

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “SMC” BENCH**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 291/AHD/2014 & C.O. NO. 162/Ahd/14  
(Assessment Year: 2006-07)**

<b>DCIT, Ahmedabad</b>	<b>Circle-1,</b>	<b>V/S</b>	<b>M/s. Asman Investment Ltd. Arvind Mills Premises, Naroda Road, Ahmedabad</b>	
<b>M/s. Asman Investment Ltd. Arvind Mills Premises, Naroda Road, Ahmedabad</b>		<b>V/S</b>	<b>DCIT, Ahmedabad</b>	<b>Circle-1,</b>
<b>(Appellant)</b>			<b>(Respondent)</b>	

**PAN: AABCA5968R**

**Appellant by : Shri Santosh Karnani, Sr. D.R.  
Respondent by: Shri Vijay Ranjan & Ira Kapoor, A.R.**

**(आदेश)/ORDER**

Date of hearing : 10 -01-2018  
Date of Pronouncement : 15 -01-2018

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER**

1. ITA No. 291/Ahd/2014 & C.O. No. 162/Ahd/2014 are appeal by the revenue and cross objection by the assessee directed against the order of the Ld. CIT(A)-VI, Ahmedabad dated 25.11.2013 pertaining to A.Y. 2006-07.
2. The appeal and the cross objection were heard together and are disposed of by this common order for the sake of convenience.
3. The substantive grievance of the revenue read as under:-
  1. *The CIT(A) has erred in law and on facts by allowing carry forward of speculation loss of Rs. 69.62 lacs pertaining to A.Y. 2000-01 beyond a period of four years in contravention of the provisions of section 73(4).*
  2. *The CIT(A) has erred in law and on facts by deleting the addition of Rs. 64.35 lacs u/s. 14A to Book Profit despite the fact that the same is required to be added to Book Profit as per Explanation 1, clause (f) to section 115JB(2) of the Act.*
4. The assessee is engaged in the business of trading in shares & securities, trading of clothes & garments and trading of garments under franchisee arrangement.
5. During the course of the scrutiny assessment proceedings, the A.O. noticed that the assessee has claimed carry forward of speculation loss of Rs. 69.62 lakhs pertaining to A.Y. 2000-01. The A.O. was of the opinion that as per the amended provisions of Section 73(4) of the Act, no speculation loss shall be carried forward under this section for more than four assessment years. The A.O. formed a belief that the assessee is not eligible to carry forward and set off the speculation loss pertaining to A.Y. 2000-01. The A.O. accordingly denied the set off of loss of Rs. 69.62 lakhs.

6. Assessee carried the matter before the ld. CIT(A) and vehemently stated that the amendment brought to the provisions of Section 73(4) of the Act is with effect from 01.04.2006 and therefore applicable from A.Y. 2006-07 and the assessee cannot be denied the set off the speculation loss by the amended provision.
7. After considering the facts and the submissions and the relevant provisions of the law, the ld. CIT(A) was convinced that the amendment by the Finance Act, 2005 is with effect from 01.04.2006 and cannot be so interpret as to have the effect of reducing the number of assessment years for which the loss computed in assessment of a earlier assessment year in conformity with the then prevailing law could be carried forward from eight assessment years to four assessment years. The ld. CIT(A) was of the opinion that the claim of set off of loss cannot be denied and accordingly directed the A.O. to allow the set off of speculation loss of A.Y. 2000-01 from the income of the assessee.
8. Before us, the ld. D.R. heavily relied upon the findings of the A.O. by placing strong reliance on the decision of the Hon'ble Supreme Court in the case of Reliance Jute & Industries Ltd. 120 ITR 921. Per contra, the ld. counsel for the assessee drew our attention to the judgment of the Hon'ble Supreme Court in the case of Shah Sadiq and Sons 31 Taxmann.com 498 and pointed out that the Hon'ble Supreme Court has subsequently decided this issue in favour of the assessee and against the revenue. It is the say of the ld. counsel that the Hon'ble Apex Court while deciding this issue has considered the judgment in the case of Reliance Jute Mills Co. Ltd.

9. We have given a thoughtful consideration to the orders of the authorities below. We have also gone through the relevant decisions relied upon by both sides. The Hon'ble Supreme Court in the case of Reliance Jute and Industries Ltd. had the occasion to consider the following facts and held as under:-

**FACTS**

*"The assessee-company is carrying on the business of manufacturing jute goods, There was a carried forward business loss of Rs. 15.50.189 in respect of the assessment year 1950-51. For the assessment year 1960-61, in relation to the previous year ending 31-3-1960, the assessee claimed set off of this unabsorbed loss against the business income of the current year. The ITO rejected the claim on the ground that this loss related to 1950-51 and could not be carried forward for more than eight years. The assessee's appeals before the AAC and the Tribunal were unsuccessful. On reference, the High Court also held that the assessee was not entitled in law to set off this unabsorbed loss. On appeal:"*

**HELD**

- 1. It is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implications. On that principle, it is abundantly clear that, for the assessment year 1960-61, it is section 14( 1) that is in force in that assessment year which has to be applied. There is no question of the assessee possessing any vested right under the law as it stood before the amendment. The assessment for one assessment year cannot, in the absence of a contrary provision, be affected by the law in force in another assessment year. A right claimed by an assessee under the law in force in a particular assessment year is ordinarily available only in relation to a proceeding pertaining to that year.*
- 2. Since the provisions of section 24(2). as amended in 1957. govern the assessment for the assessment year J 960-61, the High Court is right in affirming that the unabsorbed loss of Rs. 15,50,189 of the assessment year 1950-51 cannot be carried forward for more than eight years and, consequently, cannot be set off against the business income of the assessment year 1960-61.*

10. This judgment of the Hon'ble Supreme Court is dated 10.10.1979. However, we find that the Hon'ble Supreme Court in the case of Shah Sadiq and Sons (supra) deliver the judgment on 14.04.1987. While considering the following facts, and holding as under:-

**FACT**

*For the assessment years 1960-61 and 1961-62, the assessee-firm suffered losses under speculation business, and these losses were permitted to be carried forward in the relevant assessment proceedings made under the 1922 Act. In the assessment year 1963-64, the assessee's claim for set off of these losses against the speculation profits earned during that year was rejected by the department on the ground that under section 75(2) of the 1961 Act, which has applicable for that assessment year, such set off could not be allowed in the hands of the firms. The Tribunal was of the view that when an Act was passed repealing an earlier enactment, it could not be said to supersede any right already accrued under the repealed enactment unless there was something in the repealing Act to indicate that clearly. The Tribunal, therefore, held that the assessee was entitled to have the losses brought forward from the preceding two years and set off against the profits earned for the year 1963-64 and, accordingly, allowed the appeal. On reference, the High Court agreed with this view, by relying upon section 6 of the General Clauses Act.*

**HELD**

*The right given to the assessee for the assessment year 1961-62 under section 24(2) of the 1922 Act was an accrued right and a vested right. It could have been taken away expressly or by necessary implication. It had not been so done. Neither section 297(2)(h) of the 1961 Act nor any other sub-clauses of section 297(2) indicated contrary intention of the Legislature regarding any vested right*

*of the assessee under the 1922 Act. On the contrary section 6(c) of the General Clauses Act indicates that right should be preserved.*

*In the instant , section 75(2) dealt with a different scheme of carrying forward of loss but it did not speak of any accrued right. It did not destroy either by express words or by necessary implication the vested right given to an assessee under section 4(2). Therefore, unless one finds that in section 297 or within the four corners of the General Clauses Act any intendment, express or implied, of destroying the rights created by section 24(2) of carrying forward the losses to set off in subsequent years in case of speculation business, that right cannot be said to be destroyed.*

*Under the 1922 Act, the assessee was entitled to carry forward the losses of the speculation business and set off such losses against profits made from that business in future years. The right of carrying forward and set off accrued to the assessee under the 1922 Act. A right which had accrued and had become vested continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued unless the repealing statute took away such right expressly. This is the effect of section 6.*

*The 'savings' provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words, whatever rights are expressly saved by the 'savings' provision stand saved. But, that does not mean that rights which are not saved by the 'savings' provision are extinguished or stand ipso facto terminated by the mere fact that a new statute, repealing the old statute is enacted. Rights which have accrued are saved unless they are "" taken away expressly. This is the principle behind section 6(g). The right to carry forward losses which had accrued under the repealed 1922 Act, is not saved expressly by section 297. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the*

*1922 Act. Section 6(c) saves accrued rights unless they are taken away by the repealing statute.*

11. Considering the facts in totality in the light of the subsequent judgment of the Hon'ble Supreme Court in the case of Shah Sadiq and Sons (supra), we do not find any reasons to interfere with the findings of the ld. CIT(A). Ground no. 1 is accordingly dismissed.
12. While calculating the tax u/s. 115JB of the Act, the A.O. found that an amount of Rs. 64.35 lakhs was disallowed u/s. 14A r.w.r. 8D of the Act by the A.O. while finalizing the assessment u/s. 143(3) of the Act. The A.O. accordingly considered the disallowance of Rs. 64.35 lakhs while computing the book profit u/s. 115JB of the Act.
13. Assessee assailed the assessment before the ld. CIT(A) and vehemently contended that the disallowance made u/s.14A of the Act cannot be considered for computing the book profit u/s. 115JB of the Act.
14. After considering the facts and the submissions and drawing support from various judicial decisions, the ld. CIT(A) deleted the adjustments made by the A.O. to the book profit computed u/s. 115JB of the Act.
15. Before us, the ld. D.R. brought to our notice the decision of the Hon'ble High Court of Gujarat in the case of Gujarat State Fertilizers and Chemicals Ltd. in Tax Appeal No. 126 of 2013. Per contra, the ld. counsel for the assessee stated that the disallowance made u/s. 14A r.w.r. 8D amounting to Rs. 64.35 lakhs was restricted by the Tribunal to Rs. 20,000/-. The ld. counsel further placed

reliance on the decision of the Tribunal Special Bench in the case of Vireet Investment Pvt. Ltd. in ITA No. 502/Delhi/2012.

16. We have given a thoughtful consideration to the orders of the authorities below. We find that ITAT Delhi Special Bench in the case of Vireet Investment Pvt. Ltd. had the occasion to consider the following important question of law- *“Whether the expenditure incurred to earn exempt income computed u/s. 14A could not be added while computing book profit u/s. 115JB of the Act”*.
17. And the Special Bench answered the question in favour of the assessee and against the revenue by holding that the computation under clause F of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated u/s. 14A r.w.r. 8D of the Act.
18. Respectfully following the findings of the Special Bench (supra), we decline to interfere with the findings of the ld. CIT(A). Ground no. 2 is accordingly dismissed.
19. The ld. counsel for the assessee did not press the cross objection and the same is dismissed as not pressed.

Order pronounced in Open Court on	15- 01- 2018
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Sd/-

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER True Copy**  
Ahmedabad: Dated 15 /01/2018

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Rajesh

Copy of the Order forwarded to:-