IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. and Assessment Year	APPELLANT	RESPONDENT
1074/Bang/2017 2011-12	Karnataka State Industrial Infrastructure Development Corporation Ltd., Khanija Bhavan, 4th Floor, East Wing, No.49, Race Course Road, Bengaluru – 560 001. **PAN : AAACK 5531 H**	The Deputy Commissioner of Income Tax , Circle – 11(5), Bengaluru, Karnataka State.
1334/Bang/2017 2011-12	The Deputy Commissioner of Income Tax , Circle – 11(5), Bengaluru, Karnataka State.	Karnataka State Industrial Infrastructure Development Corporation Ltd., Bengaluru – 560 001. **PAN : AAACK 5531 H**

APPELLANT		RESPONDENT
Assessee by	:	Shri. Ramasubramaniam, Advocate
Revenue by	:	Shri. Manjeet Singh, Addl. CIT (DR)(ITAT), Bengaluru
Date of hearing	:	28.07.2020
Date of Pronouncement	:	14.08.2020

O R D E R

Per A. K. Garodia, AM:

These are cross-appeals filed by the assessee and the Revenue and these are directed against the order of CIT(A)-4, Bengaluru dated 24.02.2014 for Assessment Year 2011-12.

2. First, we take up the appeal of the Revenue i.e. ITA No. 1334/Bang/2017. Regarding this appeal, learned DR of the Revenue fairly conceded that the tax effect in this appeal of the Revenue is below Rs.50 lakhs and therefore, this appeal of the Revenue is not maintainable because of low tax effect as per the latest instructions of CBDT. Accordingly, this appeal of the Revenue is dismissed because of low tax effect.

3. Now, we take up the appeal of the assessee. Ground No.1 is general, ground No.2 is as under:

> *"2. That the Learned Commissioner of Income tax (Appeals) erred in confirming the disallowance under section 40A (9) of the Income Tax Act,1961 and in doing so he failed to appreciate the following:*
>
> *a) That the expenditure incurred was neither in connection with setting up or formation of nor was it a contribution to any fund, referred to in section 40A (9) but was merely expenditure incurred on employee welfare through an external agency.*
> *b) That the expenditure in question was incurred wholly and exclusively in the ordinary course of the business of the Appellant and as such is deductible u/s 37 of the Income Tax Act."*

4. It was submitted by learned AR of the assessee that the disallowance was made by the AO by invoking the provisions of sub-section 9 of section 40A of the Income Tax Act, 1961 (hereinafter called 'the Act') but in the present case, this is not applicable because as per sub-section 9 of section 40A, disallowance can be made in respect of sum paid by the assessee as an employer towards the set up or formation of or as contribution to any fund, trust, company, AOP, POI, Society registered under the Societies Act, 1860, or other institution for any purpose except where such sum is so paid for the purposes to the extent provided by or under clause IV or clause IVA or clause V of sub-section 1 of section 36 or as required by or under any other law for the time being in force. He submitted that in the present case, the amount in dispute of Rs.2,75,000/- was paid to two concerns viz., Geleyara Balaga and

SC/ST Welfare Association for the purpose of festival celebration and general welfare of its employees. As against this, learned DR of the Revenue supported the orders of authorities below.

5. We have considered the rival submissions and we find that the amount in question was paid for the welfare of the employees of the assessee and not as contribution to any fund, trust, etc., and therefore, in our humble understanding, provisions of sub-section 9 of section 40A are not applicable in the present case and the amount in question is allowable under section 37 and accordingly, this disallowance is deleted and this ground is allowed.

4. Ground No.3 is as under:

"3. That the Learned Commissioner of Income tax (Appeals) erred in confirming the following additions in the computation of Book Profits under section 115JB made by the Assessing Officer and in doing so:

a) The Ld CIT (A) failed to appreciate that as per the Scheme envisaged under Section 115JB, the Provisions for Bad and Doubtful Debts created in earlier years and written back during the year under assessment ought to have been reduced from the net profits shown in the Profit & Loss Account.

b) The Ld CIT (A) failed to appreciate that for the years in which the said provisions were created, the Appellant had no liability to income tax under the Minimum Alternate Tax regime and consequently the question of adding back the amount of provisions in those years is immaterial for the assessment year under dispute.

c) The Ld CIT (A), failed to appreciate that in order to invoke the proviso to clause(i) of Explanation to Sub-section 2 of Section 115JB , it is necessary that the provisions of the said 115JB should have been applicable to the Appellant during the preceding previous year/s during which the provisions were created.

d) The Ld CIT (A), without assigning any reasons thereof, has not considered the submissions of the Appellant that the estimated expenses disallowed under Section 14A read with Rule 8D(2)(iii) cannot be added back in the Computation of Book Profits U/s 115JB inasmuch as Section 115JB requires that only the actual expenses incurred towards earning any income to which Section 10 (other than the provisions contained in clause [38])applies shall be added.

5. Learned AR of the assessee first made the arguments in respect of ground 3 (d) regarding disallowance made by the AO under section 14A r.w.r. 8D(ii) for the purpose of computing book profit under section 115JB of the Act. He submitted that in respect of this issue, the order of Special Bench of this Tribunal rendered in the case of ACIT Vs. Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012 dated 16.06.2017 is applicable as per which this issue was decided in favour of the assessee and he also submitted that copy of the same is available on pages 69 to 138 of the paper book and in particular, our attention was drawn to para 4 of this Tribunal order available on page 78 of the Paper Book and it was pointed out that in this para, it is noted by the Special Bench of the Tribunal that the issue being decided is this as to whether any addition has to be made for computing book profit under section 115JB of the Act in respect of disallowance made under section 14A of the Act and the finding is given in para 6.22 of the same Tribunal order, copy available on page 116 of the Paper Book in which this is the finding of Special Bench of the Tribunal that for the purpose of computing book profit under section 115JB of the Act, no addition will be made in respect of disallowance under section 14A r.w.r. 8D of the Act. He submitted that in view of this judgment of Special Bench of the Tribunal, ground No.3 (d) should be allowed. Learned DR of the Revenue supported the orders of authorities below.

6. We have considered the rival submissions and respectfully following this judgment of Special Bench of the Tribunal rendered in the case of ACIT

Vs. Vireet Investment Pvt. Ltd., (supra), this issue is decided in favour of the assessee and ground No.3 (d) is allowed.

7. Now we take up ground Nos.3 (a) to 3 (c). These are in respect of other two additions made by the AO for computing book profit under section 115JB. Regarding ground No.3 (a), learned AR of the assessee fairly conceded that this issue is squarely covered against the assessee as per the Tribunal order rendered in the assesseee's own case as noted by learned CIT(A) on page 15 of his order. Respectfully following the earlier Tribunal orders in assssee's own case, this issue is decided against the assessee and ground No.3 (a) is rejected.

8. Regarding ground Nos.3 (b) and 3 (c), it was submitted learned AR of the assessee that the authorities below have invoked the provisions of the proviso below clause (i) of explanation 1 to sub-section 2 of section 115JB. He submitted that as per this proviso, clause(i) below explanation 1 of section 115JB (2) will be applicable if the provision was made in an earlier year after 01.04.1997 and the book profit of such year had not been increased by such reserve or provision out of which the amount in question is withdrawn in the present year. He submitted that in the earlier year when the provision was made for Bad Debts, there was no requirement to compute book profit and therefore, it cannot be said that reversal of provision for bad debts in the present year is not required to be reduced from book profit for the purpose of computing book profit u/s 115JB. Learned DR of the Revenue supported the orders of authorities below.

9. We have considered the rival submissions. First, we reproduce the clause (i) and its proviso below explanation 1 to section 115JB (2) for ready reference. The same reads as under:

> "*(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss:*
>
> *Provided that where this section is applicable to an assesseee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to* section 115JA, *as the case may be"*

10. From the above provisions of clause (i) and its proviso, it comes out that if any provision was made by the assessee after 01.04.1997 and the same is withdrawn in the present year, then book profit has to be reduced by the amount of provisions written back but such reduction from book profit is not allowable if in the year of creation of provision, it was not added back to book profit. There is no dispute on this factual aspect that in the present case, in the year of creation of provision for Bad Debt, no addition was made in the book profit and its reason may be anything. This is the only argument of learned AR of the assessee that in the year of creation of provision for Bad Debt, book profit was not required to be computed because there was no requirement for such computation and therefore, the Revenue cannot insist in the present year that for this reason alone that there was no addition to book profit in the year of creation of provision, the deduction cannot be allowed in the present year on account of write back of provision but we do not find any merit in this argument because as per the proviso below clause (i) below explanation 1 to sub-section 2 of section 115JB as reproduced above, this is not the requirement that if book profit was computed in the year of creation of the reserve of provision and addition was not made in that year for computing book profit then only the benefit of clause (i) in explanation 1 to

section 115JB (2) will not be available. In our humble understanding, as per this proviso, the benefit of clause (i) of Explanation 1 to section 115JB (2) will not be available to the assessee if the book profit was not increased by the amount of provision made in the year of making the provision for whatever reason. Hence, we hold that there is no infirmity in the order of CIT(A) on this issue and accordingly, grounds 3 (b) and 3 (c) are also rejected.

11. In the result, appeal of the assessee is partly allowed in the terms indicated above and the Appeal of the Revenue is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(BEENA PILLAI)	**(A.K. GARODIA)**
Judicial Member	**Accountant Member**

Bangalore,
Dated: 14th August, 2020.
/NS/*

Copy to:

1. Appellants	2. Respondent	3. CIT
4. CIT(A)	5. DR, ITAT, Bangalore.	6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.