

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2993/Mds/2016

निर्धारण वर्ष /Assessment Year: 2010-11

The Dy. Commissioner of-  
Income Tax,  
Corporate Circle-2(1),  
Chennai-600 034.

**Vs.** M/s.Island Hotels Maharaj-  
Ltd., (Successor-EIH  
Associated Hotels Ltd.),  
1/24,GST Road,  
Meenambakkam,  
Chennai-600 027.  
**[PAN: AAACI 8157 M]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Awijit Rakshit, JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.N.V.Balaji, Adv.

सुनवाई की तारीख/Date of Hearing

: 28.08.2017

घोषणा की तारीख /Date of Pronouncement

: 31.10.2017

**आदेश / O R D E R**

**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Revenue filed this appeal against the Order of Commissioner of  
Income Tax (Appeals)-6, Chennai, in ITA No.33/CIT(A)-6/2012-13 dated  
01.08.2016 for the ay 2010-11.

2. M/s. Island Hotels Maharaj Ltd., (Successor-EIH Associated Hotels Ltd.) is engaged in the hospitality business. In the assessment made for the ay 2010-11, the AO has refused to allow the assessee's claim of credit for brought forward depreciation pertaining to a y 2000-01 based on the ITAT Special Bench, Mumbai decision in the case of Times Guaranty Ltd. in ITA No.4917/M/2008 (TIOL 340 ITAT Mum SB) dated 30.06.2010. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) by following the judgment of the Hon'ble Gujarat High Court in the case of General Motors India Pvt. Ltd. vs. DCIT (2013) 354 ITR 244 (Guj) allowed the appeal. Aggrieved against that order, the Revenue filed this appeal with the following grounds of appeal:

1. *The Order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.*
  - 2.1 *The CIT(A) erred in allowing the assessee to carry forward the brought forward depreciation pertaining to A.Y.2000-01 to be set off beyond the period of eight years.*
  - 2.2 *The CIT(A) ought to have appreciated that as per section 32(2) of the Act the unabsorbed depreciation for the A.Ys.1997-98 to 2001-02 which is carried forward can be set off against business income only and can be carried forward only up to 8 years and only unabsorbed depreciation for A.Y.2002-03 onwards can be carried forward without time limit and can be set off against all income.*
  - 2.3 *The CIT(A) failed to appreciate the Supreme Court's decision in the case of Peerless General Finance and Investment Co. Ltd. (73 Taxmann.com 258)(SC) wherein it was observed that the unabsorbed depreciation as on 1st April, 1997 can be set off against the income from any Head for the immediate Assessment Year following 1st April, 1997 and thereafter if there still is any unabsorbed depreciation the same can be set off only against the Business Income for a period of eight (08) Assessment years.*
3. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*

3. The D R presented the case on the lines of grounds of appeal, supra. The AR relied on the decision of the Hon'ble High Court of Gujarat, based on which the CIT(A) allowed the appeal. Further, he relied on the decision of this Tribunal in the case of ACIT vs. M/s. Tamil Nadu Cements Corporation Ltd., for the a y 2008-09 in ITA NO.420/Mds/2017 dated 29.06.2017. The relevant portion is extracted as under:

*" .....The Ld.DR placed his reliance on the judgment of the Apex court in Peerless General Finance and Investment Co. Ltd. vs. Commissioner of Income Tax, (2016) 380 ITR 165.*

*3. On the contrary, Ms. S.Sriniranjani, the Ld. counsel for the assessee submitted that Section 32(2) was amended w.e.f. 01.04.2002 by Finance Act, 2001. After the amendment, the carry forward depreciation has to be treated as depreciation for the current year and it has to be set off for the succeeding previous years. The Gujarat High Court in General Motors India Pvt. Ltd. examined this issue and found that after the amendment it can be carry forward even after 8 assessment years. This judgment of the Gujarat High Court was followed by this Tribunal in ACIT vs. M/s. Sri Ramakrishna Mills (Coimbatore) Ltd., ITA 2468/Mds/2014 vide order dated 10.07.2015.*

*4. We have considered the rival submissions on either side and perused the material available on record. Section 32(2) was amended w.e.f. 01.04.2002. The amended Section 32(2) reads as follows:*

*"Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no profits or gains chargeable for that previous year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section(2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be the allowance for that previous year, and so on for the succeeding previous years."*

*In view of the latest provisions of Sec. 32(2), the depreciation which cannot be allowed shall be added to the amount of depreciation for the following year and the same shall be treated as income of the previous year and deemed to be allowance for that year. Accordingly, it can be carry forward even for the succeeding previous years without any restriction. Since the Parliament has removed the restriction of 8 succeeding years w.e.f. 01.04.2002, the Ld.CIT(Appeals) has rightly placing his reliance on the judgment of the Gujarat High Court and this Tribunal decision, allowed the claim of the assessee. Therefore, we do not find any reason to interfere with the order of the lower authority. Accordingly the same is confirmed.*

4. We have considered the rival submissions. Since the facts and position of law remain same, following the above decisions, we hold that decision of the CIT (A) does not require any interference and hence dismiss the Revenue's appeal.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on October 31, 2017, at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(एस जयरामन)

**(S. JAYARAMAN)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: October 31, 2017.

TLN

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