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ITAT/54/2023
IA No.GA/1/2023
GA/2/2023

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX-1, KOLKATA

-Versus-

LANSHREE PRODUCTS & SERVICES
LIMITED

BEFORE :
THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st March, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for the appellant

Mr. J. P. Khaitan, Sr. Adv.
Ms. Nilanjana Banerjee Pal, Adv.
...for the respondent.

The Court : There is a delay of 69 days in filing the appeal.

We have heard Mr. Soumen Bhattacharjee, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee and perused the affidavit filed in support of the application for condonation of delay and we find sufficient cause has been

shown for not preferring the appeal within the period of limitation.

Accordingly, the application for condonation of delay (IA No.GA/1/2023) is allowed and the delay of 69 days in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated July 12, 2022 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.8/Kol/2022 for the assessment year 2013-14.

The revenue has raised the following substantial questions of law for consideration:

(A) *Whether the Learned Tribunal has committed substantial error in law by holding that the claim of the assessee of Rs.49,44,871/- while computing net profit under 115JB is consonance with Clause (iii) of Explanation 1 in the said Section and further please to observe that the claim of the assessee is correct and to that extent the finding of the Learned CIT (Appeals) cannot be sustained ?*

(B) *Whether the Learned Tribunal has committed substantial error in law by not appreciating that neither the department nor the assessee debated on any aspect of set off of book profit against book loss on book unabsorbed depreciation in instant case right from the*

assessee's appeal before the CIT(A) and therefore there was neither any debate nor even an offer for debate from assessee's side on the issue ?

(C) Whether the Learned Tribunal has committed substantial error in law by not appreciating that the order under Section 154 of the Act in this case aimed only at nullifying assessee's claim of set off of book loss or unabsorbed depreciation upto Assessment Year 2014-15 against book profit beyond assessment year 2012-13 which was not permitted under the provision of law and it was a mistake apparent on the face of record arising out of the books of account of the assessee ?

We have heard Mr. Soumen Bhattacharjee, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee.

Though three substantial questions of law have been suggested by the revenue. If substantial questions of law (B) and (C) are considered and an answer is arrived at, then substantial question of law (A) need not be examined. Substantial questions of law (B) and (C) are with regard to the jurisdiction of the Assessing Officer under Section 154 of the Act. The said provision deals with rectification of mistake. Sub-section (1) of Section 154 says that with a view to rectify

any mistake apparent from the record, an Income Tax authority referred to in Section 116 may do any one of the Acts as mentioned in Clauses (a) to (d) of Section 154(1). The other Sub-sections deal with matters where the issue has been considered and decided in a proceeding by way of an appeal or revision relating to the orders referred in Sub-section(1) of Section 154 of the Act. Thus, the Section empowers the authority only to rectify mistakes by amending an order passed by it or amending any intimation or deemed intimation under Sub-section (1) of Section 154 or amending an intimation under Section 200A(1) or amending an intimation under Section 206CB. However, in the instant case the Assessing Officer sought to invoke the said power and revise the entire assessment. Before the Commissioner of Income Tax (Appeals) the assessee had placed reliance on the decision of this Court in the case of *DCIT vs. Binani Industries Limited in ITA 144/Kol/2013* wherein a more or less identical question was considered by this Court and it was held as follows:

> *"3.3. We have heard the rival submissions and perused the materials available on record. We are in agreement with the arguments of the Learned AR that the losses (both cash loss and depreciation loss) would continue to remain in the books of accounts till it is wiped off by earning profits by the assessee company and accordingly the same would be available*

for reduction from book profits u/s 115JB of the Act. we hold that the least of the cash loss or depreciation loss once adjusted/reduced from book profits in earlier assessment years, do not vanish out of the books until it is wiped out by profits in subsequent years. Till such time, the losses would only continue to remain in the books. We hold that for the purpose of computation of book profits u/s 115JB of the Act, every year the situation of least of cash loss and depreciation loss needs to be worked out and reviewed and accordingly the understanding of the Learned Assessing Officer that such loss once adjusted in earlier year is no longer available for set off is misconceived. Hence we do not find any infirmity in the order of the Learned CIT(A) in this regard. The Ground No.2 raised by the revenue is dismissed."

Though the assessee relied upon the aforementioned decision, the Commissioner of Income Tax (Appeals) did not accept the same and the apepal was dismissed. The assessee carried the matter on appeal to the learned Tribunal and the Tribunal after noting the issue involved in the case and having examined the evidences and records and the income tax return of the assessee in respect of the earlier years, found that the claim made by the assessee is correct to the extent and the finding of the Commissioner of Income Tas (Appeals) cannot be sustained. More importantly, the Tribunal, in our view, rightly held so far as the issue of allowing of book loss or

unabsorbed depreciation while computing the book profit under Section 115JB, the issue being a debatable issue, cannot be subject mater of proceedings under Section 154 of the Act. At this juncture, it will be beneficial to refer to the decision of the Hon'ble Supreme Court in the case of *T.S. Balaram, Income-tax Officer vs. Volkart Brothers* reported in (1971) 82 ITR 50 (SC) wherein the Hon'ble Supreme Court has held as follows :

> *"From what has been said above, it is clear that the question whether section 17(1) of the Indian Income-tax Act, 1922, was applicable to the case of the first respondent is not free from doubt. Therefore, the Income-tax Officer was not justified in thinking that on that question there can be no two opinions. It was not open to the Income-tax Officer to go into the true scope of the relevant provisions of the Act in a proceeding under section 154 of the Income-tax Act, 1961. A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions. As seen earlier, the High Court of Bombay opined that the original assessments were in accordance with law though in our opinion the High Court was not justified in going into that question. In Sathyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [1960] 1 SCR 890, this court while spelling out the scope of the*

> *power of a High Court under Article 226 of the Constitution ruled that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions cannot be said to be an error apparent on the face of the record. A decision on a debatable point of law is not a mistake apparent from the record – see Sidhramappa Andannappa Manvi v. Commissioner of Income tax [1952] 21 ITR 333 (Bom.) The power of the officers mentioned in Section 154 of the Income Tax Act, 1961, to correct "any mistake apparent from the record" is undoubtedly not more than that of the High Court to entertain a writ petition on the basis of an "error apparent on the face of the record." In this case, it is not necessary for us to spell out the distinction between the expressions "error apparent on the face of record" and "mistake apparent from the record". But suffice it to say that the Income Tax Officer was wholly wrong in holding that there was a mistake apparent from the record of the assessments of the first respondent."*

In the above decision, the Hon'ble Supreme Court has pointed out that it was not open to the income tax officer to go into the true scope of the relevant provisions of the Act in a proceeding under Section 154 of the Act. In the case on hand, this is precisely what the Assessing Officer has done and the learned Tribunal rightly allowed the assessee's appeal. We

find no ground to interfere with the order passed by the Tribunal on the said count.

Accordingly, substantial questions of law (B) and (C) are answered against the revenue. Consequently, the appeal (ITAT/54/2023) stands dismissed and substantial question of law (A) is unanswered as being unnecessary.

Consequently, the connected application for stay (IA No.GA/2/2023) also stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

As./S.Pal