allowed, as it is a capital expenditure. Our attention has also been invited to Section 115 JB of the Act and it is pointed out the amount claimed by the assessee cannot be debited to the statement of profit and loss, as same cannot be reduced as it does not fall within explanation to Section 115 JB(1) of the Act. It is also urged that prior period expenses charged to profit and loss account cannot be deducted from the profit of year for the purpose of book profit. In support of aforesaid submissions reliance has been placed on '**COMMISSIONER**

OF INCOME TAX VS. KHAITAN CHEMICALS & FERTILIZERS LTD.,', (2008) 307 ITR 0150, 'DEPUTY COMMISSIONER OF INCOME TAX VS. CORE HEALTH CARE LTD.,' (2008) 298 ITR 0194, 'COMMISSIONER OF INCOME-TAX VS. KARNATAKA SOAPS & DETERGENTS LTD.,' (2015) 64 TAXMANN.COM 378 (SC) and 'THE COMMISSIONER OF INCOME TAX CENTRAL CIRCLE AND ANOTHER VS. M/S KARNATAKA SOAPS & DETERGENTS LTD.,', ITA NO.257/2007 AND CONNECTED MATTERS DECIDED ON 13.10.2014.

6. On the other hand, learned counsel for assessee submitted that instant case is not a case of expenditure raising share capital, and the interest was paid under a contractual obligation. It is further submitted that once a profit & loss account is prepared in accordance with Part II and III of Schedule VI to the Companies Act and is certified by Auditors, it becomes the basis for levying tax on book profit and not the amount shown in printed balance sheet as the same is prepared for the benefit of share holders. It is also contended that next profit was to be computed on the

basis of profit and loss account. In support of his submissions, reference has been made to decisions in '**BROOKE BOND INDIA LTD. VS. COMMISSIONER OF INCOME-TAX**', (1997) 225 ITR 798 (SC), '**T.T.N.TEXTILES LT. VS. DEPUTY COMMISSIONER OF INCOME-TAX**', (2010) 326 ITR 352 (KERALA) and '**HINDUSTAN LEVER LTD. VS. COMMISSIONER OF INCOME-TAX, BOMBAY**', (2017) 88 TAXMANN.COM 534 (BOMBAY).

7. We have considered the submissions made on both sides and have perused the record. The Supreme Court in **BROOKE BOND INDIA LTD.,** supra has held that all the expenses incurred for expansion of capital base of the company was directly related to the capital incidentally, that would help in profit making. When the object of the Assessee is to increase share capital, the expenses incurred in expanding share capital would be in capital field. In the instant case also the assessee with an object to increase share capital has incurred expenses in the form of payment of interest on account of delay in allotment of shares, yet the

increase in capital results in expansion of the capital base of the company and may also help in profit making. Therefore, it retains its character as capital expenditure as the expenditure is directly relatable to expansion of the capital base of the company. For the aforementioned reasons the first substantial question of law is answered in the affirmative and in favour of revenue.

8. The Supreme Court in **APOLLO TYRES** supra has held that there cannot be two incomes one for the purpose of Companies Act and another for the purpose of Income Tax Act. It has further been held that Assessing Officer while computing the income under Section 115J of the Act has power to examine whether books of accounts are certified by the authorities under the Companies Act and the Assessing Officer has limited power of making increase and deductions as provided in the explanation to Section 115J of the Act. It is pertinent to note that provisions of Section 115J or Section 115JB of the Act are parimateria. It has further been held that Section 115J (1A) of the Act empowers the authority under the Income Tax Act, 1961 to probe into the accounts

accepted by the authorities under the companies Act. In the instant case, deletion as sought for by the assessee does not fall within the purview of Section 115 JB of the Act. Therefore, the Commissioner of Income Tax (Appeals) and the tribunal were not justified in deducting the addition made on account of prior period expenditure while computing book profits under Section 115 JB of the Act. The second substantial question of law is therefore, answered in the negative and in favour of the revenue.

In view of proceeding analysis, the order passed by the Income Tax Appellate Tribunal and Commissioner of Income Tax (Appeals) are quashed and the order passed by Assessing Officer is affirmed.

In the result, the appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**