

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.2317/M/2012
Assessment Year: 2007-08**

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| M/s. Dome Bell Electronics (India) Ltd., 171-C, Mittal Court, Nariman Point, Mumbai – 400 021 PAN: AAACD6266G | Vs. | Dy. Commissioner of Income Tax, Circle – 3(1), Room No.607, 6 th Floor, Aayakar Bhavan, Mumbai - 400020 |
| (Appellant) | | (Respondent) |

**ITA No.4655/M/2014
Assessment Year: 2007-08**

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| Dy. Commissioner of Income Tax, Circle – 3(1), Room No.607, 6 th Floor, Aayakar Bhavan, Mumbai - 400020 | Vs. | M/s. Dome Bell Electronics India Ltd., 171-C, Mittal Court, 17 th Floor, Nariman Point, Mumbai - 21 PAN: AAACD6266G |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Revenue by : Shri K. Krishna Murty, D.R.

Date of Hearing : 18.10.2016
Date of Pronouncement : 21.10.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned appeals one by the assessee and the other by the Revenue are related to the same assessment year 2007-08. The assessee has come in appeal against the order of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 20.01.2012 dismissing the appeal of the assessee against the order of the Assessing Officer (hereinafter referred to as the AO) dated 30.07.2010 passed under section 154 of the Income Tax Act.

On the other hand, the Revenue has come in appeal against the order of the Ld. CIT(A) dated 30.08.2013 allowing the application of the assessee moved under section 154 of the Act. Since the facts and issue involved therein are interlinked, hence both the appeals have been heard together and are being disposed of by this common order.

2. The brief facts of the case are that the assessee company had filed the return of income on 31.10.2007 declaring total income at loss of Rs.45,54,07,974/- under the normal provisions of the Income Tax Act, 1961 and book profit of Rs.30,72,665/- under the provisions of section 115JB of the Act. The regular assessment u/s. 143(3) of the Act, was completed vide order dated 31.12.2009 and after making certain disallowances total income was assessed at Rs.Nil. While making the above assessment, the AO had disallowed the interest expenditure of Rs.35,76,50,244/- under section 36(1)(iii) of the Act holding that the said expenditure was not incurred for business purposes but it was attributable to the share investment in the same company from which the funds were borrowed. Further that the same at the most was attributable to earning of tax exempt income. While making the said disallowance, the AO further made a passing reference in the assessment order that even otherwise the said interest expenditure was disallowable under provisions of section 14A of the Act. However, since the provisions of section 115JB were applicable in the case of the assessee, the AO computed the book profits at Rs.6,73,88,383/- under section 115JB of the Act.

3. Thereafter, the assessee moved an application before the AO pleading that a mistake apparent on record has occurred in the assessment order. It was pleaded that the tax exempt income of Rs.4,89,47,044/- has to be excluded while computing the book profit under section 115JB of the Act. The AO accepted the claim of the assessee. He, however, noted that as per explanation (1) clause (f) of section 115JB, while computing book profit, the amount of expenditure relatable to any income to which section 10 (other than the

provisions contained in clause (38) thereof) or section 11 or section 12 apply, is to be added in book profit, if it is debited to profit and loss account. He accordingly disallowed the interest expenditure (which was earlier disallowed under the provisions of section 36(1)(iii) of the Act under normal provisions) relating to earning of the exempt income and added the same to the income of the assessee while computing book profits under section 115JB of the Act.

4. Being aggrieved by the said order of the AO, the assessee preferred appeal before the Ld. CIT(A) which has been dismissed by the Ld. CIT(A) vide impugned order dated 20.01.12. The assessee, thus, has come in appeal before us against the said order of the Ld. CIT(A).

5. It is pertinent to mention here that after the dismissal of his appeal vide order dated 20.01.2012, the assessee moved a rectification application under section 154 of the Act before the Ld. CIT(A) pleading that it was a debatable issue as to whether the disallowance made under section 14A in relation to the expenditure incurred for the purpose of earning of exempt income can be added while computing the book profits under section 115JB of the Act. It has been further pleaded that the AO was not supposed to make addition in respect of the above stated debatable issue as the same was not a mistake apparent from record.

6. The Ld. CIT(A) vide order dated 30.08.13 accepted the application of the assessee moved under section 154 of the Act and while relying upon various case laws held that the issue was a debatable issue and as such it cannot be said that there was any mistake apparent from record which may justify the action of the AO in rectifying the order and thereby adding the disallowance of expenditure made under section 14A while computing the book profits under section 115JB of the Act. He also held that even otherwise in the assessment under normal provisions, the AO had disallowed the expenditure under section 36(1)(iii) of the Act and as per the provisions of

section 115JB of the Act, the same could not be added into the book profits. He accordingly directed the AO to delete the addition in respect of interest expenditure while computing the book profits under section 115JB of the Act. Aggrieved by the above order of the Ld. CIT(A), the Revenue has come in the present appeal.

7. After considering the rival contentions, we find that so far as the appeal of the assessee is concerned, the assessee at this stage is not left with any grievance as the rectification application moved by the assessee under section 154 of the Act in relation to the impugned order of the Ld. CIT(A) dated 20.01.2012 has been accepted by the Ld. CIT(A) and the impugned additions have been deleted. Hence, the impugned order of the Ld. CIT(A) has stood modified and substituted with his order dated 30.08.13. Since the assessee has not been left with any grievance on this issue, the present appeal of the assessee has become infructuous and the same is accordingly dismissed.

8. So far as the appeal of the Revenue is concerned, we find that the issue regarding the disallowance of expenditure incurred in relation to earning of exempt income made under section 14A of the Act under the normal provisions of the Act whether can be added into the income of the assessee while computing book profits under section 115JB of the Act is a debatable issue. It has been brought to our knowledge that the said issue is pending decision before the special bench of the Tribunal in ITA No.502/Del/2012 in the case of Vireet Inv.(P) Ltd. Delhi. An identical issue as to whether the disallowance made by the AO under section 14A under normal provisions is to be added while computing the book profits under section 115JB is a debatable issue or whether the AO can be justified in making the additions relating to the above issue under section 154 of the Act came into consideration before the co-ordinate bench of the Tribunal in the case of "M/s. Beekaylon Synthetics Pvt. Ltd." in ITA No.7558/M/2013 vide order dated 31.07.2015. The Tribunal held that the AO is not empowered under section 154 of the Act to make

addition on this debatable issue as the same cannot be said to be a mistake apparent on record. The relevant part of the order of the Tribunal for the sake of convenience is reproduced as under:

“6. The above decisions cited by both the sides show that the issue is quite debatable which has yet to be settled by the High Courts/Supreme Court. There are contrary decisions of the Tribunal in favour of both the parties. Under such circumstances, in our view, it was beyond the powers of the AO exercisable under section 154 to make an addition on a debatable issue, the original assessment in this case had been completed under section 143(3) of the Act. Merely because, the other view is possible that itself cannot be a ground to rectify the order under section 154 of the Act as the same cannot be said to be a mistake apparent on record. Similarly, the addition made on account of provision for doubtful debts whether to be added while computing book profits under section 115JB has been a quite debatable issue. Under such circumstances, the invoking of provisions of section 154 by the AO on debatable issue was beyond his jurisdiction.. In our view, it is not a case of any mistake apparent on the record. The AO passed the assessment order u/s 143(3) of the Act on the basis of material available before him. It has been time and again held by the higher courts that if the alleged mistakes require investigation into facts or determination of law or discussion of debatable points are involved or two opinions are possible on the issue then such pointed mistakes cannot be said to be mistakes apparent on record which can be rectified under section 154 of the Income Tax Act. Hence, the order passed by the AO under section 154 is not sustainable in the eyes of law and the same is accordingly set aside.

7. In the result, the appeal of the assessee is hereby allowed.”

9. Respectfully following the above decision of the Tribunal, this issue is accordingly decided in favour of the assessee and against the Revenue.

10. We, therefore, do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

11. In the result, the appeal of the assessee as well as that of Revenue is hereby dismissed.

Order pronounced in the open court on 21.10.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 21.10.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.