

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **725/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2009-10

Sambros Tex Global Ltd.,
F1, PRP Block-Rose Park,
No.10, Santhi Nagar, 1st Cross,
Adambakkam,
Chennai – 600 088.

The ACIT,
Vs. Central Circle-1,
Coimbatore

PAN: AAICS 9000K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sathyanarayanan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 12.12.2022

घोषणा की तारीख/Date of Pronouncement

: 14.12.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.237/16-17 dated 07.01.2019. The assessment was framed by the ACIT, Central Circle-1, Coimbatore for the assessment year 2011-12 u/s.154 of the Income Tax Act, 1961, (hereinafter 'the Act') vide order dated 29.03.2016.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making rectification u/s.154 of the Act by adding prior years income as book profit u/s.115JB of the Act.

3. The assessee raised two facets of arguments, first that this is a highly debatable issue and second that the assessee has already offered said income of Rs.1 crore in assessment year 2007-08 and making this addition again in relevant assessment year 2009-10 of Rs.99,30,600/- will tantamount to double addition.

4. Brief facts are that the assessee filed its return of income for the assessment year 2009-10 on 30.09.2009 and accordingly, scrutiny assessment was passed u/s.143(3) of the Act on 23.11.2011. Subsequently, the AO issued notice u/s.154 of the Act for the reason that prior period income of Rs.1 crore was not taxed u/s.115JB of the Act. The AO in his rectification order u/s.154 of the Act dated 29.03.2016 made addition of Rs.99.31 lakhs being prior year income of Rs.1 crore shown below the line in the profit & loss account for financial year 2008-09 relevant to assessment year 2009-10. According to AO, prior year income was covered in the adjustment as envisaged while computing book profit u/s.115JB of

the Act. Therefore, the AO carried out this mistake apparent from record and rectified the mistake by making addition of this Rs.99.31 lakh to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

4.1 The CIT(A) simpliciter confirmed the action of the AO by observing as under:-

“7.1 I have gone through the order of the AO, written submissions and the provisions of the Act. IT has been noticed that the impugned prior year income has been routed through Profit & Loss Appropriation Account only. As per the provisions, adjustment of the prescribed items mentioned in Explanation I will have to be with reference to the net profit as shown in the profit and loss account for the relevant assessment year. Thus the prior year income shown only in the appropriation account is not to be reckoned while computing Book Profit u/s 115JB, for it is not an eligible item covered by the said 17 adjustments prescribed in the said Explanation.

7.2 The decisions relied upon by the appellant in the case of Apollo Tyres Ltd vs. CIT (2002) 255 ITR 273 and Malayala Manorama Co Ltd., in Appeal Civil No.5420-5423 of 2022 in [2008 TIOL-77-SC] will not come to the rescue of the appellant as the facts are distinguishable inasmuch as that the AO had not interfered with the Profit & Loss account for the relevant previous year under consideration and has only gone by the present provisions of Section 115JB of the Act that is applicable to the impugned A.Y. by correctly not reckoning the prior period income.”

Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee filed copies of original return of income for assessment year 2007-08, revised

return of income for assessment year 2007-08, Form No.3CA & 3CD, assessee's audit objection for assessment year 2009-10. The Id.counsel for the assessee took us through the revised return, which is enclosed at page 32 of assessee's paper-book, wherein total income declared was Rs.59,87,670/- and also shown us that in the return of income at column 23, this Rs.1 crore was already included in return for assessment year 2007-08. The Id.counsel also took us through the computation of income i.e., profit & loss account for the year ended 31.03.2009, which is enclosed at assessee's paper-book page 74, which shows that prior income of Rs.1 crore is below the line but Id.counsel before us argued that since this income has already been offered in assessment year 2007-08 and paid taxes by filing revised return after survey, said additional income recorded in the books as prior income was to adjust the reserve account in assessment year 2009-10. According to him, if it is brought to tax again it will amount to double taxation. In view of these arguments, Id.counsel stated that this action cannot be done while acting u/s.154 of the Act because this is highly debatable issue.

6. We have gone through the facts and noted that the assessee could prove before us that this income has already been offered in assessment year 2007-08 and this cannot be added again in

assessment year 2009-10. We noted that since the assessee has already offered this income in assessment year 2007-08 and issue is settled, only adjustment was made in the books of account of financial year 2008-09 relevant to assessment year 2009-10 and this fact was in the knowledge of AO at the time of making adjustment and even this was explained during the course of rectification proceedings by the assessee. In view of the above, first of all the assessee has offered this in assessment year 2007-08, it cannot be added again and moreover, this being highly contentious issue and debatable whether this is to be assessed in assessment year 2007-08 or 2009-10, it cannot be rectified while acting u/s.154 of the Act. Hence, we allow the appeal of assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th December, 2022 at Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 14th December, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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