

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1220/Mds/2016
निर्धारण वर्ष /Assessment year : 2003-2004

Indian Bank
Corporate Office,
Accounts Department,
254-256, Avvai Shanmugam
Salai,
Royapettah,
Chennai 600 014.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 2(2)
Chennai.

[**PAN AAACI 1607G**]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. S. Swaminathan, C.A.
: Shri. Supriyo Pal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing
घोषणा की तारीख /Date of
Pronouncement

: 13-10-2016
: 28-10-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, its assails an order dated 01.03.2016 of Commissioner of Income Tax (Appeals)-6, Chennai confirming rectification made by the Id. Assessing Officer u/s.154 of the Act for the impugned assessment year.

2. Facts apropos are that the assessee a nationalised bank had filed its return for the impugned assessment year on 25.11.2003. Assessment was completed u/s.143(3) of the Act on 31.03.2006. Thereafter, notice u/s.154 of the Act was issued to the assessee on 19.03.2013. The notice stated that carried forward unabsorbed depreciation ought not have been allowed beyond eight years and there was a mistake apparent in the assessment order in allowing set off of such depreciation against non business income. Assessee thereupon submitted that law applicable for the assessment year 2003-04 was that which appeared in the Act as on 1st April, 2003. As per assessee limitation of eight period stood withdrawn on that date and carry forward of unabsorbed depreciation could not be restricted to such period, nor its set off with other income could be denied. However this contention was not accepted by the Id. Assessing Officer. He passed an order dated 19th April, 2013 u/s.154 of the Act whereby unabsorbed deprecation loss pertaining to assessment year 1994-95 claimed by the assessee was disallowed.

3. Assessee thereupon moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that there was no mistake in the assessment which was amenable to a rectification u/s.154 of the Act. However, the Id. Commissioner of

Income Tax (Appeals) was not appreciative of this contention. According to him, by virtue of judgments of Hon'ble Madras High Court in the case of *CIT vs. Pioneer Asia Packaging Private Limited (2009) 310 ITR 198* and that of *CIT vs. S & S Power Switchgear Limited 318 ITR 187* unabsorbed depreciation loss could be adjusted only against business profit. As per Id. Commissioner of Income Tax (Appeals) such unabsorbed depreciation could not be allowed a set off against income from house property and income from other source as done by the assessee. Thus, he held that Id. Assessing Officer was justified in invoking u/s.154 of the Act and effecting rectification.

4. Before us, Id. Authorised Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that the assessee had brought to the notice of the Assessing Officer the amendment made by Finance, Act, 2001 through which sub Section (2) of Sec. 32 was substituted. As per Id. Authorised Representative once this substitution came into statute only the substituted provision would apply. Sub Section (2) of Sec.32 of the Act has it stood today allowed considering unabsorbed depreciation as a part of current depreciation. According to him, such unabsorbed depreciation which became part of current depreciation could be set off against income under any head.

5. Per contra, Id. Departmental Representative submitted that sub-section (2) of Section 32 of Finance Act, 2001 did not in any way effect the treatment to be given for carrying forward depreciation. As per Id. Departmental Representative carry forward deprecation pertaining to years prior to assessment year 2002-03 would still be governed by the old provisions.

6. We have considered the rival contentions and perused the orders of the authorities below. No doubt the Hon'ble Jurisdictional High Court decision in the case of *Pioneer Asia Packaging Private Limited (supra)* had held that by virtue of amendment to Sec. 32(2) of the Act w.e.f. 01.04.1997, the deeming fiction of earlier years, whereby unabsorbed depreciation was treated as part of current depreciation was removed and a limit of eight years was put to carrying forward unabsorbed depreciation. In the case of *S & S Power Switchgear Limited (supra)* the lordship held that unabsorbed depreciation relating to assessment years prior to assessment year 1997-1998 could be set off against business income or income from any other head for assessment year 1997-1998 and seven subsequent years. The impugned assessment year here is 2003-2004 and it can be argued that it falls within the seven year period. Even otherwise by virtue of substitution of Sec. (2) of Sec. 32 of the Act, the old provision

stood reinstated thereby bringing back the deeming fiction of treating earlier years unabsorbed depreciation as part of current depreciation. Thus, claim of the assessee for the impugned assessment year for set off of unabsorbed depreciation as on 01.04.1997 against other heads of income cannot in our opinion be faulted. In any case, we cannot say that there was a mistake in the assessment order which was apparent from the record and which could be corrected by a rectificatory proceedings u/s.154 of the Act. We, therefore set aside the order of the authorities below.

7. In the result, the appeal of the assessee stands allowed.

Order pronounced on Friday, the 28th day of October, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:28th October, 2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER