

Gurbax Singh
2017-05-23 10:09

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 417 of 2016 (O&M)
Date of decision: 26.4.2017

M/s Gee City Builders Private Limited

.....Appellant

Vs.

Commissioner of Income Tax-Central Circle, Ludhiana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Salil Kapoor, Advocate with Mr. Sumit Lalchandani,
Advocate for the appellant-assessee.

Mr. Rajesh Katoch, Senior Standing counsel for the respondent-
revenue.

Ajay Kumar Mittal,J.

CM No. 26034-CII of 2016

1. The delay in refiling the appeal is condoned. CM stands disposed of.

CM No.26033-C II of 2016

2. The appellant is permitted to make good the deficiency in court fee. CM stands disposed of.

ITA No. 417 of 2016

3. This order shall dispose of ITA Nos. 417 and 418 of 2016 as learned counsel for the parties are agreed that identical issue is involved in

both the appeals. However, the facts are being extracted from the ITA No.417 of 2016.

4. The appellant-assessee has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 01.06.2016, Annexure P.3, passed under Section 254(1) of the Act by the Income Tax Appellate Tribunal, Chandigarh “SMC” Bench, Chandigarh (in short, “the Tribunal”) in ITA No. 422/CHD/2016, for the assessment year 2008-09, claiming following substantial questions of law:-

(i) “Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in hearing and deciding this case in SMC, whereas the same ought to have been heard by the Division Bench of the Tribunal?

(ii) Whether in view of the facts and circumstances of the case and in law, the order passed by the Tribunal in SMC is without jurisdiction?

(iii) Whether in view of the facts and circumstances of the case and in law, the Tribunal erred in concluding that the provisions of Section 115JB(6) are not applicable in the instant case?”

(iv) Whether in view of the facts and circumstances of the case and in law, the Tribunal erred in giving a restrictive interpretation to the words of Section 115JB(6), without appreciating that the appellant meets all the criterias/conditions as specified in the said sub-section?

(v) Whether on the facts and circumstances of the case and in law, the order by the Tribunal is bad in law and perverse?

5. A few facts relevant for the decision of the controversy involved as narrated in appeal may be noticed. The appellant-assessee-M/s Gee City Builders is a private limited company dealing in business development of housing project units. It filed its return of income for the

assessment year 2008-09 on 04.03.2009 declaring income of ₹ 2,20,013/- .

The Assessing Officer framed the assessment under Section 153A read with Section 143(3) of the Act and assessed total income of the assessee at ₹ 12,74,720/-. The Assessing Officer computed income under MAT at ₹ 96,28,336/- under Section 115JB of the Act. . The assessee was having income from sale of its flats, which was exempt under Section 80IB(10) of the Act. The deduction under the said section was allowed to the assessee. The assessee claimed that the provisions of Section 115JB of the Act were not applicable. The claim of the assessee that by virtue of Section 115JB(6) of the Act, it was not entitled to pay the tax under the MAT provisions, was rejected by the Assessing Officer. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 10.02.2016, Annexure P.2, the CIT(A) dismissed the appeal. Still not satisfied, the assessee preferred an appeal before the Tribunal. Vide order dated 01.06.2016, Annexure P.3, the Tribunal dismissed the appeal filed by assessee. Hence, the instant appeal by the appellant-assessee.

6. We have heard the learned counsel for the parties.

7. Learned counsel for the appellant-assessee submitted that though the Assessing Officer had assessed the income at ₹ 12,74,720/- but the income under the provisions of MAT was computed at ₹ 96,28,336/- and tax payable was determined accordingly. It was urged that the appeal which was heard by the Tribunal was by a learned Single Member whereas according to Section 255(3) of the Act, since the income computed by the Assessing Officer under MAT was more than ₹ 50,00,000/-, the same was required to be heard by a two member Bench of the Tribunal under sub section (2) of Section 255 of the Act. It was prayed that the impugned order

passed by the Tribunal be set aside and the matter remanded to the Tribunal to decide it afresh in accordance with law.

8. On the other hand, learned counsel for the revenue opposed the aforesaid prayer and argued that the income assessed was less than ₹ 15,00,000/- and, therefore, hearing of the appeal by learned Single Member of the Tribunal was justified.

9. After hearing learned counsel for the parties, we find force in the submissions made by learned counsel for the appellant-assessee.

10. It would be advantageous to refer to relevant provisions of Section 255 of the Act. Under sub section (1) of Section 255 of the Act, the President of the Appellate Tribunal is empowered to constitute benches from among the members to exercise the powers and functions of the Appellate Tribunal. Sub-section (2) of Section 255 of the Act provides that subject to provisions contained in sub section (3), the Bench shall be constituted with the composition that it would have one judicial member and one Accountant member. Under sub-section (3) of Section 255 of the Act, the President or any other member of the appellate Tribunal is authorized to adjudicate appeals sitting singly which have been allotted to the Bench pertaining to an assessee whose total income as computed by the Assessing Officer does not exceed the specified limit.

11. We now proceed to examine the legislative history of monetary limit prescribed under sub section (3) of Section 255 of the Act. As originally enacted, the limit prescribed under the sub section was ₹ 25,000/- which was enhanced to ₹ 40,000/- by Taxation Laws (Amendment) Act, 1970 with effect from 1st April 1971. The Direct Tax Laws (Amendment) Act, 1989 further enhanced the limit to ₹ 1,00,000/-

and the said limit was increased to ₹ 5,00,000/- by Finance (No.2) Act, 1998 effective from 1.10.1998. Finance Act, 2015 effective from 1.6.2015 has prescribed the limit of ₹ 15,00,000/- which again was modified to ₹ 50,00,000/- by Finance Act, 2016 made applicable from 1.6.2016. The relevant portion of Section 255 of the Act as applicable as on date is reproduced hereunder for ready reference:-

“255.(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

(2). Subject to the provisions contained in sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3). The President or any other member of the Appellate Tribunal authorized in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed fifty lakh rupees and the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(4) to (6) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx”

12. It requires to be mentioned here that the legislature has used the term ‘computed’ in contra-distinction to the word ‘assessed’ in sub section (3) of Section 255 of the Act. In the present case, the income of the assessee was assessed by the Assessing Officer at ₹ 12,74,720/- but was computed under the MAT provisions at ₹ 96,28,336/- under Section 115JB of the Act which was much above the limit prescribed under sub-Section

(3) of Section 255 of the Act. The appeal was decided on 01.06.2016 on which date, the limit for hearing appeal by learned Single Member of the Tribunal would be taken at ₹ 50,00,000/- as the amended provision of sub section (3) of Section 255 of the Act by Finance Act 2016 was made operative from 1.6.2016 itself.

13. In view of the above provision of law, the impugned order dated 01.06.2016, Annexure P.3, passed by the Tribunal whereby single member had heard the appeal, in both the appeals is set aside and the matter is remanded to the Tribunal to decide it afresh after hearing the parties in accordance with law. The appeals shall be heard by a Division Bench of the Tribunal in accordance with sub Section (2) of Section 255 of the Act. Consequently, both the present appeals stand disposed of accordingly.

(Ajay Kumar Mittal)
Judge

April 26, 2017
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes