

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

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No: 2767/Chny/2019

निर्धारण वर्ष/Assessment Year : 2014-15

Roca Bathroom Products Pvt. Ltd.,
"The Heritance", 41, Haddows Road,
Nungambakkam, Chennai – 600 006.

Vs. Deputy Commissioner of Income
Tax,
Large Taxpayer Unit -1,
Chennai.

[PAN: AAACE 9982E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. N.V. Balaji, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. G. Johnson, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

: 24.03.2021

घोषणाकीतारीख/Date of Pronouncement

: 21.06.2021

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the consolidated orders of the Commissioner of Income Tax (Appeals)- 9, Chennai, particularly against the order in ITA Nos.170/17-18 dated 31.07.2019 for the assessment year 2014-15.

2. While making the assessment for the assessment year 2014-15 in the case of the assessee, M/s Roca Bathroom Products Pvt. Ltd., the A O noticed from the Profit and Loss Account that the assessee has claimed set off of accumulated unabsorbed losses of M/s. Espiern Plastics Limited to the extent of Rs.7,04,94,282. From the Note 30 to the financial statement titled as 'Amalgamation of Espiem Plastics Limited with the company" , the A O noted that the consideration for 74% of the equity share capital of the transferee company held by ex-promoters was discharged on 12.02.2014 only. Since the assessee company was holding only 26% percent of equity shares as on 01.04.2013 which is the appointed dated as per the scheme approved by the Hon'ble High Court of Madras on 28.4.2014, the A O held that it is evident that the precondition for amalgamation , i.e. shareholders holding of not less than three-fourths in value of the shares in the amalgamating company becoming shareholders of the amalgamated company was not satisfied. As the requirements laid down in Sec. 2(1B) were not fully satisfied on the court appointed date of 01.04.2013, the AO held that the assessee is not entitled to the claim of carry forward and set off' of loss u/s Sec. 72A of the Income Tax Act, 1961 and hence disallowed the assessee's claim and completed the assessment . Aggrieved, the assessee filed an appeal before the CIT (A). The Ld. CIT(A) relying the Supreme Court decision in the case of Smt. Tarulata Shyam and others v. CIT, West Bengal (1977) 108 ITR 345 (SC) held that the AO is right in strictly interpreting the provisions of the Act as the

appellant has not satisfied the prescribed condition u/s. 2(1B) r.w.s. 72A of the Act and dismissed the appeal. Aggrieved against the order of the Id. CIT(A), the assessee filed this appeal. The concise grounds of appeals filed by the assessee are extracted as under:

- " 1. The order of the Commissioner of Income Tax (Appeals) [' CIT(A)] is erroneous and contrary to the principles of natural justice and bad in law.*
- 2. The CIT (A) erred in law and on facts in not considering set-off of accumulated losses and unabsorbed depreciation amounting to INR 70,494,282 under section 2(1B) read with section 72A of the Income-tax Act without appreciating the fact that*
- 3. The CIT (A) in law and on facts in failing to appreciate that conditions stipulated under the provisions of section 2(1B) of the Act were satisfied upon amalgamation of Ws. Espiem Plastics Limited ('amalgamating company') with the Appellant.*
- 4. The CIT (A) erred in considering the 'appointed date' instead of the date on which the scheme becoming effective ('effective date'), for concluding the non-compliance of conditions specified in section 2(1B)(iii) of the Act.*
- 5. The CIT (A) erred in disregarding the scheme of amalgamation which inter-alia sanctioned the vesting of and carry forward of loss by Appellant which is binding on the statutory authorities including income-tax authorities.*
- 6. The CIT (A) Commissioner of Income-tax (Appeals) erred by upholding the denial of carry forward of loss and unabsorbed depreciation made by the Learned AO, stating that the taxing statute be interpreted strictly, without having regard to the legal position applicable to the facts in hand.*
- 7. The Appellant craves leave to add, alter, amend, modify all or any grounds of appeal at or before the hearing of appeal."*

3. The case was heard through video conferencing. The Ld. AR submitted that as on 01.04.2013, only 26% of shares were held by the assessee company with Espiem Plastics Ltd . On 10.02.2014, the balance 74% of shares were bought and on the same day ie on 14.02.2014 itself Espiem

Plastics Ltd., the transferor company and the assessee transferee company, Roca Bathroom Products Pvt Ltd., applied for amalgamation. On 28.04.2014, the Hon'ble High Court of Judicature at Madras sanctioned the scheme of amalgamation with effect from 01.04.2013. Relying the decision in the case of ITO vs. Purbanchal Power Co. Ltd., in ITA No. 201/Kol/2010 dated 17.07.2014 for the ay 2006-07, of ITAT Kolkata Bench and inviting our attention to the paper book , wherein the copy of extract of Resolution passed on 10.02.2014 and para 11 titled as "consideration" of the copy of scheme of amalgamation are placed , the Ld. AR submitted that shareholders of amalgamating company would be vested with the right/interest arising from the scheme of amalgamation only upon scheme becoming effective and pleaded that for compliance of conditions specified in section 2 (1B)(iii) of the Act, the effective date be regarded. Per contra, the Ld. DR reiterating the facts brought by the lower authorities submitted that when the provisions of the Act are clear, there is no case for any ambiguity and hence the interpretation made by the lower authorities are in accordance with law and hence pleaded that the orders of the lower authorities be upheld.

4. We heard the rival submissions and gone through the relevant material. It is seen from the paperbook that Espiem Plastics Ltd., the transferor company, as well as Roca Bathroom Products Pvt. Ltd., the transferee company, sought the sanctioning the scheme of amalgamation

before the Hon'ble High Court of Judicature at Madras so as to be binding on all the equity shareholders of the transferor/transferee company w.e.f. 01.04.2013. The Hon'ble High Court of Judicature in Comp. Petn No. 111 and 112 of 2014 dated 28.04.2014 sanctioned the scheme of amalgamation w.e.f. 01.04.2013 and declared that it is binding on all the equity shareholders of the said companies w.e.f. 01.04.2013. Thus, the appointed date for amalgamation is 01.04.2013. The assessee has not disputed the fact that as on 31.03.2013, the assessee was holding only 26% of equity shares in the transferor company. Since, the assessee is relying the case of Purbanchal Power Co. Ltd., let us examine the facts in brief. In that case, Four companies viz Preetam Marketing Pvt Ltd and Xenith Exports Pvt Ltd were amalgamated w.e.f. 31.03.2004 and the other two companies viz Burman Trexim Pvt Ltd and Varsha Fabrics Ltd were amalgamated w.e.f. 31.03.2005, while making the assessment for the assessment year 2006-07 in the case of Purbanchal Power Co. Ltd., the AO noticed that the share capital of the assessee company as on 31.03.2005 and 31.03.2006 was at Rs. 5,04,600/-, no shares were allotted to the shareholders of the amalgamating company in lieu of the transfer of substantial undertaking in the amalgamated company and overruling assessee's explanation etc, the AO assessed Rs. 69,64,39,089/- credited as amalgamation reserve in the accounts of the assessee u/s. 68 as unexplained credit and held that the amalgamation is a colourable device to evade the tax by amalgamating companies and held that the requirement u/s.

2(1B) of the Act has not been met. From the material and explanation furnished before the AO etc., the Hon'ble tribunal found that the amalgamation reserves credited to the accounts of Rs. 64,69,73,480/- appeared in the audited accounts of the four companies till 31.03.2004 and 31.03.2005, respectively, and the balance amount is on account of inter se debit balance of the transfer company. The shares being held by the transferor companies between themselves, inter se, was more than 3/4th and therefore the provisions of section 2(1B) have not been violated. Thus, on the facts, this case law offers no help to the assessee. In this case, the scheme of amalgamation has been approved by the Hon'ble High Court of Judicature at Madras under the Companies Act, 1956 w.e.f. 01.04.2013. It is settled law that once amalgamation is approved, the amalgamating company ceasing to exist, it can't be regarded as a person u/s. 2(31) of the Act against whom assessment proceedings can be initiated or an order of assessment passed. Therefore, appointed date, 01.04.2013, is crucial in this case. As on 31.03.2013, the assessee company had only 26% of equity shares in the transferor company, and therefore, the provisions of section 2 (1B) r.w.s 72A of the Income Tax Act have not been complied with by the assessee. Since, the assessee company did not have 3/4th of the shares of the transferor company as on 31.03.2013, the appointed date being 01.04.2013, the assessee is not entitled to the claim of carry forward and the set off of loss of

the transferor company as on 31.03.2013. The corresponding grounds of the assessee fail.

5. In the result, the assessee's appeal is dismissed.

Order pronounced on 21st June, 2021 at Chennai.

Sd/-

(धुव्वुरु आर. एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 21st June , 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF