

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.7517/M/2019
Assessment Year: 2015-16**

M/s. Go Airlines (India) Ltd., C-1, 1 st Floor, Wadia International Centre, Pandurang Budhkar Marg, Worli, Mumbai – 400 025 PAN: AACCG 2599K	Vs.	Deputy Commissioner of Income Tax-5(1)(1), Room No.568, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ronak Doshi, A.R.
Revenue by : Shri Yogesh Kamat, D.R.

Date of Hearing : 15.07.2021
Date of Pronouncement : 26.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 26.09.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2015-16.

2. The grounds raised by the assessee are as under:

"1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in upholding the action of the Deputy Commissioner of Income Tax, ward 5(1)(1), Mumbai ("Ld. AO") in denying adjustment in book profit of unabsorbed depreciation amounting to Rs.17,09,18,048/- on the alleged ground that the same has already been adjusted in the preceding years.

2. The Appellant prays that it be held that Rs. 17,09,18,048/- should be reduced from the net profits for arriving at the book profits under section 115B of the Act as against 'Nil' adjustment done by the Ld. AO, after reducing Rs. 17,09,18,048/- which

has already been .adjusted in preceding years. Accordingly, the Ld. AO be directed to allow adjustment of Rs. 17,09,18,048/- to the book profits under section 115JB of the Act.”

3. The only issue raised in the grounds of appeal by the assessee is against the order of Ld. CIT(A) upholding the order of AO wherein the AO has denied the adjustment of book profit of unabsorbed depreciation amounting to Rs.17,09,18,048/-.

4. The Ld. Counsel of the assessee, at the outset, submitted that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee’s own case in ITA No.3788/M/2018 A.Y. 2014-15 vide order dated 13.01.2021. The Ld. A.R. prayed before the Bench that since the issue has been settled in favour of the assessee by the decision of the co-ordinate bench of the Tribunal, the issue in the current year may kindly be allowed following the said decision of the co-ordinate bench of the Tribunal.

5. The Ld. D.R., on the other hand, fairly agreed that issue is squarely covered by the decision of the co-ordinate bench of the Tribunal, however, relied on the orders of authorities below.

6. After hearing both the parties and perusing the decision of the co-ordinate bench of the Tribunal vis-à-vis the facts before us in the instant case, we find that the co-ordinate bench of the Tribunal has decided the issue in favour of the assessee in ITA No.3788/M/2018 (supra) in the preceding assessment year, the operative part whereof is reproduced as under:

“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 Coordinate 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.”

7. In view of the above, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to grant the deduction of unabsorbed depreciation and recompute the book profit under section 115JB of the Act accordingly.

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

Order pronounced in the open court on 26.07.2021.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 26.07.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.