

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4515/MUM/2014
Assessment Year: 2011-12**

M/s Sujata Trading Private Ltd.
Pushp-Kunj, ¾ Khan Abdul
Gaffer Khan Road, Worli Sea Face,
Worli, Mumbai-400025

Vs. Income Tax Officer 8(3)(2),
2nd floor, Aayakar Bhavan, M.K.
Road, Mumbai-400020

PAN: AACCS2276H

(Appellant)

(Respondent)

Assessee by: Shri Harshal Agrawal, AR
Revenue by: Shri B.S. Bist, DR

Date of Hearing : 14/02/2017
Date of pronouncement: 28/04/2017

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals) – 18, Mumbai and arises out of order u/s 143(3) of the Income Tax Act, 1961 (the 'Act').

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

1. On the facts and circumstances of the case as well as in law, the learned CIT(A) 18 erred in dismissing the first ground regarding the violation of principals of natural justice by stating that 'the ground is general in nature'..
2. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) 18 erred in confirming the disallowance of Rs.3,00,000/- out of

Rs.4,00,000/- disallowance by Income Tax Officer, out of total rent paid Rs.5,00,000/- by your appellant.

3. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) 18 erred in confirming the disallowance of Rs.3,00,000/- in place of Rs.4,10,000/- disallowance by the Income Tax Officer out of total car expenses of Rs.4,27,151/-.
4. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) 18 erred in confirming the disallowance of Rs.1,10,000/- done by Income Tax Officer out of Rs.1,50,000/-, being 50% of the electricity expenses debited in the Profit and Loss Account.
5. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) 18 erred in confirming the disallowance of Rs.41,050/- done by the Income Tax Officer out of business promotion expenses of Rs.82,107/-.
6. On the facts and circumstances of the case as well as in law, the Ld. CIT(A) 18 erred in confirming the disallowance of Rs.2,50,000/- out of Rs.5,00,000/- towards service charges paid to the Director.
7. In the facts and circumstances of the case as well as in law, the Ld. CIT(A) 18 erred in confirming the action of the Income Tax Officer in setting off the brought forward unabsorbed depreciation first instead of the brought forward business loss, as contemplated under the provisions of the Income Tax Act, 1961.

3. The assessee filed its return of income for the A.Y. 2011-12 on 27.09.2011 declaring total income of Rs. Nil. The assessee derives income from trading in shares.

We begin with the 1st ground of appeal. It relates to the issue of violation of principal of natural justice by the Assessing Officer (A.O.). We find that sufficient opportunity was given by the A.O. to the assessee to represent its case. This is evident from the assessment record. In view of the above the 1st ground of appeal is dismissed.

4. We now come to 2nd ground of appeal. The assessee has claimed Rs.5,00,000/- as rent for the A.Y. 2011-12 as compared to Rs.1,00,000/- in the previous assessment year 2010-11. The rent of Rs. 5,00,000/- was paid to M/s. Steel Investment (P) Ltd. which is a sister concern of the assessee for using the office premises located at 3/4, Pushp Kunj, Khan Abdul Gaffar Khan Road, Worli Sea Face, Worli, Mumbai – 400025. The A.O. having conducted enquiries, found that the said premises is a Duplex Bungalow owned by M/s. Steel Investment (P) Ltd. where the entire 1st floor was occupied by the Director Shri Anirudh Jajodia, his wife and Director Ms. Astha and family members. Two rooms on the ground floor are used for the purpose of business, one of these rooms is occupied by the Director and the other room is used to keep records and used by the staff. In view of the above, the A.O. disallowed Rs. 4,00,000/- as excessive rent. In appeal, the learned CIT(A) restricted the disallowance to Rs. 3,00,000/-. Having heard the rival submissions and perused the relevant material on record, we deem it fit to restrict the disallowance to Rs. 2,00,000/- in place of Rs. 3,00,000/- sustained by the learned CIT(A). Hence the 2nd ground of appeal is partly allowed.

5. Now we come to 3rd ground of appeal. The A.O. observed that the assessee had debited Rs. 4,27,151/- under the head administrative expenses on account of car expenses. The car expenses included a sum of Rs. 4,10,000/- paid to Smt. Rajni Devi Jajodia, mother of the Director of assessee-company. The A.O. asked the assessee to produce the log book for running of the vehicle. However the assessee could not produce before the A.O. the log book. Since the expenses towards depreciation and running of vehicle was already allowed, the A.O. disallowed the claim for car hire charges of Rs. 4,10,000/-. The learned CIT(A) restricted the disallowance to

Rs.3,00,000/-. Having heard the rival submissions and perused the relevant material on record, we find that the assessee failed to file before the A.O. the log book for running of the vehicle. The disallowance of Rs. 3,00,000/- sustained by the learned CIT(A) is upheld. Hence the 3rd ground of appeal is dismissed.

6. Now we turn to the 4th ground of appeal. The assessee has claimed a sum of Rs. 1,50,000/- towards electricity charges for the impugned assessment year as compared to Rs. Nil for the previous assessment year 2010-11. The assessee submitted before the A.O. that it had paid 50% of the total electricity charges to M/s. Steel Investments Pvt. Ltd. for the premises located at ¾ Pushp KUnj, Khan Abdul Gaffar Khan Road, Worli Sea Face, Worli, Mumbai-400025. The A.O. noted that it is highly inappropriate to charge 50% of the total electricity expenses to the assessee-company when in fact more than half of the premises are being used by the Director and his family for residential purpose. Therefore, he disallowed Rs. 1,10,000/- as excessive and unreasonable. The learned CIT(A) concurred with the above finding of the A.O. Having heard the rival submissions and perused the relevant material on record, we find that the order of the learned CIT(A) is based on proper appreciation of facts by the A.O. Hence ground the 4th ground of appeal is dismissed

7. During the course of proceedings before us, the Ld. Counsel of the assessee submitted that the assessee would not like to press 5th and 6th ground of appeal. Thus, the 5th and 6th ground of appeal are dismissed as not pressed.

8. We now come to the 7th ground of appeal. The A.O. observed that the income of the assessee before set off of brought forward losses was

Rs.17,03,246/-. The assessee had brought forward business losses and brought forward unabsorbed depreciation. However, the assessee did not adjust the brought forward unabsorbed depreciation but instead set off the brought forward business losses only. The A.O. thus, held that the brought forward unabsorbed depreciation merges with the current year's depreciation, hence, the brought forward unabsorbed depreciation is first adjusted and then the brought forward unabsorbed business losses.

8.1 In appeal, the Ld. CIT(A) agreed with the order of the A.O. on the same reasons and dismissed the appeal filed by the assessee.

8.2 Before us, the Ld. Counsel of the Assessee submits that the A.O. erred in first setting off the unabsorbed depreciation as contemplated u/s 32(2) of the Act as compared to the brought forward business losses u/s 72 of the Act. It is submitted by him that as per section 72 of the Act, the brought forward business losses are to be set off first after providing the current year's depreciation. The carry forward of the unabsorbed depreciation is governed by section 32(2) of the Act. Only after fully set off of the brought forward business losses, the unabsorbed depreciation is used.

8.3 On the other hand, the Ld. D.R. relies on the order of the Ld. CIT(A).

8.4 We have heard the rival submissions and perused the relevant material on record. There is no time limit for the purpose of carrying forward of unabsorbed depreciation; it can be carried forward for indefinite period, if necessary. In subsequent year (s), unabsorbed depreciation can be set off against any income whether chargeable under the head 'Profits and gains of business for profession' or under any other head (except income under the head 'Salaries'). In the matter of set off, the following order of priority is followed in the subsequent year (s):

- a. Current depreciation.
- b. Brought forward business loss.
- c. Unabsorbed depreciation.

It may be said that if in the subsequent year(s), there is no brought forward business loss, unabsorbed depreciation can be added to current depreciation for the purpose of claiming deduction.

In view of the above, the order of the Ld. CIT(A) on the above ground of appeal is set aside and the A.O. is directed to allow current depreciation, brought forward business loss and unabsorbed depreciation as per the order of priority as delineated here-in-above, after giving a reasonable opportunity of being heard to the assessee.

9. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 28/04/2017

Sd/-

(JOGINDER SINGH)
JUDICIAL MEMBER

Mumbai:

Dated: 28/04/2017

Biswajit. Sr. P.S.

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

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