

IN THE INCOME TAX APPELLATE TRIBUNAL "PATNA BENCH", PATNA
(VIRTUAL HEARING AT KOLKATA)

SHRI SONJOY SARMA, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 59/Pat/2021
Assessment Year: 2014-15

**Vikramshila Dugdh Utpadak Sahkar
Sangh Ltd.,**

Hospital Road, Mayaganj,
Bhagalpur
[PAN: AAAAV7285P]

..... **Appellant**

vs.

ACIT, Central Circle-1,
Bhagalpur

..... **Respondent**

Appearances by:

Assessee represented by : None

Department represented by : Sh. Ashwani Kr. Singal, JCIT

Date of concluding the hearing : 07.01.2025

Date of pronouncing the order : 13.01.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal emanates from the order dated 11.06.2021, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter 'the Ld. CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereafter 'the Act').

1.1 It is seen that the assessee tendered a claim for allowing the benefit of carrying forward of depreciation in the computation of income. The Ld. AO is seen to have dismissed this claim on the ground that such a claim was not presented in the computation of income. Thus, the application u/s 154 of the Act was dismissed by the Ld. AO.

1.2 Aggrieved with this action, the assessee approached the Ld. CIT(A), who also agreed with the action of the Ld. AO and denied claim with the following findings:

“5. In the instant case, the matter pertains to calculation of unadjusted depreciation of earlier years at a much later date and that too during the course of giving appeal effect of an entirely different year. No such claim has been made in the AYs to which the stated unabsorbed depreciation pertains. The amount of carried forward loss, either business or depreciation is to be determined every year for it to be set off. The instant case does not fall within the scope of inadvertent mistake as it has been done year after year. Accordingly, the discretion available to the appellate authorities is used and it is decided that the claim of the appellant cannot be allowed in this year. It may also be mentioned here that the Income Tax Act contains an express provision in terms of Section 119(2)(b) wherein such belated claims of the assessee are to be considered so as to avoid genuine hardship. Routine acceptance of all such belated claims of the appellant makes this section redundant which cannot be the intention of the legislature. In view of the above, the ground of appeal of the appellant for allowing set off of unabsorbed depreciation not claimed earlier is dismissed.

4.6 As for the claim of the appellant that brought forward losses of AY 2013-14 has not been set off, it is seen that the AO has not given any reason or finding for rejecting this claim of the appellant. The appellant has also claimed that the return of income for AY 2013-14 was filed in time and hence business losses are eligible to be carried forward. The AO is directed to verify the claim of the appellant and allow the set off of business loss computed for the AY 2013-14 with the income of the instant year.”

1.2 On the last date of hearing, it was seen that this matter was long pending and only as far as back as 04.10.2023 some authorised representative had appeared to seek adjournment. It is felt that after more than 10 separate dates of hearing, this matter deserves to be disposed of. The Ld. DR was requested to assist in going through the documents and the facts.

1.3 This appeal has been filed with the following grounds of appeal as under:

1. For that the grounds of appeal hereto are without prejudice to each other.

2. For that the learned Commissioner of Income Tax (Appeal) has erred in not considering the claim of carry forward and set off of unabsorbed depreciation on the grounds inter-alia that the same was made in proceeding of appeal for the first time in appeal and that no such claim could be entertained in view of the judicial pronouncement referred to and relied upon by him notwithstanding the fact that in view of the legal fiction created in section 32 (2) of the Act, the allowance of the part of the allowance to which effect has not been given, shall be added to the amount

of the allowance for depreciation for the following previous year and deemed to be part of that allowance or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year and so on for the succeeding assessment years.

3. For those other various reasons which may be as under time of hearing.”

1.4 For the sake of reference, the statement of facts filed by the assessee also deserve to be extracted as under:

“The appellant is a Co-operative society and is engaged in the business of sale of milk and milk products.

In the accounting period relevant to the assessment year under consideration the appellant had filed a return showing a total income of nil against which the assessment has been completed at a total income of ₹ 3,92,64,380.

Aggrieved with the order of assessment the appellant filed an appeal before the learned Commissioner of Income Tax (Appeal). The learned Commissioner of Income Tax (Appeal) after hearing the parties had been pleased to partly allowed the appeal.

That still aggrieved, the appellant has filed an appeal before the Hon'ble Income Tax Appellate Tribunal, which has been pleased to dismiss the appeal.

That the appellant thereafter filed the petition for rectification before the learned assessing officer under section 154 of the Income Tax Act, 1961 (hereinafter called the Act) on the grounds inter-alia that the losses determined in course of assessment for the year preceding that is, assessment year 2013-14 was not allowed to be set off. The appellant also stated that even the unabsorbed depreciation was not considered and allowed to be set of.

The learned Commissioner of Income Tax (Appeal) in a detailed order allowed the claim of carry forward and set of business loss.

The learned Commissioner of Income Tax (Appeal), however rejected the claim of carry forward and set off of unabsorbed depreciation. The only ground for such disallowance inter-alia was that such claim was made for the first time in appeal.”

2. As mentioned earlier, this matter was gone through with the help of Ld. DR and it is seen that there is no clarity whether the assessee had claimed depreciation in previous years which could not be absorbed and hence was needed to be carried forward. It is clear that a plain reading of section 32(2) of the Act would ensure that any unabsorbed depreciation would be available for setting of in future financial years. There are a catena of judgments which direct that the AO is duty bound to consider claims of depreciation even when such claims have not been clearly presented in the return of income. In light of this position, we direct that the Ld. AO must

examined whether there is any unabsorbed depreciation of previous years which is required to be carried forward or set off and allow the same as per law. We are aware that there may have been a consolidated claim of brought forward losses (which included depreciation) which may have been denied by any condition of filing return of income on time for allowance of the said claim. However, the Ld. AO would do well to see if such a composite claim also has unabsorbed depreciation and in case it was so then the same deserves to be allowed as per law. This matter is remanded back with these directions.

5. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 13.01.2025

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 13.01.2025
AK, P.S.

Copy of the order forwarded to:

1. Vikramshila Dugdh Utpadak Sahkar Sangh Ltd., Bhagalpur
2. ACIT, Central Circle-1, Bhagalpur
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches