

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1706/Del./2019
(ASSESSMENT YEAR : 2015-16)**

ACIT, Circle 10 (2),
New Delhi.

vs.

Gutermann India Pvt. Ltd.,
205, C.A. Chambers,
18/12, W.E.A. Karol Bagh,
New Delhi – 110 005.

(PAN : AACCG3294P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gaurav Jain, Advocate
Shri Sudarshan Roy, Advocate
Shri Piyush Jain, Advocate
REVENUE BY : Shri Anuj Garg, Sr. DR

Date of Hearing : 13.04.2023

Date of Order : 26.04.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of Id. CIT
(Appeals)-4, New Delhi dated 20.12.2018 pertaining to AY 2015-16.

2. The grounds of appeal taken by the Revenue read as under :-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(AO has erred in holding that clause (iii) of Explanation (1) of section 115JB(2) refers to aggregate amount of loss brought forward or unabsorbed depreciation as one composite figure and not to year-wise consideration of the amounts of brought forward loss or unabsorbed depreciation for the purpose of computing the amount liable to be reduced from net profit as per profit & loss account.

1.a Whether the Ld. CIT(A) has erred in ignoring the well-established principle of interpretation that, a court/adjudicating authority, in construing a statute, should give weight to the interpretation placed upon it, at the time of its enactment, by those whose duty it has been to construe, execute & apply it, and therefore, the methodology of computing the quantum of brought forward loss or unabsorbed depreciation, as explained specifically in Finance Act 1987 (vide CBDT Circular 495 dated 22.09.1987) would govern the said computation.”

3. Brief facts of the case are that Assessing Officer noted that during the assessment proceedings, on perusal of computation of book profits as per section 115JB of the Income-tax Act, 1961 (for short 'the Act'), it was observed that an amount of Rs.18,58,59,067/- being loss brought forward or unabsorbed depreciation, whichever is less is taken as deduction from the book profit. AO was not in agreement with the aforesaid method. As per assessee, the computation has to be made between brought forward loss or unabsorbed depreciation on accumulated basis as per the losses or unabsorbed depreciation outstanding as on the start of the year. The AO in support of its finding relied upon the Circular No.495 dated 22.09.1987 and the decision of the Authority for Advance Ruling in the case of Rashtriya Ispat Nigam Ltd. (2006) 285 ITR (AAR) and the Cochin Bench of ITAT in the case of Steel Industrial Forgings Ltd. vs. ACIT (2008) 19 SOT 128.

4. Assessee filed an appeal before the Id. CIT (A). Ld. CIT (A) noted the following submission of the assessee :-

“6.1.4 On the other hand, the appellant relied upon the following decisions as pronounced by different Benches of ITAT, wherein it has

been clearly held that for the purpose of computing the amount of deduction the comparison of brought forward loss and unabsorbed depreciation has to be made on accumulated basis. The judgments relied upon by the appellant are as under:

- Amline Textiles (P) Ltd. v. ITO 27 SOT 152
- Central India Polyesters Ltd. v. CIT ITA No. 210 to 212/Nag/2013
- ACIT v. Arvind Mills Ltd. (ITA No. 3440/AHD/2010)

6.1.5 In view of the aforesaid decisions of the Hon'ble ITAT and in view of the principles laid down by the Hon'ble Supreme Court in the case of CIT v. Vegetable Products Limited 88 ITR 192, in the presence of two views, the view in favour of the appellant should be considered.”

5. Ld. CIT (A) agreed with the submissions of the assessee and concluded as under :-

“6.1.6 Thus, considering the judgments relied upon by the appellant, I hold that the disallowance made by the AO is bad in law and the deduction of brought forward loss or unabsorbed depreciation, whichever is less for the purpose of computation of book profit has to be considered on accumulated basis and not on year to year basis comparison. The ground of appeal is thus accepted.”

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. DR for the Revenue relied upon the decision of Cochin Bench of ITAT in the case of Steel Industrial Forgings Ltd. (supra) as relied upon by the AO.

8. Ld. Counsel of the assessee, on the other hand, supported the order of the ld. CIT (A). In this regard, his submission on case laws are as under:-

“5. The aforesaid issue, in our respectful submission, is covered by the decisions of various benches in the Tribunal in the following manner:

- The leading decision dealing with the aforesaid proposition is the decision of the Mumbai Bench of Tribunal in the case of Imlin

Textile v. ITO (2009): 27 SOT 152; wherein while deciding the exactly similar issue in favour of the assessee, the Hon'ble Tribunal held as under:

"....

7. We have heard the rival submissions and perused the relevant material on record. Both the sides admitted that it is a virgin issue and no precedent is so far available on this point. The short controversy raised for our consideration is: Whether clause (iii) of Explanation (1) to section 115JB(2) refers to the year-wise consideration of the amounts of brought forward loss or unabsorbed depreciation for the purposes of reduction from the net profit as per profit and loss account or it is the aggregate amount of loss brought forward or unabsorbed depreciation as one composite figure? Whereas the assessee's claim is that it is the aggregate amount of loss brought forward or unabsorbed depreciation relating to the earlier years which should be considered for the purpose of deducting from the net profit as per profit & loss account, the revenue is contending that the brought forward losses as well as unabsorbed depreciation in respect of each year is to be separately examined and allowed. The Assessing Officer has not allowed deduction for unabsorbed depreciation amounting to Rs. 44.53 lakhs while computing book profit precisely on the ground that in the assessment year 2001-02 the figure of profit before depreciation is a positive figure at Rs. 7.30 lakhs and as per sub-clause (b) of Explanation to clause (iii) of Explanation (1), the loss excluding depreciation has to be taken at zero.

.....

12. Clause (iii) states that 'the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account' is to be reduced from the net profit. As per the plain language of this provision, it is noted that the word employed in the provision is the "amount" and not the "amounts" of loss brought forward or unabsorbed depreciation, whichever is less. The reference to the "amount of" brought forward loss or unabsorbed depreciation whichever is less shows the intention of the Legislature for considering one consolidated figure of brought forward loss or unabsorbed depreciation for the earlier years in totality and not on year to year basis. The use of the word "amount" in singular conveys the aim of referring it to one figure. Wherever the Legislature desired to use the word "amount" in plural, it specifically used the word "amounts" instead of the "amount" as can be seen from the heading of section 40 - 'Amounts not deductible'. From here we can easily deduce that for the purposes of clause (iii) of Explanation (1) the unabsorbed depreciation for all the earlier years is to be clubbed into one amount; and the amount of brought forward loss (before depreciation) is also to be taken by summing up all the figures of loss of earlier years, and then the lower of these two amounts is to

be reduced from the net profit as shown in the profit & loss account so as to comply with the prescription of clause (iii) of Explanation (1). Similar position is coming up from the pressing into service of the word 'loss' in this clause in contradistinction to the word 'losses', as has been done in the marginal notes to sections 72, 73, 74, 74A and 75 etc. From here we gather that by using the words 'amount' and 'loss' in this clause, the point has been made clear that it is a composite figure each of the unabsorbed depreciation and brought forward loss, that merits consideration.

13. Moving still further we find from the language of this clause that there is no reference to considering the brought forward loss or unabsorbed depreciation on year to year basis. There is nothing in the language of section, which could suggest, even remotely, that the Legislature intended to consider year-wise figures. If it had desired like that, then it would have been so stated in unequivocal terms in the provision itself. In the absence of any specific mention in this regard in the clause, we are unable to infer such intendment. Since the language of the section is clear and does not admit of any doubt, we are not persuaded to interpret it in the way, the Id, DR impresses upon us to do."

- The aforesaid decision of the Tribunal has been repeatedly followed by the following different Benches of the Tribunal in the following decisions:
 - Decision of the Hon'ble Mumbai Bench of ITAT in the case of Central India Polyesters Ltd. versus CIT; ITA no. 210 to 212/Nag/2013
 - Decision of the Hon'ble Pune Bench of the Tribunal in the case of Kirloskar Ferrous Industries Ltd. versus ACIT; ITA no. 519/PN/2009
 - Decision of the Hon'ble Pune Bench of the Tribunal in the case of Kirloskar Ferrous Industries Ltd. versus ACIT; ITA no. 519/PN/2009
 - Decision of the Hon'ble Pune Bench of ITAT in the case of Kailash Vahan Udyog Ltd. versus DCIT; ITA 1322/PN/2011
 - Decision of the Hon'ble Bangalore Bench of the Tribunal in the case of Bangalore International Airport versus DCIT; ITA no. 510 & 662/Bang/2014
 - Decision of the Hon'ble Chennai Bench of the Tribunal in the case of M/s. Prithvi Softech Limited versus CIT; ITA no. 797/Mad12010."

9. As regards ITAT, Cochin Bench decision and reliance on the CBDT circular by the Id. DR for the Revenue, Id. Counsel of the assessee submitted that both the aforesaid decision of Cochin Bench and CBDT circular dealt with interpretation of section 115J, which contained a materially differ provision with regard to the reduction of loss or unabsorbed depreciation as per clause (iv) contained in Explanation to that section.

10. We have considered the issue. We find that short question before us is whether, *“as per the AO, for the purposes of computing the amount of brought forward loss or unabsorbed depreciation, whichever is less, a comparison on year to year basis should be made or on the other hand, as per the assessee, the comparison has to be made between the brought forward loss or unabsorbed depreciation on accumulated basis as per the losses or unabsorbed depreciation outstanding as on the start of the year”*

11. We find that the issue has been cogently dealt with by the Id CIT (A). Reliance upon the case laws also germane and supports the case of the assessee. Reference to case laws by the Id. CIT (A) and Id. Counsel of the assessee clearly indicate that the issue has to be decided in assessee's favour. As regards the CBDT circular and the case laws relied upon by the Id. DR for the Revenue, as submitted by the Id. Counsel of

the assessee, they are not applicable to the facts of the case. In any case, Id. CIT (A) has rightly observed that in view of the principles laid down by Hon'ble Apex Court in the case of CIT vs. Vegetable Products Ltd. 88 ITR 192, in the presence of two views, the view of assessee should be considered. Accordingly, in the background of aforesaid precedent, we do not find any infirmity in the order of the Id. CIT (A) and we uphold the same.

12. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the open court on this 26th day of April, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 26TH day of April, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-4, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**
