

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8<sup>TH</sup> DAY OF JUNE 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M.I. ARUN

I.T.A. NO.183 OF 2017

BETWEEN:

M/S. KARNATAKA STATE INDUSTRIAL AND  
INFRASTRUCTURE DEVELOPMENT  
CORPORATION LTD.,  
REP. BY ITS CHAIRMAN AND  
MANAGING DIRECTOR  
SMT. P. HEMALATHA  
KHANIJA BHAVAN, NO.49, 4TH FLOOR  
EAST WING, RACE COURSE ROAD  
BANGALORE-560001  
PAN:AAACK 5531H.

... APPELLANT

(BY SRI. A. SHANKAR, SR. ADV., FOR  
SRI. S. ANNAMALAI, ADV.)

AND:

DEPUTY COMMISSIONER OF INCOME TAX  
CENTRAL CIRCLE-11(5) R.P. BHAVAN, OPP.  
RBI NRUPATHUNGA ROAD BANGALORE-  
560001

PRESENTLY BMTc BUILDING  
KORAMANGALA 6TH BLOCK  
BANGALORE-560095.

... RESPONDENT

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

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THIS I.T.A. IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961, ARISING OUT OF ORDER DATED 09-12-2016 PASSED IN ITA NO.1659/BANG/2013, FOR THE ASSESSMENT YEAR 2008-09, PRAYING TO:

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

II. ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE ITAT, BENGALURU BENCH IN ITA NOS.1659/BANG/2013 DATED 09-12-2016 FOR THE ASSESSMENT YEAR 2008-09 & ETC.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, ALOK ARADHE J., DELIVERED THE FOLLOWING:

### JUDGMENT

This appeal under Section 260-A 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 on 05.12.2017 to consider the following substantial questions of law:

"(i) Whether the Tribunal is justified in law in not holding that the assessment order itself is bad in law and void ab initio when the notice under section 143(2) of the Act which is mandatory for assumption of jurisdiction by the assessing officer was never issued and served on the assessee in respect of the revised return on the facts and circumstances of the case?

(ii) Whether the Tribunal is justified in law in holding that the appellant is not entitled to the reduction of the amount of Rs.16,11,65,105/- credited to the profit and loss account on account of reversal of provision for bad and doubtful debts under section 115JB of the Act, on the facts and circumstances of the case?

(iii) Without prejudice, whether the Tribunal in law failed to take note of the fact of retrospective amendment by Finance (No.2) Act, 2009 with effect from 01.04.2001, by which the computation of book profit as per MAT provisions requires the provision for bad and doubtful debts to be added back and consequently book profits under MAT provisions

are to be computed for such earlier assessment years in accordance with amended scheme of the Act and further such amended computation ought to form the basis of computation of MAT for the subsequent years and accordingly the authorities below ought to have allowed the reduction of Rs.16,11,65,105/- under proviso to clause (i) of Explanation 1 to section 115JB(2), on the facts and circumstances of the case?

(iv) Without prejudice, whether the Tribunal in law failed to appreciate that the appellant had added back the provision for bad and doubtful debts for certain years and hence ought to have granted the deduction in respect of reversal of provision for bad and doubtful debts at least to that extent, on the facts and circumstances of the case?

(v) Whether the Tribunal is justified in law in holding that the indirect expenditure disallowed under section 14A read with rule 8D(iii) of Rs.47,01,514/- 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 assessee is a company and is an undertaking of the Government of Karnataka engaged in financing industrial units in the State of Karnataka. The assessee filed its return of income for the Assessment Year 2008-09 on 30.09.2008. Thereafter, the assessee filed revised return on 09.03.2010. The return was selected for scrutiny. However, it is the claim of the assessee that no notice under Section 143(2) of the Act has been issued for the Assessment Year 2008-09. The assessment was completed under Section 143(3) of the Act.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 17.09.2013, deleted the additions made

under normal provisions of the Act and in respect of additions made in computation under Section 115JB of the Act, the Assessing Officer did not grant relief with respect of disallowance of provision for bad and doubtful debts written back, disallowance of estimated expenses under Section 14A of the Act and indexation benefit of long term capital gains under Section 10(38) of the Act, under Section 115JB of the Act. The assessee as well as the revenue filed an appeal before the Tribunal. The Tribunal by an order dated 09.12.2016 inter alia upheld the disallowance of deletion of write back of provision for bad and doubtful debts for the determination of book profits under Section 115JB, disallowance of estimated expenses under Section 14A of the Act is to be added back for the determination of book profits under Section 115JB and deleted the addition with respect to disallowance of indexation benefit in respect of long term capital gains under Section 10(38) for the

determination of book profits under Section 115JB of the Act.

4. Learned Senior counsel for the assessee submitted that the following 3 issues arise for consideration in this appeal:

i) Reduction of provision for bad and doubtful debts written back credited to profit and loss account for computation of book profit under Section 115JB

ii) Disallowance of estimated expenses under Section 14A of the Act for computation of book profit under Section 115JB

iii) no notice under Section 143(2) of the Act issued on the revised return.

It is further submitted that first issue involved in this appeal has already been decided in favour of the assessee in the case of the assessee itself for other Assessment Years. In this connection, reliance has been placed on judgments dated 05.01.2021 passed in ITA

No.409/2014, 05.02.2021 passed in ITA No.11/2021 and 19.04.2021 passed in ITA No.184/2021. It is also submitted that the second issue has also been answered in favour of the assessee by a decision of this Court in 'CIT Vs. GOKALDAS IMAGES P. LTD.' (2020) 122 TAXMANN.COM 160 (KAR.). It is also submitted that no notice under Section 143(2) of the Act was issued on the revised return and therefore, the order of the Tribunal to the aforesaid extent be set aside and the matter be remitted to the Tribunal to consider the aspect of non-issuance of notice under Section 143(2) of the Act.

5. On the other hand, learned counsel for the revenue has not disputed the fact that first two issues have been answered by this Court in favour of the assessee. However, with reference to the third aspect namely absence of notice under Section 143(2) of the Act, it is submitted that the aforesaid issue has been

rendered academic as the controversy has already been decided on merits in favour of the assessee.

6. We have considered the submissions made on both sides. Admittedly, the first three issues involved in this appeal are covered by decisions of this Court in the case of the assessee as well as in GOKALDAS IMAGES P. LTD., supra. Therefore, substantial question of law Nos.2 to 5 are answered against the revenue and in favour of the assessee. However, since the issue with regard to validity of the proceedings on account of absence of notice under Section 143(2) of the Act has not been examined by the Tribunal, therefore, we set aside the order of the Tribunal and remit the matter to the Tribunal to consider the effect of the assumption of jurisdiction by the Assessing Officer on account of non-issuance of notice under Section 143(2) of the Act. Since the matter is being remitted to the Tribunal

therefore, it is not necessary for us to deal with the first substantial question of law.

Accordingly, the appeal is disposed of.

Sd/-  
JUDGE

Sd/-  
JUDGE

RV