

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथा. जी, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **987/Chny/2023**
निर्धारण वर्ष / Assessment Year: 2012-13

Golden Weaving Mills Pvt Ltd.,
D.No. 59/11,
South Avani Moola Street,
Madurai – 625 001.

The Income Tax Officer,
v. Corporate Ward -1,
Madurai.

[PAN: AAACG-6671-L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. M.V. Prasad, FCA by virtual
: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 27.03.2024

घोषणा की तारीख/Date of Pronouncement

: 05.04.2024

आदेश / O R D E R

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 20.07.2023 and pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:

1. *The order of the Learned CIT(Appeals), National Faceless Appeal Centre (NFAC) is patently erroneous both in law and on facts.*

2. *On the facts and circumstances of the case, the Learned CIT(A) erred in upholding the action of the Assessing Officer in making disallowance of deduction of the amount of Interest waiver of Rs.4, 71,82,883/- credited to the P & L A/c claimed in the computation of Book Profit u/s 115JB and consequently determining the Book Profit at Rs.3,80,77,497/- as against the book loss of Rs.91,35,086/- admitted by the appellant in the return of income.*
3. *On the facts and circumstances of the case, the learned CIT(A) ought to have held that the deduction of the amount of interest waiver of Rs.4,71,82,883/-is allowable under the provisions of clause (vii) of Explanation-1 to section 115JB(2) since it is an undisputed fact that the appellant company has been declared as a sick industrial company by the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 and the amount of interest waived by TIIC which is credited to the P&L A/c represents the profits of such a sick industrial company.*
4. *On the facts and circumstances of the case, the Learned CIT(A) erred in in law in holding that the provisions of clause (vii) of Explanation-1 to section 115JB(2) are not applicable to the appellant for the instant assessment year on the reasoning that the appellant has earned profits during the year. The Learned CIT(A) ought to have appreciated that the net worth of the appellant company is less than the accumulated losses despite the earning of profits during the year on account of interest waiver and therefore the appellant has duly satisfied the condition laid down in clause (vii) of Explanation-1 to section 115JB(2).*
5. *On the facts and circumstances of the case, the Learned CIT(A) erred in upholding the finding of the Assessing Officer that the deduction in respect of profits of a sick industrial company as per clause (vii) of Explanation-1 cannot be allowed in computing Book Profit u/s 115JB in the case of the appellant since the appellant made the said claim of deduction erroneously against item 'f- Others' of the MAT Schedule in the return of income instead of the item 'e - profit of sick industrial company till net worth is equal to or exceeds the accumulated losses'. The Learned CIT(A) ought to have appreciated*

that the deduction which is otherwise allowable as per the provisions of law cannot be denied merely due to the inadvertent mistake made in filling up the return of income.

- 6. On the facts and circumstances of the case, the Learned CIT(A) is not justified in holding that the decision of ITAT, Hyderabad in the case of B.V. Reddy Transports Pvt Ltd in ITA No.13/Hyd/2016 relied on by the appellant is distinguishable. on facts though the Hon'ble Tribunal clearly held therein that the provisions of section 115JB are not applicable to profits of a sick industrial company.*
- 7. On the facts and circumstances of the case, the learned CIT(A) ought to have held that the assessment order passed u/s 143(3) r.w.s 147 is not legally sustainable since the re-opening of assessment by issue of notice u/s 148 is bad in law on account of change of opinion of the Assessing Officer in the absence of any new tangible material coming into his possession indicating income escaping assessment after the completion of the regular assessment u/s 143(3) vide order dated 19.02.2015. This ground may be admitted as an additional ground since it raises a pure question of law and it goes to the root of the matter.*
- 8. Any other legal and factual ground that may be urged at the time of hearing of the appeal."*

3. The brief facts of the case are that, the assessee company filed its return of income for the assessment year 2012-13 on 21.09.2012, admitting nil income under normal provisions of the Income-tax Act, 1961 and book profit of Rs. (-)91,35,086/- u/s. 115JB of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The assessment has been completed u/s. 143(3) of the Act, on 19.02.2015 and

accepted income returned by the assessee company. The case has been subsequently reopened u/s. 147 of the Act, for the reasons recorded as per which income chargeable to tax has been escaped assessment on account of incorrect computation of book profit u/s. 115JB of the Act and accordingly, notice u/s. 148 of the Act dated 13.08.2016, was issued and served on the assessee. In response to notice u/s. 148 of the Act, the assessee has filed return of income on 13.08.2016, admitting nil income. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that, the assessee has claimed deduction towards interest waiver given by TIIC from the book profit computed u/s. 115JB of the Act. Therefore, called upon the assessee to explain as to why book profit u/s. 115JB of the Act, cannot be recomputed. In response, the assessee submitted that net profit of the appellant as per the profit and loss account for the instant assessment year was at Rs. 5,28,46,464/-. Although, there was no revenue from operations during the year an amount of Rs. 5,34,46,292/- is credited to the profit and loss account as extra-ordinary item and said extra-ordinary item of income includes profit on sale of fixed assets and interest on loan waived under OTS scheme by TIIC at Rs. 4,71,62,883/-.

The appellant being a sick Industrial Company, in terms of Clause (vii) of Explanation (1) of section 115JB of the Act, the book profit has been computed by excluding extra-ordinary income credited to profit and loss account. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee company claimed deduction of the relevant amount of Rs. 4,71,62,883/- under the head "f-others" in Schedule MAT of the ITR and not under the head "e". The assessee did not claim the said amount as deductible towards the profit of Sick Industrial Company, though there is a specific column for making such a claim in the return of income. Since, interest expenditure of TIIC loan was debited to the profit and loss account on accrual basis in the respective years though it was not paid, when waived such interest has been credited to profit and loss account, the same should be offered to tax. Since, the assessee debited interest to the book profit, the Assessing Officer has recomputed book profit u/s. 115JB of the Act, by adding back interest waived at Rs. 4,71,62,883/- and determined total income of Rs. 3,80,47,797/- u/s. 115JB of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee reiterated its submissions made before the Assessing Officer and contended that, as per Clause (vii) of Explanation (1) to section 115JB of the Act, 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 as sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses, then the said profit should be excluded from book profit computed u/s. 115JB of the Act. The assessee further contended that, although it has computed book profit in accordance with law, but while filing return of income by mistake shown profit from sick industrial company under wrong column of ITR and the same has been explained to the Assessing Officer. But, the Assessing Officer has rejected explanation furnished by the assessee and recomputed book profit u/s. 115JB of the Act.

5. The Id. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedents including the decision of ITAT, Hyderabad Benches in the case of M/s. Singareni Collieries Company Ltd vs ACIT [2011] 15 Taxmann.com 48 (Hyd), held that although the appellant has been declared as sick industrial company by the BIFR vide order dated 22.01.2003, but the appellant failed to prove that its net worth is equal to or negative for the impugned assessment years in order to claim the benefit of deduction towards profit while computing book profit u/s. 115JB of the Act. Thus, rejected arguments of the assessee and sustained computation of book profit by the Assessing Officer u/s. 115JB of the Act. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

6. The Ld. Counsel for the assessee, Shri. M.V. Prasad, FCA, submitted that the Id. CIT(A) never disputed fact that the appellant is sick industrial company in terms of BIFR order dated 22.01.2003, but rejected arguments of the assessee only on the ground that, the appellant failed to prove the conditions prescribed for claiming such deduction including the net worth of such company becomes equal to or exceeds the

accumulated losses. But, fact remains that the appellant has filed its financial statements for the relevant assessment year and claimed that the net worth of the company is negative and thus, satisfied the conditions for claiming deduction towards profit while computing book profit. The Ld. Counsel for the assessee, took us to financial statement for the year ending 31.03.2012 and explained that the appellant is having a negative net worth of Rs. 2.02 crores. The accumulated losses of the company exceed the net worth of the company. Therefore, he submitted that the assessee has satisfied the conditions for claiming deduction towards profit of sick industrial company for computing book profit u/s. 115JB of the Act. The Id. CIT(A), without considering relevant facts simply sustained computation of book profit by the Assessing Officer.

7. The Id. DR, Shri. D. Hema Bhupal, JCIT, on the other hand supporting the order of the Id. CIT(A) submitted that, the assessee could not file necessary evidences before the Assessing Officer to prove that net worth is equal to or exceeds the accumulated losses of the company for the relevant assessment year. Therefore, the Id. CIT(A) has rightly held that the assessee is not eligible for deduction

towards profits of sick industrial company for computing book profit and their order should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per Clause (vii) of explanation (1) to section 115JB of the Act, while computing book profit u/s. 115JB of the Act, profit of sick industrial company, which is credited to the profit and loss account is to be deducted from the profit. The appellant company was declared as sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 by the BIFR vide order, dated 22.01.2003. Since, the appellant company is a sick industrial company for the impugned assessment year, any profit derived from said industrial companies can be deducted while computing book profit. The only condition required to be satisfied before claiming deduction towards profit from book profit is the net worth of said company should be equal to or accumulated losses should exceed the net worth of said company. In the present case, the appellant has satisfied the conditions prescribed for claiming deduction towards profit of sick industrial companies in terms of Clause (vii) of

Explanation (1) to section 115JB of the Act, because the net worth of the company as on 31.03.2012 was at Rs. 37.5 lakhs as against this, the accumulated loss of the company was at Rs. 2.39 crores. In other words, the net worth of the company becomes equal to or the accumulated loss of the company for the year ending 31.03.2012 is in excess of net worth. Therefore, in our considered view, the assessee has satisfied the conditions of Clause (vii) of Explanation (1) to section 115JB of the Act and thus, rightly claimed deduction towards profit of sick industrial companies while computing book profit u/s. 115JB of the Act. Therefore, we are of the considered view, that the Assessing Officer is completely erred in re-computing book profit u/s. 115JB of the Act, by making additions towards interest income credited to profit and loss account towards waiver of interest by TIIC. The Id. CIT(A), without considering relevant facts has simply upheld re-computation of book profit by the Assessing Officer by following the decision of ITAT, Hyderabad Benches in the case of Singareni Collieries Company vs ACIT (Supra), even though the decision rendered in the said case is totally on different facts and not applicable to facts of the present case. Thus, we set aside the order of the Id. CIT(A) and direct the Assessing

Officer to delete additions made towards interest waiver of Rs. 4,71,82,883/-, while computing book profit u/s. 115JB of the Act and accept book profit as computed by the assessee.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 05th April, 2024 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिकसदस्य/**Judicial Member**

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 05th April, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF