IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1020 OF 2014

Commissioner of Income Tax-1 .. Appellant

v/s.

M/s. Weizmann Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. J.D. Mistri, Senior Counsel a/w Mr. Atul Jasani for respondent

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.

DATED : 9th DECEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st October, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is challenged to the extent it relates to Assessment Year 2001-02.

2. The Revenue urges the only following substantial question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in setting aside the order of CIT(A) and directing deletion of addition of Rs.1,28,60,000/-*

made to Book Profit by an order u/s 154 of the Act passed on 19.08.2010 when the order u/s 154 beyond four years of assessment ?

Briefly, the facts leading to this appeal are as under :-

3. On 27th February, 2004, the assessment order was passed under Section 143(3) of the Act for the subject assessment year. The assessment order accepted the respondent assessee's claim of book profits under Section 115JB of the Act. The book profits as claimed was after allowing of amounts set aside as provisions for diminution in the value of assets.

4. The respondent assessee being aggrieved by the assessment order dated 27th February, 2004 on certain other issues had preferred an appeal to the appellate authority and carried its grievance up to the Tribunal. On 29th August, 2007, the Tribunal restored some of the issues by which the respondent assessee was aggrieved to the Assessing Officer to re-adjudicate. It is relevant to note that the issue of allowing of amounts set aside as provision for diminution of the value of assets was not an issue which was restored to the Assessing Officer for re-adjudication.

5. Consequent to the above, the Assessing Officer passed an order dated 30th December, 2008 under Section 143(3) of the Act r/w Section 254 of the Act giving effect to the order dated 29th August, 2007 of the Tribunal.

6. The Finance (No.2) Act of 2009 amended Section 115JB of the Act with retrospective effect from 1st April, 2001. The amendment *inter alia* added to Explanation I to Section 115JB of the Act, clause (i) providing that for purposes of computing that the book profits thereunder, the profit shown in the profit and loss account is to be increased by the amounts set aside as provision for diminution in the value of assets.

7. In view of the above amendment to Section1 115JB of the Act, the Assessing Officer by order dated 19th August, 2010 passed under Section 154 of the Act rectified its order dated 30th December, 2008. This order dated 19th August, 2010 of the Assessing Officer under Section 154 r/w Section 143(3) of the Act increased the book profits under Section 115JB of the Act by adding to it the amounts set aside as provision for diminution in value of assets.

8. Being aggrieved, by the order dated 19th August, 2010 the respondent assessee carried the issue of jurisdiction of the Assessing Officer to rectify the order dated 30th December, 2008 on an issue not dealt with in it, but was a subject matter of an order dated 27th February, 2004 of the Assessing Officer upto the Tribunal. By the impugned order dated 31st October, 2013 the Tribunal held that in the present facts, the assessment order dated 27th February, 2004 passed under Section 143(3) of the Act did not merge with the order dated 30th December, 2008 passed under Section 143(3) r/w 254 of the Act. Thus, the rectification of the order dated 30th December, 2008 by order dated 19th August, 2010 would not affect the order dated 27th February, 2004. Therefore, the mistake, if any, warranting rectification on account of amendment to Section 115JB of the Act is in the order dated 27th February, 2004 passed by the Assessing Officer under Section 143(3) of the Act. Therefore, the additions made in view of the rectification order dated 19th August, 2008 was deleted. The Tribunal in the impugned order placed reliance upon / followed the decision of this Court on almost identical circumstances in ***Commissioner of Income Tax, Bombay City-II Vs. Sakseria Cotton Mills Ltd. 143 ITR 47*** to allow the respondent assessee's appeal before it.

9. Mr. Suresh Kumar, learned Counsel for the Revenue submits that in the present facts, the decision to rectify the order arises on account of retrospective amendment made to Section 115JB of the Act in 2009 with retrospective effect from 2001. It is on the basis of the above amendment that the rectification order was passed on 19th August, 2010 and it would affect the order dated 27th February, 2004. Therefore, it is submitted that the decision of this Court in *Sakseria Cotton Mills Ltd.* (supra) would not apply.

10. We are of the view that the issue stands concluded by the decision of this Court in Sakseria Cotton Mills Ltd. (supra) in favour of the respondent assessee and against the appellant Revenue. The distinction sought to be made by the appellant Revenue on the basis of the amendment to Section 115JB of the Act in 2009 with retrospective effect from 2001 does not address the fundamental issue of non-merger of the order dated 27th February, 2004 with the order dated 30th December, 2008. Therefore, any rectification of the order dated 27th February, 2004 is required to be done within 4 years from 27th February, 2004 as provided under Section 154 of the Act. It is not disputed before us that issue of the provisions made for diminution in value of assets which is sought to be rectified is an issue which was never the

subject matter of consideration in the order dated 30^{th} December, 2008 passed under Section 143(3) r/w Section 254 of the Act. Therefore, in these circumstances, it could not be rectified under Section 154 of the Act. Thus, the distinction sought to be made is of no consequence. The decision of Court in *Sakseria Cotton Mills Ltd.* (supra) would apply to facts the present case and no fault can be found with the impugned order in following the decision of this Court.

11. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

12. The appeal is dismissed. No order as to costs.

(M.S. SONAK, J.) **(M.S. SANKLECHA, J.)**