

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI S. RIFAUR RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3073/MUM/2019
Assessment Year: 2014-15**

Osho Minerals India Pvt. Ltd., 11 th Floor, Peninsula Business Park B Wing, Lower Parel, Mumbai 400013 PAN: AABCR8691J	Vs.	The Principal Commissioner of Income Tax- 3, Room No. 612, 6 th Floor, Aaykar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri Govind Aggarwal (AR)

Revenue by : Shri Awungashi Ginson (CIT DR)

Date of Hearing: 18/09/2019
Date of Pronouncement: 31/10/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 25.03.2019 passed by the Ld. Principal Commissioner of Income Tax 3 (for short 'the PCIT), Mumbai, for the assessment year 2014-15, whereby the Ld. PCIT has revised the assessment order passed by the AO u/s 143 (3) of the Act by exercising jurisdiction u/s 263 of the Income Tax Act, 1961 (for short the 'Act').

2. In this case, the AO passed assessment order u/s 143(3) of the Act, determining the total loss of the assessee at Rs. 6,63,85,814/- as against the loss of Rs 9,27,07,655/- filed by the assessee in its return of income. Subsequently, the Ld. Pr.CIT revised the assessment order passed by the AO exercising the jurisdiction u/s 263 of the Act, on the ground that in the order u/s 143(3) of the Act the AO has made addition of Rs. 2,40,16,841/- after

holding the unsecured loans from four parties as unexplained cash credits u/s 68 of the Act, however, while computing tax the AO allowed set off losses against this income u/s 68 in violation of the provisions of section 115BBE. The assessee is in appeal against the action of the Ld. Pr. CIT.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

“1. *The learned PCIT has erred in law and on the facts of the case, in not allowing to set-off the loss against the addition of income U/s 68 of the Act without appreciating the fact that the provisions of Section 115BBE has been amended prospectively.*

2. *The learned PCIT has erred in law and on the facts of the case in intimating revisionary provisions U/s 263 of the Income Tax Act, 1961.”*

4. At the outset, the Ld. counsel for the assessee pointed out that provisions of section 115BBE are not applicable in the case of the assessee as the amendment inserting the words ‘set off of loss’ is applicable with effect from 1st. April 2017 applicable from the assessment year 2017-18 onwards. The Ld. counsel invited our attention to the Circular No 11/2019 dated 19th of June 2019 issued by the Government of India , Ministry of Finance ,Department of Revenue CBDT, North Block, New Nelhi (copy placed on record) which clarifies that the amendment in section 115BBE(2) is applicable with effect from the assessment year 2017-18 onwards. The Ld. counsel further submitted that in view of the aforesaid facts, the impugned order passed by the Ld. Pr. CIT is not sustainable in law and liable to be quashed. The Ld. counsel relied on the order of the Jaipur Tribunal in the case of *Navjeevan Trade & Commerce (P) Ltd vs. ITO ITA No 575/JP/2018* dated 03.08.2018 to substantiate its claim.

5. On the other hand, the Ld. departmental representative relied on the order passed by the Ld Pr. CIT.

6. We have carefully gone through the material on record including the Circular of the CBDT and the decision of the ITAT relied upon by the Ld.

counsel. As pointed out by the Ld. counsel for the assesseeThe CBDT has clarified the issue regarding applicability of the provisions under section 115BBE of the Act. Para 4 para of the Circular reads as under:

“4. Thus Keeping in the legisltive intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since, the term or set off of any loss’was specifically inserted only vide Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set off of losses against income determined under section 115BBE of the Act till the assessment year 2016-17.”

6. Sub section (2) of section 115BBE of the Income Tax Act, 1961 reads as under:-

“Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) and clause (b) of sub section (1).”

7. As is clear from the said circular that the term ‘ or set off of any loss’ has been inserted vide Finance Act, 2016 and the assessee is entitled to claim set off of losses against income determined under section 115BBE of the Act, till the assessment year 2016-17. Since the assessee’s appeal pertains to the assessment year 2014-15, it was entitled to claim set off losses against income determined under section 115BBE of the Act. Therefore, in our considered view, since the impugned order passed by the Ld. Pr.CIT is contrary to the expressed provisions of the Act the same is liable to be set aside.

8. Further, he Jaipur Bench of the ITAT has held in the case of *Navjeevan Trade & Commerce (P) Ltd vs. ITO*(supra) has held that since the amendment brought by the Finance Act, 2016 in section 115BBE(2) was effective from assessment year 2017-18, the assessee was eligible to claim set off of current year business loss including depreciation, against current year income under the head Income assessed from other sources, under section 71 of the Act. The assessee in this case had declared commission and brokerage income in its

profit and loss account and offered the same to tax under the head profit and gain of the business. The AO treated it as unexplained cash credit and brought to tax under section 68 read with section 115JBBE. Hence, the assessee's case is also covered by the decision of the Jaipur Bench of the Tribunal.

9. Since, the impugned order passed by the Ld. Pr. CIT u/s 263 is contrary to the provisions of the Act and contrary to the decision of the Jaipur Bench of Tribunal discussed above, we allow the sole ground of appeal of the assessee and quash the said order holding the same as not sustainable and bad in law.

In the result, appeal filed by the assessee for assessment year 2014-2015 is allowed.

Order pronounced in the open court on 31st.October, 2019.

Sd/-
(S. RIFAUR REHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/10/2019

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai