

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 8620 of 2014

and

M.P. No. 1 of 2014

M/s.Seshasayee Paper and Boards Limited,
Represented by its Director (Finance) & Secretary,
V.Pichai,
Cauvery R.S.Post,
Pallipalayam,
Erode - 638 007. Petitioner

Vs

The Assistant Commissioner of Income-tax,
Circle I (1),
No.3, Gandhi Road,
Salem - 636 007. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records in PAN:AACCS1192G dated 07.03.2014, relating to Assessment Year 2006-07 on the file of the Respondent and quash the same.

For Petitioner : Mr.G.Baskar
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned speaking order dated 07.03.2014 in this writ petition. The said order overrules the objections of the petitioner for reopening of the assessment for the Assessment Year 2006-2007.

2. In this case, the petitioner had filed returns for the Assessment Year 2006-2007 on 04.11.2006 and filed computation of Book Profits under Section 115JB of the Income Tax Act, 1961, (hereinafter referred to as the IT Act). The assessment was also completed under Section 143(3) of the IT Act by an order dated 10.12.2008.

3. After the assessment was completed, the Finance Act, 2009 was amended, wherein, certain amendments were made to Section

115JB of the IT Act with retrospective effect from 01.04.2001. The feeble attempt was made by the Assessing Officer namely the Deputy Commissioner of Income Tax by issuing notice under Section 154 of the IT Act, wherein, it was stated that the assessment order dated 10.12.2008 requires to be amended as there is a mistake apparent from the records within the meaning of Section 154/155 of the IT Act.

4. The reasons given for proposed rectification was that the petitioner had debited a sum of Rs.29,35,473/- in their Profit and Loss Account being a provision of bad and doubtful debts and the same was not added back to book profit under Section 115JB of the Act and therefore this amount was to be added back. The relevant portion of the notice dated 18.07.2012 issued under Section 154 read with Section 155 of the IT Act is reproduced below:-

"The company has debited Rs.29,35,473- in P & L A/c being provision of bad and doubtful debts and the same was not added back to book profit u/s 115JB. The amount is required to be added back."

5. The petitioner thereafter replied to the Assitant Commissioner of Income Tax for the aforesaid notice. After the petitioner replied with the aforesaid notice, another notice under Section 148 of the IT Act on 20.03.2013 was issued to the petitioner and the reasons given for reopening of the assessment was communicated on 06.01.2014.

6. The ostensible reason for reopening of the assessment as communicated by a letter/notice dated 06.01.2014, reads as under:-

"As requested by you, I am providing herewith the reason for re-opening the assessment for the assessment year 2006-07 as under:-

"It is seen from the record that the assessee had debited a sum of Rs.29,35,473/- in the P & L A/c being provision for bad and doubtful debts. However, the same was not added to the book profit u/s.115JB based on the Supreme Court in the case of CIT vs HCL Commet Systems & Services Ltd reported in (305) ITR 409.

However, based on the latest amendment to the IT Act by the Finance Act 2008 w.r.e.f. 01.04.01, book profit u/s. 115JB requires to be increased by "the amount or amounts set-aside as provision for

diminution in the value of any asset", and hence, the provision for bad and doubtful debts to the tune of Rs.29,35,473/- debited in the P&L A/c requires to be added for the purpose of arriving book profit.

In view of the above, I have reason to believe that the income chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

7. The petitioner replied to the same which is culminated in the impugned order. In the impugned order, the respondent ordered as follows:-

"The objections raised by you for the reopening of assessment u/s.148 is considered and it was not acceptable for the following reasons:-

1. The reasons given to you for reopening the assessment was that "based on the latest amendment to the IT Act by the Finance Act 2008 w.e.f. 01.04.01, book profit u/s. 115JB requires to be increased by the amount or set-aside as provision for diminution in the value of any asset, and hence, the provision for bad and doubtful debts to the tune of Rs.29,35,473/- debited in the P&L A/c requires to be added for the purpose of arriving book profit".

Thus, the reopening of the notice is in accordance with law. The intention of the legislature is that the provisions should be applied with particular date and for giving effect to that amendment, the re-opening notice was issued.

2. The case laws submitted in support of your claim is perused. In my opinion, wherever the legislature does not want the application of law retrospectively, the provisions are provided in the Act, as given in section 14A of the I.T.Act. In this case, there is no specific provision provided by the legislature in the Act.

3. The contention that the provision for doubtful debts debited in the Profit & Loss Account is meeting the requirements for write off of bad debts by applying the principles laid down by the Hon'ble Supreme Court in the case of Southern Technologies Limited (320 ITR 577) is examined. The

Hon'ble Supreme Court had pronounced the order with relate to Non Banking Finance Companies (NBFCs) and other case law relied were also pronounced in Vijaya Bank case (323 ITR 166). However, the assessee company's business is entirely different from banking business and thus, these decisions would not be applicable.

It is also specifically brought to the notice of the assessee that the provision for doubtful debts was added back in regular computation. If the assessee company have a belief that "provision for doubtful debts" had fulfilled the criteria for bad debts to be written off, then the same should have been shown under bad debts written off and there is no reason to follow different accounting treatment having same status.

I understand that there must be a proper reason for classifying certain debts as doubtful debts and because of the same, in regular computation of income, it was added back. Therefore, it is an attempt to match the principles of Hon'ble Supreme Court with the facts of this case, which was not proved.

In view of the above reasons, there is a failure on the part of the assessee to disclose any truly all material facts. Hence, I am rejecting the objections raised and proceeding with the assessment proceedings.

Your case posted for hearing on 14.03.2014."

8. Assailing the impugned order, the learned counsel for the petitioner submits that the issue is covered by the decision of the Delhi High Court in Sun Investment Pvt Ltd Vs Assistant Commissioner of Income Tax and others, (2012) 344 ITR 1 and the decision of this Court in Commissioner of Income Tax, Chennai Vs Saint Gobain Glass India Limited [2020] 269 Taxman 610 (Madras). The learned counsel for the petitioner further submits that on the date when the petitioner filed the returns under Section 139 of the IT Act i.e., on 04.11.2006, there was no provision which warranted the amount provisioned as bad and doubtful debts to be added to the book profits for the proposed computation of income under Section 115JB of the IT Act.

9. The issue was clarified only by the decision of the

Hon'ble Supreme Court in Commissioner of Income Tax Vs HCL Comnet Systems & Services Ltd, (2008) 305 ITR 409 and it is thereafter in the following financial year vide Finance Act, 2009, the explanation to Section 115JB of the IT Act was amended to give effect to the decision of the Hon'ble Supreme Court. It is therefore submitted that the assumption of jurisdiction under Section 148 of the IT Act, i.e., after a lapse of four years period was without jurisdiction notwithstanding the fact that section has been amended with effect from 01.04.2001 vide Finance Act, 2009.

10. Defending the impugned order, the learned senior standing counsel for the respondent submits that the assumption of jurisdiction cannot be questioned as the law was not only amended with retrospective effect but also the decision of the Hon'ble Supreme Court cited by the petitioner in Southern Technologies Ltd., Vs Joint Commissioner of Income Tax, 320 ITR 577 was rendered in the context of business of non-banking financial company. It is submitted that other case cited by the petitioner in Vijaya Bank Vs Commissioner of Income Tax, 323 ITR 166 also cannot be applied and as the petitioner's business was totally different from the banking business.

11. The learned senior standing counsel for the respondent relied on the similar decision of this Court also cited by the learned counsel for the petitioner in Commissioner of Income Tax Vs Saint Gobain India Ltd, [2020] 269 Taxman 610 and states that the Court has also accepted the view, since the law amended in 2009 and therefore submits that cannot be held that the Assessing Officer could not have the power to issue notice.

12. Heard the learned counsel for the petitioner and the learned senior standing counsel for the respondent.

13. The petitioner has filed returns based on the understanding of law as it stood at the time of filing of returns on 04.11.2006. Therefore, it cannot be said that there was a failure on the part of the petitioner truly and fully disclosure all materials that required for assessment. In fact the assessment was also completed based on the understanding of law as it prevailed then. At about the same time, when the assessment order was passed 10.12.2008, the Hon'ble Supreme Court pronounced its judgment on 23.09.2008, wherein, the Hon'ble Supreme Court examined the provisions of Section 115JA of the IT Act, held as under:-

"9. From the above, it is evident that the AO has to accept the authenticity of the accounts maintained in accordance with the provisions of Part II and Part III of Sch.VI to the Companies Act,

which are certified by the auditors and pressed (passed) by the company in the general meeting. The AO has only the power of examining whether the books of accounts are duly certified by the authorities under the Companies Act and whether such books have been properly maintained in accordance with the Companies Act. The AO does not have the jurisdiction to go beyond the net profit shown in the P&L a/c except to the extent provided in the Explanation. Thereafter, the AO has to make adjustment permissible under the Explanation given in Section 115JA of the 1961 Act. It may be noted, that the adjustments required to be made to the net profit disclosed in the P&L a/c for the purposes of Section 349 of the Companies Act are quite different from the adjustment required to be made under the Explanation to Section 115JA of the 1961 Act. For the purposes of Section 115JA, the AO can increase the net profit determined as per the P&L a/c prepared as per Parts II and III of Schedule VI to the Companies Act only to the extent permissible under the Explanation thereto.

10. As stated above, the said Explanation has provided six items, i.e., item Nos.(a) to (f) which if debited to the P&L a/c can be added back to the net profit for computing the book profit. In this case, we are concerned with item No.(c) which refers to the provision for bad and doubtful debt. The provision for bad and doubtful debt can be added back to the net profit only if item (c) stands attracted. Item (c) deals with amount(s) set aside as provision made for meeting liabilities, other than ascertained liabilities. The assessee's case would, therefore, fall within the ambit of item(c) only if the amount is set aside as provision; the provision is made for meeting a liability; and the provision should be for other than ascertained liability, i.e., it should be for an unascertained liability. In other words, all the ingredients should be satisfied to attract item (c) of the Explanation to Section 115JA. In our view, item (c) is not attracted. There are two types of "debt". A debt payable by the assessee is different from a debt receivable by the assessee. A debt is payable by the assessee where the assessee has to pay the amount to others whereas the debt receivable by the assessee is an amount which the assessee has to receive from others. In the present case "debt" under consideration is "debt receivable" by the

assessee. The provision for bad and doubtful debt, therefore, is made to cover up the probable diminution in the value of asset, i.e., debt which is an amount receivable by the assessee. Therefore, such a provision cannot be said to be a provision for liability, because even if a debt is not recoverable no liability could be fastened upon the assessee. In the present case, the debt is the amount receivable by the assessee and not any liability payable by the assessee and, therefore, any provision made towards irrecoverability of the debt cannot be said to be a provision for liability. Therefore, in our view item (c) of the Explanation is not attracted to the facts of the present case. In the circumstances, the AO was not justified in adding back the provision for doubtful debts of Rs.92,15,187 under clause (c) of the Explanation to Section 115JA of the 1961 Act."

14. In the light of the aforesaid judgment of the Hon'ble Supreme Court, provisions of Section 115JB of the IT Act was amended. The amended provision was amended retrospectively and is deemed to have been in force all along during the period commencing from 1st April of 2017.

15. Though the provisions stands amended with retrospective effect, it cannot be said that the petitioner had failed true and full disclosure of all material facts that were required for completing the assessment. The petitioner has taken a bonafide stand that the amount debited in Profit and Loss Account towards provisions of bad and doubtful debts were not be included under Section 115JB of the IT Act. This was scrutinized and the assessment order came to be passed on 10.12.2008.

16. Therefore, even if, the amended provision as it stands amended, vide Finance Act, 2009 in the Income Tax Act, 1961, it cannot be said that there was a failure on the part of the petitioner to truly and fully disclose all material facts/informations required for assessment.

17. I am therefore of the view, there is no merits in the impugned order. The writ petition filed by the petitioner therefore deserves to be allowed and is accordingly allowed. No costs. Consequently, conneted Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

arb

To

The Assistant Commissioner of Income-tax,
Circle I (1),
No.3, Gandhi Road,
Salem - 636 007.

+cc to M/S.G.Baskar, Advocate Sr.No.19437

+cc to M/S.A.p.Srinivas, Advocate Sr.No.19195

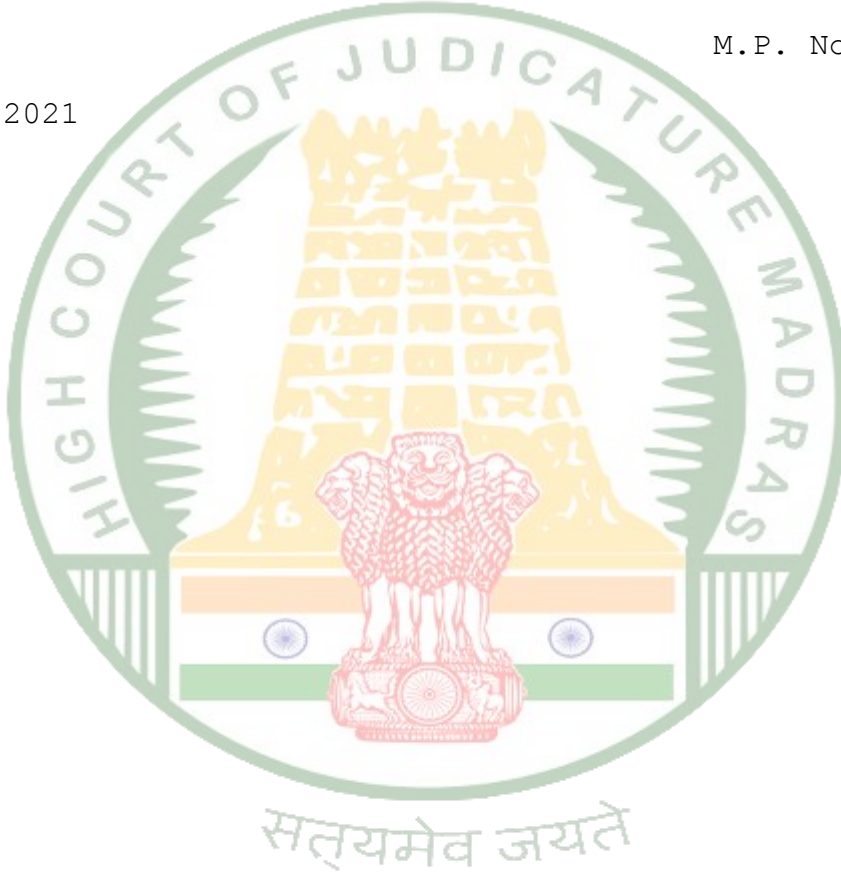
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DMK (CO)

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