

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1996/Mum/2023
(A.Y. 2013-14)**

ACIT-1(1)(1) 579, Aaykar Bhavan, M.K. Road, Mumbai – 400020	Vs.	M/s Chemical and Ferro Alloys Private Limited 3 rd Floor, Liberty Building, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAACC4508N		
Appellant	..	Respondent

Appellant by :	Sanjay Parikh
Respondent by :	H.M. Bhatt

Date of Hearing	16.11.2023
Date of Pronouncement	11.12.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the revenue is directed against the order passed by the Id. CIT(A) NFAC, dated 30.03.2023 for A.Y. 2013-14. The assessee has raised the following grounds before us:

- “1. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in deleting the disallowances made on account of expenditure incurred with respect to Salary expenses. Increment, Electricity charges, Insurance charges without appreciating the findings of Assessing officer that the assessee was not interested in reviving the closed business?”

2. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in bringing to tax the lease rentals received from giving the mud logging unit on lease under the head "Profit and gains of business income", without appreciating the fact that the assessee has not carried any business activity during the year?"*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in bringing to tax the rental income from giving the property on rent under the head "Profit and gains of business income", without appreciating the fact that the assessee has not carried any business activity during the year?"*
4. *Whether on the facts and circumstance of the case and in law, the Ld.CIT(A) erred in allowing the deduction with respect to depreciation claimed by the assessee without appreciating the findings of Assessing officer that the assessee was not interested in reviving the closed business?"*
5. *Whether on the facts of the case and in law including the judgment of Hon'ble Supreme Court in Bombay Steam Navigation Company Ltd. (56 ITR 52 SC), Ld. CIT(A) is justified to allow the deduction for various business expenses on facts of the case, when admittedly no business has been conducted?"*

2. The fact in brief is that return of income declaring loss of Rs.488,71,317/- was filed on 30.09.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 03.09.2014. During the course of assessment on verification of the detail filed the assessing officer noticed that during the year the income earned by way of rent, interest etc, were offered as business income against which assessee has claimed various expenses. The assessing officer noticed that since no business activity had been carried out during the year under consideration, therefore, the claim of expenses was not allowable. On query, the assessee submitted that assessee company was in existence and the depreciation and expenditure were allowable on temporary suspension of manufacturing activity. The assessee has also referred the case of Hon'ble Himachal Pradesh High Court in the case of CIT vs. Kirti Resorts Pvt. Ltd. (243 CTR 341) (HP). The assessee has also explained the fact pertaining to the Ferro manganese plant of the assessee. The assessee explained that it had set up industrial undertaking to manufacture ferro manganese in late 50s

and early 60s. The administrative ministry i.e Ministry of Steel and Mines and Commerce Ministry had pronounced various concessions and on the basis of such terms and conditions the company set up the industrial undertaking on the basis of EOU plant for 100% Exports. The company was also assured that NTPC, Government of India undertaking will supply 28mw of power at concessional rate and accordingly the company continued the production in the said unit for the purpose of exports. However, the electricity charged to the assessee company was not as per the agreed agreements. The assessee has made representation to the central government, state government and MSEB for withdrawal of electricity bills raised and requested to supply the electricity at the agreed rate. However, the request of the assessee was rejected. The MSEB filed suit for recovery of arrear amounting to Rs.207 crores, therefore, the company had temporarily closed its operations till the final decision to be taken by the Bhandara district court. The assessee company has also registered before the BIFR for rehabilitation of the company. The assessee also accepted that the aforesaid submission has been accepted by the department in the scrutiny assessment made u/s 143(3) of the Act for assessment year 2009-10/2012-13 and earlier years. However, the AO has not agreed with the submission of the assessee stating that the business was permanently closed down since 1996 and the legal fight with the MSEB proves that the assessee had no intention of starting the business. Therefore, the AO has disallowed all the expenses claimed under the head business income. The AO has also not allowed any of these expenditure as allowable against the income from other sources u/s 57(iii) of the Act.

Rent from Mud logging unit:

3. The assessee has leased out the mud logging unit for annual rent of Rs.25,99,000/-. The AO stated that since the assessee has not

carried out any business during the year, therefore, lease rent from letting out of machinery was taxed as income from other sources. However, the depreciation of Rs.70,456/- was allowed against rent of letting of mud logging unit of Rs.25,99,000/-.

Rent income from Property:

4. During the year the assessee has also received rent income of Rs.22,01,408/- from various parties on account of leasing the commercial properties and the same was offered as business income. The AO has taxed the sum under the head income from house property on the ground that assessee has not carried out any business activity during the year under consideration.

Interest Income:

5. The assessee has also earned interest on bank deposit Rs.20,71,136/-, interest on income tax refund Rs.55,065/- interest from other Rs.31,31,780/- etc. All these amount were taxed as income under the head other sources. None of the expenses incidental to earning such income was considered for providing deduction u/s 57(1)(iii) against interest income.

6. The assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has allowed the appeal of the assessee after following the decision of ITAT for assessment year 2010-11 vide ITA No. 1927/Mum/2015 dated 11.01.2017. The relevant operating part of the decision of ld. CIT(A) is reproduced as under:

“IV.1 The appellant is a holding company of M/s Universal Ferro and Allied Chemicals Ltd. The company is carrying on the business of manufacture of Ferromanganese at Manek Nagar, Tumsar, Maharashtra The appellant filed its return of income on 30.09.2013 declaring a loss of Rs. 4,88,71,317, thereafter a revised return was filed on 27.03.2014 declaring a loss of Rs. 7,09,22,442. The AO assessed the income of the appellant at Rs. Nil by disallowing the business expenditure amounting at Rs. 8,55,56,172 taxing rental income from mud logging units under the head income from other sources taxing rental

income from commercial property under the head income from house property not allowing set off of business loss. The company was running into financial losses and ultimately it registered itself as a BIFR unit and because of that there was temporarily suspension of business as the petition in BIFR remained pending from 1998 to 2012 that is for 16 years. Soon after the company was out of BIFR it got merged with its holding company CFA vide HG Order. The expenses incurred by the appellant were mainly relating to administration and preservation of the business and for protection of its assets and for taking measures to save the assets and the property from expropriation. For safeguarding its factory buildings and plant and machinery appellant incurred Rs. 42,72,240 as security charges. Appellant had to insure its immovable properties, plant and machinery and mud logging units and therefore it paid insurance charges thereon. For the requirement of power at the factory and administrative office the total cost incurred towards electricity was Rs 19,75,257 and the same was charged to P&L account. Appellant entered into an agreement with Maharashtra Ferro Alloys Masdoor Samgh on 22.04.2013 in respect of lay of wages for the period March 1997 to June 2000 and the settlement was arrived at a cost of Rs. 2,58,28,292. The appellant created the necessary liability in the books to recognise the aforesaid cause of the settlement after adjusting the available provision in the books. Apart from that the salary expenses were paid to the employees, legal and professional cases, MSEB cases and other cases.

IV.2 In the case of Kirloskar Oil Engines Ltd vs DCIT the ITAT Pune bench held that the CIT(A) erred in directing to grant relief as per BIFR's order. The taxpayer had requested during the course of assessment proceedings that the concessions mentioned therein i.e. the BIFR's order should be allowed in the hands of the taxpayer. It recommends that the relief under the IT Act, the relief be allowed to the assessee if the IT Department be made a party to the BIFR proceedings. There is nothing on record to show that the department's views were considered before finalisation of BIFR proceedings. In the CIT(A) order for the AY 2010-11 the operative portion of the CIT(A) order is reproduced below:-

“I have perused the facts of the matter. The appellant has not reverted the AO's observation that all the businesses of the appellant have been lying closed since several years, as pointed out in clause 8(a) of the Audit Report and the appellant had rented out its premises. On perusal of the BIFR proceedings it is seen that the company is in the process of negotiating with the workers for settling their dues. The bench has also observed that the company is lying closed since 1998 and the outstanding dues of the company to various creditors are more than 122 crores. It is therefore clear, that this is not the case of temporary suspension in the business of the appellant. It appears that in the hearing of BIFR on 23.06.2014, the net worth of the company had turned positive on account of financial intrusion by the promoters, as a result of which the appellant has been discharged from the purview of Sick Industries Companies Act. Even this act of the promoters cannot be said to be a revival of the existing businesses of the appellant by itself. In the circumstances I have no reason to differ from the observation of the AO that the appellant's business has come to an end. These grounds of appeals are therefore dismissed.”

“It is clear from the above that the assessee itself took the view that the company had closed down its business till the proceedings under BIFR were completed in 2012.

IV 3 So far as question No. 4 is concerned, the controversy before the Tribunal was whether the assessee was entitled to- claim expenses which were shown in annexure "D" which is annexed to the statement of the case, even though the assessed had not carried on any business and not earned any income from such business. Annexure "D" is a statement of expenses claimed by the company and partly allowed by the ITO. The nature of the expenses claimed relate to items such as office salaries, machinery dismantling charges, rents, rates, taxes and insurance, postage, telegrams, telephones and other items set out therein. The Tribunal has taken the view that even though no income was actually earned for some time from the assets which were in the possession of the company that fact was not relevant for considering the assessee's claim for deduction of expenditure incurred for holding these assets The Tribunal has expressed the view-and, in our view, correctly that the expenditure incurred by the assessee, which to a considerable extent was referable to the assessee's holding on to the assets, was allowable in so far as they could be referred to the holding of the assets. The view taken by the tribunal is based on the decision of this Court in Ormerod (India) P. Ltd. CIT (1959) 36 ITR 329 (Born). This decision has now been approved by the Supreme Court in CIT vs Rajendra Prasad M1978 CTR (SC) 141 (1978) 115 ITR 519 (SC). In that view of the matter, question No. 4 must be answered in the affirmative and in favour of the assessee.”

IV.4 After analyzing the aforementioned judgments, we have noticed that the CIT(A) has decided this ground against the assessee by taking into consideration the observation of BIFR proceeding. The revenue authorities have concluded that the case of the assessee is not that of temporary suspension in the business of the assessee. But at the same time, the Ld. CIT(A) has also taken into consideration that during the hearing of BIFR, the networth of the company has turned positive on account of financial intrusion by the promoters, as a result of which the assessed has been discharge for the purview of SICA. We have also gone through the orders passed in the petition before BIFR wherein it has been observed by the bench that the net worth of the company has turned positive by Rs. 1237.64 lakhs as per the financial year ending 31.03.14. It was also observed by the bench that since the assessee has infused a hefty amount for the revival of business therefore the assessee company ceased to be a sick industrial company within the meaning of u/s 3(1)(b) of the SICA as its net worth has turned positive, therefore considering the facts, the assessee company was discharged from the purview of SICA/BIFR

Since we have already concluded this ground in favour of the assessee, therefore, the assessee is entitled to claim depreciation and business expenses deduction and expenses on account of depreciation incurred by the assessee as already been held in the case of Kansai Nerolac Paints Ltd vs DCIT, Kavita Marketing Pvt. Ltd vs. ITO and Premius Investment & Finance Ltd. vs DCIT in ITA No. 1927/Mum/2015 (Supra), therefore these grounds of appeal raised by the assessee are allowed.

The judgement by the Hon'ble ITAT F Bench Mumbai in the taxpayer's own case in ITA No 1927/Mum/2015 M/s Universal Ferro and Allied Chemicals Ltd for the AY 2010-11 which is quoted or reproduced above has clearly held that the

taxpayer is entitled to claim depreciation, business expenses deduction and expenses on account of depreciation incurred by the assessee. Now let us have a look at the expenses claimed by the taxpayer.

- 1. Security charges Rs. 42,72,240*
- 2 Electricity charges Rs. 19,75,257 METAX*
- 3. Layoff compensation Rs 1,74,82,290*
- 4. Increment Rs. 43,34,550*
- 5. Bonus Rs. 40,11,452*

Out of the total expenses of Rs. 8,55,56,172 the expenses relating to electricity charges as well as salary of the employee is treated as business expenses and the same is allowed. The appellant has qualified the entire expenditure of Rs. 8,55,56,172 as business expenses. This is as per the ITAT's order in ITA No. 1927/Mum/2015. Even though the assessee has qualified the entire expense as business expense the nomenclature itself will not suffice. The bifurcation of the business expenses show that almost all the expenses are directly related to running the manufacturing unit. They are not directly linked to running the business. The electricity charges was incurred by the appellant to safeguard its factory building and plant and machinery situated at its plant at Tumsar and Thane. Apart from electricity charges the salary of the employees and increment are treated as falling under the head business. To that extent expenses relating to salary of the employee and increment are allowed. The increment claimed by the taxpayer in the P&L account is Rs. 43,34,550 apart from salary All other expenses not directly related to business are not allowable. Apart from that there are insurance charges which are directly related to business. this has to be allowed. The Assessing Officer is directed to give an appeal giving effect order arriving at this correct income after reducing Salary expenses (pro rata - only for managerial cadres), Increment, Electricity charges (charges exclusively incurred in registered office). Insurance charges.

V. Ground No. 5

v.1 The Ld. AR appearing on behalf of the assessee submitted that the CIT(A) erred in confirming the order of the Assessing Officer that the income from giving the equipments on lease for short duration does not constitute business Income, The Ld. AR drawn our attention to paper book at page No. 123 & 124 which is an agreement for leasing of mud logging units which reflects that initially the lease was for a period of 5 years and then it was renewed for 3 years. The Ld. AR also relied upon the judgement titled CIT vs. Vikram Cotton Mills Ltd (169 ITR 597) Supreme Court dated Dec 15, 1987.

On the other hand Ld. DR appearing on behalf of the revenue relied upon the orders passed by the revenue authorities.

v.2 We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by the revenue authorities. Since we have already decided the main grounds of appeal in favour of assessee and held that there was not a permanent discontinuation in the business of the assessee, therefore while relying upon the judgment of Hon'ble Supreme Court in the case of CIT vs Vikram Cotton mills Ltd (169 TTR 597) Supreme Court dated Dec 15, 1987 wherein it is held as mentioned below-

Business income-letting out of plant-Assessee's business of manufacturing textiles was temporary suspended-intention of the assessee was not to discontinue the business- suspension was for a time period with the object of tiding over the crisis condition-income derived by assessee by way of lease from letting out its assets was assessable to tax under the head 'Profits and gains of business.

Considering the aforementioned facts and circumstances of the case, we are of the considered view that the income earned by the assessee by getting a quantum of lease constitutes business income and assessable to tax under the head "profit and gains of business", therefore this ground of appeal is allowed. There is only change in the head of income. Earlier it was treated as falling under Income from Other Sources by the taxpayer. Since it is only a change in head of income, the addition made by the assessing officer stands.

VI. Ground No.7

VI.1 The Ld. AR appearing on behalf of the assessee submitted that Ld. CIT(A) erred in confirming the Assessing Officer's stand bringing interest income to tax under the head 'other sources and not under the head 'business. The Ld. AR also relied upon the judgement titled CIT vs. Lok Holdings (308 ITR 356), High Court of Bombay, dated Jan 15, 2008 wherein it was held that "Interest earned by assessee as properly developer, by making temporary deposits of surplus money out of advance received by it from intending purchases is business income and cannot be assessed as income from other sources"

On the other hand Ld. DR appearing on behalf of the revenue relied upon the orders passed by the revenue authorities.

VI.2 We have heard the counsel for both the parties and we have also perused the material placed on record as well as the orders passed by the revenue authorities. Since we have already decided the main ground of appeal in favour of assessee by holding that the suspension in the business was temporary and also while relying upon the judgment of Hon'ble Supreme Court in the case of CIT vs Lok Holdings, we are of the considered view that the interest income earned during the constitution of business by the assessee is a business income and cannot be assessed as income from other sources, therefore this ground of appeal is also allowed. Here in this case also there is only a change in head as far as income is concerned from Income from Other Sources to business income. The addition made by the assessing officer stands

VII. Excess Provision written back

*The details of excess provision written back is as under.
Reversal of provision for doubtful debts – Rs.336,39,882*

Less:

Bad debts written off Rs.238,09,736

*Balance shown as "excess provision written back under Other Income
Rs.98,30,146*

AO ignored the fact that write back of excess provision for doubtful debts was net off the Bad Debt written off in the books and hence the amount of Bad debts

does not appear as a separate expense head in the Profit and Loss Account but is nevertheless indirectly charged to the Profit and Loss Account. In this connection it is mentioned that bad debts written off (u/s 36(1)(vii)) is already deducted from the provision for doubtful debts reversed Provision for doubtful debts is now added back to the total income since it was claimed in the earlier year under sec 36(1)(viii). The addition of Rs.9830146 is upheld.

Addition upheld:98,30,146/-

VIII. Allowance of carried forward loss

As the appellant (erstwhile subsidiary company) got merged with its holding company M/s Chemicals and Ferro Alloys wet 1st April 2014 vide Bombay HC order dt. 18/3/2016, all the unabsorbed brought forward depreciation losses/business losses have not been carried forward while filing revised R/I of the holding company i.e the taxpayer for the AY 2015-16. In any event since the appellant was under BIFR and a loss making company, the losses of AY 2013-14 and earlier years were never utilized either by UFAC or by its successor holding company post the merger. What is discernible from the submission given by the taxpayer is that losses do not matter at this stage. Only at a later stage when business commences again, and is run regularly and profits are earned- then only losses can be set off. There is no such thing in sight right now. There is the losses made by the subsidiary also to be set off

IX. Claim of correct depreciation

The appellant has claimed depreciation in accordance with section 32 of the Act. The appellant's business was not permanently shut down. Since it was temporarily shutdown the appellant claimed depreciation on all assets. In the ITAT, F Bench Mumbai for AY 2010-11 in ITA no 1927/2015 appellants own identical case vide order dt 11/1/2017 has allowed all the claim of depreciation. Hence addition on this account is deleted.

X. In the result the appeal is partly allowed.”

7. During the course of appellate proceeding before us, the ld. Counsel submitted that identical issue on similar fact has been adjudicated by the ITAT in the case of M/s Universal Ferro & Allied Chemicals Ltd. as discussed supra.

On the other hand, the ld. D.R. supported the order of lower authorities.

8. Heard both the sides and perused the material on record. With the assistance of the ld. Representative we have perused the decision of ITAT on similar issue and identical facts as referred supra. The relevant operating part of the decision is reproduced as under:

“3.3. I have perused the facts of the matter. The appellant has not reverted the AO's observation that all the businesses of the appellant have been lying closed since the 10s several years, as pointed out in clause 8(a) of the Audit Report and that the appellant has rented out its premises. On perusal of the BIFR proceedings it is seen that the company is in the process of negotiating with the workers to settle their dues. The Bench has also observed that the company is lying closed since 1998 and the outstanding dues of the company various creditors are more than Rs.122 Crore. It is therefore clear that this is not the case of temporary suspension in the business of the appellant it appears that in the hearing of the BIFR on 23.06.2014, the net worth of the company has turned positive on account financial intrusion by the promoters, as a result of which the appellant has been discharge for the purview of SICA. Even this act of the promoters cannot be said to revival of the existing businesses of the appellant by itself. In the circumstances. I have no reason to differ from the observation of the AO that the appellant's business has come to an end. These grounds of appeal are therefore dismissed.”

After analyzing the aforementioned order passed by the Ld CIT(A), we have noticed that the CIT(A) has decided this ground against the assessee by taking into consideration the observation of BIFR proceeding The Ld. CIT(A) has concluded that the case of the assessee is not that of temporary suspension in the business. However, the Ld. CIT(A) has also taken into consideration that during the hearing of BIFR, the networth of the company has turned positive on account of financial infusion by the promoters, as a result of which the assessee has been discharged for the purview of SICA. We have also gone through the orders passed in the petition before BIFR wherein it has been observed by the bench that the net worth of the company has turned positive by Rs. 1237.64 lakhs as per the financial year ending 31.03.14. It was also observed by the bench that since the assessee has infused FT amount for the revival of business therefore the assessee company ceased to be a sick industrial company within the meaning of u/s 3(1)(b) of the SICA as its net worth has turned positive, therefore considering the facts, the assessee company was discharged from the purview of SICA/ BIFR

We have also gone through the decision relied upon by the assessee in the case of Kavita Marketing Pvt. Ltd. Vrs. Income Tax officer in ITA No. 4886/Mum/2014 dated June 15, 2016. The operative portion is reproduced below:

“The Second Ground raised by the assessed is with regard to the disallowance of expenses of Rs. 18,96,428/-. It has been explained that the expenditure was disallowed by the AO on the ground that there was no business achieved during the year. Ld. Representative for the assessee pointed out that the said ground has inadvertently not been decided by the CIT(A).”

The aforementioned judgment passed by the tribunal is based on another judgment of the tribunal i.e. Preimus Investment & Finance Ltd Vrs. DCIT in ITA No. 4879/Mum/2012 dated March 13, 2015. The operative portion is reproduced below-

“5. We have heard the rival submissions and perused the material before us We find that the AO had assessed the interest income under the head Income from other sources, that the basis for not treating the interest income as business income was the denial of the RBI to register the

assessee as NBFC, that the FAA upheld the order of the AG and held that the assessee was not carrying on any business. that expenditure incurred by the assessee towards running its office were also disallowed. In our opinion, the approach of the AO and the FAA was not as per the provisions of the Act. Permission/denial by the RBI to register an assessee as NBFC does not decide the issue of carrying of business or make the business illegal. If the assessee had violated any provisions of law under the RBI Act it would be penalised by the appropriate authority. But that does not mean that the systematic organized activity carried out by the assessee for earning profit would not be treated as business. The explanation to sec. 37(1) of the Act is not at all applicable to the case under consideration. In the scrutiny assessment, completed earlier years, the AO had assessed the interest income as business income and had allowed all the expenditure related with the business activity. The rule of consistency demands that for deviating from the stand taken in the earlier AY, the AO should bring on record the distinguishing feature of that particular year. We find that the AO or the FAA has not mentioned even a single line as to how the facts of the case under appeal were different from the facts of the earlier or subsequent years. We find that the disallowance of the expenses was without any basis. In the case of Rampur Timber & Turnery Co. Lid (supra) the Hon'ble Allahabad High Court has held that expenditure incurred for retaining the status of the company, namely miscellaneous expenses, salary, legal expenses, travel expenses, would be expenditure wholly and exclusively for the purpose of making and earning income. There is no doubt that the assessee is a corporate entity Even if it is not carrying on any business activity it has to incur some expenditure to keep up its corporate entity. Therefore expenditure incurred by it has to be allowed. Reversing the order of the FAA, we decide ground No. 1 and 2 in favour of the assessee. We hold that the interest income earned by the assessee has to be taxed under the head business income and all the expenses related with it have to be allowed"

We have also considered the judgment relied upon by the assessee in the case of Hindustan Chemical Works Ltd Vrs. Commission of Income Tax (124 FR 561), High Court of Bombay dated Feb 9, 1979. The operative portion is reproduced below:-

"14. So far as question No. 4 is concerned, the controversy before the Tribunal ether the assessee was entitled to claim expenses which were shown in annex. "D" which is annexed to the statement of the case, even though the assessee had not carried on any business and not earned any income from such business. Annexure "D" is a statement of expenses claimed by the company and partly allowed by the ITO. The nature of the expenses claimed relate to items such as office salaries, machinery dismantling charges, rents, rates, taxes and insurance, postage, telegrams, telephones and other items set out therein. The Tribunal has taken the view that even though no income was actually earned for some time from the assets which were in the possession of the company that fact was not relevani for considering the assessee's claim for deduction of expenditure incurred for holding these assets. The Tribunal has expressed the view and in our view, correctly that the expenditure incurred by the assessee, which to a considerable extent was referable to the assessee's holding on to the assets, was allowable in so far as

they could be referred to the holding of the assets. The view taken by the tribunal is based on the decision of this Court in Ormerod (India) P Ltd. vs. CIT (1959) 36 ITR 329 (Born). This decision has now been approved by the Supreme Court in CIT vs. Rajendra Prasad M1978 CTR (SC) 141 (1978) 115 ITR 519 (SC) In that view of the matter, question No. 4 must be answered in the affirmative and in favour of the assessee."

After analyzing the aforementioned judgment, we have noticed that the CIT(A) has decided this ground against the assessee by taking into consideration the observation of BIFR proceeding. The revenue authorities have concluded that the case of the assessee is not that of temporary suspension in the business of the But at the same time, the Ld. CIT(A) has also taken into consideration of BIFR, the networth of the company has turned positive of financial intrusion by the promoters, as a result of which the assessee account has been discharge for the purview of SICA. We have also gone through the orders passed in the petition before BIFR wherein it has been observed by the bench that the net worth of the company has turned positive by Rs. 1237.64 lakhs as per the financial year ending 31.03.14. It was also observed by the bench that since the assessee has infused a hefty amount for the revival of business therefore the assessee company ceased to be a sick industrial company within the meaning of u/s 3(1)(b) of the SICA as its net worth has turned positive, therefore considering the facts, the assessee company was discharged from the purview of SICA/BIFR.

Since we have already concluded this ground in favour of the assessee, therefore, the assessee is entitled to claim depreciation and business expenses deduction and expenses on account of depreciation incurred by the assessee as already been held in the case of Kansai Nerolac Paints Ltd. Vrs. DCIT, Kavita Marketing Pvt. Ltd. Vrs. ITO and Premium Investment & Finance Ltd. Vrs. DCIT in ITA No. 1927/Mum/2015 (Supra), therefore these ground of appeal raised by the assessee are allowed.

Ground No. 5:

10. The Ld. AR appearing on behalf of the assessee submitted that the CIT(A) confirming the order of the Assessing Officer that the income from giving the equipments on lease for short duration does not constitute business income. The Ld. AR drawn our attention to paper book at page No. 123 & 124 which is an agreement for leasing of mud logging units which reflects that initially the lease was for a period of 5 years and then it was renewed for 3 years. The Ld. AR also relied upon the judgement titled CIT Vrs. Vikram Cotton Mills Ltd (169 ITR 597) Supreme Court dated Dec 15, 1987.

11. On the other hand Ld DR appearing on behalf of the revenue relied upon the orders passed by the revenue authorities

12. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by the revenue authorities. Since we have already decided the main grounds of appeal in favour of assessee and held that there was not a permanent discontinuation in the business of the assessee, therefore while relying upon the judgment of Hon'ble Supreme Court in the case of CIT Vrs. Vikram Cotton mills Ltd (169 ITR 597) Supreme Court dated Dec 15, 1987 wherein it is held as mentioned below

'Business income-letting out of plant Assessee's business of manufacturing textiles was temporary suspended-intention of the assessee was

not to discontinue the business-suspension ETICA was for a time period with the object of tiding over the crisis condition income derived by assessee by way of lease from letting out its assets was assessable to tax under the head 'Profits and gains of business'.

Considering the aforementioned facts and circumstances of the case, we are of the considered view that the income earned by the assessee by getting a quantum of lease constitutes business income and assessable to tax under the head "profit and gains of business", therefore this ground of appeal is allowed.

Ground No.7

13. The Ld. AR appearing on behalf of the assessee submitted that Ld. CIT(A) erred in confirming the Assessing Officer's stand bringing interest income to tax under the head 'other sources and not under the head 'business'. The Ld. AR also relied upon the judgement titled CIT Vrs. Lok Holdings (308 ITR 356), High Court of Bombay, dated Jan 15, 2008 wherein it was held that "Interest earned by assessee as property developer, by making temporary deposits of surplus money out of advance received by it from intending purchasers is business income and cannot be assessed as income from other sources".

14. On the other hand Ld. DR appearing on behalf of the revenue relied upon the orders passed by the revenue authorities.

15. We have heard the counsel for both the parties and we have also perused the material placed on record as well as the orders passed by the revenue authorities. Since we have already decided the main ground of appeal in favour of assessee by holding that the suspension in the business was temporary and also while relying upon the judgment of Hon'ble Supreme Court in the case of CIT Vrs. Lok Holdings, we are of the considered view that the interest income earned during the constitution of business by the assessee is a business income and cannot be assessed as income from other sources, therefore this ground of appeal is also allowed.

16. In the net result, the appeal filed by the assessee is partly allowed."

Following the decision of ITAT, Mumbai as supra this ground of appeal of the revenue stand dismissed.

9. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 11.12.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 11.12.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.