

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 4649/Mum/2018

(Assessment Year 2012-13)

Supertex Industries Ltd.
45-49 Babu Genu Rd,
Princess Street,
Kalbdevi,
Mumbai-400 002

Vs.

DCIT
Cir 43(3)(2)
Room No.649, 6th Floor,
Aaykar Bhavan
M.K. Road,
Mumbai-400 020

(Appellant)**(Respondent)****PAN No.AAACS7274D****Assessee by** : Shri Vishal D. Shah, AR**Revenue by** : Shri Ajay Singh, DR**Date of hearing:** 07.09.2022**Date of pronouncement :** 20.09.2022**ORDER****PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by assessee against appellate order passed by the Commissioner of income tax (appeals) – 9, Mumbai dated 7/05/2018 for assessment year 2012 – 13 raising solitary issue that:-

"On the facts and under the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) erred in upholding the Assessing Officer's action in computing tax of ₹1,99,395 by applying provisions of Mat under Section 115JB, without appreciating the fact that the appellant was a sick company under BIFR and



accumulates losses is still not recouped. Hence it is exempt from provision of section 115JB of the Income-tax Act, 1961 even though the net worth of the company has become positive.”

02. Brief facts of the case show that assessee is a company, filed return of income on 12/9/2012 at Rs. Nil after claiming the entire business income of Rs. 170,50,855/- against unabsorbed depreciation and brought forward business losses. The income of the assessee was assessed u/s 143 (3) of the income tax act by order dated 9/3/2015. The learned assessing officer computed profit u/s 115 JB at ₹ 1,046,480 and levy tax accordingly. Therefore the assessee was aggrieved and preferred appeal before the learned CIT – A.
03. The learned CIT – A dismissed the appeal of the assessee per order dated 7/05/2018, therefore, assessee is in appeal before us.
04. The issue in this appeal shows that assessee company was declared as a sick Industrial company in terms of provision of section 3 (1) (o) of The Sick Industrial companies Act. State bank of India was appointed as operating agency to formulate revival scheme. The scheme of revival of the assessee company was sanctioned by BIFR as per order dated 8/9/2008. The net worth of the assessee company became positive as per the audited balance sheet as on 31/3/2009 and provisional balance sheet as on 30/3/2010. Accordingly, the assessee company approached the operating agency to discharge it from the purview of BIFR.



Subsequently the order dated 16/6/2010 was passed where the company ceased to be a sick industrial Co as its net worth has turned positive on 30/3/2009. The scheme of revival continued and directors were given responsibility to implement it for remaining period. This order was challenged by the Director General of Income Tax before the Appellate Authority for Industrial and Financial Reconstruction against the direction of the BIFR for continuing benefits and provision of the revival scheme after discharging the company from the sick industrial Companies act as it achieved positive net worth and therefore the order of the BIFR was erroneous. In fact, the DGIT was concerned with the income tax relief mentioned in the scheme continuing to be granted to the assessee despite company coming out of SICA. Appellate authority [AIFR] dismissed the appeal of DGIT and therefore the assessee is contending that it is eligible for the benefit u/s 115 JB of the Act, even though it's net worth has turned positive. The revenue authorities strictly interpreted the provisions of Section 115 JB wherein clause [vii] of explanation [1] provides that the moment the net worth of the company becomes equal to or exceeds the accumulated losses; the company is obliged to pay book profit tax u/s 115 JB of the Income Tax Act on its book profit.

05. The learned authorised representative referred to the facts of the case with reference to the paper book submitted. He referred to the summary of the record of the proceedings of hearing and the draft rehabilitation scheme



framed by BIFR. The consequent BIFR order dated 16/06/2010 and the fact that later on the company was discharged from the provisions of industrial companies act. He further referred that the income tax department preferred an appeal before the appellate authority challenging the continuation of the benefit to the assessee and the same was dismissed. Therefore, the claim of the learned authorised representative is that despite, the companies net worth turning out to be positive, unless the rehabilitation scheme is over i.e. the impugned timeframe, the assessee should be allowed the benefit of exemption under the provisions of Section 115 JB of the act. Therefore, he opposes the orders of the lower authorities.

06. The learned departmental representative strictly referred to the provisions of the act and submitted that as soon as the assessee company has positive net worth, the exemption provided under the income tax act from payment of book profit tax is over. He submitted that when the language of law is clear, nothing could be read into that. He further stated that there is no provision either under the income tax act or under the sick industrial Companies act, which provides that despite the company turning into positive net worth, the benefit of exemption of book profit tax should be provided to the assessee. Therefore, according to him the orders of the lower authorities cannot be challenged.
07. We have carefully considered the rival contention and perused the orders of the lower authorities. Undoubtedly,



the assessee was referred to the board of industrial and financial Reconstruction Under the provisions of the sick industrial Companies act. Assessee was declared a sick company u/s 3 [1] [o] of the SICA. Rehabilitation scheme of the assessee was approved by the board of industrial and financial Reconstruction. It is also undisputed that subsequently by the order dated 16/6/2010 the assessee was discharged from all the onerous liability of sick industrial Companies act. Further, the remaining period of rehabilitation scheme, for implementation, was left to the wisdom of the directors of the company to continue. Therefore, the assessee is out of the provisions of sick industrial Companies act. According to the provisions of Section 115 JB of the Income Tax Act clause [vii] of explanation [1] provides for exclusion from book profit the amount of profit of a sick industrial Co. from the assessment year in which the said company has become a sick company and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses. Undisputedly, the net worth of the company has turned positive in the impugned assessment year. Naturally, therefore, for this year, assessee is not eligible for exclusion of its profit from the chargeability of book profit tax. There is no provision under the income tax act or under the sick industrial Companies act to exclude such profit from book profit tax u/s 115 JB of the act in these circumstances. Learned lower authorities have correctly interpreted the law and denied benefit to the assessee. Whenever, the provisions



of law are clear and unambiguous they should be given full effect thereof and should be read as it is without adding or subtracting anything. In view of this, we do not find any infirmity in the orders of the lower authorities. We hold that learned assessing officer is correct in not excluding the book profit earned by the assessee from the provisions of 115 JB of the income tax act as the assessee's net worth turned positive during the year. There is no infirmity in the order of the learned CIT – A in confirming the same. Solitary ground of appeal of the assessee is dismissed.

08. Appeal of the assessee is dismissed.

Order pronounced in the open court on 20.09.2022.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 20.09.2022

Sudip Sarkar, Sr.PS/Dragon

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai