IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 50 OF 2015

India Furniture Products Limited,
A Public Limited Company
having registered Office at
Jaikissan Bhawan, Zuarinagar,
Goa 403726
At present having the following
address at G-106, SIDCO,
Industrial Estate, Kakkalur,
Tiruvallur – 602003,
represented herein by its
Whole Time Director
Shri Pervesh Kumar Gandhi,
PAN Card No.AAAC21715A. ….….. Appellant.

Versus

The Commissioner of Income Tax
"Aaykar Bhavan"
Patto, Panaji, Goa. ….….. Respondent.

Shri Menino Pereira, Advocate for the appellant.

Ms. Asha Desai, Advocate for the respondent.

CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.

Date : - 6 June 2016.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri M. Pereira, learned Counsel appearing for the appellant and Ms. A. Desai, learned Counsel appearing for the respondent.

2. Admit on the following substantial question of law:

Whether the impugned order dated 09/02/2015 passed by the Income Tax Appellate Tribunal, Panaji, Goa stands vitiated for not carrying out the calculations in terms of Section 115 JB(2) of the Income Tax Act ?

Learned Counsel appearing for the respondent waives service. Heard forthwith with the consent of the learned Counsel.

3. Shri M. Pereira, learned Counsel appearing for the appellant, during the course of hearing, has vehemently argued that though the appellants have brought material on record before the learned Commissioner to establish that the appellants were entitled for deduction of the total loss claimed to the extent of Rs.1,59,28,201/-, nevertheless, the Revenue Authorities have allowed deductions only for a sum of Rs. 71,12,238/-. The learned Counsel further points out that the amount of deduction claimed was, according to him, the loss which was accumulated, which can be deducted whilst computing the income.

4. Ms. Desai, learned Counsel appearing for the Revenue, however, submits that the appellants have not brought any material on record to establish that the amount claimed was, in fact, the loss which can be deducted under Section 115 JB(2) of the Income Tax Act. The learned Counsel further points out that it is well settled that whilst computing such loss, accumulated depreciation cannot be included. The learned Counsel further points out that in any event, in case the appellants have produced any material which has not been considered, the ITAT may re-examine the matter only on this aspect.

5. Upon hearing the learned Counsel appearing for the parties and taking note of the contentions raised by the respective parties, we find that there is no specific mention in the impugned order the manner of calculation of the amounts in terms of the explanation to Section 115 JB(2) of the Income Tax Act. Without going into the merits of the rival contentions, we find it appropriate to quash and set aside the impugned order of the ITAT and remand the matter to the learned Tribunal to re-examine the matter only on this limited aspect, after hearing the parties in accordance with law. It is, however, clarified that the matter is remanded only for the restricted purpose to examine whether the appellants are entitled to get the deduction on

account of losses incurred as provided in Section 115 JB(2) of the Income Tax Act. In case the appellants desire to produce any further material, such material shall be considered by the Tribunal, after hearing the parties in accordance with law.

6. In view of the above we pass the following :

<u>O R D E R</u>

(I) The appeal is partly allowed.

(II) The impugned order dated 09/02/2015 passed by the Income Tax Appellate Tribunal, Panaji, Goa is partly quashed and set aside to the extent referred to herein above.

(III) ITA No.292/PNJ/2014 is restored to the file of the learned Tribunal.

(IV) The learned Tribunal shall re-examine the matter only in the light of the observations made herein above, after hearing the parties in accordance with law.

(V) The appeal stands disposed of accordingly.

NUTAN D. SARDESSAI, J. **F.M. REIS, J.**

ssm.