

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'A', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1208/Mds/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Virgo Properties Pvt. Ltd.  
New No.5, Old No.3,  
Plaza House, Thirumurthy Street,  
T.Nagar,  
Chennai – 600 017.  
[PAN: AABCV 9182A]

(अपीलार्थी /Appellant)

Asst. Commissioner of Income  
Tax,  
Corporate Circle – 3(2),  
Chennai – 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Balasubramanian, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri Srinivasan, Jt. CIT  
सुनवाई की तारीख/ Date of hearing : 13.07.2017  
घोषणा की तारीख /Date of Pronouncement : 31.07.2017

**आदेश /O R D E R**

Per Sanjay Arora, AM:

This is an Appeal by the assessee arising out of the Order dated 27.03.2017 by the Commissioner of Income Tax (Appeals)-11, Chennai ('CIT(A)' for short), dismissing the assessee's appeal contesting the order u/s. 154 dated 06.10.2015 for assessment year (AY) 2011-12.

2. The sole issue arising in the instant appeal is the maintainability of the order u/s. 154 seeking to assess the book profit of the assessee at the 'correct'

figure. The assessee filed its return of income for the year on 30.09.2011, disclosing regular income at ₹. 1,42,43,520/- and book profit at ₹. 506,04,764/-. The same was subject to the verification procedure under the Act, assessing regular income at ₹. 158.66 lacs vide order u/s. 143(3) dated 19.03.2014. This was followed by a notice u/s. 154(3) by the Assessing Officer (AO) dated 21.09.2015 (served on 23/9/2015), stating that the book profit had been wrongly assessed at ₹. 64,64,764/-, and had to be as per the profit and loss account, duly audited, i.e., at ₹. 506,04,764/-. The book profit was accordingly assessed at ₹. 506.05 lacs, and confirmed in appeal for the same reason.

3. Before us, the Id. Authorized Representative (AR) would, taking us through the assessment order u/s. 143(3), attempt to exhibit that book profit had in fact not been assessed at all, and that the assessment was limited to regular income (at ₹. 158.66 lacs) only. *How could, then, the same be rectified?* It is only where an assessment is made that a mistake in arriving at or computing the correct figure could at all be made. On being asked of the basis of the figure of ₹. 64.65 lacs, as stated in the notice u/s. 154(3), he explained that though the assessee had initially returned the book profit at ₹. 506.05 lacs, i.e., as per the profit and loss account, it was subsequently revised to ₹. 64.65 lacs per a return filed on 27.06.2012 by making some adjustments, and toward which he would take us to para 1 of the assessment order, bearing reference to the filing of the revised return. The Id. Departmental Representative (DR) would submit that the AO had brought the correct amount of book profit to tax, and that a mistake u/s. 154 would include an omission in adopting the right figure, even as held by the Id. CIT(A). The AR would, in rejoinder, place reliance on the decisions in the case of *CIT v. Hero Cycles* [1997] 94 Taxman 271 (SC) and *CIT v. O.R.M.SM.SV.Sevugan* [1948] 16 ITR 59 (Mad), to press home the point that

where a point – of law or of fact, has not been examined at all, the same cannot be regarded as a mistake apparent from record.

4. We have heard the parties, perused the material on record, and given a careful consideration to the matter.

The primary facts are not in dispute. The assessee per its original return u/s. 139(1) returned book profit as per profit and loss account, i.e., at ₹. 506,04,764/-. The same was revised u/s. 139(4) to ₹. 64,64,764/- by deleting the profit of ₹. 441.40 lacs on the sale of shares credited to the profit and loss account, duly audited. It is this profit that the Revenue has subject to book profit tax through recourse to s. 154. This is borne out by the notice u/s. 154(3) dated 29/1/2015, the contents of which are extracted in the ‘Statement of Facts’ forming part of the appeal before the first appellate authority. The AO made the adjustment in the absence of any objection thereto raised by the assessee before him, while the Id. CIT(A) not only found the same to be in order, i.e., in accordance with the provision of s. 115-JB, but also noted, again, an absence of any objection (i.e., on merits of the impugned adjustment) before him. In other words, no case against the adjustment on merits has been made at any stage.

Coming to the assessee’s pleadings before us, the income tax computation form dated 19/3/2014 (copy on record) enclosed along with the assessment order, noted as so therein, forms part of the assessment order itself, as explained in *Kalyankumar Ray v. CIT* [1991] 191 ITR 634 (SC). The same vide para 17 clearly states of the deemed income by way of book profit at ₹. 64,64,764/- . It is therefore incorrect to say, as does the assessee before us, that there has been no assessment of book profit in the first instance, i.e., u/s. 143(3) dated 19.03.2014. The reliance by the assessee on the cited decisions is thus misplaced. In fact, even otherwise, the word ‘mistake’, which is a composite of the words ‘mis’ and ‘take’, is a word of wide and indefinite import, so that a

mistake u/s. 154 would include an omission on the part of an authority to do what it was bound to do, i.e., to assess the book profit in view of the assessee having returned the same and its profit and loss account disclosing a net profit. The same surely cannot be equated with the non-examination of any aspect in assessment, and which is subsequently sought to be carried under sec. 154.

The next question is if the AO, in view of the limited purview of s. 154, exceeded his jurisdiction in altering the assessed figure of ₹. 64,64,764/- to ₹. 506,04,764/-, i.e., by including the profit on the sale of shares. Without doubt, debatable issues, either of fact or of law, are outside the ambit of s. 154, so that alteration of the book profit by the AO u/s. 154 could only be subject to it being not a debatable or a contentious issue. That is, is only a mistake, apparent from record, on the part of the AO in assessing at the said figure. In this regard, it is well settled that s. 115-JB is a self contained code, and only the adjustments delineated under *Explanation-1* to s. 115JB could be made to the net profit as disclosed by the profit and loss account adopted by the company (in its' annual general meeting) to arrive at the book profit u/s. 115JB. Reference for this may be made to the decisions in *Apollo Tyres Ltd. v. CIT* [2002] 255 ITR 273 (SC) and *Ajanta Pharma Ltd. v. CIT* [2010] 327 ITR 305 (SC). The only thing therefore that needs to be seen in this regard is if the company, in reducing the profit on the sale of shares, has followed any of the specified adjustments under *Explanation 1* to s. 115JB. We find that none of the specified adjustments correspond to the said adjustment, made by the assessee to the net profit per the revised return, and neither has the assessee stated any at any stage. This, rather, raises a question on the validity of the said revision, which u/s. 139(5) could only be rectify an omission or wrong statement in the original return, so that it is incumbent on the assessee to state what omission or wrong statement informs its revision, i.e., its' basis, and which it has abysmally failed to. Continuing further, capital gains on transactions in securities has been specified for reduction (from

net profit) only in the case of a foreign company (Cl. (iid) to *Explanation 1*, inserted w.e.f. 01/4/2016). The same by itself implies, i.e., if there were to be any doubt whatsoever in the matter, that the capital gains for an assessee, not being a foreign company, being not specifically provided, is not to be reduced (from the net profit) in arriving at the book profit. Thus, even if the shares sold are held as a capital asset – which does not appear to be the case on the basis of the assessment order, so that the surplus on their sale is a capital gain to the assessee, the profit on the said sale cannot be reduced.

We accordingly have no hesitation in confirming the impugned order and, thereby, the rectification by the AO. We decide accordingly.

5. In the result, the assessee's appeal is dismissed.

*Order pronounced on July 31, 2017 at Chennai.*

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, July 31, 2017.

*EDN*

Sd/-

(संजय अरोड़ा)

(Sanjay Arora)

लेखा सदस्य/Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF