

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM**

ITA No. 3417/Mum/2016

(A.Y. 2007-08)

Prisim Cement Limited Rahejas, Main Avenue, V.P. Road, Santacruz (West), Mumbai-400 054	Vs.	The Asst. Commissioner of Income Tax, Central Circle – 34, Air India Building, Nariman Point, Mumbai-400 021
Appellant	..	Respondent
PAN No. AAACP6224A		

Assessee by : Prakash Kotajia, AR

Revenue by : Virender Singh, DR

Date of hearing: 01-05-2018 **Date of pronouncement :** 11-05-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-54, Mumbai [in short CIT(A)], in appeal No. CIT(A)-41/ACCC-34/IT-742/11-12 dated 01.02.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-34, Mumbai (in short 'ACIT') for the A.Y. 2007-08 vide order dated 20-12-2011 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in reopening the assessment



under section 147 of the Act. For this assessee has raised the following ground No. 1: -

“1. The learned Commissioner of Income-tax (Appeals) erred in upholding the action of the Assistant Commissioner of Income tax- Central Circle-34, Mumbai (hereinafter referred as "Assessing Officer") in passing of order under section 143(3) r.w.s. 147. The appellant submits that the reopening of assessment is illegal and contrary to provisions of the Act as the appellant has not concealed any particulars of its income nor tiled any inaccurate particulars thereof.”

3. At the outset, the learned Counsel for the assessee Shri Prakash Kotajia stated that he has instructions from the assessee not to press this ground. Accordingly, he made endorsement on the appeal qua this. On this the learned Sr. DR has not objected. As the issue is not pressed, the same is dismissed as not pressed.

4. The second issue which is on merits is as regards to the order of CIT(A) upholding the action of the AO in not allowing the set off of brought forward of unabsorbed depreciation amounting to Rs. 1,98,73,287/-. For this assessee has raised the following ground no. 2 and 3: -

“2. The learned Commissioner of Income tax(Appeals) erred in upholding the action of the Assessing Officer in not allowing the set off of brought forward unabsorbed depreciation amounting to Rs. 1,98,73,287/- (in respect of assessment year 2002-03) against the profit & gain of business or profession 11w assessment year 2007-08.



3. *The appellant submits that Assessing Officer be directed to allow set off of brought forward unabsorbed depreciation amounting to Rs. 1,98,73,287/-."*

5. Briefly stated facts are that the AO reopened the assessment under section 147 of the Act for the reason that the set off of losses pertaining to AY 2002-03 amounting to Rs. 58,32,05,878/- has wrongly been taken whereas actual unabsorbed depreciation was to the extent of Rs. 56,33,32,581/-. Accordingly, this leads to excess allowances of set off of unobserved depreciation amounting to Rs. 1,98,73,297/-. Accordingly, the AO disallowed this set off of loss by observing as under: -

"Further, the set off of loses against the income of AY 2007-08 includes unabsorbed depreciation amounting to ₹ 58,32,05,878/- pertaining to AY 2002-03. However, on verification of the assessment record of AY 2002-03, after giving effect to the CIT(A)'s order, the unabsorbed depreciation was only ₹ 56,33,32,581/- which leads allowance of excess set off of unabsorbed depreciation of ₹ 1,98,73,297/-.."

Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO by observing in para 9.4.1 as under: -

"9.4.1 I have considered the submissions of the appellant and perused the materials available on record. The appellant has submitted that the Id AO has erred in not allowing the set off of brought forward unabsorbed depreciation amounting to ₹ 1,98,73,287/- (in respect of AY 2002-03) against the profit of assessment year under consideration. The



appellant has further submitted that in AY 2001-02 it had incurred a sum of ₹ 9,51,40,000/- towards restructuring fees in respect of loans from ICICI Bank Ltd and in books of account, it had considered the same as Deterred Revenue expenditure and was amortized over a period of 9 years. However, in its computation of income for A.Y. 2001-02 it had debited the entire amount as deduction. The d. AO while completing the assessment in A.Y. 2001-02 had restricted the allowance of such deferred revenue expenses to the extent Witten off in books of accounts. The Id. CIT(A) had confirmed the said disallowance made in A.Y. 200102. The appellant has also submitted that it had not preferred any appeal against the order of the Id. CIT(A) in A.Y. 2001-02 and hence has accepted the contention of the Department. The appellant has also submitted that in A.Y. 2002-03. it had debited the deferred revenue expenses of Rs. 1,98,73,297/- in P & L account and had added back the same in computation of income in tune of its stand in A.Y. 2001-02. Now the appellant has submitted that since the in A.Y. 2001-02 it has finally accepted the stand of the Department, so in A.Y. 2002-03 it is entitled of claim of deferred revenue expenses debited in P & L account, but added back in computation of income. The contentions of the appellant have been considered carefully. From the facts available on records it is observed that the appellant in A.Y. 2001-02 in computation of income had claimed the entire deferred revenue expenses and the same was disallowed by the Id. AO therein



and restricted the same to the extent debited in P & L account. The said action of the Ld. AO in A.Y. 2001-02 was confirmed by the Ld. CIT(A). From the records it is also observed that the appellant has not revised its claim in A.Y. 2002-03. Further in A.Y. 2001-02, before the Ld. CIT(A) the appellant had not pleaded to give any direction in respect of its claim of deferred revenue expenditure for AN 2002-03 and also there is no direction of the Ld. CIT(A) in respect of A.Y. 2002-03. In view of the facts of the case, as on date in the records of A.Y. 2002-03 no such claim of the appellant stands allowed. Before the undersigned, the appeal is for A.Y. 2007-08 and hence the undersigned cannot adjudicate on any issue pertaining to the A.Y. 2002-03. In view of the facts of the case and circumstances, I am of considered opinion that no fault can be found with the action of the Ld. AO in disallowing the claim of unabsorbed depreciation of Rs. 1,98,73,297/- against the profit of current assessment year. Hence the disallowance of claim of set off of Rs. 19873297/- is CONFIRMED. Accordingly, the Ground No. 4 is DISMISSED.”

Aggrieved, now assessee is in second appeal before Tribunal.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. When a query was put to the learned Counsel for the assessee that this matter pertains to AY 2002-03 and arising out of the order of the AO giving appeal effect to CIT(A)'s order for AY 2002-03. Whether the same is challenged by assessee or not, he could not answer. The assessee should have challenged the appeal



ITA No. 3417/Mum/2016

giving effect to the order of CIT(A) by AO and not the ultimate assessment for the AY 2007-08 which is only consequential. We find that the dispute pertains to AY 2002-03 and not to the relevant AY 2007-08 and accordingly, there is no cause of action in this year. Hence, we dismiss this issue of assessee's appeal. The appeal of assessee is dismissed.

7. In the result, the appeal assessee is dismissed.

Order pronounced in the open court on 11-05-2018.

Sd/-
(NK PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 11-05-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI