

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH 'G' MUMBAI**

**BEFORE SMT. P.MADHAVI DEVI, JM &  
SHRI RAJENDRA SINGH, AM**

**M.A.NO. 746/Mum/2009 - A.Y 1998-99  
[Arising out of I.T.A.No.4019/mm/2007]**

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| Asst. Commissioner of I.T [OSD]<br>Circle 21,<br>Mumbai | Vs. | M/s GTL Limited,<br>Global Visions, ESIL MIDC,<br>TTC Industrial Area,<br>Navi Mumbai 400 701<br><br><b>PAN NO.</b> |
| (Applicant)   |     | (Respondent)  |
|   |     |   |
| Revenue by  | :   | Mr. Mohd. Usman.  |
| Assessee by   | :   | Mr. K.Shivram & Mr.Paras S.Savla.   |

**ORDER**

**Per P.MADHAVI DEVI, JM:**

This is a miscellaneous application filed by the revenue u/s.254[2] of the I.T.Act.

2. Brief facts leading to this miscellaneous application are that the assessee had filed a return of income for the A.Y 1998-99 on 30/11/98 declaring the total income at Rs.11,62,10,850/- u/s.115JA of the Act. AO completed the assessment assessing the total income at Rs.34,63,78,187/-. This order was subsequently rectified and modified on three other occasions. Later on, it was noticed that the provision of doubtful debts of Rs.18,99,254/- was not added back to the profit & loss account while computing deduction u/s.115JA of the Act. Therefore, AO passed an order u/s.154 of the Act on 30-12-2004 adding back the provision for doubtful debts u/s.115JA of the Act. This

order was challenged by the assessee before the CIT(A) who allowed the same relying upon the decision of the Bombay High Court in the case of cit vs. Echjay Forgings (P) Ltd. [251 ITR 15]. The revenue appealed against the same to the ITAT and the Tribunal vide orders dated 17-3-09 confirmed the order of the CIT(A) by placing reliance upon the following decisions –

1. CIT VS. HCL Comnet Systems & Services Ltd. 205 ITR 409 [S.C]
2. CIT vs. Echjay Forgings P. Ltd. 251 ITR 15 [Bom]
3. Special Bench decision in JCIT vs. M/s Usha Machine Industries Ltd. [2007] 104 ITR {S.B.} [Kol]

Thereafter, by the Finance Act, 2009 clause [g] has been inserted in Explanation to sec.115JA[2]of the Act w.r.e.f. A.Y 1998-99 and subsequent years providing that provisions for doubtful debts and advances are disallowable while calculating profit u/s.115JA of the I.T.Act . The revenue has relied on the decision of the Karnataka High Court reported in 239 ITR 282 in support of its contention that an order which is not in accordance with the retrospective law can be rectified u/s.154 of the Act.

3. The Ld.DR reiterated the contentions raised in the miscellaneous application, while the Ld.counsel for the assessee submitted that the revenue has not been able to point out the mistake apparent from record of the order on the date when it was passed. In support of his contention, he placed reliance upon the decision of the Bombay High Court in the case of CIT vs. Sudhir S.Mehta [265 ITR

548], wherein it was held that on retrospective amendment of sec.148(1) deleting the word 'not being less than thirty days' being subsequent to the Tribunal's order striking down the notice, there is no mistake apparent from the order of the Tribunal. He submitted that as held by the Hon'ble jurisdictional High Court in the case of CIT vs. Thana Electricity Supply Ltd. [206 ITR 727], the decision of the High Court is binding on the sub-ordinate courts and authorities or Tribunal in its superintendence throughout the territories in relation to which it exercises jurisdiction. Thus, according to him, the decision of the Bombay High Court in the case of Sudhri S.Mehta [cited supra] is binding on this Tribunal. As regards the reliance placed upon by the Ld.DR on the decision of the Karnataka High Court in the case of M.Srinivasalu vs. UOI 239 ITR 282, he submitted that it is distinguishable on facts as the assessee therein had challenged the validity of sec.148 as violative of Article 14 and 19[1][g] in a writ petition and the High Court held that 'the Parliament can enact the law prospectively or retrospectively.' Thus, according to the Ld.counsel for the assessee, the said decision is not applicable to the case before us.

4. Having heard both the parties and having considered their rival contentions, we find that the Tribunal's order is dated 17<sup>th</sup> March, 2009 whereas the retrospective amendment of the Act has received the assent of the President of India on 19-8-2009 i.e. after the order of the Tribunal was passed. Similar were the facts of the case before the Hon'ble Bombay High Court in the case of Sudha S. Mehta [cited

supra], wherein the Tribunal's order was dated 26-6-96 whereas the law was amended retrospectively w.e.f. 1-4-1989 and this amendment was assented to by the President of India on September, 28, 1996 i.e. after the order of the Tribunal was passed. After taking these facts into consideration the Hon'ble Bombay High Court held that the proceedings got concluded before the Tribunal under the then existing law and, therefore, there was no mistake apparent from record in the order of the Tribunal dated 26-2-1996. As this is a decision of the jurisdictional High Court this Tribunal is bound by the same. Otherwise also the decision of the Karnataka High Court in the case of M.Srinivasalu vs. UOI [cited supra], relied upon by the Ld.DR is distinguishable on facts as submitted by the Ld.counsel for the assessee. In view of the same, we agree with the assessee that there is no mistake apparent from record in the order of the Tribunal. In view of the same, revenue's miscellaneous application is accordingly dismissed.

5. In the result, revenue's miscellaneous application is dismissed.

Order pronounced on this 10<sup>th</sup> day of March, 2010.

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|--------------------------|-------------------------|
| Sd/-                     | Sd/-                    |
| <b>(RAJENDRA SINGH)</b>  | <b>(P.MADHAVI DEVI)</b> |
| <b>Accountant Member</b> | <b>Judicial Member</b>  |

Mumbai: 10<sup>th</sup> March, 2010.

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