

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.2494/Mum/2025
(Assessment Year: 2013-14)**

The Birla Group Holding Private Limited, (As a successor to Turquoise Investments and Finance Pvt Ltd) Industry House, 1 st Floor, 159, Churchgate Reclamation, Marine Lines, Mumbai-400 020 PAN: AAACR2250C	vs	ACIT, Circle 2(1), Ujjain Aaykar Bhavan, 127, Dewas Road, Bharatpuri, Ujjain, Madhya Pradesh, 456010.
APPELLANT		RESPONDENT

Assessee by : Shri Ronak Doshi & Pranav Zanwar
Respondent by : Shri Swapnil Choudhary – Sr AR

Date of hearing : 22/07/2025
Date of pronouncement : 04/08/2025

ORDER

Per Anikesh Banerjee (JM):

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeals)-52, Mumbai [in short, 'Ld.CIT(A)] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), date of order 21/02/2025. The impugned order emanated from the order of the Learned

Assistant Commissioner of Income-tax -2(1), Ujjain (in shot, 'the Ld.AO'), passed under section 143(3) read with section 263 of the Act, 1961 (in short, 'the Act'), date of order 21/12/2018.

2. The assessee has raised the following grounds: -

"GROUND NO. I: ADDITION ON ACCOUNT OF LOSS FROM PARTNERSHIP FIRM AMOUNTING TO Rs. 8,97,32,308/-

1. On the facts and circumstances of the case and in law, the CIT(A) erred in upholding the AO's order in adding to the book profits an amount of Rs. 8,97,32,308/- being the share of loss from partnership firm.

2. The Appellant prays that that the aforesaid addition pertaining to share of loss from partnership firm to the computation of book profits u/s 115JB be deleted.

GROUND NO. II: - LEVY OF INTEREST U/S 234C AND 234D OF THE ACT:

1. The CIT(A) erred in upholding the AO's order in levying interest u/s. 234C and 234D of the Act.

2. The Appellant prays that the AO to be directed to delete or appropriately reduce the Interest charged u/s. 234C and 234D of the Act.

GROUND NO, III: - GENERAL:

The Appellant craves leaves to add to, alter, amend and / or delete the above grounds of appeal."

2. The brief facts of the case are that the assessee's case was completed under section 143(3) accepting the returned income as well as book profit computed under section 115JB of the Act. Thereafter, by pursuing the provisions of section 263 of the Act, the Ld. Principal Commissioner of Income-tax, Ujjain set aside the impugned assessment order and directed the Assessing Officer to make fresh

assessment. The Assessing Officer passed the 'Order Giving effect' (OGE) wherein he added back the share of loss from partnership firm in MAT under section 115JB of the Act. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) upheld the observations of the Ld.AO and rejected the appeal of the assessee. Being aggrieved, the assessee filed an appeal before us.

3. The Ld. AR submitted arguments and filed a paper book comprising pages 1 to 108, which has been taken on record. The Ld. AR contended that the assessee had incurred a loss representing its share in a partnership firm, which was duly debited to the Profit and Loss Account. However, while computing the book profit under section 115JB of the Act, the Ld. AO treated the said loss as a negative income and added it back in accordance with clause (f) of Explanation 1 to section 115JB(2) of the Act. The Ld. AR submitted that the sole issue raised before the Hon'ble Bench pertains to the adjustment made on account of the assessee's share of loss in the partnership firm. The Ld. AO, in the assessment order, noted that the share of profit in a partnership firm is exempt under section 10(2A) of the Act, and therefore, the corresponding share of loss from the same source cannot be set off against taxable income.

In response, the Ld. AR argued that since the share of loss from the partnership firm was credited to the Profit and Loss Account, the same cannot be added back while computing book profit under section 115JB of the Act.

4. In support of his contention, the Ld. AR placed reliance on the decision of the Co-ordinate Bench of the ITAT, Mumbai Bench "C", in the case of **Deputy Commissioner of Income-tax, Circle 6(3), Mumbai vs. Metro Exporters Ltd. (2006)**

10 SOT 647 (Mum), and referred to paragraph 4 of the said order, which is reproduced below: –

“4. We have considered the rival submissions and have perused the orders of the Assessing Officer and the CIT(A). We find that the assessor has debited its share of loss from a registered fires to its profit and loss account and Assessing Officer has made the addition of the same to the net profit while computing the total income of the assessee as per provisions of section 115JA of the Act on the plea that share of profit of the assessee from a partnership firm is exempt from tax as per Chapter III under section 10(2)(a) of the Act. We find that the provisions of Chapter XII-B of the Act is a special provision relating to assessment of certain companies whether the income of certain companies chargeable to tax for the relevant previous year shall be deemed to be an amount equal to 30 per cent of such book profit. These, being special provisions applicable to certain companies have to be strictly applied and income of the assessee has to be computed in accordance with "Book Profit" of the assessed and the working of the "book profit" has to be made as per the provisions of Chapter XII-B of the Act. The proposition that the word "income" includes "loss" is not applicable while computing the "book profit" in accordance with the provision of Chapter XII-B of the Act. We find that the provision of sub-clause (1) to Explanation to section 115JA of the Act relates to the amounts of "Expenditure" relatable to any income to which any of the provisions of Chapter III applies and therefore, the "Loss Share" from a registered firm cannot be said to be synonymous to the word expenditure mentioned in the relevant sub-clause(f) to Explanation to section 115JA of the Act. In sub-clause (ii) Explanation to section 115JA provides for any amount of income to which any of the provisions of Chapter III applies, if such amount is credited to the profit and loss account of the assessee. In this case, the share of the assessee from a registered firm is a "loss" figure and therefore is debited to the Profit and Loss account of the assessee and cannot be credited to the profit and loss account of the assessee. In these facts of the case, we find that the CIT(A) has rightly observed that if any share of profit from the firm had been credited to Profit and Loss account, the same would have to be reduced from the net profit for the purpose of computation of income under section 115JA by virtue of sub-clause (ii) to Explanation to section 115JA of the Act. This being not a case of share of profit from a firm in the hands of the assessee credited to the profit and loss account, we hold that no addition

for the purpose of computation of total income of the assessee under section 115JA of the Act can be made with regard to share of loss from a registered firm of the assessee and accordingly we uphold the order of the CIT(A) that even on merits the addition made in not in accordance with law and the ground of appeal No. 2 of the Revenue is dismissed.”

He further respectfully relied on the order of the co-ordinate bench of ITAT, Delhi Bench “G” in the case of **DCIT vs Roxy Investments Pvt Ltd (2008) 24 SOT 227 (Del)**. The relevant paragraph 13 is reproduced as below: -

“13. A careful perusal of clause (ii) of Explanation to section 115JB(2) will reveal that though the said clause speaks about the amount of ‘income’, it also speaks of “if, any such amount is credited to Profit & Loss Account. Thus, while reading the said clause as a whole, it will become clear that the amount of income which can be reduced by the Assessing Officer for computing the book profit under that clause will be the amount which is credited to the Profit & Loss Account and not the amount of income which is claimed by the assessee or determined by the Assessing Officer while assessing the income under the regular provisions of Income-tax Act. Such a view is also supported by the decision of Delhi Tribunal in the case of Moser Baer India Ltd (supra) wherein relying on the following decisions such proposition was laid down.

- (i) Apollo Tyers Ltd v. CIT (2002) 255 ITR 273 (SC)*
- (ii) GTN Textiles Ltd a case (pa)*
- (iii) Govind Rubber(P) Licant(mpa)*
- (iv) Starchik Specialtier Lady cane (s)*
- (v) Smruthi Organics Lada (pa)*
- (vi) Tushako Pump Ltd v. Asst. CIT (2005) 2 SOT 556 (Bom), and*
- (vii) Asst. CIT vs. Varinder Agro Chemicals Ltd. [2007] 161 Taxman 134 (Chd.)(Mag.)*

14. *In view of the above submission, we find no merit in this ground of the department and the same is dismissed.*

15. *In the result, the appeal filed by the revenue is dismissed.”*

5. The Ld. DR argued and relied on the order of the revenue authorities. The Ld.DR invited our attention in paragraph 8 of the impugned appellate order, which is extracted below:-

“8. In Ground No. 2, the appellant has contested the addition made on account of share of loss from partnership firm amounting to Rs. 8,97,32,308/-.

8.1. I have considered the appellant's submissions, the arguments raised, and the materials on record, including the orders of the AO, the revision order u/s 263 of the Act, and the judicial precedents cited by the appellant.

8.2. The appellant has debited a sum of Rs. 8.97.32,308/- on account of share of loss from partnership firm but has not added the same in the computation of book profit. The appellant has made various averments including that such loss does not fit within various clauses of Explanation 1 to Section 115JB of the Act. Section 10(2A) clearly provides that the share of a partner in the total income of the firm does not form part of total income. Explanation 1 to Section 115JB of the Act provides for increase of book profit by "(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply....." & decrease of book profit by "(ii) the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply, if any such amount is credited to the statement of profit and loss..... Thus, it is clear that the share of profit in the partnership firm needs to be adjusted to the book profit. It would be completely illogical to hold that only the positive share of income would be reduced while the share of negative income would be ignored while computing the book profit.

8.3. In the case CIT (Central) vs Harprasad & Co. (P) Ltd [99 ITR 118 (SC)], 3 judge bench of the Hon'ble Supreme Court has held that profit includes losses, it is discernible that the words 'income' or 'Profits and gains' should be understood as including losses also, so that, in one, sense profits and gains' represent 'plus income' whereas losses represent 'minus income (1). In other words, loss is negative profit. Both positive and negative profits are of a revenue character. Both must enter into computation, wherever it becomes material, in the game mode of the taxable income of the assessee. Similar view has been held by the Hon'ble Supreme Court in numerous other cases.

8.4. In the case of *DCIT v. Fixit (P.) Ltd. (95 taxmann.com 188) (Chennai - Trib.)* in ITA No. 2833/Chny/2017 for AY 2001-02 dt. 26.06.2018, the Hon'ble ITAT considered the identical issue of share of loss in partnership firm and eventually held in para 9 as follows:-

"9. What is excluded from total income by the above sub-section (2A) of Section 10 is the share of the partner in the total income of the firm. Share of loss in a firm is not an expenditure relatable to any exempt income and application of clause-1 of the Explanation was, in our opinion, incorrect. It was Clause (ii) of the Explanation which was applicable. Share of loss in our opinion is nothing but share of negative income. Explanation (ii) to Section 115JB mandates reduction of income to which Section 10 applies, if such income is credited in the Profit & Loss A/c. When share of income from firm is exempt u/s. 10(2A) of the Act, necessarily share of loss is also exempt. What the AO did by adding the loss from the two firms to the profits was reducing, the negative Profit, since loss is nothing but negative profit. We are of the opinion what the Id. AO did was in accordance with Clause(ii) of the Explanation and that the Id. CIT (A) fell in error in relying on a wrong clause for giving relief to the assessee. Accordingly, we set aside the order of the Id. CIT (A) and reinstate the addition made by the AO"

8.5. In view of the above discussion, the AO's action in re-computing the book profit by taking into account the share of loss in partnership firm is upheld. Accordingly. Ground No. 2 stands **DISMISSED.**"

6. We have carefully considered the rival submissions, perused the material available on record, and examined the judicial precedents relied upon by both parties. The core issue for our adjudication is whether the share of loss from a partnership firm, debited to the Profit and Loss Account, can be added back while computing book profits under section 115JB of the Act, by invoking clause (f) or clause (ii) of Explanation 1 to section 115JB(2) of the Act. The Ld. AO added back the share of loss in book profits under clause (f), treating it as relatable to exempt income under section 10(2A). The Ld. CIT(A) upheld this view, primarily on the premise that exempt income under section 10(2A) encompasses both profit and

loss, and hence the share of loss also needs to be excluded from the computation of book profit.

However, we find merit in the submissions of the Ld. AR. The Co-ordinate Bench of the ITAT in **Metro Exporters Ltd.** (supra) has clearly held that share of loss from a partnership firm, being a negative figure debited to the Profit and Loss Account, cannot be equated with 'expenditure relatable to exempt income' for the purposes of clause (f). The decision further clarifies that the mechanism under section 115JB does not contemplate adjustment of such losses unless they fall under the specified heads of additions or deductions in the Explanation. Similarly, the Delhi Bench in **Roxy Investments Pvt. Ltd.** (supra) emphasized that only those amounts actually credited to the Profit and Loss Account and representing exempt income can be reduced under clause (ii); thus, a debit on account of a loss cannot be covered under the provision.

The revenue's reliance on the judgments in **Harprasad & Co** (supra) and **Fixit (P.) Ltd.** (supra) are misplaced in the present context. The issue at hand pertains to the manner of computation of book profit under section 115JB—a special code—and the treatment of items in the Profit and Loss Account under that code. The proposition that loss is negative income cannot be extended mechanically to make additions unless expressly permitted by the Explanation to section 115JB.

It is settled law that adjustments to the net profit for computing book profit under section 115JB are to be strictly made in accordance with the clauses specified in the Explanation to the section. There is no express provision under Explanation 1 permitting addition of the share of loss from a partnership firm, unless it is in the

nature of expenditure relatable to exempt income or any other specified item which in the present case, it is not.

Accordingly, we hold that the action of the Ld. AO in adding back the assessee's share of loss from the partnership firm to the book profits under section 115JB of the Act is not in accordance with law. The Ld. CIT(A) erred in upholding the same.

7. As regards the levy of interest under sections 234C and 234D of the Act, the same is consequential and mandatory in nature. The Ld. AO is directed to recompute the interest, if any, after giving effect to this order.

8. Ground III being general in nature, no need for adjudication.

9. In the result, the appeal of the assessee bearing **ITA No.2494/Mum/2025** is allowed.

Order pronounced in the open court on 04th day of August 2025.

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 04/08/2025

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai