

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No:- 2890/Del/2017
(Assessment Year: 2012-13)**

M/s Vogue Fabrics, G.T. Road, Opp. B B M B Sewah, Panipat.	Vs.	DCIT, Panipat Circle, Panipat.
PAN No: AABFV1872E		
APPELLANT		RESPONDENT

Assessee by : Dr. Rakesh Gupta, Adv.
Revenue by : Shri Anuj Garg, Sr. DR

Date of Hearing : 03.01.2024
Date of Pronouncement : 03.01.2024

ORDER

PER N.K. BILLAIYA, AM

This appeal by the Assessee is preferred against the order of the CIT(A), Karnal, dated 03.02.2017 pertaining to A.Y. 2012-13.

2. The sum and substance of grievance of the assessee is that the CIT(A) erred in confirming the action of the AO in not allowing the benefit

of unabsorbed depreciation as claimed by the assessee in its petition u/s 154 of the Act.

3. Briefly stated the facts of the case are that an assessment u/s 143(3) of the Act was framed by the AO vide order dated 30.03.2015.

4. Thereafter on 15.04.2015, the assessee filed an application u/s 154 of the Act which reads as under:

"In Reference to above said assessment made u/s 143(3) vide order dated 30.03.2015 of our firm, the returned business loss of the firm for Rs. 57,67,888/- (before setting off income under the head "Income from house property") has been reduced to Rs.7.13,016/- and Income from other sources has been computed at Rs. 1,19,54,679/-. The Income from House property has been accepted as declared in the return of the income at Rs. 11,42,341/-.

After making inter head adjustments, income of the assessee firm has been computed at Rs. 1,23,94,004/-. (as per para 17 of the subjected assessment order dated 30.03.2015).

It is brought to your kind attention that the so computed Total income of Rs.1,23,94,004/- of the assessee firm for the assessment year 2012-13 as per para 17 of the subjected order has been computed without taking into consideration that the unabsorbed depreciation of carlier years available to the assessee firm for set off as per provisions of Section 32(2) of the Income Tax Act, 1961.

This being "mistake apparent from record" as per section 154 of the Income Tax Act, 1961 needs rectification. We request that the same may be rectified as per the unabsorbed depreciation of earlier years available for set off to the assessee firm as detailed below:

<u>ASS. YEAR</u>	<u>UNABSORBED DEP. AVAILABLE</u>
2004-05	Rs.9,32,283/-
2005-06	Rs. NIL

2006-07	Rs. 60,08,950/-
2007-08	Rs. 81,43,880/-
2008-09	Rs. 22,71,251/-
2009-10	Rs. 39,81,549/-
2010-11	Rs. 35,08,688/-
2011-12	Rs. 33,34,781/-

Unabsorbed Depreciation carried forward is deemed to be the depreciation of current year and is eligible to be set off against other heads of income except income from salary and winning from lotteries. Hence the additions made and computed under the head "Income from other sources" at Rs. 1,23,94,004/- as per para 17 of your order dated 30.03.2015 is eligible for set off as above said."

5. The rectification application of the assessee was rejected by the AO vide order dated 28.09.2015 holding that; the assessee has failed to produce the requisite information /documents in support of its claim.
6. The assessee challenged the order of the AO before the CIT(A) but without any success.
7. Before us, the Counsel for the assessee vehemently stated that the claim of unabsorbed depreciation brought forward from earlier assessment years were very much available in the assessment records and the AO ought to have considered his own assessment records for allowing the

claim. It is the say of the Counsel that the AO should be directed to considered the claim and decide the issue. The DR fairly conceded to this.

8. We have carefully considered the rectification application and the order of rejection. We are of the considered view that the claim of the assessee is definitely a mistake apparent from record rectifiable u/s 154 of the Act. All that the AO was required to do was to verify the claim from his own assessment records and whether the unabsorbed depreciation as claimed was available to the assessee. In the interest of justice and fair play, we deem it fit to restore the issue to the files of the AO. The AO is directed to examine the claim of the assessee from his records and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Open Court on 03.01.2024

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 03/01/2024.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.01.24
Date on which the typed draft is placed before the dictating Member	03.01.24
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	