

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.309/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2017-2018)

The Dhamra Port Company Ltd., HIG-20, BDA Colony, Jaydev Vihar Bhubaneswar, RRL Khorda, Regional Research Laboratory, SO-751013, Odisha	Vs	DCIT, Circle-1(2), Bhubaneswar
PAN No. : AABCD 0602 P		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से / Assessee by	:	Shri S.N.Soparkar, Sr. Advocate, Shri Vartick Choksi and Biren Shah, CAs appeared through Virtual Mode
राजस्व की ओर से / Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	18/11/2024
घोषणा की तारीख / Date of Pronouncement	:	18/11/2024

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 30.05.2024, passed in appeal No.CIT(A), Bhubaneswar-1/14506/2019-20 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1065260891(1) for the assessment year 2017-2018, on the following grounds :-

- In law and on the facts and in the circumstances of the case, the order u/s 250 of the Act passed by the Ld. CIT (A) is erroneous and bad-in-law*
- In law and in the facts and circumstances of the case of the Appellant, Ld CIT(A) has grossly erred in directing the AO to allow the deduction of "brought forward loss or unabsorbed depreciation, whichever is lower" on year-on-year basis as against the cumulative basis while computing book profit as per clause (iii) of Explanation I of Section 115JB of the Act.*
- In law and in the facts and circumstances in the case of the appellant, the Ld. CIT(A) has grossly erred in ignoring the judicial pronouncements cited by appellant wherein it is clearly held that as per clause (iii) of Explanation 1 of section 115JB, business loss or unabsorbed depreciation is to be considered on cumulative basis without discussing its non-applicability*

4. *The appellant craves leave to add to alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

2. Brief facts of the case are that the assessee is a company registered under the Companies Act and filed its return of income on 14th October, 2017 declaring total income at Nil after claiming set off of brought forward loss under normal provisions of the Income Tax and declared book profit of Rs.1,84,83,12,132/- u/s.115JB of the Act and paid MAT thereon. Thereafter the return was revised on 19th September, 2018. The assessment was completed u/s.143(3) of the Act, wherein the book profit was determined at Rs.2,24,36,02,627/-. In the first appeal, the assessee has challenged the action of the Id.AO of not allowing the set off of brought forward business loss or unabsorbed depreciation whichever is lower as per the books of accounts as provided in clause (iii) of Explanation to Section 115JB(2) of the Act. The Id. CIT(A) held that the assessee should be allowed deduction of brought forward business loss or unabsorbed depreciation which is lower computed on year-to-year basis for the purpose of book profit instead of aggregate figure of brought forward business loss or unabsorbed depreciation whichever is lower as has been claimed by the assessee. Since all the grounds of appeal are related to this single issue, thus, these are canvassed together for the sake of convenience.

3. Before us, the Id. AR of the assessee submitted that as per the provisions of Explanation to clause (iii) of Section 115JB(2) of the Act, the amount of brought forward business loss or unabsorbed depreciation as per books of accounts whichever is lower is to be allowed as deduction for

computing the book profit, however, the Id. CIT(A) has wrongly applied the provisions of the Act language of which is very much clear and unambiguous. He further submitted that the amount of brought forward business loss and unabsorbed depreciation means the amounts appearing in the books of accounts as on the first day of the previous year and are always be the cumulative figures, thus, the same cannot be taken as year-to-year basis as nowhere in the Act it was stated so. During the course of hearing he filed a chart containing the details of cumulative figures of brought forward business loss and unabsorbed depreciation which reads as under :-

										(Rs. in crores)
AY	(A) Profit after depreciation as per books of Account	(B) Ind AS Adjustment	(C=A-B) Profit/loss after Ind AS Adjustment	(D) Current year Depreciation	(C+D=E) Profit or loss excluding depreciation	(F) Brought forward loss	(G) Working of brought forward loss	(H) Position of carried forward loss excluding depreciation	(I) working of carried forward loss	(J) Position of unabsorbed depreciation
2012-13	(458.09) (Page 2)	0	-458.09	127.99	-330.1	(3.19) As shown in reserves in (page 1) AY 2011-12		-333.29	(-3.19 + (-)330.1	127.99
2013-14	(339.95) (Page 2)	0	-339.95	145.51	-194.44	-333.29	(-330.1 + (-)3.19	-527.73	(-333.29 + (-)194.44	273.50
2014-15	(133.82) (Page 3)	0	-133.82	149.63	15.81	-527.73	(-333.29 + (-)194.44	-511.92	(-527.73 + 15.81	423.13
2015-16	70.56 (Page 4)	52.91 (Page 6)	17.65	203.17	220.82	-511.92	(-527.73 + 15.81	-494.27	(-511.92 + 17.65	423.13
2016-17	114.47 (Page 5)	36.23(89.14-52.91) (Page 6)	78.24	188.69	266.93	-494.27	(-511.92 + 17.65	-416.03	(-494.27 + 78.24	423.13

As per the above chart, the cumulative amount of brought forward business loss of Rs.416.03 crores is less than by aggregate figure of unabsorbed figure of unabsorbed depreciation of Rs.423.13 crores, thus, he requested to allow the amount of brought forward business loss being lower of them.

4. He further placed reliance on the judgment of the Hon'ble Karnataka High Court in the case of Bangalore International Airport Ltd.,

[2023] 154 taxmann.com 394 (Karnataka), wherein the Hon'ble High Court in para 12 has held as under :

12. We have carefully perused the explanation to section 115JB of the Act. Clause 2(iii) of Explanation 1 (i) of section 115JB makes it clear that the amount of loss brought forward or unabsorbed depreciation whichever is less as per the books of accounts must be permitted to be set off. The CIT(A) and the ITAT placing reliance on CBDT Circular No. 495 dated September 22, 1987, have rightly held that the cumulative brought forward losses or unabsorbed depreciation should be considered for set off. In view of unambiguous language employed in the statute, no exception can be taken with ITAT's order confirming the CIT(A)'s order holding that the assessee is entitled to claim set off. So far as the actual amount is concerned, the ITAT has remitted the matter to the Assessing Officer. However, on principle, the ITAT has rightly held that the assessee is entitled to claim set off.

5. It was further submitted that the order of the Hon'ble High Court has already been confirmed by the Hon'ble Supreme Court by dismissing the SLP filed by the revenue, therefore, this issue has attained finality. He, thus, prayed that for the purpose of computing book profits in terms of Explanation to Clause (iii) of Section 115JB of the Act, the amount of brought forward business loss or unabsorbed depreciation, whichever is lower is to be considered as the cumulative amounts as appearing on the first date of the previous year in the books of accounts of the assessee as against year-to-year figure of unabsorbed depreciation or brought forward loss as directed by the Id. CIT(A).

6. Ld. AR also placed reliance on the following judicial pronouncements :-

- i) Amline Textiles (P.) Ltd., 27 SOT 152 (Mumbai-Trib)*
- ii) Bangalore Internal Airport Ltd., 459 ITR 158 (Karnataka HC)*
- iii) Bangalore International Airport Ltd., 154 taxmann.com 395 (SC)*
- iv) N.K.Industries, ITA No.2131/Ahd/2012 (Ahmedabad-Trib.)*

Besides, during the course of hearing the Id. AR also filed a written submission which is as under :-

**BEFORE THE HON'BLE MEMBERS OF CUTTACK BENCH,
NCOME TAX APPELLATE TRIBUNAL, CUTTACK
ITA NO.309/CTK/2024**

The Dhamra Port Company Limited
Odisha
(APPELLANT)

Vs.

DCIT, Circle1(2),
Bhubaneswar, Orissa
(RESPONDENT)

Grounds of appeal(Only Specific Grounds)	Ld. AO's Order	CIT(A)'s order	Remarks																														
<p>The CIT(A) has grossly erred in directing the AO to allow the deduction of "brought forward losses or unabsorbed depreciation, whichever is lower" on year-on-year basis as against cumulative basis while computing book profits.</p>	<p>Assessee's submission</p>	<p>AO's finding</p> <p>Assessee's Submission</p> <p>Page 18 Para 3</p>	<p>CIT's Finding</p> <p>Page 36 Para 7.2</p> <p>In the return of income, while arriving at book profit, the assessee company has claimed deduction for "brought forward loss or unabsorbed depreciation whichever is lower" at Rs.221.70 crores. However, during the course of assessment proceedings, assessee found that it is entitled for deduction of Rs.416.03 crores under the clause (iia) of Explanation - 1 to Section 115JB as against Rs.221.70 crores claimed in return of income.</p> <p>As working of Rs.416.03 crore was also supported by express provisions of the Act as well as various decisions of the Courts, it has filed reply dated 22nd November, 2019 before the Assessing Officer wherein such additional claim was made.</p>																														
			<p>Before the AO it submitted that for computing the figure of unabsorbed depreciation/business loss which can be set-off while computing the MAT liability bifurcation of Rs.839.16 crores is required to be made. Bifurcation has been shown as under:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Financial Year</th> <th style="text-align: center;">Assessment Year</th> <th style="text-align: center;">Business Loss as per Books</th> <th style="text-align: center;">Depreciation as per Books</th> <th style="text-align: center;">Total Loss</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2013-14</td> <td style="text-align: center;">2104-15</td> <td style="text-align: center;">-15.81</td> <td style="text-align: center;">149.64</td> <td style="text-align: center;">133.83</td> </tr> <tr> <td style="text-align: center;">2012-13</td> <td style="text-align: center;">2013-14</td> <td style="text-align: center;">194.44</td> <td style="text-align: center;">145.51</td> <td style="text-align: center;">339.95</td> </tr> <tr> <td style="text-align: center;">2011-12</td> <td style="text-align: center;">2012-13</td> <td style="text-align: center;">237.40</td> <td style="text-align: center;">127.99</td> <td style="text-align: center;">365.39</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">416.03</td> <td style="text-align: center;">423.13</td> <td style="text-align: center;">839.16</td> </tr> <tr> <td colspan="4">Depreciation or Business Loss whichever is lower as of 1st April, 2016</td> <td style="text-align: center;">416.03</td> </tr> </tbody> </table> <p>In respect of this claim of the assessee, the CIT(A) was fair enough in granting the deduction to the assessee in respect of the claim, however, it granted the deduction on year to year basis instead of allowing on Cumulative Basis. The assessee had referred the Decision of ITAT Mumbai in the case of Almine Textiles Pvt. Ltd. 27 SOT 152 (Mumbai) which clearly stated that the deduction had to be allowed on Cumulative basis, however the CIT(A) failed to consider the order.</p> <p>The assessee company would further like to rely on the decision of Karnataka High Court in the case of Bangalore International Airport Ltd [2023] 154 taxmann.com 394 (Karnataka). (Refer to page 1-3 of the Paper Book). Further, the</p>	Financial Year	Assessment Year	Business Loss as per Books	Depreciation as per Books	Total Loss	2013-14	2104-15	-15.81	149.64	133.83	2012-13	2013-14	194.44	145.51	339.95	2011-12	2012-13	237.40	127.99	365.39			416.03	423.13	839.16	Depreciation or Business Loss whichever is lower as of 1 st April, 2016				416.03
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					<p>SLP filed by the department was rejected by the Supreme Court [2023] 154 taxmann.com 395 (SC). (Refer to page 4-5 of the Paper Book)</p> <p>In the light of the above, the assessee requests the Hon'ble bench to allow the deduction of business loss to the assessee on cumulative basis.</p>
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7. *Per Contra*, Id. CIT-DR vehemently supported the order of the lower authorities and submitted that in the Explanation given to clause (iii) of Section 115JB(2), the word used is “*the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account*”,. The words “loss and depreciation” are singular words and not the plurals, therefore, cumulative figures cannot be taken and year-to-year figure has to be considered for this purpose. He further placed reliance of Circular No.24/2017, dated 25.07.2017, wherein Question No.3 provides that for the purpose of Ind AS being applicable for the first time w.e.f. Financial Year 2016-2017 relevant to assessment year 2017-2018, i.e. the year under appeal, thus, the opening figure should be taken at Nil as has been explained in answer to Question No.3 of the Circular. The relevant question and answer thereof is reproduced as under :-

Question 3: *As per Explanation to Section 115 JB (2C) of the Act, the convergence date is defined as the first day of the first Indian Accounting standards reporting period as defined in Ind AS 101. The Memorandum explaining the provisions of the Finance Bill 2017 mentions that the adjustment as on the last day of the comparative period is to be considered. It may be clarified as to what would be the appropriate manner for computation of transition amount on convergence date, 1st April i.e. at the start of the day or at the end of the day?*

Answer: *In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is*

also required to present an equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year. The amounts as on start of the opening date of the first year of adoption should be considered for the purposes of computation of transition amount.

8. Lastly, the Id. CIT-DR submitted that the matter may be sent to the AO for verification as to whether there is any opening balance of business loss or unabsorbed depreciation after giving adjustment to Ind AS whichever is lower on year-to-year basis as against the cumulative basis while computing book profit as per clause (iii) Explanation 1 of Section 115JB of the Act.

9. Ld. CIT-Dr also placed reliance on the following judgements :-

- i) Karnataka Small Scale Industries Vs. CIT, 179 CTR 1 (SC)*
- ii) Milan Intermediates LLP Vs. ITO, [2018] 96 taxmann.com 338 (Ahmedabad-Trib.)*

10. We have heard rival submissions and perused the material available on record. In the present case, the moot question is with regard to the allowability of set off of brought forward loss or unabsorbed depreciation, which is lower as per books of accounts for the purpose of computing the book profits for charging MAT u/s.115JB of the Act. Before going further into the matter, we must refer the provisions as contained in Section 115JB(2) Explanation 1 Clause (iii), which reads as under :-

[(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account [in case of a company other than the company referred to in clause (iih)].
Explanation.-For the purposes of this clause,-
(a) the loss shall not include depreciation;
(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or]

11. From bare reading of the above clause, we find that the language of the provisions is very clear and unambiguous according to which the amount of loss brought forward or unabsorbed depreciation, whichever is less as per the books of accounts should be deducted out of the profits of the year to compute the book profits for charging MAT. As per book keeping, while preparing final accounts of a company, the term “loss brought forward” and “unabsorbed depreciation” refers to the aggregate of amount of loss brought forward from earlier years as also the amount of unabsorbed depreciation is the gross unabsorbed depreciation upto the first day of the previous year i.e. both should be cumulative upto that date. It is nowhere stated that such brought forward loss or unabsorbed depreciation should be considered on year-to-year basis as appearing in the balance sheet prepared based on books of account for all the previous years to which such loss or depreciation is related. This being so, we are in agreement with the arguments of the Id. AR that for the purpose of computing the book profit, the amount of brought forward loss or unabsorbed depreciation as per books whichever is lower should be the cumulative figure and not the figure computed on year-to-year basis. This view is further supported by the decision of the Hon’ble Karnataka High Court in the case of Bangalore International Airport Limited (supra) and confirmed by the Hon’ble Supreme Court by dismissing the SLP filed by the revenue. The coordinate bench of ITAT Mumbai ‘A’ Bench in the case of Amline Textiles (P.) Ltd., 27 SOT 152 (Mumbai-Trib.) has also dealt with issue in length and 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.

8. Section 115JB is a special provision for payment of tax by certain companies. Sub-section (1) contains the non obstante clause and provides that where the income-tax payable on the total income of a company as computed under this Act is less than 10 per cent of its book profit, then such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of 10 per cent. Explanation (1) provides the mode of computing "book profit" by taking net profit as shown in the profit and loss accounts as its starting point to be increased by the items mentioned in clauses (a) to (h) debited to the profit & loss account and as reduced by the items specified in clauses (i) to (vii). At this stage it will be apt to consider the relevant part of this section as under:-

"Explanation (1) For the purposes of this section, 'book profit means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -

(a) to (g)**

(h) if any amount referred to in clauses (a) to (h) is debited to the profit and loss account, and as reduced by-

(i) & (ii)

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation-For the purposes of this clause,-

(a) the loss shall not include depreciation;

(b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil; or"

9. On going through the mandate of the above provision it transpires that having increased the amount of net profit as per profit and loss account in accordance with clauses (a) to (h), certain items are to be reduced which, inter alia include the amount of loss brought forward or the unabsorbed depreciation, whichever is less as per the books of account. The term 'loss' has been defined for the purposes of this clause as exclusive of the amount of depreciation.

10. Here it would be relevant to mention that section 115J, the original predecessor of section 115JB also has Explanation which provides the mechanism for computing the 'book profit. Clause (iv) provides for the reduction of the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of section 205 of the Companies Act, 1956 are applicable. There was controversy on the interpretation of term 'loss' in clause (iv) of the Explanation as to whether the loss should be considered as before or after taking into account the amount of depreciation. The Hon'ble Supreme Court in the case of Surana Steels (P.) Ltd. v. Dy. CIT [1999] 237 ITR 7771 held that the term 'loss' occurring in clause (b) of first proviso to section 205(1) of Companies Act has to be read as amount arrived at after taking into account the depreciation and accordingly the same was to be read and understood in the context of section 115J also. Resultantly the term "loss" was understood as the amount arrived at after taking into account the depreciation. The Legislature made its intention clear by providing in the successor sections that the loss shall not include depreciation, it is so provided in section 115JA and the similar wording has been used in clause (iii) of Explanation (1) to section 115JB also, which is under consideration. Hence the judgment of the Hon'ble Supreme Court rendered in the case of Surana Steels (supra) is not relevant in the context of section 115JB, which specifically states that the loss shall not include depreciation. The net effect of the position as it now exists is that while computing the amount of loss brought forward, the amount of depreciation is not to be considered. In other words, the loss for the purposes of section 115JB has to be computed before depreciation.

11. The basic rule of interpretation of the provisions is the 'strict rule', that is, follow what has been expressly stated in the provision and go by the plain language of the section. It is not permissible to import any thing into statutory provision and read what is not explicitly provided. The need for unearthing the real intention arises only when the language of the section is ambiguous, vague or

uncertain. With this basic principle of interpretation on hand, we move on to examine the rival contentions made by the parties as to whether clause (iii) it refers to consideration of year-wise separate figures of unabsorbed depreciation and loss brought forward or the composite figures.

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.

12. Also the coordinate bench of Ahmedabad ITAT in the case of Arvind Mills Ltd., passed in ITA No.3440/Ahd/2010, order dated 05.08.2011, in para 5 of the order, the Tribunal has observed as under:-

5. We have considered the rival submissions and do not find any merit in the appeal of the revenue. The identical issue is considered by ITAT Mumbai Bench in the case of [Amline Textiles \(P\) Ltd](#) (supra) and the issue was decided in favour of the assessee. The learned CIT(A) reproduced the operative portion of the order in the impugned order. Even, according to Explanation (iii) to [section 115JB \(2\)](#) of the IT Act the amount of loss brought forward or unabsorbed depreciation whichever is less as per the books of accounts shall have to be considered by the AO while completing

the assessment. The same provision was taken into consideration while finalizing the assessment. The AO at the rectification stage had taken different interpretation of this provision in order to pass order u/s 154 of the IT Act. Therefore, the learned CIT(A) rightly held that the issue is debatable and the conclusion could be drawn after long drawn discussions. There was no mistake apparent on record; therefore, on a debatable issue the proceedings u/s 154 of the IT Act would not be valid. The learned DR merely relied upon the order of the AO u/s 154 of the IT Act and has not pointed out any infirmity in the order of the learned CIT(A). In view of the above, we do not find any merit in the appeal of the revenue. Same is accordingly dismissed.

13. Now, we come to the judgments relied upon by the Id. CIT-DR in the case of Karnataka Small Scale Industries, supra, where the dispute was with regard to old section of 115J of the Act and the issue in hand in present appeal was not at all discussed/under dispute. In the other case of Milan Intermediates LLP, there was Nil amount of unabsorbed depreciation available, thus, the coordinate bench was of the view that least of the business loss or unabsorbed depreciation is to be considered. However, the facts of the present case are entirely different and therefore, the ratio laid down in the aforesaid case by the coordinate bench of Ahmedabad ITAT are not applicable.

14. Now, coming to the question of correct figure of unabsorbed depreciation or brought forward business loss, which is to be considered for deduction, we find that at page 12, the Id. CIT(A) has reproduced a table which is part of the submissions made by the assessee during the course of appellate proceedings, which is also reproduced hereunder:-

Financial Year	Assessment Year	Business Loss as per Books	Depreciation as per Books	Total Loss
2013-14	2014-15	-15.81	149.64	133.83
2012-13	2013-14	194.44	145.51	339.95
2011-12	2012-13	237.40	127.99	365.39
		416.03	423.13	839.16
Depreciation or Business Loss whichever is lower as of 1st April, 2016				416.03

15. During the course of hearing before us, the Id. AR has also submitted another table which has been reproduced hereinabove in the arguments of the Id. AR. On perusal of both the tables, we find that there is a difference in the amounts of brought forward business loss as per books for A.Y.2012-2013 though the cumulative amount of carried forward business loss and unabsorbed depreciation are the same in both the tables for the year under appeal. It is also seen that the CBDT vide its Circular No.24/2017 in reply to Question No.3 has also stated that the reconciliation between the previous Indian GAAP and Ind AS, both on the opening date of preceding year as well as on the closing date of the preceding year, required to be present, therefore, for the limited purpose of the verification of the correct amounts of brought forward business loss and unabsorbed depreciation, whichever is lower to be allowed to set off against the current year business profit for computation of book profits, matter is set aside to the file of AO with the direction that after making necessary verification from the financial accounts of the assessee

company and also with reference to the working of Ind AS adjustments which are become mandatory from the year under appeal, allow the correct amount of cumulative figure of business or unabsorbed depreciation whichever is lower out of current year business profits as per books of accounts for computing book profit for charging MAT as per law. Thus, we give answer in favour of the assessee with regard to allowability of set off of cumulative figure of brought forward business and unabsorbed depreciation whichever is lower for computation of book profit for MAT purpose, however, direct the AO to verify the correct amounts allowable as deduction.

16. In the result, appeal of the assessee is allowed with the direction given hereinabove.

Order pronounced in the open court on 18/11/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 18/11/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
The Dhamra Port Company Ltd.,
HIG-20, BDA Colony, Jaydev Vihar
Bhubaneswar, RRL Khorda,
Regional Research Laboratory,
SO-751013, Odisha
2. प्रत्यर्थी / The Respondent-
DCIT, Circle-1(2), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

Sd/-
(MANISH AGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack