127 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:099307-DB

ITA-10-2024 (O&M)
Date of Decision: 02.08.2024

PR COMMISSIONER OF INCOME TAX, PANCHKULA …Appellant

V/S

M/S VENUS REMEDIES LIMITED …Respondent

ITA-11-2024 (O&M)
Date of Decision: 02.08.2024

PR. COMMISSIONER OF INCOME TAX, PANCHKULA …Appellant

V/S

M/S VENUS REMEDIES LIMITED …Respondent

ITA-12-2024
Date of Decision: 02.08.2024

PR. COMMISSIONER OF INCOME TAX, PANCHKULA …Appellant

V/S

M/S VENUS REMEDIES LIMITED …Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**
**HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present Mr. Saurabh Kapoor, Sr. Standing Counsel along with Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel for the appellant(s).

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**<u>SANJEEV PRAKASH SHARMA, J.(Oral)</u>**

1. Appeal No.10-2024, Appeal No.11-2024 and Appeal No.12-2024 are being dealt with together as common question of law and facts is involved in the same. Facts are being extracted from Appeal No.10-2024.

2. The appellant has assailed the order dated 24.08.2023, passed by the Income Tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh, (hereinafter referred to as 'the ITAT'), whereby the Assessing Officer was directed to compute book profit after allowing deduction of whole expenditure incurred by the assessee company for the assessment year 2010-11 and 2011-12 respectively and compute the MAT liability under Section 115JB of the Income Tax Act, 1961 (for short 'the Act, 1961') accordingly.

3. Learned counsel submits that the case had a checkered history and it is a second round of appellate proceedings where the assessee had taken up the matter against the order of CIT (Appeals) disallowing the application under Section 154 of the Act, 1961. It is submitted that the powers under Section 154 of the Act, 1961, are limited and the assessee ought to have filed a revised return and not correction in the original return already filed with regard to the amount deducted in the books of account under the head 'Patents IPR Technologies'. Learned counsel submits that merely because the judgment passed by the Karnataka High Court was affirmed by the Hon'ble Supreme Court by dismissal of the LPA of the revenue, the assessee could not have moved application U/s 154 of the Act, 1961 on account of the interpretation of the law as taken by the Karnataka High Court relating to Section 115J and 115JB of the Act, 1961.

4. We have carefully considered the submissions of learned counsel and examined the order passed by the ITAT so as to find out whether there is any substantial question of law arises for consideration of this Court in the present appeal.

5. This appeal has a checkered history. We find from the order passed by the ITAT that the assessee had filed its return of income for the year 2009-10 on 30.09.2009, declaring the income of Rs.12,91,67,010/- and for the purposes of MAT liability under Section 115JB of the Act, 1961, the book profit was declared as Rs.48,92,35,027/-. Subsequently, the assessee case was selected for scrutiny and after calling for information and documentation, the assessment order was passed on 30.12.2011, under Section 143(3) of the Act, 1961, wherein the income under the normal provision was determined as Rs.48,92,35,027/-, which was accepted as it is.

At this stage, the assessee filed rectification application under Section 154 of the Act, 1961, stating that there was a mistake apparent on record relating to revenue expenditure incurred by the company amounting to Rs.35,67,94,891/-. It was stated that the same was liable to be deducted from book profits for the purpose of calculation of MAT liability which had not been allowed by computing the book profits and in support, reliance was placed on the decision of the Hon'ble Supreme Court in M/s Karnataka Soaps and Detergents Limited, SLP (C) No.19860 of 2015, wherein the SLP was dismissed by the Hon'ble Supreme Court on 16.11.2015.

However, the Assessing Officer, rejected the rectification application on the ground that it would amount to fresh determination of facts. Whereafter, an appeal was preferred to CIT(A), which was disposed vide order dated 13.06.2017, remanding the matter to the Assessing Officer for passing a fresh speaking order.

Against the order of the CIT (Appeals), an appeal was preferred by both the revenue as well as assessee and the ITAT vide its order dated

22.01.2018, remand the matter back to CIT (Appeals) with a direction to adjudicate the matter afresh.

The CIT (Appeals) dismissed the appeal of the assessee vide order dated 02.09.2019. An appeal was thus, again preferred before the ITAT, wherein, the impugned order has been passed.

6. In order to appreciate the controversy, we may examine the provisions of Section 154 of the Act, 1961, which provides for rectification of mistake. Section 154 of the Act, 1961, is reproduced as under:-

> "154. Rectification of mistake.
>
> (1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may,
>
> (a) amend any order passed by it under the provisions of this Act;
>
> (b) amend any intimation or deemed intimation under sub-section (1) of section 143;
>
> (c) amend any intimation under sub-section (1) of section 200A;
>
> (d) amend any intimation under sub-section (1) of section 206CB.
>
> (1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.
>
> (2) Subject to the other provisions of this section, the authority concerned
>
> (a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice [by the assessee or by the deductor,] [or by the collector], and where the authority concerned is the [Commissioner (Appeals)], by the 9[Assessing Officer] also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of [the assessee or the deductor] [or the collector], shall not be made under this section unless the authority concerned has given notice to [the assessee or the deductor] [or the collector] of its intention so to do and has allowed [the assessee or the deductor] or the collector] a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor [or the collector], the Assessing Officer shall make any refund which may be due to such assessee or the deductor [or the collector].

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund [already made or otherwise increasing the liability of the assessee or the deductor [or the collector], the Assessing Officer shall serve on the assessee or the deductor [or the collector], as the case may be] a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made

> after the expiry of four years [from the end of the financial year in which the order sought to be amended was passed].
>
> (8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made [by the assessee or by the deductor] [or by the collector] on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an
> order, within a period of six months from the end of the month in which the application is received by it,—
>
> (a) making the amendment; or
>
> (b) refusing to allow the claim

7. From the bare perusal of Section 154 of the Act, 1961, it is apparent that the same allows the Income Tax Authorities to make amendments, corrections and even pass such orders notwithstanding anything in law for the time being in force and in relation to any matter other than the matter which might have been so considered by way of appeal or revision.

8. Thus, the scope and powers of the Assessing Officer are quite wider and he can even amend its earlier order *suo-moto* as well as on an application so moved for such rectification.

9. Herein it is a case which was taken up for scrutiny by the Assessing Officer and an order has been passed subsequently. At this stage, the Assessing Officer could have examined the position of law and as per existing law, the deductions from the book profits for the purpose of calculation of MAT liability could have been waived and as noticed by the ITAT in its order, the inadvertent mistake occurred on account of misinterpretation, can always be corrected. It is not a case where any new facts or accounts have been introduced in the books of accounts. The ITAT

has factually examined the balance sheets and discussed at length the facts in appeal in para No.30 and 31 of its order. The same read as under:-

> *30. In the instant case, on perusal of the balance sheet, in particulars Schedule – E, we find that the assessee has incurred revenue expenditure of Rs.35,67,94,891/- on Patents/Trademark registration, Clinical Trials, product launching registration, consultancy expenses, process validation etc. and these revenue expenditure are treated as deferred expenses under head Patent/IPR/Technology for write off over the next few years and during the year under consideration, out of the same, an amount of Rs.1,53,13,959/- has been written off and claimed in the P&L Account as apparent from Schedule Q under the head 'Administrative & Other Expenses". Therefore, there is no dispute that the assessee has incurred revenue expenditure during the year however only a part has been shown and debited in the P&L Account and the remaining amount has been shown in the balance sheet. Where the book profit have to be determined in terms of profit/loss account prepared in accordance with Part II Schedule VI of the Companies Act, the profit and loss account shall be so made out as clearly to disclose the results of the working of the company during the period and shall disclose every material feature including credits or receipts and debits or expenses in respect of non-recurring transactions or transactions of an exceptional nature, the whole of the revenue expenditure incurred by the assessee*

*amounting to Rs.35,67,94,891/- (and not just a part thereof as shown currently at Rs.1,53,13,959/-) during the previous year has to be reduced while calculating the net profit. There is no concept of part recognition of revenue expenditure in Part II Schedule VI of the Companies Act, and therefore, where the assessee has debited a part of the revenue expenditure in the profit/loss account, the profit/loss account so prepared is not in accordance with Part II Schedule VI of the Companies Act and has apparently been done for presentation to and consumption of the shareholders.*

*31. We therefore find that these facts are clearly emerging from the books of accounts so prepared by the assessee and as so reflected on the face of the balance sheet and profit/loss account and does not require any long drawn process of reasoning or analysis and therefore where the tax liability has been computed under Section 115JB of the Act, the book profit have to be determined in terms of Part II of Schedule VI of the Companies Act which necessarily include the book profit after allowing deduction for whole of the Revenue expenditure. We therefore find that the facts of the present case are pari materia with the facts as well as the issue (Seciton 115JA has been substituted by Section 115JB) before Hon'ble Karnataka High Court and the application of the assessee seeking rectification under Section 154 of the Act, drawn support rightly from the decision of the Hon'ble Karnataka High Court.*

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10. Thus, we are satisfied that there is no introduction of new facts to the books of accounts and the mistake which had occurred on account of misinterpretation of law in submission of ITR, can always be corrected and rectified in terms of Section 154 of the Act, 1961.

11. In view thereto, no substantial question of law therefore, arises for further consideration of this Court. The appeals therefore, fail and are accordingly dismissed.

12. All pending misc. application(s) also stand disposed of.

**(SANJEEV PRAKASH SHARMA)**
**JUDGE**

**(SANJAY VASHISTH)**
**JUDGE**

02.08.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No