

आयकर अपीलिय अधिकरण, मुंबई “बी” खंडपीठ
Income-tax Appellate Tribunal -“B”Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member
आयकर अपील सं./I.T.A./13/Mum/2016,निर्धारण वर्ष /Assessment Year: 2003-04

ACIT-7(2)(1) Room No.573, 5th Floor, Aayakar Bhavan M.K. Road, Mumbai-400 020.	Vs.	Mahindra Gesco Developers Ltd. (Now known as Mahindra Lifespace Developers Ltd.) Mahindra Towers, 5th Floor, Road No.13, Worli, Mumbai-400 018. PAN:AAACG 8904 C
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri T.A. Khan-CIT-DR
अपीलार्थी की ओर से /**Assessee by:** Shri Prasad Bapat
सुनवाई की तारीख / **Date of Hearing:** 01/06/2018
घोषणा की तारीख / **Date of Pronouncement:** 01/06/2018
आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य ,राजेन्द्र के अनुसार -PER RAJENDRA, AM-

Challenging the order dated 19/10/2015 of the CIT(A)-13, Mumbai,the Assessing Officer (AO)has filed the present appeal.Assessee-company filed its return of income on 28/11/2003, declaring total **Loss** of Rs.3,12,20,237/-.The AO completed the assessment on 28/02/2005, determining the income of the assessee at Rs.27,97,50,140/-.

Effective ground of appeal is about deleting of penalty levied by the AO,u/s. 271(1)(c)of the Act.

Brief Facts:

2.In this matter,assessment u/s.143(3) of the Act was completed in this case on 28.02.2005.While computing the income under normal provisions of the Act,the AO disallowed provision on account of impairment of assets and also provision for diminution in value of investment apart from various other additions/disallowance and computed the total income at ₹.27,49,50,140/-.He did not compute the book profits u/s.115JB of the Act,while completing the assessment u/s.143(3)of the Act on 28.02.2005.The assessee preferred appeal before the Ld.CIT(A) and also the Tribunal.The Tribunal,by its order dated 30.06.2011,partly allowed the appeal of the assessee and Revenue’s appeals were dismissed in ITA.s/4291/Mum/2007, 5658/ Mum/2007 & 4129/Mum/2007,dated 30. 06.2011.

Subsequently,on 06.01.2012 an order was passed by the AO for giving effect to the order Tribunal,wherein he determined the income of the assessee at Rs. NIL as per the normal provisions of the Act.He,in his order,computed and accepted the book profits u/s. 115JB at

₹.5,48,71,162/-.Later on,he issued a rectification-notice to the assessee.The assessee objected to the proposal of the AO stating that such an adjustment could not be made u/s. 154 of the Act by rectifying the order giving effect to the Tribunal order.The assessee contended that there is no mistake apparent on record in the order passed giving effect to the Tribunal order since this issue is not emanating from the Tribunal order, and the consequential order passed giving effect to the Tribunal is in accordance with law and there is no mistake crept in. However, the AO passed order u/s.154 on 14.03.2013 rectifying the order passed giving effect to the Tribunal order by adding back the provision for diminution in value of assets and provision for diminution in value of investments and computed the book profits at ₹.21,03,86,222/-observing that there is a mistake apparent on record in passing the order giving effect to the Tribunal order as provisions of Section 115JB were amended by Finance Act 2008 w.e.f 01.04.2001 requiring addition of the amount or amounts set aside as provision for diminution in the value of any asset to the book profits. Assessee preferred appeal before the First Appellate Authority (FAA)and he quashed the order passed by the AO,following the decision of the Tribunal in the case of M/s Weizmann Limited ITA/768/Mum/2012, 742/Mum/2012 and 770/Mum/2012 dated 31.10.2013,wherein an identical issue was decided by the Tribunal.

In the meanwhile,the AO initiated penalty proceedings invoking the provisions of section 271(1)(c)of the Act.The FAA deleted the penalty.

3.Before us,the Departmental Representative(DR)stated that there was no justification in deleting the penalty levied by the AO,that admission of an appeal by the Hon'ble High Court could not be basis for deleting penalty,that it was a case of furnishing inaccurate particulars. He relied upon the cases of Prakash S Vyas(272 CTR 353),Emblem Fashion Wear Exports (P.)Ltd.(83 taxmann.com 28)and Shree Gopal Housing & Plantation Corporation, Mumbai(IT Appeal No. 701 of 2015 of the Hon'ble Mumbai High Court).

The Authorised Representative(AR)stated that the Tribunal had held that the order passed by the AO under section 154 of the Act was bad in law.He also referred to the circular no.25 of 2015,dtd. 31.12.2015.He stated that the AO was not justified in levying penalty,that the FAA had rightly deleted the penalty.

4.We have heard the rival submissions and perused the material before us.We find that original order was completed,u/s.143(3)of the Act,that the matter travelled up to the Tribunal and it dismissed the appeal filed by the AO and partly allowed the appeal of the assessee,as stated earlier.While giving effect to the order of the Tribunal,the AO finalised the income of

the assessee at Rs.5.48 crores, as per the provisions of section 115JB of the Act.Later on the AO issued a notice u/s.154 of the Act and determined the income of the assessee at Rs.21.03 crores as per the provisions of section 115JB of the Act.The Tribunal,on 21/03/2018, dismissing the appeal,filed by the AO,had held that he was not authorised to make addition of MAT income u/s.154 of the Act,while giving appeal effect to order of the Tribunal.As the original rectification order passed by the AO has been quashed by the Tribunal,so, the penalty order would not survive.Otherwise also,the penalty is not leviable in MAT matters for the year under consideration in light of the Circular no.25 of 2015(supra),issued by the CBDT. So,we decide the effective ground of appeal against the AO.

As a result,appeal filed by the AO stands dismissed.
फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 1st June,2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 1 जून,2018 को की गई।

Sd/-

(अमरजीत सिंह / Amarjit Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 01 .06.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ B ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.