

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'G' BENCH MUMBAI**

BEFORE SHRI SAKTIJIT DEY, JM

&

SHRI M.BALAGANESH, AM

**ITA No.3788/Mum/2018
(Assessment Year :2014-15)**

M/s. Go Airlines (India) Limited C-1, 1 st Floor, Wadia International Centre Pandurang Budhkar Marg Worli, Mumbai – 400 025	Vs.	Deputy Commissioner of Income Tax – 5(1)(1) Room No.568, 5 th Floor Aayakar Bhavan, M.K.Road, Mumbai-400020
PAN/GIR No. AACCG2599K		
(Appellant)	..	(Respondent)

Assessee by	Shri Ronak Doshi
Revenue by	Shri V. Vinod Kumar
Date of Hearing	27/10/2020
Date of Pronouncement	13/01/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3788/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal No.CIT(A)-10/DC-5(1)(1)/390/16-17 dated 20/02/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23/12/2016 by the Id. DCIT 5(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the action of the Id. AO in denying the adjustment in book profit by not giving deduction towards unabsorbed depreciation amounting to Rs.8,48,95,742/- on the ground that the same has already been adjusted in the preceding years.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a company engaged in the business of operating air craft for carriage of passengers and goods and had filed its return of income for the A.Y.2014-15 on 29/11/2014 declaring nil losses under normal provisions of the Act which was later revised on 31/03/2016 declaring loss of Rs.35,76,576/- and book loss u/s.115JB of the Act at Rs.8,66,22,306/-. This book loss was arrived by the assessee after deducting lower of brought forward business loss / unabsorbed depreciation as per books of accounts. We find that assessee had made a net profit of Rs.8,48,95,742/- and had reduced the least, being unabsorbed depreciation as per books of accounts while computing the book profit u/s 115JB of the Act. We find that the Id. AO had observed that while determining book profit u/s.115JB of the Act for A.Y.2011-12 and 2013-14, the assessee had already availed reduction on account of depreciation of Rs.10,31,03,195/- and Rs. 6,78,12,248/- respectively, while computing book profit u/s.115JB of the Act for those years. Accordingly, the Id. AO show caused the assessee seeking explanation from the assessee as to why the reduction claim of Rs.8,48,95,742/- should not be disallowed while computing book profit u/s.115JB of the Act.

3.1. In response to the same, the assessee vide letter dated 17/11/2016 offered its explanation which was not found satisfactory by the Id. AO. We find that the Id. AO had observed that if the adjustment is not done while computing book profit u/s.115JB of the Act in respect of set off allowed in earlier years, the assessee company will avail undue tax relief multiple times. Therefore, to eliminate the multiple relief claimed by the assessee on the same amount, the assessee would not be entitled for reduction as contemplated in the year under consideration. This action of the Id. AO was upheld by the Id. CIT(A).

3.2. We find that we are now concerned with the computation of book profits u/s.115JB of the Act wherein one of the items eligible for reduction would be the lower of brought forward cash loss or brought forward depreciation loss as per books of accounts. We find that provisions of Sections 32(2) and 72 of the Act explicitly provide that the amount would be carried forward for set off in the succeeding years and it should be arrived at after deducting the amounts to which effect has already been given. We find that such provisions are apparently not present in computing the book profits u/s.115JB of the Act. We find that what is contemplated in Clause (iii) of Explanation 1 to Section 115JB of the Act is the simple numerical figure being the amount of loss brought forward or unabsorbed depreciation whichever is less. Hence, it could be safely concluded that it is a simple determination of numerical amount which would be eligible for reduction from net profit for the purposes of arriving at the book profit u/s.115JB of the Act. We also find that most crucial expression used in the said Clause (iii) of Explanation 1 to Section 115JB of the Act would be "as per books of accounts". Hence, unless the entire loss as per books of accounts gets wiped out by profits earned in subsequent years, the said loss would continue to remain in the balance

sheet of the assessee i.e. "books of accounts" and would be eligible for reduction in accordance with Clause (iii) of Explanation 1 to Section 115JB of the Act, while computing book profits u/s.115JB of the Act. We find that this issue is no longer res-integra in view of the decision of the Co-ordinate Bench of Kolkata Tribunal in the case of DCIT vs. Binani Industries Ltd., reported in 178 TTJ 658, wherein the undersigned was the author, wherein it was held as under:-

3. The second issue to be decided in this appeal is as to whether the assessee is entitled for reduction of Rs. 2,18,09,000/- being the lower of unabsorbed depreciation or business loss as per books of accounts from the computation of book profits u/s 115JB of the Act in the facts of the case.

3.1. The Learned AO held that there was no loss available for reduction from the book profits u/s 115JB of the Act and hence the sum of Rs. 2,18,0,9000/- reduced by the assessee was not considered for reduction by the Learned AO. On first appeal, the said reduction was granted by the Learned CITA by relying on certain case laws. Aggrieved, the revenue is in appeal before us on the following ground:-

(ii) That the Ld. CIT(A) has erred in Law as well as in facts and circumstances of the case in directing to reduce the Book Profit u/s 115JB by an amount of Rs.2,18,09,000/- when the admissible amount, i.e., lower of 'unabsorbed depreciation' or 'business loss' was actually 'NIL'.

3.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR argued that the finding given by the Learned AO that the loss as per books of accounts once reduced from book profits in earlier years would not be available for reduction in the subsequent years. He stated that the losses would continue to remain in the books of accounts till it is wiped out by profits derived by the assessee. Accordingly, he argued that the assessee company is very much entitled for reduction of least of the cash loss or depreciation loss as per books of accounts from book profits for computation u/s 115JB of the Act.

3.3. We have heard the rival submissions and perused the materials available on record. We are in agreement with the arguments of the Learned AR that the losses (both cash loss and depreciation loss) would continue to remain in the books of ITA No.144/Kol/2013-A-AM M/s. Binani Industries Ltd 13 accounts till it is wiped off by earning profits by the assessee company and accordingly the same would be available for reduction from book profits u/s 115JB of the Act. We hold that the least of the cash loss or depreciation loss once adjusted /

reduced from book profits in earlier assessment years, do not vanish out of the books until it is wiped out by profits in subsequent years. Till such time, the losses would only continue to remain in the books. We hold that for the purpose of computation of book profits u/s 115JB of the Act, every year the situation of least of cash loss and depreciation loss needs to be worked out and reviewed and accordingly the understanding of the Learned AO that such loss once adjusted in earlier year is no longer available for set off is misconceived. Hence we do not find any infirmity in the order of the Learned CIT(A) in this regard. The Ground No.2 raised by the revenue is dismissed.

3.3. In view of the aforesaid observations and respectfully following the aforesaid judicial precedent, we direct the Id. AO to grant reduction of unabsorbed depreciation amounting to Rs.8,48,95,742/- and re-compute the book profits u/s.115JB of the Act thereon. Accordingly, the ground No I raised by the assessee is allowed.

4. The ground No.II raised by the assessee is with regard to grant of short credit of TDS amounting to Rs.1,92,547/-. We direct the Id. AO to verify the TDS certificates or any other supporting evidences thereon and accordingly, grant the TDS credit eligible to the assessee in accordance with law. Accordingly, the ground No.II raised by the assessee is allowed for statistical purposes.

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

Order pronounced on 13/01/2021 by way of proper mentioning in the notice board.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 13/01/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai