IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2018

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case Appeal Nos.1532 and 1533 of 2008

M/s.Integrated Finance Co. Ltd.,
112, Thyagaraja Road,
T.Nagar, Chennai - 600 017.
.... Appellant in the above TCAs

Vs.

The Deputy Commissioner of Incometax
Special Range - VIII, Chennai - 600 034.
.... Respondent in the above TCAs

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 14.07.2006 made in ITA Nos.1926& 1928/Mds/2002 for the assessment years 1997-98 and 2000-2001.

For Appellant : Mr.R.Venkatanarayanan
for M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.Karthik Renganathan

COMMON JUDGMENT
(Delivered by DR.ANITA SUMANTH,J)

The above Tax Case (Appeals) have been filed by the assessee against the order passed by the Income Tax Appellate Tribunal, Chennai, dated

14.07.2006.

2. These appeals relate to the assessment years 1997-98 and 2000-2001. The following common substantial questions of law have been admitted by this Court vide order dated 14.10.2008:

> *"i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provision for non-performing assets should not be reduced from the book profits computed under section 115JA of the Act?*
>
> *ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessing Officer had jurisdiction to rectify the intimation under section 143(1)(a) to disallow the provision for non-performing assets?"*

3. The facts in relation to both the appeals are common and as follows. Returns of income were filed in respect of assessment years 1997-98 and 2000-2001 and intimations under section 143(1)(a) of the Income Tax Act, 1961 (in short 'Act') were issued. Thereafter, notices under s.154 of the Act were issued on the ground that a mistake apparent on record had crept into the processing of the return. According to the Assessing Officer, the provision created towards non-performing assets represented unascertained liabilities in terms of Explanation (c) to s.115 JA of the Act and ought to have been included in the computation of book profit under s.115 JA of the Act. The proposals for rectification called upon the assessee to show cause why the intimations not be revised as aforesaid.

4. The assessee countered the proposal pointing out that the provision towards non-performing assets had been created in terms of the Prudential Norms issued by the Reserve Bank of India and as such, were ascertained. The response was rejected and the rectification effected as per the proposal of the assessing officer. It is relevant to note that at the time when the order under s.154 as aforesaid was passed by the Assessing Officer, the jurisdictional High Court, had, in the case of *Deputy Commissioner of Income Tax V. Beardsell Ltd.* ((2000) 244 ITR 256) considered the identical issue of whether a provision for doubtful debts was liable to be included in the computation of book profits under s.115JA of the Act.

5. The conclusion of the Bench, following the ratio of the judgements of the Supreme Court, in the cases of *CIT V. Jyoti Ltd.,* ((1996) 219 ITR 388 (SC) and *State Bank of Patiala V. CIT* ((1996) 219 ITR 706 (SC) was in favour of the revenue. Thus, the position of law as on the date of passing of s.154 order would that a provision for non-performing assets was liable to be included in 'book profits' in terms of Explanation (c) to section 115JA of the Act.

6. The matter travelled in appeal before the Commissioner of Income Tax (Appeals) and thereafter to the Income Tax Appellate Tribunal and both the Appellate Authorities have confirmed the disallowance made by the Assessing Officer under s.154 of the Act.

7. The assessee, apart from challenging the addition on merits had also taken a point before the lower authorities to the effect that the addition

ought not to have been made in terms of s.154 of the Act that specifically provides only for a rectification of mistake apparent on record as, according to the assessee, the present addition related to a debatable issue.

8. Heard Mr.R.Venkatanaraynan, learned counsel for the assessee and Mr.Karthik Renganathan, learned Senior Standing Counsel for the Revenue.

9. Pursuant to the decision of the Madras High Court in the case of *Beard Sell (Supra)*, the Supreme Court in the case of *CIT V. HCL Comet Systems & Services Ltd.* ((2008) 305 ITR 409) considered the question of whether a provision for bad and doubtful debts would be part of 'book profits' in terms of Explanation (c) to s.115JA of the Act. The Bench held that such provision would only represent a probable diminution in the value of the asset not a provision for liability. Thus, Explanation (c) to s.115JA would not be attracted in such instances and the amount was not liable to be added back in the computation of book profits.

10. The aforesaid judgment of the Supreme Court was overcome by way of a legislative amendment and Finance (No.2) Act 2009 inserted clause (g) in Explanation to s.115JA with retrospective effect from 01.04.1998 to read as follows:

> ***'115JA Deemed Income relating to certain companies.***
>
> *.......*
>
> *Explanation – For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -*
>
> *..........*

(g) the amount or amounts set aside as provision for diminution in the value of any asset, if any amount referred to in clauses (a) to (g) is debited to the profit and loss account, and as reduced by -

.........................'

11. Thus the settled position in law as on date is that with effect from 01.04.1998 any amount set aside as provision for diminution in value of asset would be liable to be added back to the 'book profits' in terms of s.115JA of the Act.

12. The substantial questions of law that arise for the respective Assessment Years are now answered bearing in mind the dates of the impugned orders.

13. In T.C.(A)No.1532 of 2008, the order under s.154 is dated 09.08.1999, whereas the decision of this Court in *Beardsell* (supra) is dated 14.3.2000. Thus the Revenue did not have the benefit of the decision of this Court in *Beardsell* (supra) at the time when the s.154 order was passed and the error cannot be said to be one 'apparent from the face of record' and was debatable. The invocation of section 154 to rectify an intimation u/s 143(1) of the Act is thus incorrect as when the order was passed for Assessment Year 1997-98, the position in regard to the disallowance was debatable. The questions of law in so far as they relate to assessment year 1997-98 are answered in favour of the Assessee and against the Revenue.

14. However, the order u/s 154 in respect of Assessment Year 2000-2001 was passed on 26.04.2001, subsequent to the decision of this Court in the case of *Beardsell* (supra). Thus, the substantial questions of law are

answered in favour of the Revenue and against the assessee for Assessment Year 2000-2001 .

15. In the light of the above, T.C.(A)No.1532 of 2008 is allowed and T.C.(A)No.1533 of 2008 is dismissed. No costs.

(V.K.,J.) (A.S.M.,J.)
18.12.2018

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

To
The Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai.

DR.VINEET KOTHARI, J.
and
DR.ANITA SUMANTH, J.

TCA Nos.1532 and 1533 of 2008

18.12.2018