

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE V. SRISHANANDA

I.T.A. NO.409/2014

BETWEEN:

M/S. KARNATAKA STATE INDUSTRIAL AND
INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD.,
REP. BY ITS CHAIRMAN & MANAGING
DIRECTOR SRI. V.P. BALIGAR
KHANIJA BHAVAN, NO.49
5TH FLOOR, EAST WING
RACE COURSE ROAD
BANGALORE-560001.

... APPELLANT

(BY MR. A. SHANKAR, SENIOR COUNSEL A/W
MR. M. LAVA, ADV.,)

AND:

DY. COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE-11(5)
R.P. BHAVAN, OPP. RBI
NRUPATHUNGA ROAD
BANGALORE-560001.

... RESPONDENT

(BY MR. T.N.C. SRIDHAR, ADV.)

- - -

THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 02.05.2014 PASSED IN ITA

NO.1547/BANG/2012 FOR THE ASSESSMENT YEAR 2009-10,
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTION OF LAW
STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE
APPELLANT.

(II) ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO
THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY
THE INCOME TAX APPELLANT TRIBUNAL, BANGALORE BENCH IN
ITA NOS.1547/BANG/2012 DATED 02-05-2014 FOR THE
ASSESSMENT YEAR 2009-10.

THIS ITA COMING ON FOR ADMISSION, 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 preferred by the assessee. The subject matter
of the appeal pertains to the Assessment year 2009-10.
The appeal was admitted by a bench of this Court vide
order dated 27.02.2015 on the following substantial
questions of law:

*"(i) Whether the Tribunal is justified in
law in holding that the appellant is not
entitled to the reduction of the amount of
Rs.14,77,53,747/- credited to the profit &
loss account on account of reversal of
provision for bad and doubtful debts under*

section 115JB of the Act, on the facts and circumstances of the case?

(ii) Without prejudice, whether the Tribunal in law failed to take note of the fact of retrospective amendment by Finance (No.2) Act, 2009 with effect from 01.04.2001, by which the computation of book profit as per MAT provisions requires the provision for bad and doubtful debts to be added back and consequently book profits under MAT provisions are to be computed for such earlier assessment years in accordance with amended scheme of the Act and further such amended computation ought to form the basis of computation of MAT for the subsequent years and accordingly the authorities below ought to have allowed the reduction of Rs.14,77,53,747/- under proviso to clause (i) of Explanation 1 to section 115JB(2), on the facts and circumstances of the case?

(iii) Without prejudice, whether the Tribunal in law failed to appreciate that the appellant had added back the provision for

bad and doubtful debts for certain years and hence ought to have granted the deduction in respect of reversal of provision for bad and doubtful debts at least to that extent, on the facts and circumstances of the case?

(iv) Whether the Tribunal is justified in law in holding that the indirect expenditure disallowed under section 14A read with rule 8D(iii) of Rs.49,75,359/- in computing the total income under normal provisions of the Act, is to be added to the net profit in computation of book profit for MAT purposes under section 115JB and thereby importing the provision of section 14A read with rule 8D into the MAT provisions on the facts and circumstances of the case?

2. The factual background, in which the aforesaid substantial questions of law arise for our consideration need mention. The assessee is a company and is an undertaking of Government of Karnataka. The assessee is engaged in financing industrial units in the State of Karnataka. The assessee filed the return of

income for the Assessment Year 2009-10 on 30.09.2011 declaring 'NIL' income under normal provisions of the Act. Thereafter, the assessee returned income of Rs.13,60,88,457/- under the provisions of Section 115JB of the Act. The return of the assessee was selected for scrutiny and assessment was completed under Section 143(3) of the Act. The Assessing Officer vide order dated 21.11.2011 determined the loss at Rs.1,73,60,700/- under the normal provisions of the Act and determined the book profits under Section 115JB of the Act at Rs.30,01,07,991/-.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 31.08.2012 partly allowed the claim of the assessee with regard to gratuity and leave encashment and partial relief was granted in respect of disallowance under Section 14A read with Rule 8D of the Income Tax Rules to the extent of Rs.1,03,08,426/-. However, the Assessing Officer did not grant any relief

in respect of disallowance of provision for bad and doubtful debts written back. Being aggrieved, the assessee as well as the revenue filed appeals before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal vide order dated 02.05.2014 held that write back of provision for bad and doubtful debts to the extent of Rs.14,77,53,747/- is liable to be added to the profits for determination of book profits under Section 115JB of the Act and held that disallowance of Rs.49,75,359/- under Section 14A of the Act deserves to be added back while computing book profits under Section 115JB of the Act. In the aforesaid factual background, the assessee has filed this appeal.

4. Learned Senior counsel for the assessee submitted that provision for bad and doubtful debts could not have been added to the net profit by the assessee as the provision under which the same had to be increased was inserted by Finance Act, 2009 with

retrospective effect i.e., from 01.04.2001 and the revenue cannot expect the assessee to add back the provisions for doubtful debts to the net profits for the purpose of computation under Section 115JB of the Act in the years prior to insertion of clause (i) to Explanation to Section 115JB of the Act as those years have already elapsed and the assessee cannot give effect to a provision, which was inserted at a later point of time.

5. Alternatively, it is submitted that the assessee could not have added back the provision for doubtful debts to the net profit as even if the same is added to the net profits, the resultant book profit is still negative. It is also contended that though the assessee was prevented from adding back the provision for bad and doubtful debts to the net profit due to reasons beyond its control, it has at the first subsequent opportunity demonstrated to the authorities that book profits are still negative on adding back the provision for bad and doubtful debts and therefore, no adverse

inference can be drawn as the assessee cannot perform the impossible i.e., adding back to the net profit of the provision for bad and doubtful debts, based on a provision, which was inserted later. It is also pointed out that the assessee had added the provision for Assessment Years 1998-99 to 2000-01. It is also argued that any disallowance computed under Section 14A of the Act pertains to computation of income under normal provisions of the Act and cannot be read into provisions of Section 115JB of the Act pertaining to computation of book profits by levy of Minimum Alternate Tax (MAT). In support of aforesaid submissions, reliance has been placed on decisions in **'LIFE INSURANCE CORPORATION OF INDIA VS. CIT (1996) 219 ITR 401 (SC), 'CITY UNION BANK LTD. VS. ACIT', (2020) 425 ITR 475 (MADRAS), 'HUDA AND ANOTHER VS. DR.BABESWAR KANHAR AND ANOTHER', (2005) 1 SCC 191, 'CIT VS. GOKALDAS IMAGES P. LTD.', (2020) 122 TAXMANN.COM 160**

(KAR.), 'CIT VS. BENGAL FINANCE & INVESTMENTS PVT LTD.', ITA NO.337 OF 2013 DATED 10.02.2015 and 'CIT VS. M/S ESSAR TELEHOLDINGS LTD.', ITA NO.438 OF 2012 DATED 07.08.2014.

6. On the other hand, learned counsel for the revenue submitted that the assessee has earned income which is exempt under Section 10(2A) and Section 10(35) of the Act and the expenditure incurred on the exempt income has been calculated under Rule 8D of the Rules. It is also urged that the provisions of Section 115JB of the Act are attracted in the fact situation of the case. It is also argued that Section 10(2A) of the Act exempts income of a person being partner of a firm being separately assessed and its share in the total income of the firm, whereas, Section 10(35) exempts income by way of units of mutual funds. It is also contended that income referred to in Section 10A of the Act is exempt and income not

includable in total income referred to in Section 14A is with respect to exempt income under Section 10 of the Act. Therefore, any expenditure incurred for earning the exempt income under Section 10 of the Act has to be disallowed under Section 14A of the Act. It is also argued that any expenditure relating to earning of income exempt under Section 10(2A) and Section 10(35) of the Act has to be disallowed under Section 14A of the Act and has to be added back to book profit under Section 115JB of the Act. It is further submitted that the view taken by this court in **COMMISSIONER OF INCOME TAX, BANGALORE VS. GOKALDAS IMAGES(P) LTD. (2020) 122 TAXMANN.COM 160(KARNATAKA)** requires reconsideration as the disallowance of expenditure in relation to the income referred to in Section 10 of the Act is provided only in Section 14A the Act is not referred to in Clause (f) to Explanation 1 to Section 115JB of the Act, would render the provisions of Section 14A of the Act otiose.

7. It is also argued that in the absence of any provision excluding the applicability of Section 14A of the Act to compute book profit under Section 115JB of the Act, it is implied and unambiguous that the Section 14A of the Act is applicable to computation of book profit under Section 115JB of the Act. In support of aforesaid submission reliance has been placed on '**JOINT COMMISSIONER OF INCOME TAX VS. ROLTA INDIA LTD.'** (2011) 330 ITR 470 (SC) and '**MAXOPP INVESTMENT LTD. VS. COMMISSIONER OF INCOME TAX, NEW DELHI'** (2018) 402 ITR 640(SC). It is further submitted that the Assessing Officer has rightly applied the law, which was prevailing on the date on which an order of assessment was passed. It is also contended that clause (i) in Explanation to Section 115JB(2) has been inserted by Finance Act, 2009 with retrospective effect i.e., from 01.04.2001 and therefore, no fault can be found with the view taken by the authorities. It is also urged that the decisions relied

upon by the learned Senior counsel for the assessee were rendered prior to 2009.

8. We have considered the submissions made by learned counsel for the parties and have perused the record. The Supreme Court in '**CIT VS. HCL Comnet Systems and Services Ltd.**', (2008) 305 ITR 409 (SC) held that provisions for bad and doubtful debts cannot be added under Explanation to Section 115JB of the Act. In order to ensure that provision for bad and doubtful debts debited to profit and loss account, is increased to the net profit for the purposes of computation of book profit under Section 115JB of the Act. Clause (i) in Explanation to Section 115JB(2) has been inserted by Finance Act, 2009 with retrospective effect i.e., from 01.04.2001. From perusal of para 40.2 of Circular dated 03.06.2010, it is evident that clause (i) in Explanation after Section 115JB(2) has been inserted so as to provide that if any provision for diminution in the value of any asset has been debited to the profit and

loss account, it shall be added to the net profit as shown in the profit and loss account for the purpose of computation of book profit. It is well settled in law that law does not contemplate or require the performance of an impossible act. [See: Life Insurance Corporation of India supra]. The assessee could not have added back the provision for doubtful debts to the net profit for the purpose of computation under Section 115JB of the Act in the years prior to insertion of clause (i) as those years had already elapsed and the assessee could not have given effect to the provision, which was inserted at a later point of time. The assessee therefore, could not have added back the provision for bad and doubtful debts to the net profit. It is also pertinent to note that even if the provision for doubtful debt is added back to the net profits, the resultant book profit is still negative and even though the assessee was prevented from adding back the provision for bad and doubtful debts to the net profit due to reasons beyond its control, it has at

the first opportunity demonstrated to the authorities that book profits are still negative on adding back the provision for bad and doubtful debts and therefore, no adverse inference could have been drawn against the assessee. It is also pertinent to note that the assessee had added the provision for bad and doubtful debts for Assessment Years 1998-99 to 2000-01.

In view of preceding analysis, the substantial questions of law 1, 2 and 3 are answered in favour of the assessee and against the revenue. For the reasons assigned by us in the judgment in I.T.A.No.203/2015 dated 04.01.2021, the substantial question of law No.4 is also answered in favour of the assessee and against the revenue. In the result, the judgment dated 02.05.2014 passed by the tribunal to the extent it is against the assessee is hereby quashed.

In the result, the appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS