IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF JULY 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

I.T.A. NO.1036 OF 2017

BETWEEN:

GMR INFRASTRUCTURE LIMITED
NO.25/1, SKIP HOUSE
MUSEUM ROAD, BANGALORE-560025
REPRESENTED BY ITS MANAGING DIRECTOR
SRI. G. KIRAN KUMAR
AGED ABOUT 42 YEARS.

... APPELLANT

(BY SRI. BALRAM R. RAO, ADV.,)

AND:

THE DY. COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE-2(2)
3RD FLOOR, C.R. BUILDING
QUEENS ROAD, BANGALORE-560001.

... 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 28.07.2017 PASSED IN ITA NO.1895/BANG/2016, FOR THE ASSESSMENT YEAR 2007-08, PRAYING TO:

I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

II. ALLOW THE APPEAL AND SET ASIDE THE ORDER OF THE INCOME-TAX APPELLATE TRIBUNAL DATED 28.07.2017 BEARING IN ITA NO.1895/BANG/2016 FOR THE ASSESSMENT YEAR 2007-08 & ETC.

THIS I.T.A. COMING ON FOR FINAL 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 filed by the assessee against the order dated 28.07.2017 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The subject matter of the appeal pertains to the Assessment Year 2007-08. The appeal was admitted by a Bench of this Court vide order dated 28.01.2019 on the following substantial questions of law:

> "a) Whether, on the facts and in the circumstances of the case and in law, the tribunal was right in holding that the Appellant is not entitled to raise a fresh claim during the assessment proceedings under section 153A of the Act pursuant to search action under section 132 of the Act?
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> b) Whether, on the facts and in the circumstances of the case and in law, the Tribunal

was justified in confirming the decision of commissioner of Income-tax (Appeals) order and thereby upholding the disallowance of Rs.4,94,32,158/- under section 14A of the Act?"

2. Facts leading to filing of this appeal briefly stated are that the appellant is a Company incorporated under the Companies Act, 1956 and is engaged in promotion of infrastructure developments. The appellant filed its return of income for the Assessment Year 2007-08 declaring returned loss of Rs.5,87,56,498/- under normal provisions and negative book profit of Rs.9,18,53,736/- as per the provisions of Section 115JB of the Act. An order of assessment was passed under Section 143(1) of the Act on 15.01.2009. Thereafter, an application was filed under Section 154 of the Act before the Assessing Officer pointing out the discrepancy in the short grant of TDS credit to the extent of Rs.8,79,156/-. An order of rectification was passed on 13.07.2010 by which refund of a sum of Rs.10,55,000/-was granted. Thereafter, a search and seizure operation under Section 132 of the Act was initiated on 11.10.2012 and a notice under Section 153A of the Act was issued on

17.02.2014. The appellant filed a letter requesting to treat the original return of income filed on 31.10.2017 under Section 139(1) of the Act as returned income in response to notice under Section 153A of the Act. Thereafter, notices under Sections 143(2) and 142(1) was issued to the assessee on 01.07.2014. Another notice under Section 142(1) of the Act was issued on 16.02.2015 by which the assessee was required to furnish various details. The assessee filed detailed reply to the notices on 25.02.2015 and 03.03.2015. The Assessing Officer thereafter passed an order on 19.03.2015 by which following disallowances were made by the Assessing Officer:

(i) Additional disallowance made under Section 14A of the Act of Rs.13,80,57,241/-(Rs.18,74,89,400/- less Rs.4,94,32,159/- and

(ii) Disallowance of claim made under Section 37(1) of Rs.1,08,333/- being expenditure on account of club membership fees.

3. The Assessing Officer determined the total income at Rs.Nil as against the amount of returned loss of Rs.5,87,56,498/- under normal provisions of the Act. The

Assessing Officer, in the order of assessment made the interest and administrative expenses under Section 14A of the Act to the extent of Rs.18,74,89,400/- by reference to the formula prescribed under Rule 80D of the Income Tax Rules. The Commissioner of Income Tax (Appeals) affirmed the order passed by the Assessing Officer. The assessee thereupon filed an appeal before the Tribunal. The Tribunal, by order dated 28.07.2017, has dismissed the appeal. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the assessee submitted that the Tribunal erred in not appreciating the suo motu disallowance only made by the appellant out of abundant caution, considering similar disallowance made in the past Assessment Years as there were no precedents. It is further submitted that the Tribunal ought to have taken into account the well settled legal principle that the Assessing Officer should determine the taxable income of the assessee under the Act as per the prevalent law and judgments which are applicable to the fact situation of the case. Learned counsel for the assessee also placed reliance on the circular dated

11.04.1955 issued by the Central Board of Direct Taxes as well as the decisions of Delhi High Court in 'CIT Vs. BHARAT ALUMINIUM CO. LTD.' 163 TAXMAN 430 and 'CIT Vs. JAI PARABOLIC SPRINGS LTD.' 172 TAXMAN 258. It is also submitted that the Tribunal ought to have held that disallowance under Section 14A of the Act in relation to the indirect taxes should be restricted to 1% - 2% of the dividend income only and the Tribunal erred in confirming the disallowance under Section 14A to an extent of Rs.4,94,32,158/-. It is also urged that the Tribunal erred in not appreciating that having regard to the second proviso to Section 153A, the completed assessment cannot be disturbed only in case where there is any undisclosed income found in the course of search or any incriminating documents disclosing any undisclosed income. It is also urged that the Tribunal erred in confirming the decision of the Commissioner of Income Tax (Appeals) and in upholding disallowance of Rs.4,94,32,158/- under Section 14A of the Act.

5. On the other hand, learned counsel for the revenue submitted that the Tribunal has rightly placed reliance on the

decision of Rajasthan High Court in 'JAI STEELS (INDIA) JODHPUR Vs. ACIT' 36 TAXMANN.COM 523 and therefore, no substantial question of law arises for consideration.

6. We have considered the submissions made on both sides and have perused the record. The Tribunal, by placing reliance on the decision of JAI STEELS, supra, has held that the assessment or re-assessment made in pursuance to Section 153A of the Act, is not a de novo assessment and therefore, it was not open to the assessee to claim and be allowed such deduction or allowance of expenditure which it had not claimed in the original assessment proceedings which in the case of the assessee stood completed vide order dated 15.01.2009 passed under Section 143(1) of the Act. The Tribunal, in our opinion, has followed the decision of Rajasthan High Court and we confer the view taken by Rajasthan High Court in JAI STEELS, supra.

For the aforementioned reasons, the substantial questions of law are answered against the assessee and in favour of the revenue.

In the result, we do not find any merit in the appeal.

The same is hereby dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

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