IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER

ITA No. 6612/Del/2018
(Assessment Year: 2011-12)

BSL Ltd., 26, Industrial Area, Post Box No. 17, Gandhi Nagar, Bhilwara, Rajasthan-311 001 PAN No. AABCB0639G	Vs.	DCIT Central Circle-31, New Delhi.
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Satyajeet Goel, Adv.
Revenue by	Shri Kanv Bali, Sr. DR

Date of hearing:	03.05.2023
Date of Pronouncement:	12.05.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 29.08.2018 of the Commissioner of Income Tax (Appeals)-4, Kolkata relating to Assessment Year 2011-12.

2. Assessee is the company stated to be engaged in the business of manufacturing & trading of synthetic/wollen/worsted yarn fabrics & synthetics

fabrics, manufacturing and trading of ready-made garments, generation of power, processing of synthetics etc. Assessee electronically filed its return of income for AY 2011-12 on 23.09.2011 declaring total income of Rs.7,43,42,220/- under the normal provisions of the Act and Rs.10,38,62,502/- under 115JB of the Act. The case of the assessee was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 13.03.2014 and the total taxable income was determined at Rs.9,26,29,490/-.

3. Aggrieved by the order of AO assessee carried the matter before CIT(A) who vide order dated 29.08.2018 in Appeal No.815/CIT(A)-4/2014-15 granted partial relief to the assessee.

4. Aggrieved by the order of the CIT(A), assessee is now in appeal before the Tribunal and has raised the following grounds: -

> "1.(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in upholding the action of the assessing officer in disallowing the claim of statutory deduction u/s 80IA to the extent of Rs. 75,56,637/- by making adjustment of notional brought forward losses without appreciating the facts of the case and legal position.
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> (ii) That business losses of earlier years having been set off against income of those years and there being no case of any brought forward losses pertaining to eligible unit, the disallowance of claim of statutory deduction u/ s 80IA is on illegal and arbitrary basis.
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> (iii) That this being the initial year of claiming statutory deduction u/s 801 A, the notional adjustment of brought forward losses considered by the AO and confirmed by CIT(A) is not sustainable in the light of principle laid down in plethora of decisions of Supreme Court, High

Courts and Tribunal read in consonance with CBDT Circular No. 1/2016 dated 15.02.2016.

2(i) That on facts and circumstances of the case, the Ld. CIT(A) was not justified in not excluding interest subsidy of Rs. 3,03,80,678/- being in the nature of capital receipt from book profit computed u/s 115JB of the Act.

(ii) That interest subsidy being capital receipt not taxable under normal provisions of the Income Tax Act, 1961, the same is liable to be excluded from book profit computed u/ s 115JB of the Act.

3 That orders of lower authorities are not justified on facts and same are bad in law.

4. That the appellant craves leave to add, alter, amend, substitute, withdraw and/or vary any grounds of appeal at or before the time of hearing."

5. Ground no. 1 and its sub grounds are with respect to denying the claim of deduction u/s 80IA of the Act.

6. During the course of assessment proceedings on perusing the return of income filed by the assessee, AO noticed that assessee has claimed deduction of Rs.75,56,367/- u/s 80IA of the Act on account of electricity generated from windmills. The assessee was asked to file justification and the working of the deduction. The assessee filed the details. On perusing the details filed by the assessee, AO noticed that in assessment years 200405 and 2005-06 assessee had incurred losses on account of unabsorbed depreciation and business loss in windmill division. He noted that while computing the claim of deduction for the year under consideration, assessee had not set off the unabsorbed depreciation and business loss of windmill division of earlier years against the income of windmill.

He was of the view that if the unabsorbed losses and unabsorbed depreciation of earlier years would have been set off against the profits of the year then there would have been no positive income from the windmill division and, therefore, the claim of deduction u/s 80IA of the Act was not allowable. The submissions of the assessee that the initial assessment year for the purpose of claiming deduction under 80IA was AY 2011-12 and any loss or unabsorbed depreciation of earlier years which has already been set off with other income in earlier years cannot be brought forward notionally and adjusted against the profit of the eligible undertaking was not found acceptable to AO. The AO, thereafter for the reasons noted in the order denied the claim of deduction u/s 80IA of the Act.

7. Aggrieved by the order of AO assessee carried the matter before CIT(A). Before CIT(A) assessee apart from various submissions to support its stand also placed reliance on the decision of Hon'ble Madras High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. [231 CTR 368] (Mad.). The submissions of the assessee was not found acceptable to CIT(A). CIT(A) noted that a Special Bench of Ahmedabad Tribunal had decided the issue in favour of the Revenue which is reported in 113 ITD 209 (Ahmedabad) and Hon'ble Karnataka High Court in the case of Micropals Limited vs. ACIT [56 taxmann.com 160] (Karnataka) had also decided the issue in favour of the Revenue. He, therefore, for the reasons noted in the order upheld the action of AO.

8. Aggrieved by the order of CIT(A), assessee is now before the Tribunal.

9. Before us, Ld. AR reiterated the submissions made before lower authorities and further submitted that identical issues arose before the Hon'ble Bombay High Court and the Hon'ble Bombay High Court in the case of CIT vs. Hercules Hoists Ltd. in Income tax Appeal No. 707/2014 order dated 14.06.2017 had decided the issue in favour of the assessee. He pointed to the copy of the aforesaid decision placed at pages 10 to 16 of the Paper Book. He thereafter, pointed to the issue before the Hon'ble Bombay High Court and thereafter pointed to the relevant findings of the High Court. He submitted that the Hon'ble Bombay High Court had followed the decision of Hon'ble Madras

High Court in the case of Velayudhaswamy Spinning Mills (P) Ltd. (supra) and had further noted that the aforesaid decision rendered by Hon'ble Madras High Court was confirmed by Apex Court and the issue had thus attained finality. He, therefore, submitted that in view of the decision rendered by Hon'ble Bombay High Court, the assessee being eligible for deduction u/s 80IA, be allowed the claim of deduction.

10. Ld. DR, on the other hand, took us through the order passed by the lower authorities and their findings and strongly supported the order of lower authorities.

11. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the claim of deduction u/s 80IA of the Act. It is the case of the assessee that the wind power undertaking for which assessee has claimed the deduction though had started the operations in FY 2003-04 but assessee had opted AY 2011-12 as the initial assessment year and had claimed the deduction u/s 80IA for the first time. It is further the claim of the

assessee that from AY 2004-05 to 2010-11 assessee had not claimed deduction as it had incurred losses in the wind power undertaking. It is further the contention of the assessee that the loss and unabsorbed depreciation of the wind power undertaking that was incurred in earlier years has already been set off against other income in earlier years and since there remains no brought forward losses or depreciation, notional brought forward losses cannot be adjusted against the profit of the eligible undertaking. The aforesaid factual submissions of the assessee with respect to the initial assessment year, the setting off of losses and unabsorbed depreciation against the income of earlier years has not been controverted by Revenue. The only issue, therefore, is whether the notional loss or unabsorbed depreciation of the wind power unit of earlier years can be adjusted against the profit of the eligible undertaking? We find that the identical issues arose before the Hon'ble Bombay High Court in the case of CIT vs. Hercules Hoists Ltd. (supra). The question for adjudication before the Hon'ble High Court and its findings are as under: -

> "2. The Revenue has framed the following questions for our consideration :-
> (i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the respondent company was eligible for deduction u/s 80IA of the I.T.Act, 1961.
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> (ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in its interpretation of Section 80IA(5) of the I.T. Act, 1961 that unabsorbed depreciation of the eligible units need not be necessarily set off from the profits of the same units, but could be set off from other non-eligible units as well.
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> (iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in its interpretation considering the fact that Section 80IA(5) of the I.T. Act, 1961 points out that the eligible unit be considered as a stand-alone unit, thereby mandating that unabsorbed depreciation or losses be set off before allowing profits as deduction."

12. The Hon'ble High Court has dealt with the question before it by observing as under:

> "7. It is not disputed that the respondent assessee is entitled for deduction of the profits and gains as contemplated u/s 80IA. It is also not disputed that the assessee is entitled for deduction of the profits and gains for the period of 10 consecutive years beginning with initial assessment year. It is further not disputed that the initial assessment year of the assessee's unit is 2009-10, though it started functioning from the year 2005-06. The losses of the years 2005-06 to 2008-09 were absorbed during the relevant years and no losses were carried forward. The only question of debate before the Tribunal was whether the profit earned during the Assessment Year 2009-10 would be entitled for deduction under Section 80IA(5) of the Act without deducting the losses, which were absorbed in the earlier years.
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> 8. The said issue is now no longer res-integra in view of the judgment of the Madras High Court in a case of Velayudhaswamy Spinning Mills P Ltd. & Sudan Spinning
> Mills (P). Ltd. (supra), the Court observed as under:
>
> > "From a readying of the above, it is clear that the eligible business were the only source of income, during the previous year relevant to the initial assessment year and every subsequent assessment years. When the assessee exercises the option, the only losses of the years beginning from initial assessment year alone are to be brought forward and no losses of earlier years which were already set off against the income of the assessee. Looking forward to a period of ten years from the initial assessment is contemplated. It does not allow the Revenue to look backward and find out if there is any loss of earlier years and bring forward notionally even though the same were set off against other income of the assessee and the set off against the current income of the eligible business. Once the set off is taken place in earlier year against the other income of the assessee, the Revenue cannot rework the set off amount and bring it notionally. A fiction created in sub¬section does not contemplates to bring set off amount notionally. The fiction is created only for the limited purpose and the same cannot be extended beyond the purpose for which it is created. "

> 9. The said judgment of the Madras High Court has been confirmed by the Apex Court, as such has attained finality. Even in the assessee's own case for the previous year, the losses were set off in the relevant years. The Revenue had challenged the said action before this Court in Income Tax Appeal No.2485 of 2013 and it was held that the said action is legal and proper. The said judgment is also upheld by the Apex Court.
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> 10. Considering the above, we do not find any error committed by the Tribunal in allowing the deduction of the profit u/s 80IB(5) of the Act without deducting the losses of the earlier years."

13. Before us Revenue has not placed on record any contrary binding decision in its support. In such a situation, we following the decision of Hon'ble Bombay High Court in the case of Hercules Hoists Ltd. (supra) are of the view that AO was not justified in denying the claim of deduction u/s 80IA of the Act.

We, therefore, direct the AO to allow the claim of deduction u/s 80IA of the Act. Thus, the ground of the assessee is allowed.

14. Ground no. 2 and sub grounds are with respect to the computation of book profit u/s 115JB of the Act.

15. Before CIT(A) assessee had claimed the exclusion of interest subsidy of Rs.3,03,80,678/- from the profits while computing the book profits u/s 115JB of the Act as on additional ground. Before CIT(A) assessee submitted that assessee had received interest subsidy of Rs.3,03,80,678/- under Technology Upgradation Fund Scheme (TUFS) during the year under consideration. It was submitted that

the subsidy received was reduced from the interest expenses and thus indirectly the interest subsidy was offered to tax. Before CIT(A) assessee had claimed exclusion of interest subsidy received by it under normal provisions of tax as well as MAT provisions of the Act by claiming it to be a capital receipt. CIT(A) while deciding the issue held the interest subsidy received by the assessee to be capital receipt but however, for the purpose of working out the profits under Section 115JB of the Act, CIT(A) by relying on the decision of Hon'ble Karnataka High Court in the case of B&B Infratech Ltd. (supra)

(2016) [76 taxmann.com 188] (Karnataka) held that provisions of Section 115JB of the Act overrides other provisions of the Act and accordingly only those adjustments which are given in the explanation shall be made and no other addition or deduction can be allowed. He accordingly held that though the interest subsidy received by the assessee was capital in nature but since it was not prescribed in any explanation u/s 115JB, the same cannot be allowed for exclusion under the provision of MAT and therefore the deduction cannot be allowed. He, accordingly, denied the claim of the assessee for excluding the interest subsidy for working out the provisions of MAT.

16. Aggrieved by the order of CIT(A), assessee is now before the Tribunal.

17. Before us, Ld. AR reiterated the submissions made before lower authorities and further relying on the decision of Delhi Tribunal in the case of Indogulf Cropsciences Ltd. (supra) in ITA No.7610/2017 order dated 13/10/2022 submitted

that the Tribunal while deciding the issue in favour of the assessee in that case had also considered the decision of Hon'ble Karnataka High

Court in the case of B&B Infratech Ltd. (supra). He, therefore, submitted that following the decision of the coordinate bench of Tribunal, the claim of the assessee be allowed.

18. Ld. DR, on the other hand, supported the order of lower authorities and also placed reliance on the decision of Karnataka High Court in the case of B&B Infratech Ltd. (supra).

19. We have heard the rival submissions, perused the material on record.

20. The issue in the present ground is about the computation of book profits for the purpose of Section 115JB of the Act. It is the case of the assessee that the interest subsidy received by it being capital in nature, the same should be excluded for working of the profits u/s 115JB of the Act whereas it is the case of the Revenue that since there is no specific exclusion provided u/s 115JB, the same cannot be excluded for working out the book profits u/s 115JB of the Act. We find that the identical issue arose before the coordinate bench in the case of Indogulf Cropsciences Ltd. (supra) and the coordinate bench of Tribunal has decided the issue in favour of the assessee by observing as under: -

> "7. On behalf of the assessee it was submitted that capital receipts are not to be included in computation of book profits and reliance in this regard was placed on the judgment of Coordinate Bench in M/s. Insecticides (India) Ltd. vs. DCIT and the judgment of Calcutta High Court in Ankit Metal and Power

Ltd. 2019 (7) TMI 878. It was submitted that this judgment of Hon'ble Calcutta High Court have been followed in the pronouncements as well:

i. Principal Commissioner of Income Tax-4, Kolkata vs. M/S. Krishi Rasayan Exports Pvt. Ltd. ITA/18/2021 IA No.GA/2/2018 (Old No.GA/515/2018) - Calcutta High Court - Dated - September 14, 2022

ii. SRF Limited vs. Asstt. CIT, Circle-1 LTU New Delhi, 2022 (2) TMI 758 - IT AT Delhi, Dated.- February 7, 2022

iii. JMW India Pvt. Ltd. vs. DCIT, Circle 13(2) , New Delhi, ITA 4056/DEL/2018 - ITATDelhi - Dated.- September 24, 2021

iv. M/s. Batliboi Limited vs. Dy. CIT, Circle 2 (1) , Mumbai, 2021 (2) TMI 1083 - ITAT Mumbai - Dated.- February 17, 2021

v. Prism Cement Ltd. vs. DCIT, Cen Cir-6 (1) and Vice - Versa, 2021 (1) TMI 732 - ITAT Mumbai - Dated.- January 4, 2021

vi. Jindal World Wide Ltd. Vs. ACIT, Circle-2 (1) (2), Ahmedabad, 2020 (12) TMI 439 - ITAT Ahmedabad - Dated.- November 24, 2020

vii. M/s. Ramgad Minerals & Mining Ltd. Vs. ACIT Circle - 1, Bellary, 2020 (11) TMI 174 - ITAT Bangalore - Dated.- November 4, 2020

viii. M/s. Maithan Steel & Power Ltd. Vs. Principal Commissioner of Income Tax, Kolkata, 2020 (3) TMI
114 - ITAT Kolkata - Dated.- February 26,2020

8. On the other hand, Ld. DR relied judgment of Hon'ble Karnataka High Court in B & B Infratech Ltd. vs. Income Tax Officer, Ward 12(1), Bangalore (2016) 76 taxmann.com 188 to contend that Hon'ble High Court vas considering the question, "Whether the profit shown in the books of account for the purpose of taxable liability as per the provisions of Section 115- B of the Income-tax Act, 1961 can be altered on any subject or item which oherwise is not falling in the Explanation to Section 115JB of the Act?"and has observed that provisions of Section 115JB is a complete code in itself and the increase or reduction of income is permissible only to the extent provided under the explanation to the said section and following the

judgment of Hon'ble Supreme Court of India in Appollo Tyres Ltd. vs. CIT [2002] 255 ITR 273/122 taxman 562 had held that the Tribunal in that case had not committed any error while characterizing both capital receipts and revenue receipts in a like manner for the computation of book profits u/s 115JB of the Act.

9. Giving thoughtful consideration to the matter on record and the submissions made before the Bench it can be observed that on the basis of judgment of Hon'ble Karnataka High Court in B & B Infratech Ltd. (supra) that Hon'ble Karnataka High Court was dealing with the matter where an amount of Rs. 43,00,000/- pertaining to remission of liability under one time settlement of outstanding loan with ING Vysya Bank was the disputed income which was included by the assessee in its P & L account as income and which the assessee wanted to exclude for the purpose of computing book profits u/s 115JB of the Act.

9.1 However, in the case in hand the issue revolves around the capital receipts of the nature excise duty refund and interests subsidy which without any doubt are receipts of capital nature. Hon'ble Calcutta High Court in the case of Ankit Metal and Power Ltd. (supra) was directly dealing with the question whether the incentives received from the Government for setting up power plant in the backward regions of West Bengal are to be included for the purpose of computation of book profits u/s 115JB and after taking into consideration the judgment of Hon'ble Supreme Court in Appollo Tyres Ltd. (supra) observed that the income in question, in that case was taxable but was exempt under specific provision of the Act, as such it was to be included as a part of book profit. But since a receipt is not in the nature of income at all, it cannot be included in book profit for the purpose of computation u/s 115JB and accordingly held that interest in power subsidy under the scheme have to be excluded while computing book profits u/s 115 JB.

9.2 The Co-ordinate Bench in M/s. Insecticides (India) Ltd. (supra) while dealing with question and treatment of capital receipts in computation of profit u/s 115JB had relied judgment of Hon'ble Calcutta High Court in Ankit Metal and Power Ltd. (supra) and Co-ordinate Bench decision in SRF Ltd. vs. ACIT, Circle -1 2022(2) TMI 758 ITAT Delhi judgment dated 07.02.2022, and had held that since the receipt is not in nature of income, then it cannot be considered in the book profits for the purpose of computation u/s 115JB of the Act.

10. In the light of aforesaid it can be held that Appellant company has rightly reduced Capital Receipts of the nature excise refund and interest subsidy for working out Book Profits. The grounds are allowed. The appeal is allowed and accordingly the Ld. AO is directed to re-compute the income."

21. We thus, find the coordinate bench of the Tribunal after considering the decision of Hon'ble Karnataka High Court in the case of B&B Infratech Ltd. (supra) and after placing reliance on the decision of Kolkata High Court in the case of Ankit Metal and Power Ltd. (supra) had decided the issue in favour of the assessee.

22. Before us Revenue has not placed any material on record to demonstrate that the decision rendered by Delhi Tribunal in the case of Indogulf Cropsciences Ltd. (supra) has been set aside/stayed/overruled by higher judicial forum. Further Revenue also not placed on record any contrary binding decision in its support. In view of the aforesaid facts and following the decision of the coordinate bench in the case of Indogulf Cropsciences Ltd. (supra), we hold that since the interest receipt under TUFS Scheme is capital in nature, it needs to be excluded while working out the book profits u/s 115JB of the Act. We direct accordingly. Thus, the ground of the assessee is allowed.

23. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12.05.2023

Sd/- Sd/-

(YOGESH KUMAR US)
JUDICIAL MEMBER

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 12.05.2023

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI