

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

M.A.No.346/PUN./2023

Arising out of

I.T.A.No.608/PUN./2020 - Assessment Year 2014-2015

M/s. Vikram Developers and Promoters, 19, Shrikrishna Heights, Ganeshkhind Road, Shivaji Nagar, Pune. PAN AAGFV4298R PIN – 411 005.	vs.	The DCIT, Central Circle-2(1) Room No.630, 6 th Floor, 548/2B, Gultekadi, Salisbury Park, Pune. Maharashtra. PIN – 411 037.
(Applicant)		(Respondent)

For Assessee :	Shri Kishor B. Phadke
For Revenue :	Shri Sourabh Nayak, Addl. CIT

Date of Hearing :	14.06.2022
Date of Pronouncement :	29.08.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's miscellaneous application filed u/s.254(2) of the Income Tax Act, 1961 (in short "the Act") seeks to recall the tribunal's order herein dated 10.01.2023, allowing the Revenue's main appeal ITA.No.608/PUN./2020.

Heard both the parties. Case file perused.

2. It emerges at the outset that the assessee has filed it's instant miscellaneous application MA.No.346/PUN./2024 as per hon'ble jurisdictional high court's directions in it's

W.P.No.14505 of 2023 dated 04th December, 2023 reading as under :

1. *“In paragraphs 8 and 9 of the impugned order dated 10 January 2023, it is recorded that petitioner had made a request to the Tribunal to follow the earlier order in assessee's own case or constitution of a special bench if, the Tribunal was not agreeing with the earlier order. The Tribunal has rejected that request of petitioner on the ground of co-ordinate bench's order in earlier assessment year that it had nowhere examined the ambit and scope of Section 115JC of the Income Tax Act 1961.*
2. *Mr. Jain states that petitioner will file a misc application before the Tribunal but requests that the court should condone the delay, if any.*
3. *In view of what is stated in the petition, and since there is a reference to Section 115JC of the Act in assessee's own case for the previous years, in our view, petitioner should file a misc application before the Tribunal. The Tribunal shall entertain the misc application on merits and treat the delay, if any, as condoned provided misc application is filed on or before 31" December 2023.*
4. *We clarify that we have not made any observation on the merits of the matter.*
5. *Petition disposed.”*

3. Learned counsel's case accordingly is that once the Revenue's sole substantive ground canvassed in this main appeal ITA.No.608/PUN./2020 already stood decided in assessee's favour in the preceding assessment year; it is incumbent for us to make a statutory reference for constitution of "Larger Bench" than to adopt a different approach in the impugned latter assessment year. Mr. Phadke's case therefore, is that going by their lordships' clear-cut directions, we ought to make sec.255(3) statutory reference for constitution of a Special Bench as our impugned order allowing the Revenue's main appeal in subsequent assessment year, amounts to an apparent mistake on record and therefore, deserves to be recalled to this extent.

4. We have given our thoughtful consideration to assessee's foregoing vehement contentions. We make it clear that their lordships' remand directions are indeed binding on us going by principle(s) of judicial discipline. The fact however remains that so far as the sole issue of applicability of sec.115JC in the Revenue's main appeal is concerned; we find that the earlier learned coordinate bench's order in assessee's case had not at all considered. Case law M/s. Sankara Polymers (P) Ltd., vs. ITO [2013] 31 taxmann.com 1656 (Kar.) holds that the provisions of "MAT" application are applicable even *qua* a deduction claimed u/sec.80IB of the Act. The said assessee has admittedly raised an identical plea that

sec.115JC of the Act would not apply to its profits derived from residential project already approved u/s/80IB(10) before this "AMT" provision came into force. We are of the considered view that once hon'ble Karnataka high court has decided the issue in department's favour which was not considered in learned co-ordinate bench's order, constitution of a Special Bench would not serve any purpose going by judicial discipline. We further quote [2008] 305 ITR 277 (SC) ACIT vs. Saurashtra Kutch Stock Exchange Ltd.; [2021] 133 taxmann.com 41 (SC) CIT vs. Reliance Telecom Ltd.; and [1993] 203 ITR 497 (Bom.) CIT vs. Ramesh Electric and Trading Co. that scope of sec.254 rectification proceedings is not to re-visit the earlier findings in the former round of order. We thus reject the assessee's instant miscellaneous application MA.No.346/ PUN./2024 in very terms.

5. This assessee's miscellaneous application M.A.No.346/PUN./2023 is dismissed.

Order pronounced in the open Court on 29.08.2024.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 29th August, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.