

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER

I.T.A. No.3843/DEL/2017
Assessment Year 2012-13

M/s. PVR Pictures Ltd., 1961, Basant Lok, Vasant Vihar, New Delhi.	Vs.	Dy.CIT, Circle-19(2), New Delhi.
TAN/PAN: AACCP3746K		
(Appellant)		(Respondent)

Appellant by:	Shri V.K. Garg, Adv. & Shri Parveen Kumar, CA		
Respondent by:	Ms. Beenu, Sr.DR		
Date of hearing:	22	02	2023
Date of pronouncement:	10	03	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A)-VII, New Delhi, dated 29.03.2017 arising from the assessment order dated 28.02.2017 passed by the Assessing Officer u/s.143(3) of the Act, concerning Assessment Year 2012-13.

2. As per the grounds of appeal, the assessee has challenged the computation of adjustment allowable in terms of clause (iii) of Explanation-1 to Section 115JB(2) for computation of book profits made by the Assessing Officer resulting in lower adjustment to the extent of Rs.93,06,502/-.

3. When the matter was called for hearing, the Id. counsel for the assessee submitted that;

(i) the assessee furnished its return of income computing total income under normal provisions of the Act. Likewise, book profit under Section 115JB was also computed at Nil. In the course of the assessment proceedings, the book profit was re-determined by the assessee at Rs.1,10,12,730/-. The Assessing Officer computed the tax liability on such book profits accordingly.

(ii) In the first appeal, the assessee contended that it is entitled to adjust the book profit by way of brought forward loss or depreciation as per books of account whichever is less in terms of clause (iii) of Explanation-1 to Section 115JB(2) of the Act.

4. In the first appeal, the assessee reiterated adjustment of carried forward business loss or unabsorbed depreciation whichever is lower, against 'Book Profit' for the purposes of Section 115JB of the Act. The CIT(A) observed that the assessee is not entitled to such adjustment in the facts of the case. The relevant operative paragraph of the order of the CIT(A) reads as under:

5.3 I have carefully considered the assessment order and written submission filed by the Ld. AR. The appellant has provided a working in respect of Book Profit u/s.115JB as under:

Particulars	B/ forward Loss without Dep & Amortization	Book Profit before Dep	Deprectn.	Amortization	Total of Unabs. Deprectn amortization as on date	Net profit-Loss Trsd. To Reserve & Surplus
(Loss)/profit during F.Y. 2009-10	(1,95,00,645)		(8,48,646)	(1,74,73,982)	(1,83,22,628)	(3,78,23,273)
Less: Opening profit as on	1,0,194,143		-	-	-	1,01,94,143
			(8,48,646)	(1,74,73,982)	(1,83,22,628)	(27629130)

01.04.2009 Balance as on 31.03.2010	(93,06,502)					
(Loss)/profit during F.Y. 2010- 11		17,19,9 8,265	(16,49,931)	(39,21,5 3,296)	(22,18,04 ,962)	(22,18,04, 962)
Balance as on 31.03.2010	(93,06,502)		(24,98,577)	(40,96,2 7,278)	(24,01,27 ,590)	(24,94,34, 092)

5.4. In the above working, book profits has been adjusted by Rs.93,06,502/- being the business loss for the F.Y. 2009-10 on the ground that u/s 115JB under Explanation 1 to clause (iii), the Book Profit can be reduced by the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of accounts. Based on the above said working, the appellant has contended that the amount of loss brought forward or the unabsorbed depreciation whichever is less should be allowed for working of the Book Profit computation. In this manner a sum of Rs.93,06,502/- is reduced from the Book Profit computation for the assessment year under consideration. From the working, it is evident that the appellant has considered for the F.Y. 2009- 10 (A.Y. 2010 -11), the loss before depreciation and has separately shown depreciation and amortization. The business loss been adjusted against the opening profit brought forward from 01.04.2009 and the net amount is shown as business loss.

5.5. For the F.Y. 2010-11 (A.Y. 2011-12), similar working has been shown by the appellant but in this year after excluding depreciation and amortization, the result is a Book Profit of Rs.17,19,98,265/-. However, the appellant has not set off the Book Profit anywhere against the brought forward loss as on 01.04.2010. Provisions of Section 115JB(2) of Explanation 1 to clause (ii) is reproduced as under:

'(2) 12[Every assessee,

[(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].

5.6. On plain reading of the Explanation, it is clear in the computation of Book Profit of the current year, the amount of

loss brought forward or unabsorbed depreciation whichever is less as per book is to be set off. The Explanation does not state that the position of loss or unabsorbed depreciation has to be considered on year to year basis i.e. the assessee has to aggregate the losses as well as the profits for all the year and then it will be allowed loss brought forward or depreciation whichever is less. In a financial year, if there is a loss after depreciation but after excluding depreciation, it results into profit, that profit has to be aggregated and set off against the brought forward losses and the resultant loss will be available to the assessee for the next year. Applying the provision to the facts of the appellant, it is clear that the profit for the F.Y. 2010-11 (A.Y. 2011-12) before depreciation and amortization of Rs.17,19,98,265/- is available against which the brought forward losses are to be set off. In case, if there are any further losses available after the set off, the same has to be compared with the depreciation and lesser of the two will be allowed as a deduction. In the case of the appellant, the entire loss of F.Y. 2009-10 will get absorbed by the profit for F.Y. 2010-11 and therefore, there will be a nil loss as on 01.04.2011, the year under consideration. Consequently, under Explanation to clause (iii) of Section 115JB(2), this clause will not apply. In view thereof, the appellant's claim for set off of accumulated depreciation or losses whichever is lower is not as per provisions of law and is therefore, rejected. No interference is therefore, called for in the AO's action of computing the Book Profits u/s. 115JB as per the revised computation filed by the appellant during assessment proceedings. These grounds of appeal are ruled against the appellant."

5. Aggrieved by the denial of relief, the assessee preferred appeal before Tribunal. The adjustment of Book profit under by Section 115JB by lower of business loss and unabsorbed depreciation is in issue. In the matter, the assessee contends that the only difference between the working of the assessee and the CIT(A) towards such adjustment is in relation to F.Y. 2010-11. In FY 2010-11, the assessee has claimed total book loss of Rs.22,18,04,962/- which is solely on account of unabsorbed depreciation loss claimed of Rs.39,38,03,227/-. Since, such

depreciation exceeds the resultant book loss and thus the total book loss represents the unabsorbed depreciation after part absorption against available profit as shown in the working filed. The CIT(A) on the other hand has separated the total depreciation of Rs.39.38 crore as unabsorbed depreciation and taken the remaining amount of Rs.17,19,98,268/-, i.e., [Book loss 22,18,04, 962 (-) unabsorbed depreciation 399803227] as business loss. Such methodology has ultimately resulted in Nil business loss vis-à-vis an unabsorbed depreciation of Rs.41,21,25,855/- as against the total unabsorbed depreciation loss of Rs.24,01,27,590/- and business loss of Rs.93,06,502/- computed by the assessee. The ld. counsel thus submits that the ld. CIT(A) has wrongly computed the amount of unabsorbed depreciation and business loss for the Financial Year 2010-11 opposed to the intendment of the provision of Section 115JB resulting in the present anomaly. It was contended that the action of the CIT(A) is based on both misconception of law and misconception of facts.

6. The Ld. DR for the Revenue, on the other hand, relied upon the order of the CIT(A).

7. We have considered the rival submissions and perused the material available on record. The computation of 'unabsorbed depreciation' and 'business loss' for the purposes of adjustment of lower of the two, against the 'book profits' in terms of clause (iii) of Explanation-1 to Section 115JB(2) of the Act is under controversy.

7.1 Clause (iii) of Explanation-1 to Section 115JB(2) of the Act states that an assessee is entitled to reduce the book profits by the amount of loss brought forward (excluding depreciation) or

unabsorbed depreciation, whichever is less as per books of account. As per the plain language of this provision, it is to be noted that the expression employed in the provision is the "unabsorbed depreciation" and not the "depreciation". The reference to the words "unabsorbed depreciation" rather than the word "depreciation" reflects the intention of the Legislature that in any earlier year if there is some standalone book profit, depreciation of that year stands adjusted to the extent of profit so available and balance unabsorbed depreciation, if any, only should be taken for the purposes of adjustment under Section 115JB. If intent of legislature would have been to consider profit and depreciation independent of each other there was no need to use the word "unabsorbed" before the word depreciation. The word 'unabsorbed' would be rendered redundant, if the view of revenue is endorsed.

7.2 Regarding the term "unabsorbed depreciation" we may also refer to provisions of section 32(2) of the Act governing the carry forward and set off of unabsorbed depreciation. The same is reproduced below:

"(2) Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, 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 previous years."

7.3 From the aforesaid provision also, it is gathered that the 'unabsorbed depreciation' refers to the depreciation or part thereof which remained to be set off against the existing business profits of any year owing to the fact that either there is no profit or such profits were not sufficient to set off the same.

8 Coming to the facts, computation of adjustment allowable in terms of clause (iii) of Explanation-1 to Section 115JB(2) for computation of book profit as claimed by the assessee is reproduced herein.

Assessee working

<i>Years</i>	<i>Total Unabsorbed Depreciation</i>	<i>(Profit)/ Loss [excluding depreciation]</i>	<i>Remarks</i>
<i>As on 1.4.2009</i>		<i>Profit (1,01,94,143)</i>	<i>Opening profit after absorbing Depreciation as on 01.04.2009</i>
<i>F.Y. 2009-10</i>	<i>1,83,22,628</i>	<i>Loss 1,95,00,645</i>	<i>Total book loss for FY 2009 - 10 of Rs.3,78,23,273/- include both book loss (excluding depreciation) Rs. 1,95,00,645/- and unabsorbed depreciation of Rs. 1,83,22,628/-</i>
<i>F.Y. 2010-11</i>	<i>22,18,04,962</i>		<i>Total Book loss (including depreciation) Rs. 22,18,04,962 (A) Depreciation Rs.393,803,227 (B) Standalone profit (excluding depreciation) (-) Rs. 171998265 (A)-(B) Thus, total loss of Rs. 22,18,04,962/- represent unabsorbed depreciation after part absorption against such profits (393803227 - 171998265)</i>
<i>Total</i>	<i>24,01,27,590</i>	<i>93,06,502</i>	<i>Total b/f loss (excluding depreciation) is less than total unabsorbed depreciation.</i>

9. Similarly, the adjustment entitled to the assessee against the book profit as determined by the CIT(A) is reproduced herein:

CIT(A) working

<i>Years</i>	<i>Total Unabsorbed Depreciation</i>	<i>(Profit)/ Loss [excluding depreciation]</i>	<i>Remarks</i>
<i>As on 1.4.2009</i>		<i>Profit (1,01,94,143)</i>	<i>Opening profit after absorbing Depreciation as on 01.04.2009</i>
<i>F.Y. 2009-10</i>	<i>1,83,22,628</i>	<i>Loss 1,95,00,645</i>	<i>Total book loss for FY 2009 - 10 of Rs.3,78,23,273/- include both book loss (excluding depreciation) Rs. 1,95,00,645/- and unabsorbed depreciation of Rs. 1,83,22,628/-</i>
<i>F.Y. 2010-11</i>	<i>39,38,03,227</i>	<i>Profit (17,19,98,265)</i>	<i>Total Book loss (including depreciation) Rs. 22,18,04,962 (A) Depreciation Rs.393,803,227 (B) Standalone profit (excluding depreciation) (-) Rs. 171998265 (A)-(B) <i>Ld. CIT(A) considered the figures of Standalone profit (excluding depreciation) and Depreciation separately without absorbing such profits against depreciation.</i></i>
<i>Total</i>	<i>41,21,25,855</i>	<i>Profit 16,26,91,763</i>	<i>Total b/ f loss (excluding depreciation) is Nil. Unabsorbed depreciation is Rs. 41,21,25,855/-</i>

10. In the light of law enunciated in paragraph 7 (supra), in our view, the assessee has correctly considered the figure of unabsorbed depreciation for Financial Year 2010-11 at Rs.22,18,04,962/- in its working which portion has remained unabsorbed against the existing book profits of that year. The CIT(A) in our view, has wrongly considered the entire depreciation allowance of Rs.39,38,03,227/- instead of restricting

itself to the unabsorbed component. The figure of Rs.39,38,03,227/- considered by the CIT(A) is total depreciation allowance instead of unabsorbed depreciation and thus the position taken by the CIT(A) is contrary to the phraseology of clause (iii) of Explanation-1 to Section 115JB(2). To reiterate clause (iii) of Explanation-1 to Section 115JB(2) uses the expression 'unabsorbed depreciation' which has distinct connotations vis-à-vis total depreciation. We thus find merit in the plea of the assessee in justification of the computation of adjustment available to it against the book profit. In this view of the matter, the claim of the assessee of Rs.93,06,502/- being lower of unabsorbed depreciation and business loss deserves to be set off against the current year book profit in terms of the provisions of clause (iii) of Explanation-1 of Section 115JB(2) of the Act.

11. Hence, we reverse the action of the CIT(A) and allow the claim of the assessee.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 10/03/2023.

Sd/-

**[YOGESH KUMAR US]
JUDICIAL MEMBER**

DATED: /03/2023

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**