

In the High Court of Judicature at Madras

Dated: 09.07.2014

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The Honourable **Mr.JUSTICE R.SUDHAKAR**
&
The Honourable **Mr.JUSTICE G.M.AKBAR ALI**

Tax Case (Appeal) No.82 of 2014

M/s.Sri Gokulam Hotels India P. Ltd.,
No.49, Arcot Road,
Kodambakkam,
Chennai - 600 024.

.... Appellant

Vs.

The Assistant Commissioner of Income Tax
Company Circle VI (4),
Income Tax Department,
Chennai - 600 034.

.... Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 31.7.2013 made in I.T.A.No.1012/Mds/2012 on the file of the Income Tax Appellate Tribunal "C" Bench, Chennai for the assessment year 2007-08.

For Appellant : Mr.A.S.Sriraman

For Respondent: Mr.N.V.Balaji
Standing Counsel for Income Tax

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.**)

This Tax Case (Appeal) has been filed at the instance of the assessee as against the order dated 31.7.2013 made in I.T.A.No.1012/Mds/2012 on the file of the Income Tax Appellate Tribunal "C" Bench, Chennai for the assessment year 2007-08 raising the following substantial questions of law:

"1. Whether the Appellate Tribunal is correct in law in levying the penalty under Section 271(1)(c) of the Act for not reporting the Minimum Alternate Tax computation under Section 115 JB of the Act which was construed as an act of concealment of income or furnishing inaccurate particulars of income even though the interpretation of such provisions and consequential rejection of explanation offered in relation thereto would entitled the use of the legal discretion vested in the statute on the respondent in favour of the appellant?

2. Whether the Appellate Tribunal is correct in law in levying the penalty under Section 271(1)(c) of the Act even though the mistake in not reporting the Minimum Alternate Tax computation in the original return of income which could be considered as reasonable cause for exercising the discretion vested on the respondent in favour of the appellant?"

2. The assessee/appellant, who is running a hotel business, has filed return for the assessment year 2007-08 disclosing "nil" income. The assessee admitted income from business for that assessment year at Rs.1,51,92,970/- and the same was set off with carried forward loss of the

earlier years. Notice under Section 143(2) of the Income Tax Act was issued and the authorized representative of the assessee was heard. In the course of the scrutiny proceedings, it was seen that the assessee was liable to tax under Section 115JB (Minimum Alternate Tax) of the Income Tax Act. The Assessing Officer was of the view that the assessee was liable to pay Minimum Alternate Tax under Section 115 JB of the Income Tax Act. The adjusted book profit for working out the MAT payable under Section 115JB was calculated by the Assessing Officer as hereunder:

"Net Profit as per Profit & Loss A/c	13799075
Add: Provision for bad and doubtful debts	<u>254910</u>
	14053985
Less: Provision for Fringe Benefit Tax	<u>44795</u>
	14009190
Less: Carried forward loss Asst Yr.2002-03	2147324
Carried forward loss Asst Yr.2003-04	<u>2884699</u>
	<u>5032023</u>
	<u>8977166</u>

3. Thereafter proceedings for levy of penalty under Section 271(1)(c) of the Income Tax Act was initiated for the failure of the assessee to compute the book profit and the MAT payable under Section 115 JB of the Income Tax Act. The Assessing Officer was of the view that the assessee furnished inaccurate particulars of income. The plea of the assessee that there was no suppression of income based on their own calculation was rejected and therefore an appeal was preferred against the levy of tax under Section 115JB of the Income Tax Act and the said appeal is stated to be pending.

4. Since the assessee furnished inaccurate particulars, the Revenue proceeded to impose penalty under Section 271(1)(c) of the Income Tax. Hence notice was issued under Section 271(1)(c) of the Income Tax Act on 30.12.2009. After hearing the assessee, the Assistant Commissioner of Income Tax passed an order on 29th June, 2010 imposing penalty at Rs.10,07,238/- under Section 271(1)(c) of the Income Tax Act holding that the assessee had furnished inaccurate particulars of income.

5. Aggrieved by the order of the Assistant Commissioner of Income Tax, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, by order dated 27.02.2012 accepted the plea of the assessee and allowed the appeal holding as follows:

"8. I have considered the facts of the case, the arguments advanced and the decisions relied upon. The liability as per the assessment order has arisen due to difference in interpretation under Section 115 JB as to what constitutes the eligible amount to set off while computing the book profit. The appellant had claimed the lower of the depreciation or loss before depreciation for the A.Ys 2002-03 and 2003-04. The Assessing Officer had restricted the set off of business loss pertaining to the A.Y2002-03 to Rs.21,47,324/-. The difference of Rs.39,34,105/-, in the opinion of the Assessing Officer was not eligible for set off against the assessment year 2007-08 as it has been notionally set off against the assessment year 2006-07 in his

assessment order. According to the appellant, there is a debit balance in the profit and loss account, comprising of accumulated loss under the provisions of Company Act, in their books of account. Therefore, they are entitled for the set off of lower of business loss or depreciation brought forward from the earlier accounting years. Their belief was that set off was available till there is actual profit before providing of depreciation. The lower of the depreciation/business loss for two F.Ys viz., 31-3-2002 and 31-3-2003 were claimed and from the F.Y 31-3-2004 onwards profits before depreciation was available. Therefore, **this difference in set off is because of interpretation of the amount eligible for set off.** Because of this, according to the appellant, there is no liability under the provisions of section 115 JB, whereas according to the Assessing Officer there is a liability. The liability has arisen on account of difference in the interpretation of section 115JB. Therefore the appellant cannot be held to have concealed its income or had furnished inaccurate particulars, hence I direct that the penalty levied u/s 271(1)(c) be deleted."

6. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Revenue preferred an appeal before the Income Tax Appellate Tribunal contending that penalty is liable to be imposed in terms of Section 271(1)(c) of the Income Tax Act, as the assessee had failed to compute the book profit and tax payable under Section 115JB of the Income Tax Act.

7. The Income Tax Appellate Tribunal, by order dated 31.7.2013,

accepting the submissions of the Revenue, partly allowed the appeal holding that the assessee failed to make proper computation and therefore penalty was rightly imposed by the Assessing Officer. The Tribunal, in paragraph 8 of the order held that there was no dispute that the assessee had not made any computation of book profit under Section 115JB of the Income Tax Act, while filing its return of income. It is the Assessing Officer, in the course of assessment proceedings, found out that the assessee had reported higher carried forward loss and thereby filed 'nil' return. The findings of the Tribunal in paragraph No.8 with regard to furnishing of inaccurate particulars will be relevant for clarity on this issue, which reads as follows:

"8. We have perused the orders and heard the rival submissions. There is no dispute that assessee had not made any computation of book profit under Section 115 JB of the Act, while filing its return of income. Assessing Officer had found during the course of assessment proceedings that there was failure on the part of the assessee to report the book profit and made a work-out thereof himself. Assessee, by its letter dated 17.2.2012, addressed to the CIT(Appeals), had admitted that the amount of depreciation/loss available for set-off against book profit, was at the best Rs.60,81,430/- for assessment year 2002-03 and Rs.28,84,699/- for assessment year 2003-04. With regard to the brought forward loss for assessment year 2003-04, there is no difference between the work-out furnished by the assessee and the Assessing Officer. The difference pertains only to the brought forward loss of assessment year 2002-03. While assessee's calculations show the amount as Rs.60,81,430/-, Assessing Officer had

considered Rs.21,47,324/-. Even if we presume assessee to be correct, the aggregate amount of brought forward loss/depreciation available for a set-off will not be more than Rs.89,66,129/-. Admittedly, the net profit as per the P & L account came to Rs.1,37,99,075/-. Thus, viewed from any angle, assessee was liable to Minimum Alternate Tax. Assessee had failed to furnish a computation of its book profit in its return of income. But for the vigilant attitude of the A.O., this would have been missed out altogether. There was definitely a failure on the part of the assessee to furnish particulars necessary for its assessment. Rigours of Section 271(1)(c) was attracted."

8. In the light of the above, the findings of the Tribunal that in an admitted case of 'nil' return, without complying with the provisions of Section 115 JB of the Income Tax Act, where the assessee is liable to pay MAT and the non-compliance there of results in imposition of penalty in terms of Section 271(1)(c) of the Income Tax Act, is correct. The Tribunal also found that only on account of the Assessing Officer's endeavour, the MAT liability came to be noticed. Therefore, there was a clear case of the assessee failing to furnish particulars necessary for the assessment and the case of the department that the assessee has furnished inaccurate particulars for the purpose of determining the tax under Section 115 JB stands established. As a result, penalty has to be levied as per the provisions of Section 271(1)(c) of the Income Tax Act and the Assessing Officer was justified in imposing such penalty. Hence, the findings of the Tribunal confirming the order of the

Assessing Officer and reversing the order of the first Appellate Authority is correct.

9. The issue in the present appeal is only relates to the penalty imposed under Section 271(1)(c) of the Income Tax Act, which we find is justified in the facts and circumstances of the case. In view of the above, we find that the issue decided by the Tribunal on the basis of the admitted case of the assessee by filing 'nil' return when they are liable to pay Minimum Alternate Tax is correct. Hence, the provisions of Section 271(1)(c) gets attracted.

10. Accordingly, no question of law much less any substantial question of law arises for consideration in this Tax Case (Appeal). The Tax Case (Appeal) stands dismissed. No costs.

(R.S.,J) (G.M.A.,J)
09.07.2014

Index :Yes
Internet:Yes
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To

1. The Income Tax Appellate Tribunal "C" Bench, Chennai
2. The Commissioner of Income Tax (Appeals)-I, Chennai.
3. The Assistant Commissioner of Income Tax, Central Circle -I(1), Chennai.

R.SUDHAKAR,J.
AND
G.M.AKBAR ALI,J.

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T.C.(A) No.82 of 2014

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