

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

INCOME TAX APPEAL NO.956 OF 2017

Pr. Commissioner of Income Tax – 14Appellant

V/s.

Sonu Realtors Private LimitedRespondent

Mr. Suresh Kumar for appellant.

Mr. R.S. Padvekar a/w. Mr. Tanzil Padvekar for respondent.

**CORAM : K.R.SHRIRAM, &
AMIT B. BORKAR, JJ.**

DATED : 11th OCTOBER 2021

P.C.:

1 Respondent is a company engaged in the business of construction. For the Assessment Year 2008-2009, respondent filed its return of income at Rs.51,34,740/- after claiming deduction under Sub-Section 10 of 80 IB (*Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings*) of the Income Tax Act, 1961 (the said Act) amounting to Rs.13,72,33,540/-. Subsequently, Commissioner of Income Tax (CIT) passed order under Section 263 of the said Act holding that respondent company was taxable under the provisions of Section 115JB (*Special provision for payment of tax by certain companies*) of the said Act. Respondent had agreed for the revision of the assessment pursuant to revision order under Section 263 following which the Assessing Officer passed order under Section 143 (*Assessment*) of the said Act assessing the income of respondent under Section 115JB. Respondent also paid tax under Section

115JB. The Assessing Officer, however, later levied penalty under Section 271 (1) (c) (*..... any person - has concealed the particulars of his income or furnished inaccurate particulars of such income or*) of the said Act on the ground that (a) respondent had made an attempt to reduce its tax liability by claiming wrong deduction; and (b) respondent committed a default of not computing the book profit under Section 115JB as required mandatorily by the provisions of Act.

2 Against this order, an appeal was preferred by respondent and the Commissioner of Income Tax (Appeals) by an order dated 26th May 2015 set aside the order of the Assessing Officer imposing penalty on respondent. By an order dated 20th July 2016, the Income Tax Appellate Tribunal (ITAT) dismissed the appeal of the Revenue. Against this order, the present appeal has been filed and the substantial question of law proposed is as under :

“a) Whether on the facts and in the circumstances of the case and in law, the Hon’ble ITAT was right in deleting the penalty of Rs.1,63,71,320/- levied u/s 271(1) (c) of the Act for non furnishing of particulars of MAT calculation u/s 115JB in the return of income without appreciating the fact that the tax liability on the Book Profit computed u/s 115JB of the IT Act is more than the tax liability computed on the total income computed under the normal provisions of the IT Act.”

3 Therefore, appellant is restricting its question of law only with regard to the imposition of penalty by the Assessing Officer on the ground that respondent committed a default of not computing the book profit under Section 115JB.

The relevant paragraph in the Assessing Officer's order reads as under :

It is also pertinent to mention here that the assessee company has been committing the same default of not computing the book profit u/s 115JB, as required mandatorily by the provisions of Act, for the previous years and subsequent years as well. The book profit in the case of the assessee for subsequent years was also not offered by the assessee company to tax and the same was brought to tax by the AO in the assessment orders passed for subsequent years. This clearly shows that the assessee has been committing default for year after year with regard to compliance to clear and unambiguous provisions of the Act and has been avoiding payment of due taxes.

4 Even the question of law as proposed states “*for non furnishing of particulars of MAT calculation u/s 115JB in the return of income*”. The fact is the particulars have infact been furnished. Otherwise how could, in the order passed under Section 263 of the Act, the Commissioner of Income Tax state “*..... After going through the above mentioned assessment order and the records of the assessee, it was observed that prima facie the assessment order suffered, inter alia, from the following errors, i.e., the total income was assessed under the normal provisions and the book profit of Rs.14,44,95,320/- was not assessed as income under Section 115JB of the Income Tax Act, 1961..*”. If he has to assess the book profit of Rs.14,44,95,320/-, certainly the particulars of MAT calculation must have been available before the concerned officer. In any event, if such particulars, which according to Mr. Suresh Kumar are mandatorily to be furnished by the assessee, which is a company, before the original assessment order was passed, the Assessing Officer would have certainly called for those

particulars from the assessee. In any event, even assuming for a moment that such particulars were not furnished but only the return of income was filed showing the income tax payable on the total income as computed under the said Act, that cannot amount to concealment of particulars of income or furnish inaccurate particulars of income. Even the attempt, if any as alleged, to reduce tax liability by claiming wrong deduction cannot amount to concealing the particulars of income or furnishing inaccurate particulars of such income.

5 In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

6 The appeal is devoid of merits and it is dismissed with no order as to costs.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)