

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE "B" BENCH : PUNE  
BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA Nos.562 & 563/PUN/2024  
Assessment Years - 2019-20 & 2020-21

Sahyadri Karad Hospitals Private Limited, Sahyadri Corporate Office Sr.No.89, 90, Plot No. 54 Lokmanya Colony Paud Road, Kothrud, Pune - 411 004 PAN AALCS6720M. Maharashtra.	vs.	The Deputy Commissioner of Income Tax, Circle-5, PMT Bldg., Swargate, Pune PIN – 411 009 Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Pramod S. Shingte
For Revenue :	Shri Ajay Kumar Keshari

Date of Hearing :	11.09.2024
Date of Pronouncement :	25.09.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

These assessee's twin appeals ITA.Nos. 562 and 563/ PUN/2024, for assessment years 2019-2020 and 2020-2021, arise against the Additional/JCIT (A)-2, Vadodara, Vadodara's as many Din & Order Nos.ITBA/APL/S/250/2023-24/1060277536(1) and 1060299953(1), both dated 30.01.2024, in proceedings u/s. 143(1) of the Income Tax Act, 1961, (in short the "Act"), assessment year-wise, respectively.

Heard both the parties at length. Case files perused.

2. The assessee's "lead" appeal ITA.No.562/PUN/2024, for assessment year 2019-20 pleads the following substantive grounds:

1. *On the facts and the circumstances of the case and in law, lower authorities erred in observing that unabsorbed depreciation of Rs.25,29,56,125 cannot be allowed to be carry forward on the basis of intimation u/sec.143(1) for AY 2018-19, the action is not in sync with the provision of law and therefore same needs to be corrected Your appellant prays accordingly.*

2. *On the facts and the circumstances of the case and in law, CPC has erred in rejecting the claim of appellant, of brought forward losses and absorbed deprecation of Rs.56,13,90,129/- to be carry forward to next year without assigning any reason whatsoever your appellant prays for allowing such carry forward of losses and Unabsorbed Depreciation as per provision of law.”*

3. Both the parties next submit that the assessee's latter appeal ITA.No.563/PUN/2024 for the Assessment Year 2020-2021 also pleads identical grounds since the only difference therein is *qua* the amount of the unabsorbed depreciation amounting to Rs.27,87,10,127/-, as disallowed in both the lower proceedings.

4. We note in this factual backdrop that the learned lower appellate authority has upheld the CPC's action proceedings disallowing the assessee unabsorbed depreciation carried forward claim in A.Y. 2019-2020 as under :

*“The claim of the appellant that brought forward losses of the previous years to the tune of Rs.54,45,72,329/- consisting of Rs.29,16,16,204/- as business loss carried forward U/s 72 and Rs.25,29,56,125/- as unabsorbed depreciation carried forward U/s 32(2) be allowed cannot be accepted because as per intimation U/s 143(1) for AY 2018-19 it is clear that in AY 2018-19 losses to the tune of only Rs.316465973/- were allowed to the appellant to be carried forward to future set off. Further, such adjustment/disallowance was accepted by the appellant as no appeal has been filed against such disallowance for AY 2018-19 as can be seen from records. Also, the appellant vide notices dated 08.01.2024, 11.01.2024 and 16.01.2024 was specifically asked to explain the reasons why depreciation losses disallowed in A.Y. 2018-19 was not contested by it. The appellant vide submission dated 19.01.2024 failed to explain the same and stated that it has enclosed the ITR of previous years in which it always carried forward the previous year's losses. However, it could not be established by the appellant that previous year's losses were allowed to him in full till AY 2018-19 by*

*the CPC. Therefore, it is not possible that the previous year losses as computed by the CPC and accepted by the appellant for AY 2018-19 can be increased in the next AY ie 2019-20 or the subsequent AYs. Therefore, keeping in mind the losses allowed by the CPC in the AY 2018-19, the losses in the AY 2019-20 to be carried forward to the future years cannot be more than Rs.316465973/- (Excluding business loss of AY 2010-11 as the same can not be carried forward per section 72(3) of the Act from the total losses allowed till AY 2018-19)) given the fact that the current year loss of Rs.55829267/- for the AY 2019-20 has already been allowed by the CPC. Hence, the brought forward losses of the previous years to the tune of Rs.316465973/- is admissible to the appellant. However the AO is directed to verify the claim of the brought forward business losses and also examine if the brought forward losses have been reduced as a result of scrutiny assessment in the previous years and allow the correct losses determined in the assessments of respective years. The appeal on the above grounds is partially allowed. The summary of previous year losses allowed for future set off in the year under consideration (subject to the verification by the AO) is worked as under :*

<i>AY</i>	<i>Previous years Business loss allowed u/s.72.</i>
<i>2010-11</i>	--
<i>2011-12</i>	<i>39011470</i>
<i>2012-13</i>	<i>44732466</i>
<i>2013-14</i>	<i>33800442</i>
<i>2014-15</i>	<i>40874267</i>
<i>2015-16</i>	<i>37799629</i>
<i>2016-17</i>	<i>38259895</i>
<i>2017-18</i>	<i>29564821</i>
<i>2018-19</i>	<i>52422983</i>
<i>Total</i>	<i>316465971</i>

7. *In the result, appeal is "partially Allowed".*

5. Learned counsel vehemently submits that both the lower authorities have erred in law and on facts in disallowing assessee's unabsorbed depreciation claim of Rs.25,29,56,125/- on the grounds that the same had been rejected in the preceding assessment year 2019-2020 involving section 143(1) "proceeding" dated 05.11.2019 (page 79 in the paper book). The Revenue could hardly dispute that the said "processing" had nowhere rejected the assessee's claim of unabsorbed depreciation to carry forward the said sum. We further find that section 143(1)(a) "processing" provision itself nowhere stipulates such a disallowance in any of the corresponding clauses (1) to (v) therein. We also note that section 143(1)(a) 1st proviso envisages that such an adjustment must be

proposed by an intimation in writing or by electronic mode. We emphasize here that there is no such intimation of assessee's unabsorbed depreciation carry forward claim disallowance(s) in section 143(1)(a) "processing" for the preceding assessment year 2018-2019. That being the clinching case, we conclude that both the lower authorities action is not sustainable in law. We therefore, deem it appropriate to accept the assessee's sole ground in principle and leave it open for the "CPC" to compute and allow the impugned unabsorbed depreciation as per law. This assessee's "lead" appeal ITA.No.562/PUN/2024 for the assessment year 2019-2020 is accepted.

6. Same order to follow in assessee's latter appeal ITA.No. 563/PUN./2024 for the assessment year 2020-2021 since raising the very substantial issue (supra).

7. To sum-up, these assessee's twin appeals I.T.A.Nos. 562 and 563/PUN/2024 are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 25.09.2024.

Sd/-  
(RAMA KANTA PANDA)  
VICE PRESIDENT

Sd/-  
(SATBEER SINGH GODARA)  
JUDICIAL MEMBER

Pune, Dated 25<sup>th</sup> September, 2024

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. DR, ITAT, "B" Bench, Pune.
5. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary  
ITAT, Pune.