

आयकर अपीलीय अधिकरण "ई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.1977/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2011-12)

Income Tax Officer-3(3)(3) Room No.672, Aaykar Bhavan M.K. Road, New Marine Lines Mumbai-400 020	बनाम/ Vs.	M/s. Travel Mart India Pvt. Ltd. 7, Ground Floor Tulsiani Chambers Nariman Point, Mumbai-400 021.
PAN/GIR No. AABCT-6760-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	None

सुनवाई की तारीख/ Date of Hearing	:	23/11/2020
घोषणा की तारीख / Date of Pronouncement	:	23/11/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. None appeared for either side during hearing of the appeal. However, the material on record was quite sufficient for disposal of the appeal and therefore, the appeal is being disposed-off by way of this order.
2. An assessment was framed against the assessee for Assessment Year (AY) 2011-12 u/s 143(3) on 30/03/2014, *inter-alia*, after determining book profit u/s 115JB at Rs.40,195/-. However, the order was rectified

u/s 154 on 26/11/2015 since there was an underassessment of book profits u/s 115JB. In the rectification order, the Book Profits were re-determined at Rs.13.72 Lacs. Upon further appeal, Ld. first appellate authority, vide *para* 3.1.6, directed Ld. AO to verify and allow set off of brought forward losses and depreciation while computing book profits u/s 115JB. Aggrieved, the revenue preferred further appeal before this Tribunal by way of present appeal on the ground that the assessee had not claimed such losses & depreciation either in the return of income or during assessment / rectification proceedings.

3. The material on record would show that pursuant to the directions of Ld. first appellate authority, an order has been passed u/s 250 on 14/06/2018 wherein the set-off of unabsorbed depreciation has been allowed by Ld. AO himself and Book Profits has been reduced to Nil. Therefore, it is quite evident that the assessee's claim was an allowable claim and the deduction of the same has duly been allowed by Ld. AO after due verification. It is settled position that there is no bar for appellate authorities to admit the new claim raised by the assessee during appellate proceedings despite the fact that the same was not made either in the return of income or during assessment proceedings. Therefore, finding no substance in the revenue's appeal, we dismiss the same.

4. Resultantly, the appeal stands dismissed.

Order pronounced on 23rd November, 2020.

Sd/-
(Saktijit Dey)

Sd/-
(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 23/11/2020

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.