

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1472/DEL/2018  
Assessment Year 2014-15

DCIT, Circle-21(1), New Delhi.	v.	Railtel Corporation Of India Ltd., 6 <sup>th</sup> Floor, Block-III, Delhi Technology Park, Shastri Park, New Delhi.
TAN/PAN: AABCR7176C		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Kumar Mittal, CA.		
Respondent by:	Shri Vijay Kataria, Sr.DR		
Date of hearing:	11	05	2022
Date of pronouncement:	18	05	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi ('CIT(A)' in short) dated 18.12.2017 arising from the assessment order dated 30.12.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15. The grounds of appeal raised by the Revenue read as under:

*"1. On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the addition of Rs.5,78,00,000/- made by the Assessing Officer on account of adjustment due change in the depreciation rate.*

*2. On the facts and under the circumstances of the case, the*

*Ld. CIT(A) has erred in law and facts in deleting the disallowance on account of loss on revaluation of fixed assets for Rs.1,00,15,882/- ignoring the provisions of the Act to exclude the diminution in revaluation of assets, assessee cannot be allowed to claim any loss on revaluation of fixed assets whether called diminution/depreciation in revalued assets or by any other name for the purpose of computation of taxable book profits u/s.115JB of the IT Act.”*

2. When the matter was called for hearing, ld. counsel for the assessee in the Revenue appeal pointed out that Ground No.1 concerns adjustment due acceleration in the depreciation rate owing to reworking of useful like of depreciable assets. It was pointed out that identical issue has arisen in its own case in Assessment Year 2012-13 in ITA No.2743/Del/2016 where the issue was set aside to the file of the Assessing Officer with certain directions. The fact and issue being the same, direction of the Assessee Officer should apply *mutatis mutandis* in the instant case.

3. Ld. DR did not object to such proposition in the light of the decision rendered by the Co-ordinate Bench in its own case in other assessment year. The relevant operative paragraph of the order of the Co-ordinate Bench of ITAT is reproduced hereunder for ready reference:

*“(3.4.2) With this background, we now consider the facts of this case and relevant provisions of law. Provisions under paragraphs 11 and 13 of Accounting Standard-6 (AS-6) have been noted by Ld. CIT(A) and relevant portions of the order of Ld. CIT(A) have already been reproduced earlier in this order.*

*Vide paragraph 11 of AS-6, Management of the company is vested with power to exercise judgment in the light of technical, commercial, accounting and legal requirements and it permits Management to periodically review the original estimate of useful life of an asset. Further, under paragraph 13 of AS-6, it is permitted for the company to apply the higher rate of depreciation where the management estimates of the useful life of an asset is shorter than that envisaged under the provision of the relevant statutes (here, The companies Act, 1956). The provisions regarding rates of depreciation charged by a company were explained in Circular dated 07/03/1989 issued under the Companies Act, the relevant portion of which is reproduced as under:*

*"It may be clarified that the rates as contained in Schedule XIV should be viewed as the minimum rates, and, therefore, a company shall not be permitted to charge depreciation at rates lower than those specified in the schedule in relation to assets purchases after the date of applicability of the schedule. However, if on the basis of a bona fide technological evaluation, higher rates of depreciation are justified, they may be provided with proper disclosures by way of a note forming part of annual account." [Emphasis added by us.]*

*3.4.2.1) It is, therefore, obvious that under AS-6, higher rates of depreciation for assets have to be based on bona fide technological evaluation of the useful life of the depreciable assets. For a bona fide technical evaluation, it is necessary that the evaluation should be made by a competent person or body having the requisite technical knowledge and expertise. It is further necessary that such an evaluation leading to*

*higher rate of depreciation is a bona fide evaluation, especially when such an evaluation results in tax benefit for the company. A self serving evaluation, which is not bona fide, leading to claim of reduced tax burden for the Assessee will be a colourable device within the meaning of the landmark decision of Hon'ble Supreme Court in the case of McDowell and Co. Ltd. vs. Commercial Tax Officer 154 ITR 148 (SC). A colourable device to evade tax has to be rejected.*

*(3.4.3) We have already held in foregoing paragraph (3.2.1.1) that for the purpose of determination of book profits, the statutory role of Registrar of Companies to examine and satisfy that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act, has the mandate of the Supreme Court; and further, that report(s)/opinion(s) of statutory auditor(s) and the reports / opinions / recommendations as a result of Supplementary Audit are not final: these are not only subject to approval by the company in its general meeting, but also subject to examination by Registrar of Companies and his satisfaction that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act. However, on the perusal of records before us, which includes the Assessment Order, the order of the Ld. CTT(A), the Paper book filed by the Assessee, Form 35, Form 36 etc; we find that the both the lower authorities, AO as well as Ld. CIT(A), have not considered whether, after examination by Registrar of Companies, whether Registrar of Cor cares was satisfied that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act. Further, on perusal of records, we find that the relevant information,*

*whether, after examination by Registrar of Companies, whether Registrar of Companies was satisfied that the accounts of the assessee are maintained in accordance with the requirements of the Companies Act; is not available on our records. Neither of the two sides, in the course of appellate proceedings in ITAT has provided details regarding constitution of the committee which recommended lower useful life of the assets and higher rate of depreciation. Furthermore, the information regarding technical qualifications, knowledge and expertise of the committee members is also not available on our records. Moreover, a copy of the report of the committee is also not available on our records. On perusal of the records, we find that the query of the AO from the Assessee as to why the useful life of radio equipment has been taken by this committee to the three years, when BSNL (Bharat Sanchar Nigam Limited) considers the useful life of radio equipment to be 12 to 15 years, has remained unanswered. Importantly, the lower authorities, the AO as well as the Ld. CIT (A), have also not considered whether the Registrar of Companies has accepted the decision of the Assessee company to charge higher rate of depreciation and to reduce the useful life of certain depreciable assets with retrospective effect, as a result of which the Assessee has made additional claim of depreciation amounting to Rs. 52.74 crores. Since the relevant information is not on our records, we restore the matter to the file of the AO with the direction to pass fresh order on this issue. Thus, the order of the Ld. CIT(A) is set aside on this limited issue and the matter in dispute in the present appeal before us is restored to the file of the AO for fresh order on this limited issue. In the result, appeal of the Revenue is partly*

*allowed for statistical purposes.”*

4. In view of the consensus arrived in the matter we restore the issue back to the file of the Assessing Officer to implement the directions as applicable in AY 2012-13 in terms of the order of Co-ordinate Bench. The Assessing Officer shall adjudicate the issue in the light of the observations and findings of the Co-ordinate Bench in ITA No.2743/Del/2016 for Assessment Year 2012-13 order dated 28.11.2018.

5. Ground No.1 of the Revenue is allowed for statistical purposes.

6. Ground No.2 concerns disallowances on account of loss on revaluation of fixed assets and corresponding increase in 'book profits' for the purposes of Section 115JB of the Act. The ld. counsel for the assessee in this regard submitted on facts that the assessee acquired equipments from P3 technologies cost whereof was determined under settlement at Rs.275 lakhs. The assets were thereafter revalued at Rs.175.54 lakhs and the loss amounting to Rs.99.46 lakh due to determination of fair value of assets has been shown as 'loss on revaluation of fixed assets' in its financial statements. It was contended that the loss incurred by the assessee was on account of settlement and is not in the nature of revaluation loss as incorrectly captioned in the financial statement. It was further pointed out that the assessee has not claimed any corresponding revaluation reserve in relation to such loss on account of any provision for diminution in the value of asset. It was thus contended that the Assessing Officer is not entitled to disturb the books results and the assessee is not liable to pay any alternative tax on account of adjustment in the book

profit under Section 115JB on this score.

7. The Ld. DR for the Revenue, on the other hand, assailed the action of the CIT(A) and submitted that the impugned fact of actual write off of loss on account of impairment of fixed asset is neither borne out from records nor would by itself allow the assessee to reduce the book profit for the purposes of Section 115JB of the Act. Seen it differently, the impugned loss is capital loss in nature which are not allowable as revenue expenditure even under normal provisions and therefore liable to be adjusted for the purposes of determination of book profit which is only alternate scheme of taxation in certain circumstances. Ld. DR accordingly relied upon the action of the Assessing Officer and urged for reversal of the order of the CIT(A).

8. We have carefully considered the rival submissions. It is the case of the assessee that 'book profits' declared by the assessee as determined after adjustment on account of loss on revaluation/reduction in the value of fixed asset is not permissible to be adjusted for the purposes of determination of book profit under Section 115JB of the Act. As contended, the book profits for the purposes of Section 115JB cannot be adjusted save and except the situations provided in Explanation-I thereto. It is further case of the assessee that the loss arising on account of revaluation of fixed asset is, in effect, the actual loss claimed on account of difference between the settled amount for acquisition of asset vis-à-vis the fair market value thereof. It is thus the case of the assessee that such actual loss on reduction of fixed asset value is not susceptible to any adjustment as held by the CIT(A). The Revenue, on the other hand, contends that the impugned

capital loss on account of revaluation of fixed assets as claimed in the Financial Statement admits of no ambiguity for the purposes of determination of book profit and such capital loss whether by way of revaluation and corresponding provision in the revaluation or by way of actual write off do not justify deduction from book profits being of the capital account.

9. On perusal of the audit report of the Assessee-company, we observe that the Independent Statutory Auditor has expressed 'qualified' opinion on the financial statement and one of the qualifications relates to claim of loss on revaluation of assets in question. The qualification of Auditor has the effect of stating that book profits declared by the Assessee do not bear the trappings of true and fair expression of 'statement of profit and loss'. This being so, it cannot be said that book profits disclosed in the financial statement is sacrosanct and assessee acquires indefeasible right in the matter of its declaration of book profits. Secondly, we also find merit in the plea of the Revenue that notwithstanding the fact that 'loss on account of revaluation of fixed asset' does not arise by way of provision for diminution in the value of asset but an actual loss, such capital loss is not a deductible loss in nature nevertheless. The expression 'income defined under Section 2(24) of the Act does not include such capital losses. The capital loss claimed on account of impairment of assets, in our view, is liable to be adjusted for the purposes of determination of book profit similar to the adjustment available in respect of capital receipts not taxable under the normal provisions of the Act. This view is supported by the decision of the Coordinate Bench of ITAT in *ITO vs. Ganesh Sagar Infrastructure (P.) Ltd.*, (2022) 135 taxmann.com 313 (Ahmedabad).



10. We are thus of the considered view that the assessee is not entitled to reduce the book profit by the capital loss debited to the P&L account which is subject matter of qualification by Auditors. Such capital loss is neither eligible for deduction under the normal provisions nor under the alternate provisions of taxation. We thus set aside the action of the CIT(A) on this score and restore the position taken by the Assessing Officer.

11. In the result, the Ground No.2 of the Revenue's Appeal is allowed.

12. In the combined result, the appeal of the Revenue is allowed.

**Order pronounced in the open Court on 18/05/2022.**

Sd/-  
**[SAKTIJIT DEY]**  
**JUDICIAL MEMBER**

DATED: /05/2022

*Prabhat*

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**