HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 16 OF 2015

DATE: 25.03.2015

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Between:

Commissioner of Income Tax-II,

Hyderabad.

… Petitioner

And

M/s. Kirby Building System India Ltd.,

Medak District.

… Respondent

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. No. 16 of 2015

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ORDER: (Per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is sought to be preferred and admitted by the Revenue against the judgment and order of the learned Tribunal dated 18.06.2010 in relation to the assessment year 2003-04 on the following suggested questions of law.

> "(A). Whether on the facts and in the circumstances of the case, the appellate Tribunal is justified in holding that carried forward loss or unabsorbed depreciation of the reckoning period must be aggregated and the lesser of them should be allowed to be deducted from the book profit under clause (iii) of Explanation I to Section 115 JB of Income Tax Act."
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> (B) Whether on the facts and in the circumstances of the case, the appellate Tribunal is justified in not holding that the lesser of carried forward loss or unabsorbed depreciation of each of the assessment years of the reckoning period must be allowed to be deducted under the aforesaid provision?"

It appears the learned Tribunal while deciding the issue has followed the decision of the Mumbai Bench in the case of **Amline Textiles Pvt., Ltd. vs. ITO**, wherein it was held that the provisions of Section 115 JB of the Income Tax Act has to be followed. It also found that the Assessing Officer has followed the law laid down by the Mumbai Bench. It is not stated before us that the decision of the Mumbai Bench has been challenged.

Hence, we dismiss the appeal.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 25.03.2015

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