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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 578/2019

THE PR. COMMISSIONER OF INCOME TAX -7

..... Appellant

Through: Mr.Ruchir Bhatia, Sr.SC with Mr.Anant Mann, Jr.SC.

versus

RAILTEL CORPORATION OF INDIA LTD ..... Respondent

Through: Dr.Rakesh Gupta, Mr.Somil Agarwal and Mr.Dushyant Agarwal, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**<u>O R D E R</u>**

% **16.05.2024**

1. We had in terms of our earlier order dated 27 February 2024 set out the controversy which arises in the instant appeal. That order reads as follows:-

> "1. The Principal Commissioner impugns the order dated 28 November 2018 and proposes the following questions of law for our consideration:
>
> "A. Whether the Income Tax Appellate Tribunal ["ITAT"] is legally justified in holding that clause (i) of Explanation 1 to Section 115JB of the Income Tax Act, 1961 ["Act"] is not applicable for the reduction in the book value of assets as the result of change in rate of depreciation adopted by assessee and therefore, if the books value of certain assets undergoes reduction as a result of depreciation such reduction is different from the diminution in value for the purpose of clause (i) of Explanation 1 to Section 115JB of the Act?
>
> B. Whether the ITAT is justified in ignoring the fact that although the nomenclature given by the assessee to the claim of Rs.52.74 crores is change in depreciation rates, its nature is that it has been

resulted in the diminution of the value of assets or alternatively, in the form of excess depreciation claimed on account of revaluation of assets and thus, the provision of Explanation 1 to the Section 115JB of the Act apply thereof?

C. Whether the ITAT is legally justified in holding that even if the assessee claims additional depreciation of earlier years because of change in the method of providing depreciation retrospectively, such additional depreciation for earlier years, claimed in a subsequent year, cannot be treated as diminution in the value of assets, and is not hit by clause (i) of Explanation 1 to Section 115 JB of the Act?

D. Whether the ITAT is justified in not considering the fact that differential change in depreciation amount, the impact of which relates to earlier years, cannot be allowed as deduction while computing "book pro/if under MAT provisions?

E. Whether the ITAT is legally justified in not taking into consideration the finding of Assessing Officer as recorded in the assessment order that assessee had deliberately deviated from the generally accepted accounting principle / accounting standard so as to avoid paying taxes under the MAT as well as and, nonacceptance of the method of accounting as laid down by the relevant Accounting Standard issued by the Institute of Chartered Accountants of India is also a violation of Sections 211(3A) and 211(3B) of the Companies Act, 1956 which requires that every financial statements shall accompany with the accounting standards?"

2. The thrust of the submissions of Mr. Bhatia, learned counsel appearing for the appellant revolved around Explanation 1 under. Section 115JB of the Aet and the findings in that regard as rendered by the ITAT.

3. However, and on a reading the impugned order, we find that the ITAT has ultimately held as follows:

> "(3.4.3) We have already held in foregoing paragraph (3.2.1.1) that **for the purpose of determination of book profits, the statutory role of Registrar of Companies to examine and satisfy that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act, has the mandate of the Supreme Court; and further, that report(s)/ opinion(s) of statutory auditor(s) and the reports / opinions' / recommendations as a result of Supplementary Audit are not final: these are not only subject to approval by the company in its' general meeting, but also subject to examination by Registrar of Companies and his satisfaction that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act**. However, on the perusal of records before us, which includes the Assessment Order, the order of the Ld. CIT(A), the Paper book filed by the Assessee, Form 35, Form 36 etc; we find that the both the lower authorities, AO as well as Ld. CIT(A), have not considered whether, after examination by Registrar of Companies, whether Registrar of Companies was satisfied that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act; is not available in our records. Neither of the two sides, in the course of appellate proceedings in ITAT has provided details regarding constitution of the committee which recommended lower useful life of the

assets and higher rate of depreciation. Furthermore, the information regarding technical qualifications, knowledge and expertise of the committee members is also not available on our records. Moreover, a copy of the report of the committee is also not available on our records. On perusal of the records, we find that the query of the AO from the Assessee as to why the useful life of radio equipment has been taken by this committee to the three years, when BSNL (Bharat Sanchar Nigam Limited) considers the useful life of radio equipment to be 12 to 15 years, has remained unanswered. Importantly, the lower authorities, the AO as well as the Ld. CIT (A), have also not considered whether the Registrar of Companies has accepted the decision of the Assessee company to charge higher rate of depreciation and to reduce the useful life' of certain depreciable assets with retrospective effect, as a result of which the Assessee has made additional claim of depreciation amounting to Rs. 52.74 crores. Since the relevant information is not on our records, we restore the matter to the file of the AO with the direction to pass fresh order on this issue. Thus, the order of the Ld. CIT(A) is set aside on this limited issue and the matter in dispute in the present appeal before us is restored to the file of the AO for fresh order on this limited issue. In the result, appeal of the Revenue is partly allowed for statistical purposes."

4. It is in the aforesaid context that we have asked Mr. Bhatia to apprise us whether the Department proposes to pursue the instant appeal.
5. In order to let Mr. Bhatia take appropriate instructions in that respect, let the matter be called again on 16.05.2024."

2. Today, before us, Mr. Bhatia, learned counsel for the appellant sought to assail the correctness of the observations of the Income Tax Appellate Tribunal [**"ITAT"**] and which had held that the Assessing Officer ["**AO**"] had erred in law in holding that an additional claim of INR 52.74 crores, due to change in depreciation is liable to be viewed as resulting in diminution of the value of the asset and would thus fall under clause (i) of Explanation 1 to Section 115 JB of the Income Tax Act, 1961 ["**Act**"]. According to Mr. Bhatia, in terms of Explanation 1 and while computing the "*book profit*", the assessee would have to take into consideration the "*amount of depreciation*" that may have been claimed and which forms subject matter of clause (g) of Explanation 1 to the aforenoted provision, and the profit would resultantly stand increased to the aforesaid extent.

3. We, however note that it was never the case of the appellant before the ITAT that the additional claim would fall under clause (g)

of Explanation 1 to Section 115JB. The case does not appear to have been argued on that basis. In view of the above, it is not possible for us to accede to the prayer for consideration of an aspect which was never raised before the Tribunal. This, since the said issue cannot be said to arise from the order of the ITAT.

4. In view of the aforesaid, and for all the aforenoted reasons, we find no merit in the instant appeal. It shall consequently stand dismissed.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**MAY 16, 2024/MJ**