

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

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA NO. 7105/MUM/2014 : A.Y : 2010-11**

M/s. Maccaferri Environmental  
Solutions Private Limited,  
1003, Casablanca, Plot No. 45,  
Sector-11, CBD Belapur,  
Navi Mumbai 400 416.

Vs. ITO, Ward - 3(2)(2),  
Mumbai (Respondent)

**PAN : AABCM5896L (Appellant)**

**Appellant by : Shri Sameer Dalal**

**Respondent by : Shri T.A. Khan**

**Date of Hearing : 05/10/2018**

**Date of Pronouncement : 12/12/2018**

**ORDER**

**PER G.S. PANNU, VICE PRESIDENT :**

The captioned appeal by the assessee is directed against the order of CIT(A)-4, Mumbai dated 11.09.2014, pertaining to the Assessment Year 2010-11, which in turn has arisen from the order dated 04.03.2014 passed by the Assessing Officer, Mumbai under section 154 of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, although the assessee has raised multiple Grounds of appeal, but the entire dispute emanates from an order passed by the Assessing Officer under Section 154 of the Act amending/rectifying the assessment order passed under Section 143(3) of the Act dated 28.02.2013 determining the book profit under Section 115JB of the Act of ₹6,95,57,438/-. The said action of the Assessing Officer has since been upheld by the CIT(A), against which assessee is in further appeal before the Tribunal.

3. Insofar as the relevant facts are concerned, the same can be appreciated as follows. An assessment under Section 143(3) of the Act dated 28.02.2013 was completed by the Assessing Officer determining the total income at NIL, which corresponded to the returned income. Subsequently, the Assessing Officer issued a notice under Section 154 of the Act dated 06.12.2013 proposing to rectify an error in the assessment as, according to him, a mistake apparent from record had crept into the assessment order dated 28.02.2013. The Assessing Officer noted that while the assessee had returned NIL income under the normal provisions of the Act after setting-off past losses, it had not offered any income in terms of book profit determinable under Section 115JB of the Act. As per the Assessing Officer, the book profit for the purposes of Sec. 115JB of the Act was liable to be determined at ₹6,95,57,438/-. In response, assessee furnished an explanation dated 21.12.2013 pointing out that the computation of book profit for the purposes of Sec. 115JB of the Act was duly reflected in the returned income as per Form 29B and, in terms of such computation, the book profit determinable in terms of Sec. 115JB of the Act was a negative figure and thus, there was NIL tax liability even in terms of

Sec. 115JB of the Act. A copy of such explanation has been placed at pages 7 and 8 of the Paper Book and it is noticed that assessee also detailed the manner in which it had determined the book profit for the purpose of Sec. 115JB of the Act. The Assessing Officer, however, was not satisfied with the explanation furnished by the assessee and disposed off the submissions in the following manner :-

*“Assessee vide letter dated 21-12-2013 filed in this office on 15-01-2014 has disagreed to the proposed rectification. The submission made by the assessee is considered but not found acceptable for the reason that the liability u/s 115JB is worked out incorrectly. Since the mistake is apparent from the record, the assessment is rectified under section 154 of the I.T. Act.*

*Revised accordingly. Total income as per order dated 28-02-2013 remains unchanged to Rs. Nil but income u/s 115JB will be revised as under:*

<i>Net profit as per P/L Account</i>		<i>3,72,43,272</i>
<i>Add : Provision for Bad &amp; Doubtful Debts</i>	<i>2,25,37,650</i>	
<i>Provision for Doubtful Advances</i>	<i>86,72,263</i>	
<i>Provision for Absolute Inventory</i>	<i>1,69,656</i>	
<i>Provision for Service Tax</i>	<i>32,95,130</i>	
		<i>7,19,17,971</i>
<i>Less : Unabsorbed Depreciation</i>		<i>23,60,533</i>
<i>Book profits</i>		<i>6,95,57,438”</i>

4. Thus, in terms of the impugned order passed u/s 154 of the Act, the book profit under Section 115JB of the Act was determined at ₹6,95,57,438/- as against NIL determined by the assessee. When the assessee carried the matter in appeal before the CIT(A), he assailed the action of the Assessing Officer on points of law as also on facts. In particular, assessee pointed out

that the necessary computation of book profit under Section 115JB of the Act was duly available in Form 29B at the time of assessment before the Assessing Officer and in terms thereof, no liability arose. Therefore, if the Assessing Officer was to take a different view, the same could not be done by invoking Sec. 154 of the Act, which permitted the Assessing Officer merely to rectify apparent mistakes. It was argued that the points of difference between computation of book profit made by the Assessing Officer and that by the assessee were such, which involved debatable issues, and thus was outside the purview of Sec. 154 of the Act.

5. Apart therefrom, on merits of the adjustment, assessee pointed out that the judgment of the Hon'ble Madras High Court in the case of *Tamil Nadu Cements Corpn. Ltd. vs JCIT, 349 ITR 58 (Mad)* as well as the Hon'ble Kolkata High Court in the case of *ICI (India) Ltd. vs CIT, 347 ITR 442 (Cal)* brought out that the impugned adjustment was impermissible. The CIT(A) considered the submissions put forth by the assessee, but has merely gone by the ratio of the judgment of the Hon'ble Karnataka High Court in the case of *CIT vs Mysore Breweries Ltd. (2009) 227 CTR (Kar) 569* and the amendment made by the Finance (No. 2) Act, 2009 w.e.f. 01.04.1998 on the point that while determining the book profit, the amount relatable to Provision for bad and doubtful debts was not a deductible element. Further, the CIT(A) noted that the amendment carried out by the Assessing Officer was within the purview of Sec. 154 of the Act as it was an error of law. In this manner, the CIT(A) has dismissed the appeal of the assessee, against which assessee is in appeal before us.

6. Before us, the learned representative for the assessee referred to the following determination of book profit made as per Form 29B, which was pleaded before the Assessing Officer also :-

	<u>“Amount</u>
<i>Net profit as per Profit &amp; Loss account</i>	88,26,173/-
<i>Add Provision for bad &amp; doubtful debts</i>	2,25,37,650/-
<i>Provision for doubtful advances</i>	86,72,263/-
<i>Provision for obsolete inventory</i>	1,69,656/-
<i>Provision for service tax</i>	32,95,130/-
<u>Less</u>	
<i>Unabsorbed depreciation</i>	
<i>being lower than book loss</i>	5,29,73,854/-
<i>Adjusted book profit</i>	-94,72,982/-”

7. On this basis, it is sought to be pointed out that the adjustments made by the Assessing Officer in the order passed u/s 154 of the Act were debatable in nature. It was pointed out that there is a clear-cut error even in adopting the net profit as per the Profit & Loss Account inasmuch as what was required to be adopted was ₹88,26,173/- as done by the assessee, as against ₹3,72,43,272/- adopted by the Assessing Officer. The difference between the two was on account of prior period expense of ₹2,84,17,099/-, which had not been allowed by the Assessing Officer. In support of his stand that such expense was allowable for computing the book profit, reliance was placed on the judgment of the Hon'ble Madras High Court in the case of *Tamil Nadu Cements Corpn. Ltd.* (supra). At the time of hearing, the learned representative for the assessee also relied upon the judgment of the Hon'ble Delhi High Court in the case of *CIT vs Khaitan Chemicals & Fertilizers Ltd.*, 307 ITR 150 (Delhi) for the said proposition. Apart therefrom, it has been pointed out that adjustment of ₹5,29,73,854/- was available on the basis of

audited accounts inasmuch as Sec. 115JB of the Act permits deduction of an amount which is lower of depreciation or loss. It is pointed out that denial of such adjustment has resulted in determination of book profit, which is inconsistent with the provisions of law.

8. On the other hand, the Id. DR appearing for the Revenue has vehemently supported the orders of the authorities below by placing reliance thereon. It was pointed out that there was clearly an error on the part of the Assessing Officer in not determining the liability under Section 115JB of the Act while computing the original assessment and, therefore, invoking of Sec. 154 of the Act to determine such liability was quite justified.

9. We have carefully considered the rival submissions. As our earlier discussion would show, the crux of the controversy revolves around Sec. 154 of the Act invoked by the Assessing Officer to amend the assessment order passed, in order to determine the liability in terms of Sec. 115JB of the Act. Pertinently, Sec. 154 of the Act permits the Assessing Officer to amend an order only with a view to rectify a mistake apparent from the record. It is judicially well-settled that the power to rectify a mistake apparent from record in Sec. 154 of the Act does not involve a wholesale review of the earlier order and rather, what is permissible is only to rectify an obvious and patent mistake. It is also well understood that even debatable points of law would not fall in the meaning of the expression "*mistake apparent*" for the purposes of Sec. 154 of the Act.

10. In this background, we may now examine the facts of the present case. As per the relevant observation of the Assessing Officer in the notice issued under Section 154 of the Act dated 06.12.2013 (a copy of which is enclosed at page 6 of Paper Book) as well as in the order passed under Section 154 of the Act, invoking of Sec. 154 of the Act has been justified to determine the liability under Section 115JB of the Act primarily on the ground that the *“assessee had not offered tax under Section 115JB of the Act”* and therefore, there was an under-assessment of income. In this context, it has been consistently asserted before the lower authorities as well as before us that assessee had duly furnished the computation of book profit for the purposes of Sec. 115JB of the Act in the prescribed Form 29B, which had resulted in NIL liability. Therefore, so far as the assessee was concerned, it had cleared its stand which was very much before the Assessing Officer when he passed the original assessment order. Thus, the error of assessee not having declared its manner of computation of book profit under Section 115JB of the Act is not something which is reflected by the record. Even otherwise, the adjustment which has been made by the Assessing Officer, disagreeing with the determination of book profit made by the assessee under Section 115JB of the Act, involves a debatable issue which is outside the purview of Sec. 154 of the Act. No doubt, the CIT(A) is justified in referring to the amendment made by the Finance (No. 2) Act, 2009 prescribing that Provision for bad and doubtful debt is not deductible for computing book profit, yet that is not the basis on which the Assessing Officer invoked the jurisdiction under Section 154 of the Act. Secondly, even if this aspect of the matter is held in favour of the Revenue, yet the other two aspects brought out by the assessee before the CIT(A), namely, non-consideration of prior period items of expenses and non-consideration of

adjustment for lower of depreciation or loss, are issues which are well supported and consistent with the requirement of Sec. 115JB of the Act; and, the same have been unjustly denied by the lower authorities. If these aspects are kept in mind, the determination of book profit made by the Assessing Officer under Section 115JB of the Act is clearly untenable.

11. Thus, in sum and substance, we hereby set-aside the order of CIT(A) and hold that invoking of Sec. 154 of the Act by the Assessing Officer in the present case is unjust in law as well as on facts also. Thus, the assessee succeeds in its appeal.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12<sup>th</sup> December, 2018.

Sd/-  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**

Mumbai, Date : 12<sup>th</sup> December, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai