

आयकर अपील अाधिकरण, अहमदाबाद ढायापीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2177/AHD/2018

अाधरण वष/Asstt. Year: 2014-2015

Rajendra Ship Breakers Pvt. Ltd., D-79, Kalvibid, Nr. Ram Mantra Mandir, Bhavnagar-364002. PAN: AABCR0105P	Vs.	D.C.I.T., Circle-1, Bhavnagar.
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(Applicant)		(Respondent)
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Assessee by :	Shri B.R. Popat, A.R
Revenue by :	Shri Vidhyut Trivedi, Sr.D.R

सुनवाई का ताराख/Date of Hearing : 11/02/2020

घोषणा का ताराख /Date of Pronouncement: 04/03/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-6, Vadodara, dated 20/08/2018 (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.05/12/2016 relevant to the Assessment Year 2014-2015.

The assessee has raised the following grounds of appeal.

1. *Confirming the contention of the AO that the Appellant was not entitled to the adjustment of the lower of unabsorbed depreciation and business loss of earlier years, in view of the reasons as stated in the body of the assessment order. She consequently erred in confirming the calculation of book profit at Rs.63,75,513/-and consequential MAT at Rs. 11,79,470/--, as against both being at Rs. Nil as calculated by the Appellant.*
2. *Dismissing the second ground whereby the Appellant had challenged the action of the AO in not mentioning anything about the carry forward of the returned, undisputed (and assessed) business loss and unabsorbed depreciation to the succeeding year(s), i.e. to A.Y. 2015-16 and onwards. While doing this, she completely misunderstood the facts of the case and observed that since the AO has clearly mentioned at para 3.13 about the Appellant not being allowed to carry forward unabsorbed depreciation and business loss, there is no substance in this ground. The Appellant submits that what was so mentioned by the AO in this regard was clearly and expressly in connection with quantification of Book Profit and not in connection with allowing the carry forward of the assessed unabsorbed depreciation and business loss to the succeeding year(s).*

2. The 1st issue raised by the assessee is that the learned CIT (A) erred in not allowing the adjustment of lower of the unabsorbed depreciation or business losses while calculating book profit under MAT provision.

3. Briefly stated facts are that the assessee is a private company engaged in the business of ship breaking. The assessee in its financial statements prepared under the companies Act for the year under consideration has shown the amount of profit at Rs. 63,75,513/- only. The assessee further has reduced the same by lower of the amount of brought forward losses/unabsorbed depreciation amounting to Rs. 1,23,04,414/- while working out the tax liability under the provisions of MAT against the profit shown by the assessee in the year under consideration.

3.1 However, the AO found that there was no brought forward losses/unabsorbed depreciation shown by the assessee in its financial statement. As such the AO noticed that the amount of losses incurred by the assessee in the immediately preceding previous years 2012-13 and 2011-12 has already been set off against the accumulated profit shown in the previous year 2010-11. Accordingly, the AO disallowed the claim of the assessee and determined the MAT liability with reducing either of unabsorbed depreciation/ brought forward losses as the case may be.

4. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

After considering all facts and circumstances of the case, I am not inclined to agree with the contention of the appellant. It is seen that the AO has rightly held that MAT was payable on Rs. 63,75,513/- since during A.Y. 2013-14 and A.Y. 2012-13 the entire losses incurred by the assessee company had been set off against the available accumulated profits and that even after the above set off the appellant company was having accumulated profits for appropriation. Case laws relied on by the appellant do not apply as the facts are different.

In view of above discussion, it is held that the AO was justified in making addition of Rs. 11,79,470/-. Accordingly, addition of Rs. 11,79,470/- is upheld. This ground of appeal is rejected.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

5. The learned AR before us submitted as under:

1. The Appellant is a private limited company regularly assessed to tax vide PAN: AABCR0105P. The Appellant is engaged in the business of ship breaking. The return of income for the captioned year was e-filed disclosing a loss of (-) Rs.3,16,27,011/-. The same also contained the computation of book profit for the purpose of ascertaining the MAT liability under section 115JB of the Act. The same was based on a Certificate in the prescribed form issued by the Chartered Accountant. As per this calculation, the book profit stood at Rs.Nil, thus not warranting any tax payment under section 115JB of the Act.

2. In the consequential assessment order passed, the AO did not accept the correctness of the MAT calculation as stated above. He did this by observing that since the brought forward loss and unabsorbed depreciation of the immediately preceding two years were adjusted against the higher amount of credit balance of still earlier years which was originally lying under the group of reserves and surplus, nothing remained unabsorbed and the adjustment of the lower of the two in calculation of book profit in the succeeding year was thus not permissible. The AO accordingly recalculated the book profit at Rs.63,75,513/- (a sum of Rs.42,39,463/- as appearing in the profit and loss account, as increased by Rs,21,36,050/- debited to the same towards deferred tax liability) while passing the assessment order. The first appellate authority confirmed this action for the reason stated in the body of the order. Ground No.1 of the present appeal is in relation to this issue.

3. On the background of the case, the Appellant submits that it was originally carrying on its ship breaking activities from Plot No.114 of Alang Ship Breaking Yard allotted by Gujarat Maritime Board (GMB) of Government of Gujarat. GMB developed certain new ship breaking plots and e-auctioned the rights therein for the interested parties at the relevant point of time. The Appellant's e-bid for allotment of another plot bearing No.V-9 was accepted and it was thus allotted restricted rights thereon for a period of five years upon making the corresponding contractual payment aggregating to Rs. 15,93,00,000/-(excluding taxes). The Appellant thus carried out ship breaking activities from both these plots after such allotment.

4. The Appellant made the initial payment of Rs.7,96,50,000/- (excluding taxes) towards the above in F.Y. relevant to A.Y. 2012-13 and claimed the same as deduction in the books of account and in the consequential return of income furnished. The income of (-) Rs.7,38,46,168/- declared in the return e-filed for the said year was thus net inter alia of

this deduction. This deduction was claimed by relying on the ratio of the judgments of: (i) Hon'ble Rajkot Tribunal in the case of Kapoor Chand Bansal [ITA No.2115/Ahd/97]; and (ii) Hon'ble Mumbai Tribunal in the case of M/s. Nagar Sheth Ship Breakers [ITA No.6542/Mum/96]. The return of income for A.Y. 2013-14 was also e-filed in due course of time thereafter by declaring total income at a figure of (-) Rs. 1,55,06,846/- after claiming corresponding deduction of the remaining contractual payment of Rs.7,96,50,000/- (excluding taxes) which was paid during the course of that year.

5. In the subsequent development, while passing the assessment order for A.Y. 2012-13 under section 143(3) of the Act, the AO took an adverse view in connection with what is stated above, for the reasons stated in the body of the order. To be specific, he allowed only the proportionate amount of Rs. 1,59,30,000/- towards plot development fees, while expressly mentioning about the remaining portion to be in the nature of prepaid expenditure, thus liable to be allowed as deduction on pro rata basis in the subsequent years. The Appellant accepted the verdict of the AO for avoiding unnecessary and futile litigation. As a natural corollary applicable in the subsequent years, the Appellant voluntarily revised its returns of income for A.Ys. 2013-14 and 2014-15 and correspondingly claimed the proportionate deductions of the plot development fees.

6. In view of what is stated above and in so far as the year under appeal is concerned, the revised returned income turned out to be of (-)Rs.3,16,27,011/-, as against the corresponding positive profit of Rs.42,39,463/- as per the audited profit and loss account. No revision of the audited annual accounts was however possible which did not have corresponding debit in the profit and loss account towards plot development fees in view of this having been charged to revenue in full in earlier years, as stated above.

7. As a result of what is stated above, the book profit of the Appellant remained substantially lower in comparison to the corresponding assessed income in so far as A.Ys. 2012-13 and 2013-14 are concerned. This position got reversed in the later years, especially in A.Y. 2014-15, when the book profit was proportionately higher, in view of there being no debit of the above referred deduction of plot development fees, in comparison to the corresponding returned income computed under the normal provisions wherein the deduction of the proportionate plot development fees was claimed by revising the return of income which was as per and in accordance with the undisputed finding of the AO as contained in the assessment order passed for A.Y. 2012-13.

*8. In the backdrop of what is stated above, the Appellant places on record that since it had suffered taxation in connection with the profit it earned in the earlier years which had contributed towards accumulation of the corresponding amount under the group of reserves and surplus, the same clearly had nothing to do with the subsequent losses and unabsorbed depreciation suffered which were clearly required to be reckoned for consequential set off against the profit, if any, **that may** be earned in the years falling thereafter in terms of time.*

*9. In the context of what is stated above, the Appellant alternatively submits **fiat** had it synced its books of account with the corresponding claim of deduction actually allowed in respect of the plot development fees on year on year basis, it **would** clearly have opening book balance of 'prepaid expenditure' to the extent of Rs.11,15,10,000/- (aggregate sum of Rs.15,93,00,000/- paid to GMB, as reduced by the proportionate sums of Rs. 1,59,30,000/- and Rs.3,18,60,000/- allowed as deduction in A.Ys. 2012-13 and 2013-14 respectively) towards the development fees attributable to Plot No.V-9 and it would have charged a proportionate sum of Rs.3,18,60,000/- to revenue and thereby to its profit and loss account while finalizing the accounts for A.Y. 2014-15. In that situation, the book profit would have been of (-) Rs.2,76,20,537/-, thus clearly not warranting invocation of the provisions of section 115JB of the Act even on this count. In view of this, the entire issue is required to be considered in its totality and without resorting to a fragmented approach.*

10. Without prejudice, the Appellant alternatively places on record that the action of the Revenue is clearly not in order even from different yardstick. This can be narrated by taking a hypothetical situation of the Appellant having utilized the reserves and surplus of earlier years for issuance of say bonus shares. Had this been done, there would not have been corresponding credit lying under the group of reserves and surplus and the loss and unabsorbed depreciation suffered in later years would thus have been disclosed as such not only in the books of account but also in the audited annual accounts drawn therefrom. In such a hypothetical situation, the Revenue probably would not have any reason to draw any adverse as done by it in the present case.

11.1 Without prejudice, the Appellant further submits that Clause (iii) of Explanation 1 to section 115JB(2) of the Act mentions about the book profit to be reduced by the amount of loss brought forward or unabsorbed depreciation, whichever is less, **as per books of account** This Clause does not state that the same is required to be reduced by the lower of such loss and unabsorbed depreciation which may be appearing in the **balance sheet.** The Appellant submits that the term 'balance sheet' cannot be equated with the term 'books of account'. The same in fact is part of 'financial statement', as separately defined in the Companies Act 2013 and as further clarified at paragraph 11.2 below. In view of this, it is clear that the balance sheet is only the summarized presentation of the outstanding balances under various heads as on the reporting date and that too, after subjecting these to necessary grouping/ re-grouping/ netting off, etc. Further, this is required to be done by following the specific formats of the schedules as prescribed under the Companies Act. All these provisions as contained in the Companies Act are primarily aimed at making these documents user-friendly and standardized, so that all the stakeholders of the corporate entity - consisting of the shareholders, the bankers, the tax departments, etc. can read and interpret the same harmoniously. In view of this, the term 'balance sheet' per se cannot be equated with the term 'books of account', as used in Clause (iii) of Explanation 1 to section 115JB(2) of the Act.

11.2 In the context of what is stated above, reference may be had to the definitions of the terms 'books of account' and 'financial statement' as contained in sections section 2(13) and 2(40) of the Companies Act, 2013 respectively, which are reproduced herein below for the sake of convenience:

"(13) — **"books of account"** includes **records maintained** in respect of—
(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
(ii) all sales and purchases of goods and services by the company;
(iii) the assets and liabilities of the company; and
(iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;"

"(40) — **"financial statement"** in relation to a company, includes
(i) **a balance sheet** as at the end of the financial year;
(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
(iii) cash flow statement for the financial year;
(iv) a statement of changes in equity, if applicable; and
(v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): "

11.3 On perusal of what is stated above, it can be appreciated that while the term 'books of account' has been defined to include the specified records maintained, the term 'financial statement' is separately defined to inter alia include a balance sheet as at the end of the

financial year. The provisions of section 115JB of the Act are thus required to be interpreted by considering this aspect as well.

11.4 On legal side, reliance in this regard is placed on the ratio of the judgment delivered by Hon'ble Madras High Court in the case of CIT vs. Taj Borewells, as reported at (2007) 291 ITR 232, wherein the aforementioned view has been taken. Relevant portion of this judgment is reproduced herein below for the sake of convenience:

"12. So, books of account is defined as any book which forms an integral part of a system of book keeping employed in any particular business and consequently includes both the ledger and the books of original entry. The profit and loss account of a trade is the statement -wherein the various items of profit and revenue on the one hand and the losses and expenditure on the other hand, are collected and offset, the one class against the other, that is, in compiling such an account being debit all the losses, credit all the gains. The resulting balance of this account represents the net profits or the net losses for the **period** under review. The object of a profit and loss account is to ascertain the income of a business and by offsetting the expenses of earning that income, to ascertain net increase (profit) or decrease (loss) in the traders' "net worth" for the period. The balance-sheet lists the assets and liabilities and equity accounts of the company. It is prepared "as on" a particular day and the accounts reflect the balances that existed at the close of business on that day. By following the judgment of the Madras High Court cited supra and taking note of the definition of the books or books of account in the Income-tax Act as well as in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition 2005, and also the meaning of the profit and loss account and balance-sheet, we can safely conclude that the profit and loss account and the balance-sheet are not books of account as contemplated under the provisions of the Act. Learned standing counsel for the Revenue has not placed any authority or any case law or any other material or evidence to show that the books of account include the profit and loss account and balance-sheet."

12. In the context of what is stated above, it is further submitted that had it ' been the intention of the legislature that MAT is payable without even setting of the lower of brought forward loss and unabsorbed depreciation of the earlier period; just because there is larger credit balance under the group of reserves and surplus, which may have been brought forward from still earlier years (and which may presumably have already suffered tax at the relevant points of time in the past); this will amount to carry backward of the losses and unabsorbed depreciation of the respective years to the still earlier years, which is clearly contrary to the scheme of taxation where only carry forward of such items is permissible.

13. The arguments as canvassed by the AR in the above referred part-heard **appeal** get support from the ratio of the following judgments:

- CIT(3), New Delhi vs. Sumi Motherson Innovative Engg. Ltd. - (2011) 336 ITR 321 - Delhi HC;
- Prithvi Soft Limited vs. CIT(3), Chennai - ITA No.797/Mds/2010 - Chennai ITAT;
- PCIT vs. Surat Textile Mills Ltd. - (2017) 79 taxmann.com 209 - GujaratHC;
- Surat Textile Mills Ltd. vs. DCIT - (2016) 70 taxmann.com 158 -Ahmedabad ITAT;
- Surat Textile Mills Ltd. vs. ITO - 1469/Ahd/2015 - Ahmedabad ITAT;
- Surana Steels (P.) Ltd. vs. DCIT - (1999) 237 ITR 777 - SC.

14.1 The reliance of the AO on the ratio of two judgments delivered by Hon'ble Madras High Court and ITAT Mumbai respectively is clearly ill-founded as clarified hereunder:

14.2 In so far as the reliance of the AO on the judgment of Hon'ble Madras High Court in the case of CIT vs. Madras Fertilizers Ltd., as reported at (2013) 33 taxmann.com 623, is concerned, the same clearly does not have any binding force for two reasons: (i) this judgment involves the issue of interpretation of the provisions of section 115J, whereas the issue under consideration is in connection with the interpretation of section 115JB of the Act; and (ii) this judgment also does not have any binding force because of a contrary view having already been expressed none other than by Hon'ble Territorial Gujarat High Court at a later point of time in the case of Surat Textile Mills Ltd. (supra) and that too, directly in connection with the provisions of section 115JB of the Act.

14.3 Similarly, even the judgment of Hon'ble ITAT Mumbai in the case of KFA Corporation Ltd. vs. JCIT delivered in ITA No.5147/Mum-2002, which has been relied upon by the AO, clearly does not have any binding force either, in view of the same having been delivered by a judicial authority sub-ordinate to the High Court and that too, a non-territorial one, and also in view of the same involving the issue of interpretation of the provisions of section 115JA and not section 115JB of the Act.

15. In so far as Ground No.2 of the present appeal is concerned, it is submitted that despite there being undisputed and documented amounts of unabsorbed business loss and unabsorbed depreciation under the provisions of the Income-tax law which are thus required to be carried forward under the express provisions of the Act, the AO inadvertently remained silent about allowing the same to be carried forward to the succeeding year(s). When this issue was taken in appeal which only required the AO to be directed to verify the correctness of the respective figures before allowing carry forward of the same, the CIT(A) completely misunderstood the ground and dismissed the same by observing about the contention of the AO at paragraph 3.13 of the assessment order being correct. While doing so, the CIT(A) failed to appreciate that this ground was in fact in relation to the carrying forward of the undisputed and documented unabsorbed business loss and unabsorbed depreciation under the normal provisions of the Act, which had got absolutely nothing to do with the findings of the AO and consequentially of CIT(A) while dealing with calculation of MAT profit in which the deducibility or otherwise of the lower of the brought forward business loss and unabsorbed depreciation therefrom was under disputed and which is subject matter of the preceding ground of appeal in the present case.

6. On the other hand the learned DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record before us. The assessee in the year under consideration has shown net profit in its financial statement prepared under the Companies Act amounting to Rs. 63,75,513/-. The assessee while computing the book profit under section 115JB of the Act, has reduced the same by the amount of unabsorbed depreciation/brought forward losses in pursuance to the clause (iii) to section 115 JB of the Act. However, the AO was of the view that there was no

unabsorbed depreciation/brought forward losses in the financial statement. Therefore the amount of profit for the current year cannot be reduced either of the two as the case may be. Accordingly, the AO determined the book profit at Rs. 63,75,513/- and computed MAT liability for Rs. 11,79,470/- under the provisions of section 115JB of the Act. The view taken by the AO was subsequently confirmed by the learned CIT (A).

7.1 The provisions specified under clause (iii) of explanation 1 to section 115 JB of the Act, has a direct bearing on the issue on hand which reads as under:

115JB. (1)*****
(2) *****

Explanation ⁹⁸[1].—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—]]

[(i) *****

(ii) *****

(iia) *****

(iib) *****

(iii) *the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.*

Explanation.—For the purposes of this clause,—

(a) *the loss shall not include depreciation;*

(b) *the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or]*

7.2 From the above provision, it is revealed that the assessee can claim the deduction either of brought forward losses or unabsorbed depreciation whichever is less as per the books of accounts. Admittedly, on making reference to the financial statement, we find that there is no brought forward loss or unabsorbed depreciation despite the fact that there was the loss in the immediate preceding two years amounting to Rs. 5,04,27,204/- (PY 12-13) and Rs. 3,74,46,497/- (PY 11-12) respectively. As such the said losses were set off against the accumulated profit

shown by the assessee in the previous year 2010-11. These facts are tabulated as under:

Particular	Amount (In Rs.)
Accumulated Profit at end of 31.03.2011	94,458,141.47
Loss incurred for the year ended 31.02.2012	50,427,203.79
Accumulated Profit at end of 31.03.2012	44,030,937.68
Loss incurred for the year ended 31.02.2013	37,446,497.49
Balance accumulated profit at the end of 31.03.2014	6,584,440.19

7.3 Now the first controversy rigmaroles, whether the financial statements prepared by the assessee are amount the books of accounts. To our mind, the financial statements i.e. balance sheet and profit and loss account are compilation of the various figures of the income and expenditure account, fixed assets, investments, sundry debtors, inventories, share capital, loans and liabilities, current liabilities etc which are prepared at the end of the accounting period for providing the information to various interested parties/stakeholders. As such, these financial statements cannot be referred as the books of accounts as alleged by the AO. In holding so, we draw support and guidance from the judgment of Hon'ble Madras High Court in the case of CIT vs. Taj Borewells reported in 291 ITR 232 where it was held as under:

"12. So, books of account is defined as any book which forms an integral part of a system of book keeping employed in any particular business and consequently includes both the ledger and the books of original entry. The profit and loss account of a trade is the statement wherein the various items of profit and revenue on the one hand and the losses and expenditure on the other hand, are collected and offset, the one class against the other, that is, in compiling such an account being—debit all the losses, credit all the gains. The resulting balance of this account represents the net profits or the net losses for the period under review. The object of a profit and loss account is to ascertain the income of a business and by offsetting the expenses of earning that income, to ascertain the net increase (profit) or decrease (loss) in the traders' "net worth" for the period. The balance-sheet lists the assets and liabilities and equity accounts of the company. It is prepared "as on" a particular day and the accounts reflect the balances that existed at the close of business on that day. By following the judgment of the Madras High Court cited supra and taking note of the definition of the books or books of account in the Income-tax Act as well as in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition 2005, and also the meaning of the profit and loss account and balance-sheet, we can safely conclude that the profit and loss account and the balance-sheet are not books of account as contemplated under the provisions of the Act. Learned standing counsel for the Revenue has not placed any authority or any case law or any other material or

evidence to show that the books of account include the profit and loss account and balance-sheet."

7.4 If we see the financial statements of the assessee for individual year separately, then we shall find that there was the loss incurred by the assessee in the previous year 2012-13 and 2011-12 which has been set off against the accumulated profit of the earlier years. Admittedly, the amount of accumulated profit shown by the assessee in the previous year 2010-11 has already suffered the tax under the normal computation of income. Thus, if we levy the tax under the provisions of MAT, the amount of profit which has already suffered tax will undergo the tax again in the given facts and circumstances. As such, the purpose of the MAT is to charge tax from those companies which are declaring huge profit under the Companies Act but declaring zero/negligible/smaller income under the Income Tax Act. But, the facts of the case on hand are different. It is because the assessee has already suffered the tax on the accumulated profit and therefore same profit should not be made subject to tax again under the provisions of MAT. In holding so we draw support and guidance from the judgment of Hon'ble Delhi High Court in the case of CIT vs. Sumi Motherson Innovative Engg. Ltd. reported in 336 ITR 321 where it was held as under:

"The Explanation to section 115JB(iii) categorically and unhesitatingly uses the term 'loss brought forward'. The meaning that is to be assigned to this term would be naturally the loss on the last date of the immediately preceding year, which is to be brought forward to the financial year in question. Clause (iii) provides for the amount of loss brought forward. What happens during the course of the year is not relevant, as under the scheme of the aforesaid provision no such contingency is taken note of. In the instant case, during the year loss was wiped out and, therefore, the controversy had arisen. What would happen if the figure of loss had increased during the year? In that eventuality, the department was not going to take into consideration the increased loss during the year, but the loss figure which was in the previous year and was brought forward. It is for this reason also, that in a case like this rule of literal interpretation of the provision, which is a well recognized rule of interpretation, needs to be adopted. [Para 15]

It is a common saying that the intention of the Legislature is to be judged from the language used in the legislation. If the language is plain and unambiguous, effect is to be given without going behind the wisdom of the Legislature and also regardless of the result. Therefore, the decision of the Tribunal was correct in law. [Para 17]"

7.5 We are also of the view that the amount of losses incurred by the assessee for the previous year's 2012-13 and 2011-12 should be set off against the future

income in the manner as specified under section 115 JB of the Act. Thus we hold that the assessee has rightly reduced the amount of income for the year under consideration from the brought forward losses/unabsorbed depreciation pertaining to the previous year's 2012-13 and 2011-12. Accordingly, we are not convinced with the finding of the authorities below. Accordingly we set aside the order of the learned CIT (A) and direct the AO not to levy the tax under the provisions of MAT. Hence the ground of appeal of the assessee is allowed.

8. The 2nd Issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by holding that the amount of business loss and unabsorbed depreciation pertaining to the previous year's 2012-13 and 2011-12 will not be allowed to be carried forward for set off while determining the profit under the provisions of MAT.

9. At the outset we note that we have already directed to the AO to allow the set off of the brought forward losses/unabsorbed depreciation pertaining to the years 2012-13 and 2011-12 against the income of the current year vide paragraph number 7 of this order. For the detailed discussion, please refer the relevant paragraph. Accordingly, we direct the AO to allow the claim of the assessee against the income of the future years until and unless it is exhausted as per the provisions of law.

10. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 04/03/2020 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 04/03/2020
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(True Copy)