

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' Bench, Hyderabad**

**Before Shri Laxmi Prasad Sahu, Accountant Member  
AND  
Shri K. Narasimha Chary, Judicial Member**

**ITA No 92/Hyd/2020  
Assessment Year: 2015-16**

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| Rain Industries Ltd,<br>Hyderabad<br>PAN: AABCP2276K<br>(Appellant) | Vs. | Dy.C.I.T.<br>Circle 3(1)<br>Hyderabad<br>(Respondent) |
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Assessee by: Sri Nishant Thakkar  
Revenue by: Sri Y.V.S.T. Sai, CIT(DR)

Date of hearing: 10/03/2022  
Date of pronouncement: 1403/2022

**ORDER**

**Per K. Narsimha Chary, J.M**

Aggrieved by the order dated 13.3.2020, passed by the CIT(A), Hyderabad ("learned CIT") in the case of Rain Industries Ltd, ("the assessee") for the A.Y 2015-16, u/s 143(3) of the Income Tax Act, 1961 ("the Act), the assessee preferred this appeal.

2. Brief facts of the case are that the assessee is the flagship company of Rain Group and is engaged in the business of trading of carbon products and also providing shared services to its group companies. During the Financial year 2014-15, the

assessee incurred a business loss of Rs. 6,41,02,906/- and earned income from other sources of Rs. 39,88,24,169/- comprising of Income from bank deposits amounting to Rs. 2,96,14,169/-, charged at normal rates of tax and an income of Rs. 36,92,10,000/- earned by way of dividend from foreign subsidiary, which is eligible for special rate of taxation u/ s 115BBD of the Act. Since the provisions of section 115BBD of the Act requires the dividend earned from foreign subsidiary to be charged at a special rate of 15% on a gross basis, the assessee set off the business loss against the income earned from bank deposits and paid tax on foreign dividend amounting to Rs. 36,92,10,000/- at 15% as computed u/s 115BBD. For the AY 2015-16, the assessee filed its Return of Income on 28.11.2015 declaring a total income of Rs. 36,92,10,1000/- chargeable to tax at special rate of tax at 15% and carried forward a loss of Rs. 3,44,88,737/- and a book profit of Rs. 33,14,12,980/- u/s 115JB of the Act. The company was liable to pay tax under the provisions of section 115JB of the Act, which amounted to Rs. 6,94,65,818/-, which liability was discharged by way of Foreign Tax Credit ('FTC') of Rs. 6,93,41,976/- and Tax Deducted at Source ('TDS') of Rs.1,35,93,462/-. Accordingly, the assessee claimed for a refund of the remaining TDS of Rs.1,34,69,620/- in the computation of income.

3. Learned Assessing Officer, however, completed the assessment by passing assessment order u/ s 143(3) of the Act by order dated 22.12.2017 making an addition u/s 14A of the Act amounting to Rs. 1,06,42,021/-. Apart from that, the Learned

Assessing Officer also adjusted the tax liability against the TDS credit before allowing the claim of FTC, thereby denying the refund claimed by the assessee.

4. Aggrieved by the Assessment Order, the assessee preferred the appeal before the learned CIT(A), who by way of impugned order deleted the addition made under section 14A of the Act, but declined to grant relief to the assessee on the adjustment of credit of tax deducted at source stating that there is no specific provision under the Act as to the order of priority.

5. Assessee is therefore, before us in this appeal challenging the action of the learned Assessing Officer in adjusting the tax liability against the TDS first and then the balance demand to be set-off against the FTC, thereby making no refund available to the assessee.

6. According to the learned AR, in the absence of any indication as to the order in which the reliefs have to be allowed, a construction most beneficial to the assessee should be adopted and for this purpose, he placed reliance on the CBDT Circular No. 26 (LXXVI-3) (F.NO. 4(53)-IT 54), dated July 07, 1955. In line with this argument, the assessee also placed reliance on the decisions reported in the case of CIT vs Bank of Rajasthan Ltd. [[2002J 255 ITR 599 [Rajasthan] and in the case of Legato Systems India (P.) Ltd. vs ITO [[2005J 2SOT 719 (Delhi). Further, he drew our attention to the Form ITR-6, part-B TTI and column Nos.3 to 7 thereof to demonstrate that the net tax liability has to be

determined, BY first allowing the credit u/s 115JAA and thereafter allowing the tax relief u/s 90A and 91 and since this form is issued by the Department, now the Department cannot take a different view from the sequence of relief.

7. Per contra, the learned DR submitted that the requirement through Part-B (TTI) vide col.7 is that the net tax liability shall not result in negative, so that the assessee shall not claim any refund of the taxes paid in another jurisdiction and subject to this, there is no provision in the Act prescribed to a particular sequence of relief to be granted.

8. We have gone through the record the light of the submissions made on either side. There is no dispute as to the assessee prepaid the taxes in the form of foreign tax credit to the tune of Rs.6,93,41,973/- and tax deducted at source of Rs.1,35,93,462/-. Only dispute is in respect of the order in which these credits be applied against the gross tax payable. Because of the stipulation vide col.No.7 as to the net tax liability shall be zero, in case tax relief to be granted to the assessee is more than the tax payable after credit u/s 115JAA, whatever may be the amounts paid u/s 115JAA, if they are more than the tax liability of the assessee, it will result in zero net tax liability. However, if the credit u/s 115JAA of the tax paid in the earlier year is allowed first, and then the tax relief u/s 90, 90A and 91 is allowed later, the assessee will get refund. This is the situation the assessee is agitating.

9. Both the parties conceded that there is no provision in law mandating the order of priority to apply the relief u/s 115JAA and Sections 90, 90A and 91 of the Act. However, form ITR-6 to be found at page No.31 of the paper book vide section Part-B (TTI) at page No 44, contemplate the determination of the net tax liability in a particular way. It stipulates that the credit u/s 115JAA of the tax paid in the earlier years is to be applied against the tax liability first and then out of the balance amount, the relief u/s 90, 90A and 91 is to be applied. Precisely this is the relief the assessee is seeking in this matter.

10. In the CBDT Circular No.26 (Supra), the general principle laid down is that in the absence of any indication, the general rule to be followed in all fiscal enactments is that where words used are neutral in import, a construction most beneficial to the assessee should be adopted. In the cases relied upon by the assessee, namely in the case of Bank of Rajasthan Ltd (Supra) and Legato Systems India (P.) Ltd (Supra), it is held that, it is open for the assessee to claim the benefit which enable a larger benefit. Inasmuch as Form ITR-6 is released by the CBDT as provided for the companies to file their returns where the credit of FTC is provided to the assessee before other prepaid taxes, learned Assessing Officer and for that matter, the learned CIT (A) cannot ignore the impact of the calculation provided in this form.

11. Apart from that, learned DR called for a report from the learned Assessing Officer in this case in respect of the procedures followed for the A.Ys 2017-18 & 2018-19. Learned

Assessing Officer vide letter dated 19.01.2022 submitted a report stating that in respect of A.Ys 2017-18 & 2018-19 tax credits were considered in the following order of priority:

- i) Credit u/s 115JAA
- ii) Credit u/s 90/90A
- iii) TDS

It is further stated that no action u/s 148 or 263 of the Act has been initiated in respect of A.Ys 2016-17, 2017-18 and 2018-19. This report forms part of record.

12. It makes the things clear that the Assessing Officer understood the priority of consideration of the tax credit in the way in which they are given in Form No.ITR-6 and as prayed by the assessee for the A.Ys 2017-18 and 2018-19. Insofar as the A.Y 2016-17 is concerned, a contrary view is taken.

13. When the facts remained identical in the case of the very same assessee, it is not fair to take different view for different A.Ys when such view ends in financial loss to the assessee. In these circumstances, we are of the considered opinion that the view taken by the learned Assessing Officer for the A.Ys 2017-18 and 2018-19 is in accordance with the method of calculation mentioned in Form ITR-6 vide Part-B TTI and since the assessee is praying that the same procedure to be followed for the A.Y 2016-17 also, the same cannot be denied. With this view of the matter, we direct the Assessing Officer to recompute the net tax liability after verification of the credits claimed by following the method of

computation given in Form ITR-6, Part-B (TTI). Appeal is accordingly allowed.

14. In the result, appeal is allowed.

Order pronounced in the Open Court on the 14<sup>th</sup> day of March,2022.

SD/-  
(LAXMI PRASAD SAHU)  
ACCOUNTANT MEMBER

SD/-  
(K. NARASIMHA CHARY)  
JUDICIAL MEMBER

Hyderabad, dated 14<sup>th</sup> March, 2022.

Vinodan/sps

Copy to:

S.No Addresses

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- 4 Pr. CIT - 3 , Hyderabad
- 5 DR, ITAT Hyderabad Benches
- 6 Guard File

By Order