

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “G”,MUMBAI
BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.2462/Mum/2014

(Assessment Year : 2007-08)

ITO Ward-9(3)(4), Room No. 216B, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-20.	Vs.	M/s Yashraj Containers Ltd. Plot No. 757/758, Jwala Estate, Soniwadi, Near Kora Kendra, S.V.Road, Borivali West, Mumbai-400092. PAN: AAACV4846J
(Appellant)		(Respondent)

Revenue by : Shri Vivek Perampurna
(DR)

Assessee by : Shri Sanjay Kapadia (AR)

Date of hearing : 25.07.2016

Date of Pronouncement : 24.08.2016

ORDER

PER PAWAN SINGH, JM:

1. The Present appeal is filed by the Revenue against the order of CIT(A)-20, Mumbai, dated 09.01.2014 for Assessment Year (AY)-2007-08. The Revenue has raised the following Grounds of appeal:-

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in allowing wrong claim of the assessee of interest accrued on account of extinguishment of liability on one time settlement with IDBI amounting to Rs. 1,25,82,571/- as deduction from taxable income?”

2. The brief facts of the case are that the assessee-company filed its return of income on 30.10.2007 declaring NIL. In the return of income assessee

claim set off of brought forward business losses and unabsorbed depreciation amounting to Rs. 5,15,48,492/-. The assessment was completed on 30.11.2009 u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") accepting the return of income. Subsequently, the assessment was re-opened u/s 147 of the Act. A notice u/s 148 was issued on 31.01.2012 after recording the reasons thereof. In response to the notice the assessee submitted that the return already filed by them be treated as return in response to the notice u/s 148. The assessee requested for the reasons of re-opening. The following reasons of reopening were supplied to the assessee are as under:

"The assessee company filed its return of income for A.Y-2007-08 on 30.10.2007 declaring Nil income after set off of brought forward loss of Rs. 5,15,48,492. The assessment was completed under scrutiny vide order passed u/s. 143(3) on 30.11.2009.

It was observed from the statement of computation of income that the assessee company claimed Rs. 1,25,82,571 as interest disallowed in earlier years allowed in current year on extinguishment of liability (i.e. waiver of interest accounted in the books as extraordinary item), which is not allowable as the liability has not been actually paid.

Further depreciation allowable u/s.32 pertaining to the A.Y. 2007-08 amounting to Rs. 44,72,809 has been claimed twice once under the statement of computation of income and again as set off of brought forward depreciation u/s.32(2).

This has resulted in under assessment of income of Rs. 1,70,55,320 (Rs. 1,25,82,511 + Rs. 44,72,809) leading to excess allowance of loss allowed to be carry forward of a like amount involving notional tax effect of Rs. 57,40,820 (33.66% of Rs. 1,70,55,320)."

3. The assessee vide notice dated 19.07.2012 was asked to explain about the computation of income wherein assessee-company claimed Rs. 1,25,82,571/- as interest disallowed in earlier years and further depreciation allowable u/s 32 of Rs. 44,72,809/- claimed twice. One under the statement of computation of income and again set off of brought forward depreciation. The assessee submitted that the assessee-company has carried forward unabsorbed business losses of Rs. 33,39,93,454/- , carried forward unabsorbed depreciation of Rs. 9,92,60,351/- and Long Term Capital Loss (LTCL) of Rs. 44,48,090/- brought forward from

preceding AY without set off and carried forward total unabsorbed losses and depreciation aggregating to Rs. 53,77,01,895/-. In the current year, the assessee earned net profit of Rs. 52,68,117/- and after disallowance/addition aggregating to Rs. 3,03,95,424/- and claimed the permissible deduction aggregating to Rs. 3,09,15,049/- worked out profit & gain of business at Rs. 5,15,48,492/-. The said amount of Rs. 5,15,48,492/- taxable under the head Profit & Gain of business and assessee claimed set off of the amount of Rs. 5,15,48,492/- out of brought forward business losses of Rs. 38,55,41,946/- and determined gross total income at Rs. NIL. Business loss to be carried forward after set off of brought forward losses. The assessee also contended that the set off claim of Rs. 44,72,809/- on account of unabsorbed depreciation u/s 32 is also amount of depreciation allowable as per the Act. This was an inadvertent mistake as there was no need to partially claimed set off out of brought forward business losses and partially out of brought forward unabsorbed depreciation. Assessee further contended that they have not claimed double deduction. The contention of assessee was not accepted by AO holding that the claim of interest, disallowance of Rs. 1,25,82,571/- in earlier years allowed in current year on extinguishment of liability. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A) wherein the CIT(A) allowed the appeal of the assessee in the impugned order dated 09.01.2014. Aggrieved by the order of AO, the Revenue has filed the present appeal before us.

4. We have heard the Id Departmental Representative (DR) for the Revenue. DR for Revenue argued that CIT(A) wrongly deleted the addition on account of interest disallowance amounting to Rs. 1,25,82,571/-. DR for Revenue further argued that the assessee wrongly claimed the interest disallowance disallowed in earlier years and allowed in the current year on extinguishment of liability. Authorized Representative (AR) of the

assessee submitted that he will file written submission, however more than month have passed but no such written submission are filed.

5. We have considered the contentions of the Id DR for revenue and perused the material available on record. We have seen that the assessee was making payment of interest from the year 2001-02, which is evident from the details submitted by assessee. It is further evident that because of non-payment of interest, substantial amount has been disallowed for preceding years. The assessee entered into one time settlement of outstanding dues of IDBI. As per condition of one time settlement, the assessee was required to make payment of Rs. 12.36 Crore to IDBI as full and final amount and the assessee has paid the amount of Rs. 1,04,00,000/- and created corresponding remission of interest of Rs. 1,25,82,571/- which amount has been claimed while working out the taxable income as such amount was already disallowed u/43B as shown in the details submitted before the CIT(A). In the earlier years, the interest expenditure was disallowed because of non-payment. paid interest to IDBI out of which the AO has disallowed Rs. 19,99,46,578/- u/s 43B of the Act. Details of which were called and furnished by assessee during the First Appellate Proceeding (FAA). However, when the assessee made settlement by way of one time settlement, the amount of settlement includes the element of interest to be allowed as claimed by the assessee. And the same was considered by CIT(A) in correct perspective and deleted the disallowance of Rs. 1,24,82,571/-. With these observation, we do not find any illegality or infirmity in the order of CIT(A).
6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 24th August, 2016.

Sd/-

(B.R.BASKARAN)

ACCOUNTANT MEMBER

Mumbai; Dated 24/08/2016

S.K.PS

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

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.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai