

Assessee couldn't challenge order of ITAT if it had applied amended provisions of MAT pursuant to directions of HC

Summary – The High Court of Bombay in a recent case of Sun Polytron Industries Ltd., (the Assessee) held that where Tribunal pursuant to directions issued by High Court, disposed of assessee's appeal by applying amended provisions of section 115JB, assessee could not challenge said order of Tribunal taking a new plea that section 115JB was inapplicable in its case.

Facts

- The assessee filed instant appeal submitting that the Tribunal committed an error apparent on the face of the record in applying section 115JB as amended and particularly in relation to *Explanation 1* which is an Explanation for sub-section (2) of section 115JB and clause I thereof. That clause may have been amended with retrospective effect and substituted for the original from 1-4-2001 but that section itself was inapplicable.
- The assessee's case was that the debts which were termed as bad were actually written off, due credit was given in the books to the debtor and income of the assessee had been reduced correspondingly. This was clear from the factual position and as narrated even in the order of the ITO and the Tribunal passed earlier. Therefore, this Court set aside the earlier order of the Tribunal and directed it to apply section 115JB as amended, yet on admitted facts that provision was inapplicable.
- The revenue, on the other hand, pointed out that once the Division Bench of this Court passed an order in the earlier appeal of this very assessee and directed that the Tribunal must determine the matter afresh in the light of the amended section 115JB then, it was not open for the assessee to urge that section 115JB was inapplicable.

Held

- A perusal of the earlier order passed by the High Court would indicate that the assessee remained absent though duly served. This Court therefore had proceeded on the footing and on perusal of the record of the case and held that the assessee invoked section 115JB but the amendment thereto which was crucial in nature has been omitted from consideration by the Tribunal. This is how the revenue's appeal was allowed by this order and the Tribunal was directed to hear the appeal afresh by applying the relevant provision.
- The plain and simple meaning of this direction would be that when this Court asked the Tribunal to proceed afresh in accordance with law, it is the law as noted in this Court's order. In the given facts and circumstances, this Court as also the Tribunal rightly proceeded on the footing that the assessee

invoked section 115JB. That was because though the assessee relied on the statement which is referred in the earlier order of the Tribunal but which order was set aside by the Court.

- There was on record a certificate of the Chartered Accountant dated 29-11-2004 which contradicts the contents of the assessee's letter produced during the course of hearing which is dated 20-3-2009. Pertinently, the order passed by the Tribunal which was *ex parte*, is dated 29-4-2009. This letter/certificate from the assessee emerged for the first time during the course of the proceedings before the Tribunal.
- The Commissioner as also the Assessing Officer had before them the certificate of the Chartered Accountant dated 29-11-2004 and the contents thereof are reproduced in the Tribunal's earlier order as also in the order of the Commissioner. In view thereof, it is too late to contend that section 115JB was not the applicable provision. It will not be open for the assessee in the given facts and circumstances to now urge contrary to the order of this Court that this section is inapplicable as the bad debts were written off, amount was treated accordingly in Schedule 'G' to the balance-sheet and debtors' account in the books of the assessee was credited accordingly.
- All these are factual matters and ought to have been raised by remaining present before this Court or by pointing out to the Tribunal the relevant materials. It cannot be said that Tribunal, in recalling its earlier orders and in the light of the direction by the Division Bench of this Court, acted perversely or has committed an error of law apparent on the face of the record.
- In the aforesaid facts and circumstances, the view taken by the Tribunal is a possible view. The Tribunal did not commit any error in complying with the direction of this Court. For all these reasons, the contention of the assessee that this appeal raises substantial questions of law cannot be accepted.
- As a result of the above discussion, there is no merit in this appeal and it is accordingly dismissed.