

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

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.4145/Mum/2013
(Assessment Year :2008-09)**

M/s. Rama Newsprint and Papers Ltd. Chandramukhi Building, 8 th Floor, B-Block R-Goenka Marg, Nariman Point, Mumbai – 400 020	Vs.	DCIT, Circle 3(3) Aayakar Bhavan 6 th Floor, MK Road Mumbai – 400 020
PAN/GIR No.AAACR2499H		
(Appellant)	..	(Respondent)

Assessee by	Shri Narayan Atul
Revenue by	Shri J Saravanan
Date of Hearing	27/08/2019
Date of Pronouncement	04/09/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.4145/Mum/2013 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-7, Mumbai in appeal No.CIT(A)-7/DCIT-3(3)/IT-9310-11 dated 27/12/2012 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 24/05/2010 by the Id. Dy. Commissioner of Income Tax, Circle 3(3), Mumbai (hereinafter referred to as Id. AO).

2. The short issue that arises for our consideration is as to whether assessee is eligible for set off of lower of brought forward business losses or unabsorbed depreciation as per books of accounts in accordance with Clause-(iii) of Explanation(1) of Section 115JB(2) of the Act. The interconnected issue involved therein is as to whether the deferred tax asset created by the assessee in its balance sheet as per the Accounting Standard-22 (AS-22) issued by the Institute of Chartered Accountants of India (ICAI) could be construed as part of accumulated losses as per books of accounts and consequently available for set off against book profits computed in the manner provided u/s.115JB of the Act.

3. We have heard rival submissions and perused the materials available on record including the paper book filed by the assessee. We have also gone through the audited financial statements for the year ended 31.3.2008 of the assessee. We find from the audited financial statements for the year ended 31.3.2008 of the assessee that, the assessee has reported net profit (after reducing fringe benefit tax) for the year in the sum of Rs.161.70 lakhs. We find that assessee has got sufficient amounts in the deferred tax asset created on account of unabsorbed depreciation, unabsorbed business loss , among others. The Id. AO while framing the assessment for the year under consideration had not considered the deferred tax asset as a part of accumulated loss as per books of account. The Id. AR placed on record the order passed by the Id. AO u/s.143(3) r.w.s. 254 of the Act dated 13/12/2018 for the A.Y.2007-08 wherein the Id. AO had categorically recorded a finding that deferred tax asset has indeed been created by the assessee in earlier years out of accumulated book losses. In view of this order passed for the A.Y.2007-08 by the Id. AO, we deem it fit and appropriate, to remand the issue in dispute before us back to the file of the Id. AO to decide the same in the light of the order passed by him for A.Y.2007-08 vide order dated

13/12/2018. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, appeal of the assessee is allowed for statistical purposes.

Order dictated in the open court on 27/08/2019

Order pronounced in the open court on this 04/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/09/2019
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai