

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5547/MUM/2014  
Assessment Year: 2008-09**

ASST CIT CC 47  
6<sup>th</sup> Floor, R. No. 658  
Aayakar Bhavan, M.K. Rd.  
Mumbai – 400020

Vs. M/s. Ruby Mills Ltd.  
11<sup>th</sup> Floor, Ruby House,  
J.K. Sawant Marg, Dadar (W)  
Mumbai – 400028

**PAN No. AAAC0220G**

**ITA No. 5387/MUM/2014  
Assessment Year: 2008-09**

M/s. The Ruby Mills Ltd.  
Ruby House, J.K. Sawant Marg,  
Dadar (W),  
Mumbai – 400028

Vs. ADDL CIT 7(2)  
Aayakar Bhavan,  
M.K. Road,  
Mumbai - 400020

**PAN No. AAAC0220G**

**(Appellant)**

**(Respondent)**

Assessee by: Mr. Vijay Mehta,AR  
Revenue by: Mr. Love Kumar,DR

Date of Hearing : 24/01/2017  
Date of pronouncement: 11/04/2017

**ORDER**

**PER N.K. PRADHAN, AM**

These two cross appeals – one by revenue and the other by the assessee for the assessment year 2008-09 involve some common

issues. As such we are proceeding to dispose them off by this consolidated order for the sake of convenience. The appeals are directed against the order of the Commissioner (Appeals) – 13, Mumbai and arise out of order u/s 143(3) of the Income Tax Act, 1961 (the 'Act').

2. The grounds of appeal filed by the revenue read as under:

- i. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the prior period expenses of Rs. 10,70,534/- ignoring the fact that the assessee is following mercantile method of accounting and the said expenses have not been incurred during the relevant previous year.
- ii. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the forex derivative loss of Rs. 2,89,00,000/-, ignoring the fact that the claim of the assessee is in contravention of instruction No. 3 of 2010 dated 23.03.2010 of the CBDT.
- iii. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the depreciation of Rs. 13,63,746/- (at the rate of 80%) claimed on energy efficient devices without appreciating the fact that the server stabilizers cannot be treated as energy saving device as per the depreciation table given under Income Tax Rules.
- iv. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the depreciation of Rs. 1,06,53,231/- claimed on rented out buildings, without appreciating the fact that the same is not allowable under the Act and assessee has not furnished any segregation of the assets to qualify the claim of depreciation on the rented out buildings.
- v. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the interest of Rs. 81,55,961/- pertaining to capital WIP without appreciating the fact that the assessee has not capitalized the interest in the proportion of average capital work-in- progress to average assets and has claimed even the capital expenditure as a revenue expenses.

3. We begin with the 1<sup>st</sup> ground of appeal of the revenue. It relates to the disallowance of prior period expenses of Rs. 10,70,534/- by the Assessing Officer (AO). The only reasons given by the AO in disallowing the above expenses is that these relate to preceding years and hence not allowable. On appeal, the learned CIT(A) agreed with the contentions of the assessee and allowed the prior period expenses of Rs. 10,70,534/-.

3.1 Before us, the learned DR supported the order passed by the AO. On the other hand the learned counsel of the assessee relied on the order passed by the learned CIT(A).

3.2 We have heard the rival submissions and perused the relevant material on record. In *Saurashtra Cement* 213 ITR 523, it has been held by the Hon'ble Gujarat High Court that though the expenditure relates to prior period, if the liability has accrued during the year, then the expenditure has to be allowed as deduction. Also in *CIT vs. Exxon Mobil Lubricants P. Ltd.* 328 ITR 17, it has been held by the Hon'ble Delhi High Court that when prior period income is taxed prior period expenditure cannot be disallowed.

In view of the above decisions, we uphold the order passed by the learned CIT(A) on the above issue and dismiss the above ground of appeal filed by the revenue.

4. The second ground relates to the claim of forex derivative loss of Rs. 2,89,00,000/- by the assessee. The AO followed the 'Instruction No. 3/2010' issued by CBDT and held that 'the marked to market

losses' are not allowable as they are only notional losses and not actual losses. The AO thus made an addition of Rs. 2,89,00,000/-. On appeal, the learned CIT(A) held:

“However as AO has brought on record that on being asked to furnish the details of these contracts and actual working to arrive at the figure claimed as loss assessee did not furnish the details and rather said that revenue has been recognised as appropriate and no further justification of the claim of losses was furnished, the method of working and quantification is not made available. Hence AO is directed to obtain the details of such swap arrangements and having found them dealing with contract for outstanding foreign derivative on actual basis, to allow. For the statistical purpose the ground number 2 is treated as allowed.”

4.1 Having heard the rival submissions and perused the relevant material on record, we find that on the above issue, the learned CIT(A) in her order dated 30.06.2014 has directed the AO to obtain from the assessee the details of swap arrangements and arrive at a finding after verification. The learned CIT(A) has not allowed the forex derivatives loss of Rs. 2,89,00,000/- as made out in the 2<sup>nd</sup> ground of appeal filed by the revenue. As the learned CIT(A) has specifically set aside the above issue to the file of the AO, the 2<sup>nd</sup> ground of appeal is dismissed.

5. The 3<sup>rd</sup> ground of appeal relates to the claim of depreciation @ 80% by the assessee on energy efficient devices. The AO found that most of the devices were 'servo stabilizers' and quite different from automatic voltage controller. The other equipments were 'surge suppressors' and 'harmonic filters'. None of these are listed under clause "E", which lists the electrical equipments to be treated as energy saving device in the 'Depreciation Table' given in Income Tax Rules, 1962. Therefore, the AO allowed the depreciation at the normal rate of 15% and disallowed the balance of Rs. 13,63,746/-. On

appeal, the learned CIT(A), having examined the Certificate dated 31<sup>st</sup> March, 2008 given by the Chartered Engineers held that the assessee rightly claimed depreciation @ 80% on these devices.

5.1 Having heard the rival submissions and perused the relevant material on record, we find that the learned CIT(A) after examination of the relevant Certificate has arrived at a decision. As the said decision is based on proper appreciation of document, we uphold the same and dismiss the 3<sup>rd</sup> ground of appeal filed by the revenue.

6. The 4<sup>th</sup> ground of appeal relates to claim of depreciation of Rs. 1,06,53,231/- made by the assessee. The AO referred to the assessment order for the A.Y. 2007-08 as per which 76096 sq. ft. out of total area of 111520 sq. ft. i.e. 68% area has been given on rent. As the assessee did not file details of buildings which were let out, the AO disallowed 68% of the claim of depreciation of Rs. 1,56,66,516/- which comes to Rs. 1,06,53,231/-. On appeal the learned CIT(A) held as under:

“I have duly considered the same. I have gone through the schedule 5 of fixed assets for the financial year 2007-08 and noted that same are shown as per Companies Act, however same has not been claimed as depreciation, and hence no disallowances were called for in their case. As is coming out from the reading of assessment order that AO formed this opinion after going through schedule 5 of the audited accounts. As the schedule was not the basis of claiming depreciation, and further having not claimed any depreciation on these 3 types of assets involved in these three grounds, no disallowances could have been made. In view of this A.O. is directed to look into the accounts to ascertain and satisfy himself that no such expenses have been claimed under the head depreciation by the appellant in the profit and loss account and accordingly to allow. The ground number 4, 5 and 7 are treated as allowed for statistical purpose.”

6.1 Having heard the rival submissions and perused the relevant material on record, we find that the learned CIT(A) has given a specific direction to the AO to examine the accounts and arrive at a finding after verification. The learned CIT(A) has not allowed the claim of depreciation of Rs. 1,06,53,231/- as made out in the 4<sup>th</sup> ground of appeal of the revenue. Therefore, the 4<sup>th</sup> ground of appeal filed by the revenue is dismissed.

7. The 5<sup>th</sup> ground of appeal relates to allowability of interest of Rs. 81,55,961/- in respect of capital WIP. The AO has disallowed 40% of the interest /finance charges paid by the assessee amounting to Rs. 3,26,23,846/- and it comes to Rs. 81,55,961/-. On appeal the learned CIT(A) held as under:

“During the appellate proceedings appellant have simply stated that no opportunity was given to them. On facts appellant have submitted that they have themselves capitalised the interest expenditure relating to the funds used in capital WIP account. For the same, appellant have relied upon page number 191 of paper book. I have gone through the same and noted that this is statement of interest capitalised in accounted in capital work-in-progress. The total amount of interest so capitalised is Rs. 1,91,23,990/-. I have also gone through page number 32 of annual accounts where in for the borrowing cost it has been mentioned that as they are directly attributable to acquisition, construction or production of qualifying asset, they are capitalised as a part of the cost of that asset. As appellant have already capitalised and have not debited the interest expenses in the profit and loss account, I am in agreement with appellant that same cannot be disallowed. In view of this AO is directed to look into the accounts to ascertain and satisfy himself that no such expenses have been claimed under the head interest by the appellant in the profit and loss account. Further statistical purpose ground number 8 is treated as allowed.”

7.1 Having heard the rival submissions and perused the relevant material on record, we find that the learned CIT(A) has not allowed the interest of Rs. 81,55,961/- pertaining to capital WIP as made out in the 5<sup>th</sup> ground of appeal. Rather the learned CIT(A) has given a specific direction to the AO to examine the accounts and then arrive at a finding after verification. In view of the above, the 5<sup>th</sup> ground of appeal is dismissed.

8. In the result, the appeal filed by the revenue is dismissed.

9. Now we come to the grounds of appeal filed by the assessee which read as under:

- i. The learned CIT(A) has erred in law and in facts in upholding the disallowance to repairs to building of 68% amounting to Rs. 9,63,944/- out of the total expenses on repairs to building claimed on the alleged ground that as 68% of the total area of the building is given on rent, hence 68% of the total repairs of the building shall also be disallowed.
- ii. The appellant craves leave to add / file additional grounds of appeal in respect of additions made / disallowance of expenditure and / or allowances which were set aside by the learned CIT(A) to the file of A.O. if the same are not decided in favour of your appellant, whether partly or wholly, which may be required to be taken up to meet the ends of justice and/or, alter, modify and/or delete any of the above ground of appeal.

10. Briefly stated the facts are that the assessee has claimed deduction of Rs. 1,95,08,481/- u/s 24 for repairs in respect of house property. The assessee also claims Rs. 14,17,566/- as building repair expenses. As no evidence was filed before the AO, taking into account the ratio of 68% as mentioned at para 6 here-in-above, the AO disallowed Rs. 9,63,944/-. On appeal the learned CIT(A) has held as under:

“I have duly considered the same. I find there is a contradiction in the version of appellant as during assessment proceedings they themselves admitted that these repair expenses are incurred for leave and license basis premises where

as now during the appellate proceeding submitted that these repair expenses do not pertain to the lease out premises. In absence of any supporting evidence for the same, the reply of appellant cannot be relied upon. The appellant have not negated the observation made by the AO in the assessment order that they did reply so during the assessment proceedings by their letter dated 8.12.2010. In view of this I am of the opinion that appellant has switched over from their earlier stand without negating the facts that they did admit so before AO. In absence of any contradiction made to the same, I am of the view that action of AO to disallow proportionate expenses, looking into the fact that appellant have already deducted by making a claim under section 24 also, the addition made of Rs. 9,63,944/- is upheld. The ground number 7 is dismissed. “

10.1 Having heard the rival submissions and perused the relevant material on record, we find that the decision of the learned CIT(A) on the above issue is based on proper appreciation of facts. No evidence could be produced by the assessee before the AO and the CIT(A) in support of the said claim. Therefore, we uphold the order of the learned CIT(A) on the above issue and dismiss the above ground filed by the assessee.

11. The assessee has filed an additional ground in respect of addition of forex derivative loss of Rs. 2,89,00,000/- by the AO. We have dismissed at para 4.1 here-in-above the corresponding ground of appeal of the revenue. Hence this additional ground filed by the assessee becomes in fructuous.

12. In the result, the appeals filed by the revenue and the assessee are dismissed.

**Order pronounced in the open Court on 11/04/2017**

Sd/-

(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)  
ACCOUNTANT MEMBER



Mumbai;

Dated:

*Biswajit. Sr. P.S.*

**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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**