

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4<sup>TH</sup> DAY OF JANUARY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE V. SRISHANANDA

**I.T.A. NO.203/2015**

BETWEEN:

M/S. SOBHA DEVELOPERS LTD.,  
REP. BY ITS VICE-CHAIRMAN &  
MANAGING DIRECTOR  
SRI. J.C. SHARMA  
'SOBHA', SARJAPUR-MARATHALLI ORR  
DEVARABEESANAHALLI  
BANGALORE-560103.

... APPELLANT

(BY MR. A. SHANKAR, SENIOR COUNSEL A/W  
MR. M. LAVA, ADV.,)

AND:

DEPUTY COMMISSIONER OF INCOME TAX  
LTU, JSS TOWERS  
100 FT. RING ROAD  
BANASHANKARI III STAGE  
BANGALORE-560085.

... RESPONDENT

(BY MR. K.V. ARAVIND, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,  
1961 ARISING OUT OF ORDER DATED 09.01.2015 PASSED IN ITA  
NO.1410/BANG/2013 FOR THE ASSESSMENT YEAR 2008-09,  
PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF APPELLANT.

(II) ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLANT TRIBUNAL, BANGALORE 'A' BENCH IN ITA NO.1410/BANG/2013 RELATING TO ASSESSMENT YEAR 2008-09 VIDE ITS ORDER DATED 09-01-2015.

THIS ITA COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2008-09. The appeal was admitted by a bench of this Court vide order dated 01.03.2016 on the following substantial question of law:

*"Whether the tribunal is justified in law in holding that the indirect expenditure disallowed under Section 14A read with rule 8D(iii) of Rs.24,64,632/- in computing the total income under normal provisions of the Act, is to be added to the net profit in computation of book profit for MAT purposes under Section 115JB and thereby importing*

*the provision of Section 14A read with rule 8D into the MAT provisions on the facts and circumstances of the case?*

2. Facts leading to filing of this appeal briefly stated are that the assessee is a company and is a undertaking of Government of Karnataka, which is engaged in financing industrial units in the State of Karnataka. The assessee filed its return of income for the Assessment Year 2009-10 on 30.09.2011 declaring 'NIL' income under the Act. The assessee returned the income of Rs.13,60,88,457/- under the provisions of Section 115JB of the Act. The return filed by the assessee was selected for scrutiny and Assessing Officer by an order dated 29.12.2010 completed assessment under Section 143(3) of the Act and determined loss of Rs.1,73,60,700/- under the provisions of the Act. The Assessing Officer also determined the book profit under Section 115JB of the Act at Rs.30,01,07,991/-.

3. The assessee thereupon filed an appeal

before Commissioner of Income Tax (Appeals) who by an order dated 31.08.2012 partly allowed the appeal of the assessee with regard to provisions of gratuity and leave encashment and partial relief in respect of disallowance under Section 14A read with Rule 8D to the extent of Rs.1,03,08,426/-. The assessee as well as the rev.. filed appeals before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal vide order dated 02.05.2014 write back the provision for bad and doubtful debts to the extent of Rs.14,77,53,747/- and held that the aforesaid amount is liable to be added to profits for determination of book profits under Section 115JB of the Act and held that disallowance of Rs.49,75,359/- under Section 14A of the Act is to be added back while computing book profits under Section 115JB of the Act. In the aforesaid factual background, the assessee has filed this appeal.

4. Learned counsel for the assessee submitted that the aforesaid substantial question of law has

already been answered by this court in favour of the assessee in '**COMMISSIONER OF INCOME TAX, BANGALORE Vs. GOKALDAS IMAGES (P) LTD.**' **(2020) 122 TAXMANN.COM 160 (KAR)**. On the other hand, learned counsel for the revenue has submitted that the assessee has earned income which is exempt under Section 10(2A) and Section 10(35) of the Act and the expenditure incurred on the exempt income has been calculated under Rule 8D of the Rules. It is also urged that the provisions of Section 115JB of the Act are attracted in the fact situation of the case.

5. It is also argued that Section 10(2A) of the Act exempts income of a person being partner of a firm being separately assessed and its share in the total income of the firm, whereas, Section 10(35) exempts income by way of units of mutual funds. It is also contended that income referred to in Section 10A of the Act is exempt and income not

includable in total income referred to in Section 14A is with respect to exempt income under Section 10 of the Act. Therefore, any expenditure incurred for earning the exempt income under Section 10 of the Act has to be disallowed under Section 14A of the Act. It is also argued that any expenditure relating to earning of income exempt under Section 10(2A) and Section 10(35) of the Act has to be disallowed under Section 14A of the Act and has to be added back to book profit under Section 115JB of the Act. It is further submitted that the view taken by this court in **COMMISSIONER OF INCOME TAX, BANGALORE VS. GOKALDAS IMAGES(P) LTD. (2020) 122 TAXMANN.COM 160(KARNATAKA)** requires reconsideration as the disallowance of expenditure in relation to the income referred to in Section 10 of the Act is provided only in Section 14A the Act is not referred to in Clause (f) Explanation 1 to Section 115JB of the Act, would render the provisions of Section 14A of the Act otiose. It is also

argued that in the absence of any provision excluding the applicability of Section 14A of the Act to compute book profit under Section 115JB of the Act, it is implied and unambiguous that the Section 14A of the Act is applicable to computation of book profit under Section 115JB of the Act. In support of aforesaid submission reliance has been placed on '**JOINT COMMISSIONER OF INCOME TAX VS. ROLTA INDIA LTD.'** (2011) 330 ITR 470 (SC) and '**MAXOPP INVESTMENT LTD. VS. COMMISSIONER OF INCOME TAX, NEW DELHI'** (2018) 402 ITR 640(SC).

6. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of relevant extract of Section 115JB of the Act, which reads as under:

*115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a*

*company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent.*

*(f) the amount or amounts 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; or*

*(i) the amount or amounts set aside as provision for diminution in the value of any asset,*

*if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss or if any amount referred to in clause (j) is not credited to the statement of profit and loss, and*



*as reduced by,—*

*(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the statement of profit and loss), if any such amount is credited to the statement of profit and loss:*

*(5) Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section.*

7. Thus from perusal of the relevant extract of Section 115JB, it is evident that Sub-Section (1) of Section 115JB provides the mode of computation of the total income of the assessee and tax payable on the assessee under Section 115JB of the Act. Sub-Section (5) of Section 115JB provides that save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee being a company mentioned in this Section. Therefore, any expenditure

relatable to earning of income exempt under Section 10(2A) and Section 10(35) of the Act is disallowed under Section 14A of the Act and is added back to book profit under clause (f) of Section 115JB of the Act, the same would amount to doing violence with the statutory provision viz., Sub-Section (1) and (5) of Section 115JB of the Act. It is also pertinent to mention here that the amounts mentioned in clauses (a) to (i) of explanation to Section 115JB(2) are debited to the statement of profit and loss account, then only the provisions of Section 115JB would apply. The disallowance under Section 14A of the Act is a notional disallowance and therefore, by taking recourse to Section 14A of the Act, the amount cannot be added back to book profit under clause (f) of Section 115JB of the Act. It is also pertinent to mention here that similar view, which has been taken by this court in Gokaldas Images (P) Ltd. supra was also taken by High Court of Bombay in **'THE COMMISSIONER OF INCOME TAX-8 VS. M/S**

***BENGAL FINANCE & INVESTMENTS PVT. LTD.,  
I.T.A.NO.337/2013.*** It is pertinent to note that in Rolta India Ltd., the Supreme Court was dealing with the issue of chargeability of interest under Section 234B and 234C of the Act on failure to pay advance tax in respect of tax payable under Section 115JA/ 115JB of the Act and therefore, the aforesaid decision has no impact on the issue involved in this appeal. Similarly, in MAXOPP Investment Ltd., supra the Supreme Court has dealt with Section 14A of the Act and has not dealt with Section 115JB of the Act. Therefore, the aforesaid decision also does not apply to the fact situation of the case.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered in favour of the assessee and against the revenue. In the result, the order passed by the tribunal dated 09.01.2015 insofar as it pertains to the findings recorded against the assessee is hereby quashed.

In the result, the appeal is allowed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

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