

आयकर अपीलिय अधिकरण, "डी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE S/SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.7329/Mum/2011

(निर्धारण वर्ष / Assessment Year: 2008-09)

The Asstt. Commissioner of Income Tax 8(3), Room No.217, Aayakar Bhavan, M.K.Marg, Mumbai - 400020	बनाम/ Vs.	Ramani Hotels Limited 462, A.B.Nair Road, Juhu, Mumbai - 400049
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR5513J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Subhash S. Shetty
Department by:	Shri K. Ravi Ramchandran

सुनवाई की तारीख / Date of Hearing: 20.10.2015

घोषणा की तारीख /Date of Pronouncement: 16.12.2015

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the appeal against the order of learned Commissioner of Income Tax (Appeals)-18, Mumbai [hereinafter referred to as the "learned CIT(A)"] dated 30.08.2011 relevant to the A.Y. 2008-09.

2. The revenue has raised only one ground which has been mentioned below:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) direction to the Assessing Officer to allow the set-off of brought forward unabsorbed depreciation loss of Rs.2,55,15,298/- pertaining to A.Y. 2002-03 against the assessed income for the A.Y. 2008-09 was without jurisdiction."

3. We have heard the rival contentions and perused the materials on record. The learned Departmental Representative argued that the unabsorbed depreciation loss to the tune of Rs.2,55,15,298/- pertains to the A.Y.2002-03 which is not required to be claimed in the present Assessment Year i.e. 2008-09. It is also argued that the learned CIT(A) has wrongly allowed the claim of depreciation hence the order of learned CIT(A) is not justifiable and is liable to be set aside. While, on the other hand the assessee's representative is strongly relying upon the order passed by learned CIT(A). Before going further it is necessary advert the finding of learned CIT(A) on record:-

"I have considered the submissions of the leaned counsel and in this case as brought out by the learned counsel that depreciation loss is not covered under the provisions of section 79 of the IT. Act - the provisions of section 79 are applicable only to business loss. Further, as stated by the learned counsel the brought forward depreciation loss pertaining to AY 1999-2000 to AY 2001-02 has been set off by the AO against the income in AY 2005-06, AY 2006-07 and AY 2007 -08 while framing the order u/s. 143(3) - thus, the same is clearly allowable.

Further the case laws cited and relied upon by the appellant also support the above proposition:- .

- => (1995) 128 Taxation 92 (Coch)(AT) M/s. Pioneer Enterprises
- => (1993) 114 Taxation 65 (Guj.) Broach Textile Mills
- => (1993) 201 ITR 124 (Cal) Surma Tubes Pvt.Ltd.
- => (1986) 157 ITR 658 (Jer) Kalpaka Enterprises.
- => (1983) 143 ITR 863 (Guj) Shri.Subhlami Mills Ltd.
- => (1979) 119 ITR 458 (Mad) Concord Industrial Ltd.

Accordingly, following the above reasoning and the decisions cited, the AO is directed to allow the set off of brought forward unabsorbed depreciation loss of Rs.2,55,15,298/- pertaining to AY 2002-03 against the assessed income for the present year i.e AY 2008-09. In result, this ground of appeal is allowed.

4. As discussed by the learned CIT(A) that the loss is not covered under the provision of section 79 of the Act. The provision of section 79 of the Act is applicable only to business loss and not to depreciation loss. Moreover, the

brought forward depreciation loss pertaining to A.Y.1999-2000 to A.Y.2001-02 has been set off by the Assessing Officer against the income in A.Y. 2005-06, A.Y. 2006-07 and A.Y. 2007-08. While finalising the assessment order u/s. 143(3) the learned CIT(A) has also followed the cases as mentioned in the above said order. By going through the order carefully we find no ground to interfere with the said appeal. Therefore, the appeal of the revenue is ordered to be dismissed.

7. In result the appeal of the revenue is hereby dismissed.

Order pronounced in the open court on 16th December, 2015

Sd/-

(N.K.BILLAIYA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 16th December, 2015

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai