

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महवीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No. 2117/Chny/2017**
(निर्धारण वर्ष / **Assessment Year: 2014-15**)

M/s. Kannappan Textile Mill Pvt Ltd. 9/110, Kalidas Road, Ram Nagar, Coimbatore – 641 009.	बनाम/ Vs.	ACIT Corporate Circle -2, Coimbatore.
स्थायी लेखा सं./ जी.आइ.आर.सं./ PAN/GIR No. AABCS-0452-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Vijayaraghavan (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri P. Sajit Kumar (JCIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	24-03-2022
घोषणा की तारीख / Date of Pronouncement	:	08-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Coimbatore [CIT(A)] dated 29.06.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30.12.2016. The grounds taken by the assessee read as under: -

1. The order of the Commissioner of Income tax (Appeals) -1 Coimbatore is contrary to law, facts and circumstances of the case.
2. The Ld. CIT(A) ought to have considered explanation 1 to clause (vii) of Section 115JB, which states that profits of Sick industrial companies are exempted from MAT provisions.
3. The Ld. CIT(A) erred in confirming the action of the Assessing officer in setting off of the profits of the company, for the years during which it was sick, notionally against the brought forward losses, as it would tantamount to reducing the loss twice.
4. The Ld. CIT(A) ought to have appreciated that setting off of the profit of those years, in which the company was sick, against brought forward book loss on notional basis is not legally tenable.
5. The Ld. CIT(A) had grossly misinterpreted the judgment in the case of CIT vs Biomed Hitec Industries Limited (ITA No. 2001/Mds/2011) and failed to consider the view of your appellant that though the net worth has turned positive, your appellant has brought forward book loss and the appellant is entitled to a deduction of lower of brought forward book loss or unabsorbed depreciation for the said assessment year.
6. The CIT(A) ought to have appreciated the statement of brought forward business loss and depreciation loss as per books, wherein it has been clearly established that the appellant has only claimed the lower of business loss or depreciation, loss as per the provisions of section 115JB(2)(iii) which reads as
 - (iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of accounts.
Explanation: For the purpose of this clause,
 - (a) the loss shall not include depreciation;
 - (b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil.
7. In view of the foregoing submissions, it is reiterated that the set off of the profit of those sick years against brought forward book loss on notional basis is not legally tenable and hence, the Assessing officer may kindly be directed to delete the addition made in this regard.

As evident, the assessee is primarily aggrieved by computation of Book-Profits u/s 115JB.

2. The name of erstwhile assessee namely M/s Sumangala Spinning Mills Private Limited has been changed to M/s Kannappan Textile Mill Private Limited vide fresh certificate of incorporation issued by Registrar of Companies, Tamil Nadu on 21.02.2007. The copy of the same has been placed on record.

3. The Ld. AR advanced arguments assailing the orders of lower authorities which have been controverted by Ld. Sr. DR. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

4.1 One of the adjustments made in the assessment order is adjustment of brought-forward losses in Book-Profit u/s 115JB. Upon perusal of computation of income, It transpired that the assessee adjusted carried forward losses of earlier years with Book-Profits of the current year and arrived at 'Nil' figures. The assessee's Profit as per Profit & Loss Account was Rs.88.40 Lacs which, after adjustment of dividend, came to Rs.81.67 Lacs. Against this, the assessee adjusted brought forwards losses / depreciation for Rs.81.67 Lacs. The position of brought forward losses was noted to be as under: -

Brought Forward Loss as per Books					
Financial Year	Status	Business Profit (Loss) excluding Depreciation as per Book	Depreciation as per Book	Profit/(Loss) as per Book after Tax	Business Loss or Depreciation whichever is lower
		(A)	(B)	(C)=(A)=(B)	(A) or (B) W.E.L.
31.03.1998		(1,26,54,876)	60,91,037	(1,87,45,913)	60,91,037
31.03.1999		(86,09,929)	62,35,337	(1,48,45,266)	62,35,337
31.03.2000	Under BIFR	(75,76,337)	62,81,240	(1,38,57,577)	62,81,240
31.03.2001	Under BIFR	20,73,173	62,55,485	(41,82,312)	-
31.03.2002	Under BIFR	(1,27,03,246)	62,75,000	(1,89,78,246)	62,75,000
31.03.2003	Under BIFR	(66,79,797)	62,75,000	(1,29,57,797)	62,75,000
31.03.2004	Under BIFR	2,07,43,254	11,84,135	1,95,59,119	-
31.03.2005	Under BIFR	15,69,483	26,88,816	(11,19,333)	-
31.03.2006	Under BIFR	92,87,604	(1,77,67,664)	2,70,55,268	-
31.03.2007	MAT Applicable	(3,90,173)	19,67,828	(23,58,001)	3,90,173
31.03.2008	MAT Applicable	8,75,063	29,51,743	(20,76,680)	-
31.03.2009	MAT Applicable	(50,60,833)	91,91,713	1,42,52,546	50,60,833
31.03.2010	MAT Applicable	1,11,04,089	93,32,850	17,71,239	-
31.03.2011	MAT Applicable	1,61,90,211	98,70,801	63,19,410	-
31.03.2012	MAT Applicable	42,66,638	99,85,238	(57,18,600)	-
31.03.2013	MAT Applicable	1,41,20,173	99,35,317	41,84,856	-
31.03.2014	MAT Applicable	1,96,34,476	1,04,58,192	91,76,284	-
				Total	3,66,08,620

	Adjustment against Book Profit	
	31.03.2010	25,37,856
	31.03.2011	1,03,97,281
	31.03.2013	57,34,954
	31.03.2014	81,67,886
		2,68,37,977

Thus, the eligible loss was arrived at Rs.3,66,08,620/-. This loss pertains to years ending 31.03.1998, 31.03.1999, 31.03.2000, 31.03.2002, 31.03.2003, 31.03.2007 and 31.03.2009 and this book loss was set-off with the book profits for year ending 31.03.2010, 31.03.2011, 31.03.2013 but the assessee has not considered the book profits for year ending 31.03.2004 and 31.03.2006 while setting-off the loss. Accordingly, the assessee was show-caused that if the profits for these two years are considered, the assessee would not have brought forward losses for set-off and assessee would be liable to pay tax u/s 115JB.

4.2 The assessee defended its stand and submitted that till financial year 31.03.2006 (July 2006), the company was notified as Sick Company and registered with Board Industrial and Financial Reconstruction (BIFR) under Sick Industrial Companies Act. As per clause (vii) of Explanation-1 to Section 115JB, the profits of Sick Industrial Companies would be exempted from MAT provisions specifically. The said provisions read as under:

(vii) 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 subsection (l) 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.

Explanation,- For the purposes of this clause, "net worth" shall have the meaning assigned to it in clause (ga) of sub-section (l) of section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); or

Accordingly, profits arising to the company when it was a Sick Company would not come under the scope of Section 115JB and therefore, the profits for both the years would not come under MAT provisions.

4.3 However, the explanation was held to be not acceptable since the assessee has not submitted any documentary proof that the company was under BIFR as claimed by the assessee for the said assessment years. Moreover, as per Section 115JB, the amounts of profits of sick industrial units can be deducted from the book profits for the computation of tax for the respective assessment years and it has not been mentioned that it is not to be considered for arriving cumulative book loss. Hence the assessee statement that the profits of the sick company would not at all come under MAT is not acceptable since only the profits of sick unit can be deducted for MAT purposes for arriving at tax for the particular year but not for arriving at cumulative book loss. If this is adopted the assessee would be having no loss to be set-off for Current AY 2014-15.

4.4 Alternatively, if assessee's argument that the sick company's book profits will not come under MAT provision is accepted, then the book-loss for that sick company should also not come under MAT and cannot be carry forward but it was carry forward by the assessee which is not at all an acceptable argument. Finally, the Book Profit of the assessee company was determined at Rs.81,67,886/- u/s 115JB of the Act.

Appellate Proceedings

5.1 During appellate proceedings, the assessee submitted that it has deducted an amount of Rs.81,67,886/- under clause (iii) of Explanation 1 to section 115JB(2) of the Act towards the amount of loss brought forward or unabsorbed depreciation loss, whichever is less as per books

of accounts. The assessee drew attention to the statement showing cumulative losses of Rs.4,12,00,040/- as submitted to Ld. AO. In the said statement, the accumulated losses as per books of accounts has been further segregated into unabsorbed book depreciation and unabsorbed book-loss and lower of the above two (unabsorbed book depreciation and unabsorbed book loss) have been arrived at to set-off the same against the book profit in terms of clause (iii) of Explanation-1 to Section 115JB (2) of the Act. The book carried forward loss of Rs.4,12,00,040/- has been arrived at after considering the profits relating to year 31.03.2004 & 31.03.2006 amounting to Rs.1,95,59,119/- and Rs.2,70,55,268/-. The assessee reiterated that the profits arising to the company when it was Sick in nature would not come under the scope of Section 115JB / MAT provisions. Accordingly, the profit of those years (31.03.2004 and 31.03.2006) in which the company continued to be a sick-company would not at all come under the MAT provisions. Therefore, notional adjustment of the same against brought forward book losses is not in tune with statutory provisions. Reliance was placed on the decision of Chennai Tribunal in **ACIT V/s M/s. Biomed Hitech Industries Limited (ITA No. 2001/MDS/2011)** to support the arguments. The assessee submitted that the attempt of adjustment of profit relating to sick period (31.03.2004 and 31.03.2006) notionally against the brought forward losses would tantamount to reducing the loss twice. In fact, the total book loss figure of Rs.4,12,00,040/- is net-off of profit of the financial years ending on 31.03.2004 and 31.03.2006.

5.2 During appellate proceedings, the assessee also submitted the letter dated 25.02.2000 as received from BIFR registering it as Sick Industrial Company. The order of BIFR dated 28.08.2000 was also

furnished wherein the assessee was declared as a sick company. Finally, on 11.12.2006 (Appeal No.40/2005), Appellate Authority for Industrial Financial Reconstruction (AAIFR) had ordered for deregistration of the company from the status of sick industrial company since net-worth of the company became positive.

5.3 However, Ld. CIT(A) held that as per Clause (vii) of Explanation-1 to Section 115JB, the amount of profits of Sick Industrial Company for the assessment year commencing on and from the assessment year relevant to previous year on which the company has been Sick Industrial Company and ending with assessment year during which the entire net worth become equal or exceeds the accumulated losses has to be reduced from the net profit for calculating the book profit the assessment year. The section does not mention that the amount of profit of a Sick Industrial Company should not be considered for arriving at cumulative book loss. Therefore, the appellant's contention cannot be accepted as there is no specific provision in the Income Tax Act for excluding profits of the Sick Company for arriving at the cumulative book loss. Therefore, the adjustment was confirmed against which the assessee is in further appeal before us.

Our findings and Adjudication

6. We find the As per Explanation-1 to Sec.115JB(2), 'Book Profits' means the profits as shown in the statement of Profit & Loss Account. This amount is to be increased and reduced by specified items. One of the items that is to be reduced, as per clause-(iii), is the amount of loss brought forward or depreciation whichever is less as per Books of Accounts. For the purpose of this clause, loss does not include

depreciation. Further, the provision of this clause shall not apply in case the amount of brought forward loss or depreciation is 'nil'.

7. Another reduction as provided by Clause (vii) is 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. In other words, the profits of sick industrial company would be reduced to arrive at Book Profits.

8. Applying the provisions of clause (vii), we find that the assessee has earned book-profits of Rs.195.59 Lacs for the year ending 31.03.2004 and book-profits of Rs.270.55 Lacs for the year ending 31.03.2006 and accordingly, these profits would be reduced while computing Book-Profits u/s 115JB. In other words, the Book-Profits of these two years would be Nil. It is undisputed fact that the assessee was a sick company during both these years and was eligible to claim such deduction since sufficient documents, in that regard, has already been filed by the assessee during appellate proceedings and the same is also not under dispute.

9. The logic of Ld. AO is that the Book-Profits of these two years, should first be adjusted by the amount of brought forward losses or depreciation as per clause (iii) and only thereafter, the profits should be reduced to nil as per Clause (vii). However, we find that this is not correct logic since profits of a sick company has specifically been excluded from the purview of Sec.115JB. The amount of brought forward

business losses or depreciation would be allowable only when there is positive Book-Profits. Such positive Book-Profits start arising to the assessee only from year ending 31.03.2010 after it become non-sick company and accordingly, the adjustment of brought forward business losses or depreciation would start from that year only. The same is also supported by the fact that the assessee has accumulated losses of Rs.412 Lacs in the books of Accounts which is net-off of profits for the year ending 31.03.2004 & 31.03.2006. Therefore, the assessee, in our opinion, has correctly adjusted the broughtforward losses and depreciations tabulated above and lower authorities are not justified in disturbing the same. Accordingly, we direct Ld. AO to grant this adjustment as claimed by the assessee during the year.

10. The appeal stand allowed in terms of our above order.

Order pronounced on 08th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 08-06-2022

JPV

आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF