

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

श्रीमहावीर 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.: **132/CHNY/2019**

निर्धारण वर्ष /Assessment Year: 1998-99

**VGP Housing (P) Ltd.,**  
No.6, VGP Square,  
Dharmaraja Koil Street,  
Saidapet, Chennai – 600 015.

**The ACIT,**  
v. Corporate Circle 3(2),  
Chennai – 34.

**PAN: AAACV 2568B**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **133/CHNY/2019**

निर्धारण वर्ष /Assessment Year: 1999-2000

**V.G.P. Golden Beach Resorts**  
**Ltd.,**  
No.6, VGP Square,  
Dharmaraja Koil Street,  
Saidapet,  
Chennai – 600 015.

**The ACIT,**  
v. Corporate Circle 3(2),  
Chennai – 34.

**PAN: AAACV 3002G**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 20.06.2023

घोषणा की तारीख/Date of Pronouncement

: 20.06.2023

**आदेश /ORDER****PER MAHAVIR SINGH, VICE PRESIDENT:**

These appeals filed by the assesseees are directed against the common order of the Commissioner of Income Tax (Appeals)-8, Chennai in ITA Nos.26 & 27/17-18 dated 09.11.2018. The assessments were framed by the ACIT, Corporate Circle 3(2), Chennai for the assessment years 1998-99 & 1999-2000 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 26.04.2017.

2. The only common issue in these two appeals of assesseees is as regards to the order of CIT(A) not considering the issue relating to adjustment of excess depreciation withdrawn and provision for land development and the book profit computed u/s. 115JA/115JB of the Act, which was wrongly decided overlooking the scope of such adjustment.

3. At the outset, we have gone through the directions of Hon'ble Madras High Court in assessee's own case in TCA Nos.1418 & 1419 of 2007 dated 23.12.2016, wherein Hon'ble High Court had directed vide para 12 & 13 as under:-

12. In the present case, we are concerned with excess depreciation claimed as well as provision for land development both reduced by the assessee from book profits in its computation for MAT in terms of clause (i) of the Explanation to section 115JA. However, the downward adjustment in terms of this provision is conditional upon satisfaction of the requirement under the proviso thereto i.e. whether the book profit of the earlier year when the reserve/provision was created, was increased by the amounts credited to the profit and loss account in the financial year relevant to the assessment year in question. There is no finding in the orders of the lower authorities in this regard. In fact, reference to clause (i) of the Explanation to section 115JA finds place for the first time at the level of the Tribunal. Submissions have been advanced before us on behalf of the assessee on the satisfaction of the condition set out in the Proviso to sub-clause (i) of the Explanation to s.115JA. This is however, an exercise in fact finding, that has to be gone into by the assessing officer. We thus have no choice but to remit the matter to the file of the assessing officer to redo the computation of book profits in terms of Section 115 JA as it stood at the relevant time, including the applicability of sub-clause (i) of the Explanation to section 115JA and render a finding on the applicability of the proviso thereto. Both parties have cited case law relying upon the decisions of the Supreme Court reported in Commissioner of Income Tax Vs. Lovely Exports (P) Ltd ((2008 216 CTR 0915); Indorama Synthetics (I.) Ltd Vs. Commissioner of Income Tax (330 ITR 363) and decisions of the High Court in Tamilnadu Cements Corporation Ltd Vs. Joint Commissioner of Income Tax ((2012) 349 ITR 0058); Commissioner of Income Tax Vs. W.S.Industries (India) Ltd in TCA.No.200 of 2005 vide order dated 22.08.2011 and Southern Petro Chemicals Industry Vs. Deputy Commissioner of Income Tax in T.C.A.Nos.1109 of 2004 etc. batch vide order dated 22.8.2011. The officer shall take note of the same in the proceedings to be completed denovo. We are conscious that the assessment years in question are 1998-99 and 1999-2000. However in the circumstances as seen above, we believe that a remand is called for even at this distance of time.

13. We now address the second question in both appeals. The contention of the learned counsel for the assessee is to the effect that the assessing officer, by effecting the impugned adjustments, 'tinkered' with the P and L a/c, which is impermissible. We don't agree. All that the assessing officer had done is to commence application of the Explanation to s.115JA to the book profits, albeit, in an incomplete fashion. Admittedly, the assessee has availed the reduction in terms of sub-clause (i) of the Explanation and it

remains to be seen if the condition precedent to availing of the reduction as per the proviso thereto has been satisfied. The exercise has to be carried to its logical conclusion and the error committed by the officer is limited to this aspect of the matter. To label the action of the assessing officer as 'tinkering' even at this stage would be putting the cart before the horse, and rather premature. The learned counsel also seems to suggest that the credits sought to be added back are part of p and l appropriation a/c and not the p and l a/c as required by sub-clause (i) of the Explanation. We refrain from probing further into this aspect as we have, in paragraph 15 above, directed the assessing officer to undertake, denovo, the exercise of ascertaining the liability of the assessee to MAT.

In consequence to the above directions of Hon'ble High Court, the AO has theoretically discussed the issue but he noted the directions of Hon'ble High Court in para 3 as under:-

"3. The Hon'ble High Court, Madras have now, vide its order No.T.C.A.No.1418 of 2007 & T.C.A. No.1149 of 2007 dated 23/12/2016, have directed the Assessing Officer to re-do the assessment with respect to excess depreciation reversed and provision for land development withdrawn at the stage of depreciation of profits in P & L Account in the light of the provisions of Section 115JA and relevant case laws."

The CIT(A) also not examined this issue and noted that the assessee has not filed the details and this fact is noted by the CIT(A) in para 8 as under:-

"8. The Assessing Officer has called for explanation for the assessee and has examined the facts. The assessee had not been able to satisfy the Assessing Officer on facts. The Assessing Officer has reiterated the additions. During the course of appeal proceedings before the undersigned, the assessee had been asked to submit the following:

- a) Financials, computation of income and depreciation schedule for all relevant years including AY 98-99 and 99-2000.
- b) Specific accounts of excess depreciation claimed in any earlier year and how the same is withdrawn in the years under appeal.
- c) Specific accounts of provision for land development created in any earlier year and how the same is reversed in the years under appeal.

However, the assessee has not been able to submit any of the specific details called for. It has only submitted a legal submission as in para 5 above.”

4. We noted that the CIT(A) in para 8 (b) had specifically noted to submit the specific accounts of excess depreciation claimed in earlier years and how the same is withdrawn in the years under appeal. This fact is not at all examined by the AO. We noted that the Hon'ble Madras High Court in assessee's own case has given specific direction in para 12 & 13 but assessee has also to produce the relevant details i.e., specified accounts of excess depreciation claimed in any earlier years and how the same is withdrawn in the years under appeal. Hence in the absence of the details, this aspect cannot be decided. We direct the AO to decide the issue on facts after considering the details filed by the assessee. The assessee is also directed to comply with the directions of filing of details of excess depreciation claimed in any earlier year and how the same is withdrawn in the year under appeal. In term of the above, we

remand this issue back to the file of the AO and appeals of the assesseees are accordingly allowed for statistical purposes.

5. In the result, the appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced in the open court on 20<sup>th</sup> June, 2023 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 20<sup>th</sup> June, 2023

***RSR***

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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