

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A. No.787/AHD/2011**

**निर्धारण वर्ष / Assessment Year : 2007-08**

Nakoda Textile Industries Ltd., 738, Ajanta Shopping Centre, Ring Road, Surat.	<b>Vs.</b>	DCIT, Central Circle-1, Surat.
<b>[PAN: AAACN 7282 L]</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारिती की ओर से /Assessee by:	Shri H.R.Vepari - CA
राजस्व की ओर से /Revenue by:	Shri O.P.Singh - CIT-DR & Smt.Anupama Singla - Ld.Sr.DR

सुनवाई की तारीख/ Date of hearing:	01.05.2019
उद्घोषणा की तारीख/Pronouncement on:	02.05.2019

**आदेश / O R D E R**

**PER H.S.SIDHU, JM:**

1. The Assessee has filed the present appeal against the impugned order dated 24.12.2010 passed by the Learned Commissioner of Income (Appeals)-II, Ahmedabad for the assessment year 2007-08 on the following grounds:-

“(I) Calculation of Income u/s.115JB of the Act:-

(1) On the facts and circumstances of the case and as per law, the learned Commissioner of income-tax (Appeals) erred in not granting lower of brought forward unabsorbed book depreciation of Rs.3,70,99,277/- and brought forward unabsorbed book loss of Rs.6,10,02,257/- in terms of Clause (iii) of Explanation to Section 115JB(2).

(2) The commissioner of Income-tax (Appeals) erred in misconstruing provisions of companies Act, 1956 and the factual aspects.

(II) Miscellaneous:-

The appellant craves leave to add, alter or vary any of the grounds of appeal.”

2. At the time hearing, the Learned Departmental Representative stated that the issue involved in the present appeal has already been adjudicated and decided by the ITAT, Ahmedabad 'D' Bench, Ahmedabad in assessee's own case for A.Y. 2006-07 in ITA No.574/Ahd/2009 for A.Y. 2006-07 on 21.10.2011. He requested that appeal filed by the assessee may be dismissed.

3. The Learned Counsel for the assessee has not raised any serious rejection in argument advanced by the Learned CIT-DR, but he stated that in the assessment year 2005-06 the ITAT, Ahmedabad 'C' Bench in the case of assessee in ITA no.2613/Ahd/2008 has set-aside the issue for fresh adjudication and according to law after allowing sufficient opportunity to the tax payer.

4. In compliance of the order dated 12.12.2008 passed by the ITAT, Ahmedabad 'C' Bench for assessment year 2005-06 in the case of assessee the Assessing Officer accepted the claim of the assessee. He has also filed a copy of the order dated 12.12.2008 and assessment order dated 06.05.2009 for assessment year 2005-06 in the case of assessee, but he requested that the issue in dispute may be set-aside to the Assessing Officer by issuing a similar direction as has been issued by the Tribunal vide order dated 12.12.2008.

5. We have heard the both the parties and perused the record available with us, especially the orders passed by the Revenue Authorities

along with the orders passed by the Tribunal as mentioned by both the parties. We are of the considered view that exactly similar issue involved in the present appeal has already re-adjudicated and decided by the Tribunal on 21.10.2011 in the assessee's own case in ITA No.574/Ahd/2009. Relevant portion of the same at para 8 and 9 is reproduced as under :

*"8. We have considered the rival submissions and perused the material on record and gone through the order of lower authorities. We find that there is no dispute on this aspect that as per audited profit and loss account there is profit even after claiming depreciation and hence, there is neither any unabsorbed business loss nor unabsorbed depreciation as per books of account and audited balance sheet and profit and loss account. Even in the chart of the assessee on page 33 of Paper book; the assessee has worked out net profit before depreciation of Rs.69,620,971/- as on 31.03.2005. As per this very chart, total of such expenses which are directly debited to balance sheet and also which are debited to profit and loss but below the line, the total of such expenses comes to Rs.11,08,94,591/- and total profit before depreciation is Rs.29,47,37,818/- for the period 31.03.1990 to 31.03.2006. Hence, even after reducing these expenses from the profit before depreciation of Rs.2947.37 lacs, there is no business loss and hence, the assessee is not entitled to get any deduction from book profit on account of business loss or unabsorbed depreciation whichever is lesser even if we accept the claim of the assessee. We find that there is no business loss even after reducing these expenses which are not debited by the assessee in the profit and loss account and hence, the claim of the assessee is liable to be rejected because it has no merit. Under these facts, we do not comment about allowability of this claim since it is of academic interest only. Hence, the grounds raised by the assessee are rejected. The appeal of the assessee is dismissed.*

*9. In the result, the appeal filed by the assessee is dismissed."*

**6.** After hearing both the parties, especially the order passed by the Revenue Authority as well as the order passed by the Tribunal as

mentioned above. Especially the order dated 21.10.2011 passed in ITA No.574/Ahd/2009 for assessment year 2006-07 in the assessee's own case reproduced above. We are of the considered view that the issue in dispute has already adjudicated by the Tribunal on 21.10.2011 in the assessee's own case(supra). Therefore, respectfully following the aforesaid order passed by the Tribunal on 21.10.2011 which is latest one the appeal filed by the assessee is dismissed.

7. In the result, appeal of the assessee is dismissed.

8. The order pronounced in the open court on 02.05.2019.

Sd/-  
(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER) (न्यायिकसदस्यतथा/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 2<sup>nd</sup> May , 2019/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat