

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. N. K. Choudhary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2779/Del/2017 : Asstt. Year : 2013-14

M/s Shaktiman Cements Ltd., C/o Rajiv Goel & Associates, Chartered Accountant, 179, Bank Road, Ambala Cantt.	Vs	Assistant Commissioner of Income Tax, Central Circle, Karnal
(APPELLANT)		(RESPONDENT)
PAN No. AACCS1259A		

Assessee by : Sh. Rohit Goel, CA

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 06.02.2020

Date of Pronouncement: 07.02.2020
--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-3, Gurgaon dated 17.02.2017.

2. Following grounds have been raised by the assessee:

"1. The learned Commissioner of Income Tax (Appeals) has erred in law and facts in confirming the disallowance for set off unabsorbed depreciation and business loss of earlier year and current year against the income declared and assessed u/s 68 amounting Rs. 1,09,40,000/-.

2. That learned Commissioner of Income Tax (Appeals) has erred in law and facts in confirming the action of AO that income u/s 68 is assessable as deemed Income ignoring the provisions of section 115BBE introduced from AY 2013-14 and restriction on loss set off u/s 115BBE (2) introduced w.e.f. 1-4-2017 and not retrospectively from AY 2013-14."

3. The moot issue revolves around ground no. 2 wherein the Id. CIT (A) held that the provisions of Section 115BBE introduced w.e.f. 01.04.2017 is applicable to retrospectively for the assessment year 2013-14 regarding set-off of losses against undisclosed income.

4. We have laid our eyes on the Circular NO. 11/2019 dated 19.06.2019 issued by CBDT. The entire text of the circular is as under:

Circular No. 11/2019

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

North-Block, New Delhi, dated the 19th of June, 2019

Subject: Clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18-reg.

With effect from 01.04.2017, sub-section (2) of section 115BBE of the Income-tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/69/69A/69B/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 115BBE(1) of the Act.

2. In this regard, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that in assessments prior to assessment year 2017-18, while some of the Assessing Officers have allowed set off of losses against the additions made by them under Section(s) 68/69/69A/69B/69C/69D, in some cases, set off of losses against the additions made under Section 115BBE(1) of the Act have not been allowed. As the amendment inserting the words 'or set off of any loss' is applicable with effect from p t of April, 2017 and applies from assessment year 2017-18 onwards, conflicting views have been taken by the Assessing Officers in

assessments for years prior to assessment year 2017-18. The matter has been referred to the Board so that a consistent approach is adopted by the Assessing Officers while applying provision of section 115BBE in assessments for period prior to the assessment year 2017-18.

3. The Board has examined the matter. The Circular No. 3/2017 of the Board dated 20th January, 2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in section 115BBE(2) of the Act mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE. It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set-off against income referred to in section 115BBE of the Act and hence, the amendment was made vide the Finance Act, 2016.

4. Thus keeping the legislative 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 the Finance Act 2016, w.eJ. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.

5. The contents of this Circular may be circulated widely for information of all stakeholders and departmental officers. The pending assessments and litigations on this issue may be handled accordingly.

6. Hindi version to follow.

*(Rajarajeswari R.)
Under Secretary (ITA.II), CBDT*

(F.No.22S/4S/2019-ITA.II)

5. On going through the para no. 4, we find, the CBDT categorically held that the assessee is entitled to set-off of losses till the assessment year 2016-17. The case of the assessee before us pertains to assessment year 2013-14 and hence the set-off claimed by the assessee on the undisclosed income is legally valid. Hence, the addition made by the Assessing Officer is hereby directed to be deleted.

6. In the result, the appeal of the assessee is allowed.
Order pronounced in the Open Court on 07/02/2020.

Sd/-

(N. K. Choudhary)
JUDICIAL MEMBER

Dated: 07/02/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR