

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 95/Bang/2022
Assessment Year : 2014-15

The Assistant Commissioner of Income Tax, Central Circle – 2(1), Bangalore.	Vs.	M/s. Ozone Properties Pvt. Ltd., No. 38, Ozone Group, Ulsoor Road, Ulsoor, Bangalore – 560 042. PAN: AAACO6672M
APPELLANT		RESPONDENT

**&
C.O.No. 01/Bang/2022
(in ITA No. 95/Bang/2022)
(By Assessee)**

Assessee by	:	Shri Kodandapani, CA
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	01-09-2022
Date of Pronouncement	:	09-09-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee and revenue against order dated 30.11.2021 passed by Ld.CIT(A)-11, Bangalore for A.Y. 2014-15 on following grounds of appeal:

Revenue's appeal:

“1. The order of the CIT(A) is opposed to law and facts of the case.

2. The Ld.CIT(A) has failed to appreciate the fact that in this case the assessment u/s 143(3) was completed and the information of wrong computation of income for the purpose of Section 115JB was available. Any mistake in adoption of the amount is a mistake apparent from record. Therefore, the AO has correctly passed the order u/s 154 of the Income-tax Act by making the addition to the book profit.

3. The Ld.CIT(A) has failed to consider the fact that as per Companies Act the profit arrived has to be appropriated, the amount remaining after appropriation will be adjusted in reserves and surplus. In this case as on 31.3.2013 the reserves is a negative amount of Rs.18,93,60,991 after adjustment of profit for F.Y. 2012-13 but as per the Form 29B the assessee has considered a total sum of Rs.25,26,82,473 and business loss and depreciation loss.

4. The Ld.CIT(A) has failed to appreciate that by considering inappropriate loss the assessee is trying to make it a case that the provisions of section 154 will not be applicable as the issue is not a mistake apparant from record.

5. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.”

2. Brief facts of the case are as under:

2.1 An order u/s. 153A r.w.s. 143(3) of the Act was passed by the Ld.AO determining the Book Profits of the assessee at Rs.3,49,84,448/-. Subsequently, the Ld.AO noticed that the assessee had arrived at a book profit after reducing the brought forward book loss of Rs. 5,43,01,187/-, which had already been reduced in the regular assessment for A.Y. 2013-14.

2.2 The Ld.AO issued a notice u/s. 154 of the Act to the assessee and after considering its reply passed an order u/s. 154 of the Act

and enhanced the book profits by disallowing the brought forward losses.

2.3 Aggrieved by the order of Ld.AO, assessee filed appeal before the Ld.CIT(A).

2.4 Before the Ld.CIT(A), assessee submitted that for the purposes of computing book profit, the brought forward book losses or unabsorbed depreciation, whichever is less, is required to be considered and the brought forward losses or unabsorbed depreciation as per Income Tax Act does not have any relevance. It was also submitted that, the adjustment of brought forward loss against book profit is a debatable issue and therefore can't be considered u/s. 154 of the Act. It was submitted by the assessee that brought forward book losses or unabsorbed depreciation whichever is less is to be allowed while computing book profits, till the last of them is wiped off. Assessee placed reliance on the decision of *Hon'ble Mumbai Tribunal* in case of *Amline Textiles P Ltd. vs. ITO* reported in [2009] 27 SOT 152 (ITAT Mumbai).

3. The Ld.CIT(A) thereafter held as under:

"4.3 The submissions of the appellant have duly been considered. In rectification the most important aspect which needs to be looked into is whether the amendment proposed to be made would fall within the scope of Section 154 or not. Scope of rectification is limited to correcting error of fact or error of law on the basis of material available on records. In the appeal under consideration, this is not apparent from the assessment order of the AO as to whether he intended to enhance the book profits of the appellant or not by disallowing the brought forward losses. So on the basis of material available on records it cannot be said that there was a mistake apparent from record. Further, if on an issue two different opinions are possible, the same cannot be subject of rectification. In the case of GO Airlines (India) Ltd. v. Deputy Commissioner of Income Tax, Mumbai [2021] 127 taxmann.com 803

(Mumbai - Trib.) the ITAT held as follows on the issue of adjustment of brought forward losses while computing book profits:

“3.2. We find that we are now 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 provisions of Sections 32(2) and 72 of the Act explicitly provide that the amount would be carried forward for set off in the succeeding years and it should be arrived at after deducting the amounts to which effect has already been given. We find that such provisions are apparently not present in computing the book profits u/s.115JB of the Act. 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. Hence, it could be safely concluded that 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. We also find that 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". Hence, unless the entire loss as per books of accounts gets wiped out by profits earned in subsequent years, the said loss would continue to remain in the balance sheet of the assessee i.e. "books of accounts" and would be eligible for reduction in accordance with Clause (iii) of Explanation 1 to Section 115JB of the Act, while computing book profits u/s.115JB of the Act. We find that this issue is no longer res-integra in view of the decision of the Co-ordinate Bench of Kolkata Tribunal in the case of DCIT vs. Binani Industries Ltd., reported in 178 TTJ 658, wherein the undersigned was the author, wherein it was held as under:-

3. The second issue to be decided in this appeal is as to whether the assessee is entitled for reduction of Rs. 2,18,09,000/- being the lower of unabsorbed depreciation or business loss as per books of accounts from the computation of book profits u/s 115JB of the Act in the facts of the case.

3.1. The Learned AO held that there was no loss available for reduction from the book profits u/s 115JB of the Act and hence the sum of Rs. 2,18,0,9000/- reduced by the assessee was not considered for

reduction by the Learned AO. On first appeal, the said reduction was granted by the Learned CITA by relying on certain case laws. Aggrieved, the revenue is in appeal before us on the following ground:-

(ii) That the Ld. CIT(A) has erred in Law as well as in facts and circumstances of the case in directing to reduce the Book Profit u/s 115JB by an amount of Rs.2,18,09,000/- when the admissible amount, i.e., lower of 'unabsorbed depreciation' or 'business loss' was actually 'NIL'.

3.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR argued that the finding given by the Learned AO that the loss as per books of accounts once reduced from book profits in earlier years would not be available for reduction in the subsequent years. He stated that the losses would continue to remain in the books of accounts till it is wiped out by profits derived by the assessee. Accordingly, he argued that the assessee company is very much entitled for reduction of least of the cash loss or depreciation loss as per books of accounts from book profits for computation u/s 115JB of the Act.

3.3. We have heard the rival submissions and perused the materials available on record. We are in agreement with the arguments of the Learned AR that the losses (both cash loss and depreciation loss) would continue to remain in the books of ITA No.144/Kol/2013-A-AM M/s. Binani Industries Ltd 13 accounts till it is wiped off by earning profits by the assessee company and accordingly the same would be available for reduction from book profits u/s 115JB of the Act. We hold that the least of the cash loss or depreciation loss once adjusted/reduced from book profits in earlier assessment years, do not vanish out of the books until it is wiped out by profits in subsequent years. Till such time, the losses would only continue to remain in the books. We hold that for the purpose of computation of book profits u/s 115JB of the Act, every year the situation of least of cash loss and depreciation loss needs to be worked out and reviewed and accordingly the understanding of the Learned AO that such loss once adjusted in earlier year is no longer available for set off is misconceived. Hence we do not find any infirmity in the order of the Learned CIT(A) in this regard. The Ground No.2 raised by the revenue is dismissed.

3.3. In view of the aforesaid observations and respectfully following the aforesaid judicial precedent,

we direct the ld. AO to grant reduction of unabsorbed depreciation amounting to Rs.8,48,95,742/- and re-compute the book profits u/s.115JB of the Act thereon. Accordingly, the ground No I raised by the assessee is allowed.”

4.4 A perusal of the above decision of the ITAT itself would show that the issue is disputable and thus not free from doubt. So the action of the AO in passing the rectification order under Section 154 of the Act on this issue is not correct, as such an amendment of the order was beyond the scope of Section 154 of the Act. In fact, it is noted that in a subsequent assessment order (dt. 13.12.2019) passed by the AO under Section 143(3) r.w.s. 153C of the Act, the AO has himself accepted the book profits as such after allowing the deduction of brought forward losses. Anyhow, since the issue is not free from doubt, the rectification order in relation to same cannot be upheld. So the addition made by the AO to book profits vide rectification order is deleted.

4.5 Considering above, the ground of appeal 2 as raised by the appellant is allowed. Other grounds of appeal become academic in nature and as such the same are not being adjudicated.”

4. Aggrieved by the above view, the revenue has filed the present appeal before this *Tribunal* and assessee has filed Cross Objection in support.

5. The Ld.AR filed letter dated 23.05.2022 withdrawing the cross objection which is scanned and reproduced as under:

D. 24/5/22 23.5.2022

The Registrar
Income Tax Appellate Tribunal.
Bangalore Bench B
Bangalore - 560041

Respected Sir/Madam

Srb: ITA 95/BANG/2022

The cross objections filed by the Respondent may kindly be taken as withdrawn and the appeal filed by the Revenue may kindly be heard on merits and legal issues.

Thanking you,
yours truly
AR for the Respondent

Income Tax Appellate Tribunal
Bangalore Bench B
SI. No. 952 Date 24/5/22

Accordingly the C.O. is allowed to be withdrawn.

6. In respect of issues raised by revenue in its appeal, the Ld.DR relied on the order passed by the Ld.AO, whereas the Ld.AR relied on the order passed by Ld.CIT(A).

7. We have perused the submissions advanced by both sides in the light of records placed before us.

8. It is an admitted position that book profits have to be computed strictly as per Explanation 1 to Section 115JB of the Act. Further provisions of section 115JB provide for levy of MAT on Book profits, i.e. the profits in the P&L A/c prepared in accordance with the provisions of Companies Act.

The Ld.CIT(A) while granting relief to the assessee, referred to the decision of *Hon'ble Mumbai Tribunal* in case of *GO Airlines (India) Ltd. vs. DCIT (supra)* wherein *Hon'ble Tribunal* observed as under:

"3.2. We find that we are now 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 provisions of Sections 32(2) and 72 of the Act explicitly provide that the amount would be carried forward for set off in the succeeding years and it should be arrived at after deducting the amounts to which effect has already been given. We find that such provisions are apparently not present in computing the book profits u/s.115JB of the Act. 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. Hence, it could be safely concluded that 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. We also find that 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". Hence, unless the entire loss as per books of accounts gets wiped out by profits earned in subsequent years, the said loss would continue to remain in the balance sheet of the assessee i.e. "books of accounts" and would be eligible for reduction in accordance with Clause (iii) of Explanation 1 to Section 115JB of the Act, while computing book profits u/s.115JB of the Act. We find that this issue is no longer res-integra in view of the decision of the Co- ordinate Bench of Kolkata Tribunal in the case

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3.1. The Learned AO held that there was no loss available for reduction from the book profits u/s 115JB of the Act and hence the sum of Rs. 2,18,0,9000/- reduced by the assessee was not considered for reduction by the Learned AO. On first appeal, the said reduction was granted by the Learned CITA by relying on certain case laws. Aggrieved, the revenue is in appeal before us on the following ground:-

(ii) That the Ld. CIT(A) has erred in Law as well as in facts and circumstances of the case in directing to reduce the Book Profit u/s 115JB by an amount of Rs.2,18,09,000/- when the admissible amount, i.e., lower of 'unabsorbed depreciation' or 'business loss' was actually 'NIL'."

9. Be that as it may, we note that assessee has claimed depreciation loss as per books amounting to Rs.5,43,01,187/- for the year under consideration while computing the Book profits u/s. 115JB. Computation of the same is placed at page 63 of the paper book. For the sake of reference, the same is scanned and reproduced hereunder.

MAT COMPUTATION u/s 115JB:			
	AY	2014-15	
	FY	2013-14	
Profit as per Books		8,92,85,635	
Less: Amount of Loss b/f or unabsorbed depreciation		5,43,01,187	
B/F - Business Loss	13,50,59,805		
B/F - Unabsorbed Depreciation as per books	5,43,01,187		
Book Profits/(Loss)		3,49,84,448	
MAT Tax thereon @ 18.5%		64,72,123	
Surcharge @ 5%		3,23,606	
Education Cess thereon @ 3%		2,03,872	
Total Tax		69,99,601	
Less: TDS as per 26AS		51,33,155	
		18,66,446	
Add: Interest		2,06,233	
Balance Tax Liability / (Refund)		20,72,679	
LOSSES CARRYFORWARD FOR SET OFF IN FUTURE			
		Loss as per Books	
Assessment Year		Business	Depreciation
			Total
AY 2005-06		36,33,847	-
AY 2006-07		20,65,376	-
AY 2007-08		4,94,454	-
AY 2008-09		1,38,33,976	43,76,688
AY 2009-10		3,71,26,322	1,33,32,048
AY 2010-11		5,29,45,268	1,56,67,696
AY 2011-12		(1,94,35,434)	-
AY 2012-13		8,81,82,043	2,09,24,755
AY 2013-14		(4,37,86,048)	-
AY 2014-15			18,93,60,992
Total		13,50,59,805	5,43,01,187



10. The observation of the Ld.AO in 154 order is that, the assessee has claimed loss on depreciation of the same amount in the immediately preceding year being 2013-14 while computing Book profits u/s. 115JB. On perusal of the paper book, we note that the assessee has placed computation of book profit for A.Y. 2013-14 at page 64 of the paper book. For sake of convenience, the same is scanned and reproduced under:

OZONL PROPERTIES PRIVATE LIMITED (PAN: AAAC06672M)				
MAT COMPUTATION u/s 115JB:				
	Assessment Year	2013-14		
	Financial Year	2012-13		
Profit as per P&L account		6,90,12,735		
Less: Amount of Loss b/f or unabsorbed depreciation whichever is less as per books of account		5,43,01,187		
B/F - Business Loss	17,88,45,853			
B/F - Unabsorbed Depreciation as per books	5,43,01,187			
Book Profits/(Loss)		47,11,548		
MAT Tax thereon @ 18.5%		8,71,636		
Surcharge @ 5%				
Education Cess thereon @ 3%		26,149		
Total Tax		8,97,785		
Less TDS		40,71,793		
Balance tax liability to be paid		(31,74,008)		
LOSSES CARRYFORWARD FOR SE: O/P IN FUTURE				
		Loss as per books		
		Business	Depreciation	Total
2012-13		8,81,82,043	2,09,24,755	23,31,47,040
Y 2011-12		(1,94,35,434)	-	12,40,40,242
Y 2010-11		5,29,45,268	1,56,67,696	14,34,75,676
Y 2009-10		3,71,26,322	1,33,32,048	7,48,62,712
Y 2008-09		1,38,33,976	43,76,688	2,44,04,342
Y 2007-08		4,94,454		61,93,678
Y 2006-07		20,65,376		56,99,224
Y 2005-06		36,33,847		36,33,847
Total		17,88,45,853	5,43,01,187	



11. The Ld.AO based upon the above, disputes that, the assessee claimed the depreciation loss as per books twice i.e. in the present year as well as in the immediately preceding assessment year. In our opinion, the Ld.CIT(A) has not considered the main objection of the Ld.AO and has decided the issue on the legal principles which is not at all in challenge. We had called upon the Ld.AR to file Form 29B to understand the claim of assessee for the year under consideration. The Ld.AR filed Form 29B which is scanned and reproduced as under:

FORM NO. 29B
[See rule 40B]
**Report under section 115JB of the Income-tax Act, 1961 for
computing the book profits of the company**

1. I have examined the accounts and records of OZONE PROPERTIES PVT LTD , 21/1 WOOD STREET, ASHOK NAGAR Bangalore BANGALORE KARNATAKA 560025 , AAACO6672M engaged in business of Builders, Property Developers, 0403, in order to arrive at the book profit during the year ended on the 31st March
2. (a) I certify that the book profit has been computed in accordance with the provisions of this section. The tax payable under section 115JB of the Income-tax Act in respect of the assessment year 2014-15 is Rs 6472123 ,which has been determined on the basis of the details in Annexure A to this Form.
3. In My opinion and to the best of My knowledge and according to the explanations given to Me the particulars given in the Annexure A are true and correct.

Where any matter stated in this report is answered in the negative or with a qualification , the report shall state the reasons thereof

Name : J V KODHANDAPANI
Address : FLAT NO -9, #61 TIVARI MANOR, KANAKAPURA ROAD, BASAVANAGUDI BANGALORE KARNATAKA 560004
Membership No. : 023045
FRN (Firm Registration Number) : 0050255

Place: BANGALORE
Date: 2014-11-21

ANNEXURE A
[See paragraph 2]
Details relating to the computation of Book Profits for the purposes of section 115JB of the Income-tax Act, 1961

1.	Name of the assessee	OZONE PROPERTIES PVT LTD	
2.	Particulars of address	21/1 WOOD STREET, ASHOK NAGAR Bangalore BANGALORE KARNATAKA 560025	
3.	Permanent Account Number	AAACO6672M	
4.	Assessment year	2014-15	
5.	Total income of the company under the Income-tax Act	0	
6.	Income-tax payable on total income	0	
7.	Whether Profit and Loss Account is prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956)	Y	
8.	Whether the Profit and Loss Account referred to in column 7 above has followed the same accounting policies, accounting standards for preparing the profit and loss account and the Same method of rates for calculating depreciation as have been adopted for preparing accounts laid before the company at its annual general body meeting? If not, the extent and nature of variation be specified	Y	
9.	Net profit according to Profit and Loss Account referred to in (7) above	134884256	
10.	Amount of net profit as shown in Profit and Loss Account as increased by the amounts referred to in clauses (a) to (f) of Explanation to sub-section (2) of this section (file working separately, where required)	Clause	Amount
		g-Depreciation	25651530
		Total	25651530

11.	The amount as referred to in item 10 as reduced by the amounts referred to in clauses (i) to (vii) of Explanation of sub-section (2) of this section (file working separately, where required)	Clause	Amount
		iii-Loss b/f or Unabsorbed depreciation	54301187 ✓
		viii-Deferred tax	45598621
		ii-Depreciation	25651530
		Total	125551338
12.	Book profit as computed according to Explanation given in sub-section (2)	34984448	
13.	18.5% of "book profit" as computed in 12 above	6472123	
14.	In case income-tax payable by the company referred to at Sl. No. 6 is less than seven and one-half per cent of its book profits shown in column 12, the amount of income-tax payable by the company would be 18.5% of column 12, i.e., as per (13)	6472123	

Form Filing Details	
Revision/Original	Original

12. Before us, the assessee has not placed the assessment order for assessment year 2013-14, to ascertain whether, any disallowance was made in respect of the depreciation loss claimed by assessee while computing the book profit for AY 2013-14. We are unable to understand how assessee could claim the depreciation loss in the subsequent year again, if the same has been claimed in the immediately preceding year. In the interest of justice, we remand this issue to the Ld.AO. The Ld.AO shall verify the records and consider the claim in accordance with law.

13. In the event the claim of depreciation amounting to Rs.5,43,01,187/- was claimed and allowed by the Ld.AO in the immediately preceding year while computing book profit then for the year under consideration, assessee did not have the said amount again to be claimed. Under such circumstances, book

profit has to be computed in accordance with law. Needless to say that proper opportunity of being heard must be granted to assessee.

In the result, the appeal filed by the revenue stands allowed for statistical purposes.

The Cross Objection filed by the assessee is dismissed as withdrawn.

In the result, the appeal filed by the revenue stands allowed for statistical purposes and the C.O. filed by assessee stands dismissed.

Order pronounced in open court on 09th September, 2022.

Sd/-
(LAXMI PRASAD SAHU)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 09th September, 2022.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore