

आयकर अपीलिय अधिकरण , 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No: 1708/Chny/2019

निर्धारण वर्ष/Assessment Year : 2014-15

The Assistant Commissioner of Income
Tax,
Circle -1, No. 15, Gandhiji Road,
Erode – 638 001.

M/s. SKM EGG Products Export (I)
Ltd.,
No. 185, Chennimalai Road,
Erode – 638 001.

(अपीलार्थी/Appellant)

[PAN:AACCS 7106G]

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. G. Johnson, Addl. CIT

प्रत्यर्थीकीओरसे/Respondent by

: Shri. G. Baskar, Advocate

सुनवाईकीतारीख/Date of Hearing

: 18.03.2021

घोषणाकीतारीख/Date of Pronouncement

: 15.06.2021

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-3, Coimbatore in ITA No. 201/17-18 dated 11.03.2019 for the assessment year 2014-15.

2. M/s. SKM EGG Products Export (I) Ltd., the assessee, is the manufacturer and exporter of egg products and running Poultry Farm. It filed its e-return of income for the assessment year 2014-15 on 27.10.2014 after claiming set-off of brought forward losses and unabsorbed depreciation under the normal provisions of income tax computation as well as under MAT provisions. While doing the assessment, the AO completely rejected the assessee's MAT workings on the ground that the assessee's book profit during the year was at Rs.9,93,85,557/- and that as per books of account there is no brought forward business loss / unabsorbed depreciation and the losses as per books of AYs 2011-12 & 2012-13 got absorbed against the surplus brought forward from the earlier years and thus, in effect there remains no brought forward business loss / unabsorbed depreciation for setting off against the current assessment year's book profit and hence the AO determined the income under sec.115JB at Rs.9,93,85,557/- and completed the assessment. Aggrieved, the assessee filed an appeal before the CIT(A) and the Id CIT(A) deleted the addition, inter alia, for the following reasons.

i. The stand taken by the AO that unless there is a debit balance in the P&L account, the assessee cannot be allowed the benefit of Clause (III) Explanation to Sec.115(JB)(2) is incorrect.

ii. The loss or unabsorbed depreciation of one year can be set off against the profit of subsequent year only and till such set off, the amounts are carried forward or brought forward in the subsequent year from earlier year and are available for set off as per provisions.

iii. It is incorrect to propose to set off losses of the year against profits of preceding years. In this regard, the learned CIT (A) drew support from the following decisions.

a. Prithvi Softech Ltd. vs. CIT-III, Chennai — TA No.797/Mds/2010

b. CIT vs Sumi Motherson Innovative Engineering Ltd.

(ITA No.863 of 2009, Delhi HC — 195 Taxman 353).

3. Aggrieved against the order of the Id CIT (A), the Revenue filed this appeal with following grounds of appeal.

1) The order of the learned CIT(A) is not acceptable on the facts and circumstances of the case.

2) The learned CIT(A) has erred in allowing brought forward depreciation losses to be set off against the Book profit of Rs. 9,93,85,557/- while working out income u/s 115JB (of the Act thereby reducing the income u/s 115JB to Nil.

3) The learned CIT(A) has erred in not considering the workings tabulated from A.Y 1999-2000 onwards upto A.Y 2013-14 in the assessment order which show that there is no brought forward loss or unabsorbed depreciation available as per books of accounts, and hence the assessee is liable to pay tax under MAT workings

4) The learned CIT(A) has erred in not considering that In Section 115JB, since nowhere it is mentioned that the loss of a year is to be set off against the book profit of subsequent year only and hence If there is surplus under the head P&L Account at the beginning of the year loss if any of that year will get absorbed against the brought forward surplus and the resultant figure gets carried forward in the books of account.

5) For these and other grounds that may be adduced at the time of hearing, the order of the CIT (A) may be cancelled and that of the A.O. restored.

5. The case was heard through video conferencing. The Id. DR submitted that at the time of passing the assessment order itself, the AO considered the case laws relied on by the Id CIT (A) and correctly held that they were not applicable to the facts of this case. It was noticed that in those cases the Book Loss was not appearing in the Balance Sheet for the reasons that it got set-off either by reduction in the Share Capital or adjustment against Certain Reserves. In those cases, there were brought forward loss/depreciation which were not apparently noticed in the Balance Sheet. However, in the assessee's case, the facts are different as there is no actual brought forward loss / depreciation as per books of account. In this regard, the Id DR invited our attention to the assessment order, wherein the A O has by a tabular form has drawn the assessee's book profit from the AY 1999-00 to AY 2013-14, which is extracted as under for convenience sake :

AY	Depreciation Loss	Business Loss	Total Profit (+) Loss(-)	Progressive figure
Upto 1999-00	(-) 2,55,69,944	(-)6,17,63,988	(-) 8,73,33,932	(-) 8,73,33,932
2000-01	(-)1,67,85,395	(-)3,40,53,982	(-) 5,04,97,585	(-)13,78,31,517
2001-02	0	0	(+) 44,96,889	(-)13,33,34,628
2002-03	0	0	(+) 3,83,36,352	(-) 9,49,98,276
2003-04	0	0	(+) 5,07,20,693	(-) 4,42,77,583
2004-05	0	0	(+) 3,87,53,375	(-) 55,24,208
2005-06	0	0	(+) 5,07,20,693	(+) 4,51,96,485
2006-07	0	0	(+) 9,28,04,663	(+)13,80,01,148
2007-08	0	0	(+)10,97,61,692	(+)24,77,62,840
2008-09	0	0	(+) 9,23,96,125	(+)34,01,58,965
2009-10	0	0	(+)11,94,99,132	(+)45,96,58,097

2010-11	0	0	(+) 29,57,006	(+)46,26,15,103
2011-12	(-)8,60,69,968	(-)4,60,27,218	(-)13,20,97,186	(+)33,05,17,917
2012-13	(-)9,00,73,490	(-)8,13,99,712	(-)17,14,73,205	(+)15,90,44,712
2013-14	0	0	(+) 1,36,54,239	(+)17,26,98,951

5.1 The Id DR submitted that as per provisions of section 115 JB (2) Explanation 1 Clause (iii) , the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account is allowable as a deduction from the book profit. As per the workings tabulated supra, the assessee had incurred losses in the first two years ie in the AYs 1999-00 & 2000-01 , which were completely set off, ie both the losses viz unabsorbed business and unabsorbed depreciation losses, from the book profits of subsequent AYs 2001-02 to AY 2005-06. Thereafter, the assessee company has been making continuous book profits till the AY 2010-11 and as on that year end , it had a book profits of Rs. 46,26,15,103/-. The assessee had incurred business loss / depreciation losses as per books in the AYs 2011-12 & 2012-13 which got absorbed against from the surplus brought forward from the earlier years and in the end of the AY 2012-13, the assessee had book profit of Rs 15,90,44,712/-. As per the Balance sheet, the profit and Loss account balance as on 01.04.2013 is Rs. 11,83,12,100/-. Thus, in effect there remains no brought forward business loss / unabsorbed depreciation available as per books for setting off in this assessment year, and hence the assessee is liable to pay tax under MAT workings on the book profits earned in this assessment year. Further, the Id DR submitted that in section 115JB, nowhere it is mentioned that loss of a year is to be set-off against the book profit of the subsequent year or years only. If there

is a surplus under the head P& L account at the beginning of a year in the books, the loss, if any, of that year will get absorbed against the brought forward surplus in the books and the resultant figure gets carried forward in the books of Account. Therefore, the Id DR submitted that the order of the CIT(A) may be cancelled and that of the A.O. be restored.

6. Per contra, the Ld A R submitted that the book profit for the purpose of MAT is different from the Profit shown in the Profit and Loss account prepared as per the Companies Act. The book profit is arrived at after making so many adjustments as provided in the Statute (Income Tax Act), whereas the profit as per Profit and Loss account will be without any such adjustments and hence both cannot be the same. The losses incurred, if any, it is meant to be only carried forward for setting off against the profits of subsequent years and not for setting off the said losses against the accumulated past reserves. In other words, the Act envisages only carry forward of losses and not carry backward of losses. Section 115JB of the IT Act uses the words statement of profit and loss only and nowhere the term balance sheet is being used and also the terms books of accounts, profit and loss account and balance sheet are not one and the same and does not convey the same meaning as held by various judicial authorities. The Act nowhere imposes a condition that in order to carry forward the losses the reserves should be in the negative side as held by various judicial authorities and hence the argument of the Assessing Officer that the reserves of the company has a credit balance is not legal. The Ld DR supported the view of the

ld CIT(A) that the loss or unabsorbed depreciation of one year can be set off against the profit of subsequent year only and till such set off, the amounts are carried forward to subsequent year, or in other words are brought forward in the subsequent year from earlier year and or available for set off of as per provisions of Clause (III) of Sec.115JB(2) of the Act. Further, he relied on the decisions in the case of Go Airlines (India) Ltd vs DCIT , ITAT Mumbai in ITA No 3788/Mum/2018 dt 13.01.2021 for Ay 2014-15 (2021) 198 DTR (Mumbai) (Trib) 113 and DCIT vs Binani Industries Ltd (2017) 82 taxmann.com 320 (Kolkatta-Trib).

7. We heard the rival submissions and gone through relevant material. The facts are that as per books, the profit and Loss account balance as on 01.04.2013 in the balance sheet was at Rs. 11,83,12,100/-, the assessee's book profit during the year was at Rs.9,93,85,557/- and the book profit from AYs 1999-00 to AY 2013-14 as extracted in the tabular form in para 5, supra , are not disputed. Now, we are concerned with the computation of book profits u/s.115JB of the Act, wherein one of the items eligible for reduction would be the lower of brought forward cash loss or brought forward depreciation loss as per books of accounts. We find that what is contemplated in Clause (iii) of Explanation 1 to Section 115JB of the Act is the simple numerical figure being the amount of loss brought forward or unabsorbed depreciation whichever is less is to be deducted from the book profit . Hence, it is a simple determination of numerical amount which would be eligible for reduction from net profit for the

purposes of arriving at the book profit u/s.115JB of the Act. The most crucial expression used in the said Clause (iii) of Explanation 1 to Section 115JB of the Act would be "as per books of accounts". It simply means that such computation has to be made "as per books of accounts" from the year of incorporation to the current assessment year. Hence, in this case from AYs 1999-00 to AY 2013-14, the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of accounts, which was not completely wiped out by the profits earned till the previous assessment year, would continue to remain in the balance sheet of the assessee i.e. "in the books of accounts" and such amount would be eligible for reduction, while computing book profits u/s.115JB of the Act, in accordance with Clause (iii) of Explanation 1 to Section 115JB of the Act, for this assessment year. In this case, the assessee had incurred business loss / depreciation losses as per books in the AYs 1999-00 & 2000-01 & AYs 2011-12 & 2012-13 alone, which were completely set off (ie both the losses viz unabsorbed business and unabsorbed depreciation losses were set off), from the book profits of the remaining assessment years till the previous assessment year 2013-14 and the book profit as per the profit and Loss account balance as on 01.04.2013 per the balance sheet in the books of account was at Rs. 11,83,12,100/-. Thus, on the above facts, in effect there remains no brought forward business loss / unabsorbed depreciation loss available as per books for setting off against the book profit of this assessment year. This decision is also in accordance with the case law relied on by the assessee viz Go Airlines (India) Ltd vs DCIT, ITAT Mumbai in ITA No

3788/Mum/2018 dt 13.01.2021 for Ay 2014-15 (2021) 198 DTR (Mumbai) (Trib)
113. Therefore, We find merit in the Revenue's submissions and hence allow
the Revenue's appeal.

8. In the result, the Revenue's appeal is allowed.

Order pronounced on 15th June, 2021 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/Judicial Member

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 15th June, 2021

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त) अपील(/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |