

Penalty levied for excess claim of unabsorbed depreciation u/s 115JB; ITAT denies theory of carry backward of losses

Summary – The Mumbai ITAT in a recent case of SBI DFHI Ltd., (the Assessee) held that where assessee claimed excessive unabsorbed depreciation in terms of Explanation to section 115JB while computing book profits under section 115JB, levy of penalty under section 271(1)(c) had to be upheld

Facts

- For MAT purposes, assessee adjusted brought-forward depreciation reported in assessment year 2005-06, even though it was fully set off against reserves (i.e. accumulated profits) and argued that reference to amount of loss/depreciation for MAT computation be as referred in P&L account of assessment year 2005-06 in preference over balance sheet as on March 31, 2005 (which had no carried forward losses on account of set off against accumulated profit from earlier year).
- Assessing Officer levied penalty under section 271(1)(c) for excessive claim of depreciation.
- Commissioner(Appeals) confirmed penalty.
- On appeal to the Tribunal:

Held

- The language of relevant provision is very clear and there exists no ambiguity so as to admit interpretation sought by assessee. Reference to either profit and loss account or balance-sheet is only for the purpose of ascertaining the loss, if any, brought forward as per the books of account, this is as there has to be one figure (of unabsorbed losses or depreciation) as per books of accounts. Reference to one (profit and loss account) in preference to the other (balance-sheet), as does the assessee, is misleading. All that one needs to look at is at the balance of the profit and loss account as at the end of the immediately preceding year, or, equally at the beginning of the current year, and which would reflect the profit or, as the case may be, loss carried forward to, i.e., brought forward from the immediately preceding year, the current year. Loss only will go to add to the amount of loss carried forward or reduce the amount of profit carried forward, thus when the loss is so adjusted, there is no carry backward of loss. Thus, the levy of penalty under section 271(1)(c) for assessee's excessive claim of unabsorbed depreciation in terms of Explanation to section 115JB while computing book profits under section 115JB for assessment year 2006-07 had to be upheld.