

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.5106/M/2016  
Assessment Year: 2013-14**

ACIT 1(3)(1), Room No.540, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Rama Pulp and Papers Ltd., 1, Chatau Windsor, 86, Veer Nariman Road, Churchgate, Mumbai - 400 020 <b>PAN: AAACR7243K</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Chaudhary Arunkumar Singh, A.R.  
Revenue by : Shri N.R. Agrawal, D.R.

Date of Hearing : 02.05.2019  
Date of Pronouncement : 17.07.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the Revenue against the order dated 18.05.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The issue raised by the Revenue in 1<sup>st</sup> appeal ground of appeal is against the deletion of disallowance of excess claim of depreciation in respect of energy saving equipments by allowing the depreciation @ 80% as against the depreciation allowed by the AO @ 15%.

3. The facts in brief are that the assessee has claimed depreciation @ 80% on energy saving equipments. The assessee furnished before the AO the details and invoices for the said fixed assets which are reproduced by the AO on page No.3 & 4 of the assessment order. The AO restricted the depreciation to 15% of the WDV/cost by holding that the depreciation is not as per new appendix-1 of Income Tax Rules and thus disallowed the depreciation on energy saving devise to the tune of Rs.18,05,159/-.

4. In the appellate proceedings the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“5. I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

**6. Ground No. 1** relates to disallowance of depreciation of Rs. 18,05,159/-. The AO has disallowed excess depreciation claimed of Rs. 18,05,159/-, on the Energy Saving Equipments. During the course of appellate proceedings, the AR submitted that it has claimed additional depreciation @ 80% on the Energy Saving Equipments, whereas the AO allowed depreciation @ 15% to the extent of Rs. 4,16,575/-. The AR submitted that the appellant purchased various Energy Saving Equipments on which depreciation was claimed @ 80%, on the items given in Appendix-1. The appellant has further submitted the copy of the depreciation chart on which he has claimed additional depreciation @ 80% on the Energy Saving Equipments. The submission of the appellant is considerable and found in order on which has rightly claimed the additional depreciation of 80% on Energy Saving Equipments, and hence the same is allowed. Hence, Ground No. 1 is allowed.”

5. After hearing both the parties and perusing the material on record including the assessment order which contained the comprehensive details of various energy saving equipments bought by the assessee, we observe that the assessee is entitled to depreciation @ 80% on energy saving equipments which was wrongly restricted by the AO to 15% by holding that additions were not as per appendix-1 of the IT Rules. The Ld. CIT(A) after taking into account the arguments of the assessee has allowed

depreciation @ 80% which is correct and as per the provisions of Income Tax Act. In our considered view the energy saving equipments are to be allowed depreciation @ 80% as per appendix-1. Accordingly, we uphold the order of Ld. CIT(A) on this issue by dismissing the ground raised by the Revenue.

6. The issue raised in 2<sup>nd</sup> ground of appeal is against the order of Ld. CIT(A) deleting the disallowance of claim of deduction of profit earned during sick period relevant to A.Y. 2004-05, 2005-06 and 2006-07 while computing the book profit under section 115JB(2)(vii) of the Act, 1961.

7. The AO during the course of assessment proceedings observed that assessee has computed the tax liability under MAT provisions as per ITR as under:

**“7.1 This issue has also come for consideration before the Ld. CIT(A)-2, Mumbai in the AY 2007-08, in which he has held in Para 6 & 7, that appellant has invoked clause (vii) of section 115JB by which the profit earned during phase of the company being sick shall be reduced for computing book profit u/s 115JB of the IT Act and disallowance of the claim by the AO is not justified and the ground of appeal was allowed. I agree with the CIT(A)-2, Mumbai, and the submission of the appellant is entitled to take benefit u/s 115JB(vii). It is also pertinent to note in the case of the appellant that AO in AY 2009-10, accepted the claim of the appellant vide its order dated 19.12.2011, on which no second appeal was filed by the department.”**

8. The assessee has claimed from the profit earned during the year the profit earned during sick period in A.Y. 2004-05, 2005-06 & 2006-07 under section 115JB(vii) of the Act. The AO asked the assessee to justify the claim made under section 115JB(vii) vide order sheet entry dated 19.01.2016 which was replied by the assessee vide written submission dated 14.03.2016 by submitting that assessee was not liable to any MAT as per the provisions of section 115JB(vii) as during the year the book

profit before allowing deduction under clause (vii) were Rs.3,76,22,261/- whereas deduction under section 115JB(vii) was claimed at Rs.3,76,22,261/- thereby the net MAT coming to nil. The AO rejected the contentions of the assessee by holding that the net worth of the assessee company became positive in F.Y. 2003-04 relevant to A.Y. 2004-05 and there is no provision in the Income Tax which permits or allows carry forward of any profit by the assessee company during the sick period and setting off the profits during sick period against the book profit. Finally the AO recomputed the working of MAT under section 115JB of the Act by rejecting the claim of the assessee under clause (vii) and thus the book profit was calculated at Rs.3,76,22,261/-.

9. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding that assessee is entitled to take benefit of profits earned during sick period under section 115JB(vii) of the Act by observing and holding as under:

“7.1 This issue has also come for consideration before the Ld. CIT(A)-2, Mumbai in the AY 2007-08, in which he has held in Para 6 & 7, that appellant has invoked clause (vii) of section 115JB by which the profit earned during phase of the company being sick shall be reduced for computing book profit u/s 115JB of the IT Act and disallowance of the claim by the AO is not justified and the ground of appeal was allowed. I agree with the CIT(A)-2, Mumbai, and the submission of the appellant that the appellant is entitled to take benefit u/s 115JB(vii). It is also pertinent to note in the case of the appellant that AO in AY 2009-10, accepted the claim of the appellant vide its order dated 19.12.2011, on which no second appeal was filed by the department.

7.2 As regards AO's observation in respect of net worth becoming positive in AY 2004-05 is concerned, the AR has submitted that net worth is negative in AY 2004-05 as Revaluation Reserve was of Rs. 12,61,54,994/-and Deferred tax credit was of Rs. 11,69,59,079/- cannot be considered in the definition of net worth as defined under Sick Industrial Act, 1985. The AR further submitted net worth figures for AY 2004-05 as under:

	Reserve & Surplus		Loss	of
--	-------------------	--	------	----

			Rs.48,30,66,964/-
Less	Profit for AY 2004-05		Rs.14,97,88,805
			Loss Rs.33,32,78,160/-
Less	Capital subsidy	Rs.45,00,000/-	
	Capital reserve	Rs.20,000/-	
	Share Premium Reserve	Rs.22,05,00,000/-	
	Debenture Redemption Reserve	<u>Rs.35,44,000/-</u>	<u>Rs.22,85,64,000/-</u>
			Loss Rs.10,47,14,160/-
Less	Share capital		<u>Rs.5,00,00,000/-</u>
	Net worth (-ve)		<u>Rs.5,47,14,160/-</u>

7.3 The issue has been examined with reference to the balance sheet and P&L A/c for the AY 2004-05, in which the net worth is found to be negative as mentioned above. Therefore, the AO's finding is not correct in this aspect and accordingly the appellant is entitled for the benefit of section 115JB(vii) of the Act, 1961.

7.4 In view of the above facts and circumstances of the case, I am of the opinion that the appellant is entitled for deduction u/s 115JB(vii), and hence **Ground No. 2 is allowed.**"

10. The Ld. A.R. vehemently submitted before us that assessee is a BIFR unit from 27.09.2000 and net worth of the assessee became positive for the first time in A.Y. 2007-08 and not in A.Y. 2004-05 as observed by the AO in para 7.4 of the assessment order. The Ld. A.R. submitted before the Bench the calculation which are extracted below:

Opening Balance of <b>(Loss)</b>		Rs.48,30,66,964/-
Less profit for A.Y. 2004/05		Rs.14,97,88,805/-
Remaining Loss in P & L A/c		<u>Rs. 33,32,78,160/-</u>
Capital Subsidy	45,00,000/-	
Capital Reserve	20,000/-	
Share Premium Reserve	22,05,00,000/-	
Debenture Redemption Reserve	<u>35,44,000/-</u>	<u>22,85,64,000/-</u>
Net Loss in Profit & Loss		10,47,14,160/-
Less Share Capital		5,00,00,000/-
Net worth as on 31/3/2004 <b>(Negative)</b>		5,47,14,160/-

11. The Ld. A.R. also filed a copy of balance sheet for the year ending as on 31.03.2004 and tried to explain the negative net worth which came to Rs.5,47,14,160/- as on 31.03.2004. The

Ld. A.R. also drew our attention to the definition of net worth as given under section 115JB(vii) which states that for the purpose of this clause the net worth shall have the meaning assigned to it in clause (ga) of sub section (1) of section 3 of the Sick Industrial Companies (Special provisions) Act, 1985 a copy of which is placed at page No.14 of the paper book. The Ld. A.R. also brought to the notice of the Bench the definition of free reserves as per the Sick Industrial Companies (Special Provisions) Act, 1985 which does not include revaluation reserve and accordingly submitted that revaluation reserve of Rs.12,61,54,994/- is not to be considered as free reserve as per the definition under the Sick Industrial Companies (Special provisions) Act, 1985. The Ld. A.R. submitted that the deferred tax credited in the P&L Account of Rs.11,69,59,079/- is also not free reserve as same is required per accounting standard-22. Copy of the AS-22 is placed at page No.15 to 18 of the paper book. Thereafter, the Ld. A.R. submitted the details of profit made from 2000 to 31.03.2007 earned during the BIFR period aggregated to Rs.22,91,514/- and argued that these profits are admissible as deduction from book profits under section 115JB(vii) of the Act. The Ld. A.R. referred to the definition of book profits and various additions and deductions to be provided in that section under various clauses to arrive at a correct profit. The Ld. A.R. finally submitted that the book profits during the year are to be reduced by the amount of profits if any earned during the BIFR period under section 115JB(vii) of the Act. The Ld. A.R. also submitted that this treatment has been accepted by the Revenue in A.Y. 2007-08 in the order dated 22.02.2011 passed by the CIT(A) and the

Department has not filed any appeal challenging the said order of the appellate authority in the higher forum. The Ld. A.R. submitted that since the matter has attained finality and there is no change in facts during the current year and therefore same should be accepted during the year also. The Ld. A.R. also submitted that this position has not been accepted by the Hon'ble Hyderabad Bench in the case of Singareni Collieries Companies Ltd. vs. ACIT 133 ITD 213 (Hyd). Finally, the Ld. A.R. submitted that since the position has been accepted in the assessee's own case in the earlier year and where the two interpretations of the statute are possibly interpretation which is more beneficial to the assessee has to be taken as has been held in the case of CIT vs. Vegetable Products Ltd. 88 ITR 0192.

12. The Ld .D.R., on the other hand, relied on the grounds of appeal and the order of AO. The Ld. D.R. also submitted before the Bench that it is very strange that the profits of the sick companies earned BIFR period are claimed by the assessee from the book profits. Though the Ld. D.R. candidly admitted that the position has been accepted in A.Y. 2007-08 by the Ld. CIT(A) and the Department is not in appeal against the order of Ld. CIT(A), but the same does not operate as res-adjudicata on the Revenue in not challenging the said wrong treatment given by the assessee to the profits earned during BIFR period for the purpose of calculating MAT under section 115JB. The Ld. D.R. therefore submitted that assessee is not at all entitled to claim deduction of profits earned during sick period from book profits and therefore order of Ld. CIT(A) should be reversed as being against the provision of law.

13. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that assessee is a BIFR company from 27.09.2000 and the net worth of the company became positive in A.Y. 2007-08 as is clear from the chart reproduced above. We find that the negative net worth of the assessee as on 31.03.2004 was Rs.5,47,14,160/-. Therefore, we are not in agreement with the conclusion drawn by the A.O. on the basis of facts on record that the net worth of the assessee became positive in A.Y. 2004-05 as mentioned in para 7.4 of the assessment order. We have also examined the final accounts of the assessee as on 31.03.2004 according to which the net worth apparently appeared to be a positive in the balance sheet but the definition of free reserves as defined under Sick Industrial Companies (Special Provisions) Act, 1985 does not include revaluation reserve Rs. 12,61,54,994/-. Similarly deferred tax credited in the P&L account of Rs.11,69,59,079/- is also not a free reserve. We have also perused the provisions of section 115JB(vii) which are reproduced as under for the sale of better understanding:

“The amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.”

We observe from the perusal of said clause (vii) that the profits earned by the sick industrial company commencing from the year the said company became sick industrial company under section 17(i) of Sick Industrial Companies (Special Provisions) Act, 1985 and ending for the assessment year during which the entire net worth of the company becomes equal to or exceeds the

accumulated losses have to be reduced from the book profits for calculating the MAT profits. We further find that in A.Y. 2007-08 the Ld. CIT(A) has allowed the claim of the assessee and the Revenue is not in appeal against the order of the Ld. CIT(A) in ITAT. Therefore, we are of the considered view that assessee is entitled to the deduction of profits made during the sick period in terms of the provisions of section 115JB(vii) and thus we are not in agreement with the conclusion drawn by the co-ordinate bench of the Tribunal in the case of Singareni Collieries Companies Ltd. vs. ACIT (supra). We find merit in the arguments of the Ld. A.R. that where two interpretations are possible, the construction which is more beneficial to the assessee has to be followed as has been held by the Hon'ble Apex Court in Vegetable Products Ltd. (supra). We, therefore, do not find any infirmity or defect in the order of Ld. CIT(A) and uphold the same by dismissing the ground raised by the Revenue.

14. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 17.07.2019.**

**Sd/-**  
**(Ram Lal Negi)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 17.07.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai

The DR Concerned Bench  
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.