

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1805/Bang/2017
(Assessment year:2004-05)

M/s.Nirayu Private Ltd.,
1st Main Road,
Near Railway Station, Whitefield,
Bengaluru-560066. ... Appellant
PAN:AAACN 7427 K

Vs.

Income-tax Officer,
Ward 12(1),
Bengaluru. ... Respondent

Appellant by : Shri Ravishankar, Advocate.
Respondent by : Smt.Sreenandini Das, Addl.CIT(DR)

Date of hearing : 01/11/2018
Date of pronouncement : 27/11/2018

O R D E R

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee-company directed against the order of the Id. Commissioner of Income-tax (Appeals)-5, Bengaluru, dated 30/5/2017 for the assessment year 2004-05.

2. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing process of chemicals. Return of income for the assessment year 2004-05 was filed on 01/11/2014 disclosing total income at 'nil'. Against said return of income, the assessment was completed by the Income-tax Officer, Ward 12(1), Bengaluru, [hereinafter referred to as 'Assessing Officer'] vide order dated 31/10/2006 passed u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] computing total income at Rs.3,16,28,544/- under the provisions of section 115JB of the Act. Accordingly, tax liability was also assessed u/s 115JB of the

Act as the income assessed under normal provisions of the Act was on 'nil'. While doing so, AO added to book profits depreciation debited to P&L Account on account of re-valuation and allowed, as deduction the amount of eligible profits u/s 80HHC to the extent of 30% of eligible profits.

3. Being aggrieved, an appeal was filed before the Id.CIT(A) who, vide impugned order, dismissed the appeal. While doing so, Id.CIT(A) had confirmed addition to the book of account of profits on account of depreciation of revalued assets. However, had not considered ground relating to amount of deduction to book profits on account of eligible profits u/s 80HHC.

4. Being aggrieved, the assessee is before us raising the following grounds of appeal:

The Appellant submits the following grounds, which are without prejudice to one another:

1. **Re: Disallowance of depreciation on revalued asset while computing book profit under section 115JB:**
 - 1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as 'the CIT(A)'] grossly erred in upholding the action of the Assessing Officer in disallowing depreciation on revalued asset while computing book profit under section 115JB of the Income Tax Act (hereinafter referred to as 'the Act') without appreciating that the case of the Appellant is squarely covered by the decision in case of **Apollo Tyres Limited (255 ITR 273)** wherein the **Hon'ble Supreme Court** has held that the once the accounts are properly maintained as per the applicable regulations then in such case the tax department does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in explanation 1 to section 115JB.
2. **Re: Reduction of amount of profits eligible for deduction under section 80HHC from the book profits under section 115JB.**
 - 2.1 The learned CIT(A) grossly erred in not adjudicating the ground of appeal raised by the Appellant in respect of reduction of amount of profits eligible for deduction under section 80HHC from the book profits under section 115JB.
 - 2.2 The learned CIT(A) ought to have appreciated that the case of Appellant is directly covered by the decision in case of **Ajanta Pharma Limited (327 ITR 305)** wherein the Hon'ble Supreme Court has held that while computing the book profits under explanation 1 to section 115JB, the profits eligible for deduction under section 80HHC ought to be computed on the basis of book profits and not taxable profits as claimed by the Assessing Officer. Further, the Assessing officer ought to have appreciated as per the Supreme Court decision that no scaling down of profits eligible for deduction under section 80HHC is required while deducting the same from book profit under section 115JB.
3. The Appellant craves leave to add to, alter, amend or delete any ground of appeal.

5. Learned counsel for assessee vehemently contended that it is only with effect from assessment year 2008-09, i.e. amendment by Finance Act,2006 was brought to the effect that exclusion of

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depreciation on account of revaluation of assets shall not be allowed as a deduction and prior to the amendment, in view of the judgment of the Hon'ble Supreme Court in the case of *Apollo Tyres vs. CIT* (123 taxman.com 562)(SC) that the AO had limited power of making additions and reductions except as provided for in Explanation to sub-section and the AO had no power to go beyond net profit shown in P&L Account except in circumstances mentioned in Explanation to said section. He also submitted that depreciation of revalued assets is allowable for the purpose of computing book profits u/s 115JB, prior to amendment by the Finance Act, 2006. He also relied upon the judgment of the Hon'ble High Court of Allahabad in the case of *CIT vs. Rampur Distillery & Chemicals Co. Ltd.*(28 taxman.com 291)(All.).

On the other hand, Learned Departmental Representative relied on the orders of the lower authorities.

6. We heard rival submissions and perused material on record. The issue in appeal is squarely covered by the decision of the Hon'ble High Court of Allahabad High Court in the case of 28 taxman.com 291 wherein the Hon'ble High Court, after referring to the decision of the Hon'ble Supreme Court in the case of *Apollo Tyres* (supra) and accounting standard A6, have concurred with the view that depreciation on revalued fixed assets should be allowed as deduction for the purpose of computing book profit u/s 115JB. Accordingly, we allow this ground of appeal.

7 The next ground relates to deduction of eligible profits u/s 80HHC while computing taxable income u/s 115JB of the Act. The AO has allowed only 30% of the eligible profits as deduction while computing book profits u/s 115JB of the Act. It is the contention of the assessee that entire profits of Rs.11,72,752/- be allowed as deduction. An appropriate ground of appeal was raised before the Id.CIT(A), but the Id.CIT(A) has failed to adjudicate. Therefore, we remit this ground of appeal to the Id.CIT(A) for fresh adjudication in

accordance with law keeping in view the provisions of section 80Ab. 80HHC and 115JB of the Act.

8. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 27th November, 2018

Sd/-

(N.V.VASUDEVAN)
VICE PRESIDENT

Place : Bengaluru.
D a t e d : 27/11/2018
srinivasulu, sps

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore