

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**'C' BENCH, CHENNAI**

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं

श्री अब्राहमपी.जॉर्ज, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1580/Mds/2016

& CO No.83/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

The Deputy Commissioner of  
Income-Tax,  
Corporate Circle -1(1),  
Chennai – 600 034.

v. M/s.DCM Hyundai Ltd.,  
No.2, Ground Floor, Sri Ram  
Nagar, Prakash Nagar Main Road,  
Thiruninravur, Chennai – 602024.

PAN : AAACD2712K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/ Cross Objector)

Assessee by  
Department by

: Shri T.Banusekar, C.A.  
: Shri Balasubramanian, CIT

सुनवाईकीतारीख/Date of Hearing : 05.10.2016

घोषणाकीतारीख/Date of Pronouncement : 30.11.2016

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

The revenue filed the appeal against the order of CIT(A) -1, Chennai dated 11.02.2016 and pertains to assessment year 2009-10.

2. The assessee has filed the cross objection against the very same order of the CIT(A). Therefore, we heard the appeal of the revenue and cross

objection of the assessee together and dispose off the same by this common order.

3. The only issue arises for consideration is set off unabsorbed depreciation against the long term capital gain. Shri Balasubramanian, the learned department representative submitted that the assessee claimed unabsorbed depreciation to be set off against the long term capital gain. However, the assessing officer disallowed the claim of the assessee. Referring to the decision of the Special Bench of Mumbai ITAT in the case of DCIT Vs. Times Guarantee Ltd. reported in 131 TTJ 257, disallowed the claim of the assessee. However, on appeal by the assessee, the CIT(A) allowed the claim of the assessee by placing reliance on the judgment of the Gujarat High Court in General Motors P Ltd. Vs. DCIT reported in 354 ITR 244. According to the learned department representative, the revenue has already filed the special leave petition before the Apex Court against the Gujarat High Court judgment in General Motors P Ltd. (supra). Therefore, the CIT(A) is not justified in allowing the claim of the assessee by placing reliance on the judgment of the Gujarat High Court. The learned department representative further submitted that he is placing reliance on the observation made by the assessing officer and the ground raised by the revenue before this Tribunal.

4. On the contrary, Shri T.Banusekar, the learned representative for the assessee submitted that an identical issue was considered by this Tribunal in assessee's own case in ITA 1125/Mds/2012 by an order 06.01.2014, an

identical claim was allowed by this Tribunal for the assessment year 2007-08. A similar view was taken by this Tribunal in DCIT Vs. ISC Investment & Finance Pvt.Ltd. in ITA No.1826/Mds/2015, a copy of which is available at page 115 of the paper book. In view of the consistent view taken by this Tribunal and the judgment of the Gujarat High Court in General Motors P Ltd. (supra), the CIT(A) has rightly allowed the claim of the assessee.

5. We have considered the rival submissions on either side and also perused the material available on record. As rightly submitted by the learned representative for the assessee, the unabsorbed depreciation was claimed to be set off against the long term capital gain for the assessment year 2007-08. By placing reliance on the judgment of the Gujarat High Court in General Motors P Ltd. (supra), this Tribunal in the assessee's own case for the assessment year 2007-08 allowed the claim of the assessee. The only contention of the department representative is that the decision of the Mumbai Special Bench of this Tribunal is against the assessee. This Tribunal is of the considered opinion that the judgment of the Gujarat High Court has to be preferred rather than the decision of the Mumbai Special Bench of this Tribunal. Therefore, the CIT(A) has rightly placed his reliance on the judgment of the Gujarat High Court in General Motors P Ltd. (supra) rather than the decision of Mumbai Special Bench of this Tribunal in Times Guarantee Ltd. (supra).

6. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authorities and accordingly, the same is confirmed. Hence, the appeal of the revenue stands dismissed.

7. In view of the decision of this Tribunal in the appeal of the revenue, the cross objection becomes infructuous. Accordingly, the cross objection is also dismissed.

8. In the result, both the appeal of the revenue and the cross objection of the assessee stands dismissed.

Order pronounced on 30<sup>th</sup> November, 2016 at Chennai.

Sd/-  
(अब्राहमपी.जॉर्ज)  
**(Abraham P. George)**  
लेखा सदस्य/Accountant Member

Sd/-  
(एन.आर.एस. गणेशन)  
**(N.R.S. Ganesan)**  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 30<sup>th</sup> November, 2016.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.s