

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO.392/MUM/2017 (A.Y: 2012-13)**

DCIT Central Circle – 6(1) R.No.1905, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai – 400 021	v.	M/s. Elder Projects Ltd., C-9, Dalia Industrial Estate, Elder House Off Veera Desai Road, Andheri (W) Mumbai – 400 053  <b>PAN NO: AAACE 7387 B</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Assessee by : Shri Prateek Jain**

**Revenue by : Shri V. Justin**

**Date of Hearing : 25.06.2018**

**Date of Pronouncement : 12.09.2018**

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals) – 54 Mumbai dated 06.10.2016 for the Assessment Year 2012-13.

2. The only grievance of the Revenue is that the Ld.CIT(A) erred in directing the Assessing Officer to set off of unabsorbed depreciation pertaining to Assessment Year 1996-97 to A.Y.1998-99 relying on the

decision of the Hon'ble Gujarat High Court in the case of General Motors India Pvt Ltd. v. DCIT [25 taxmann.com 364].

3. At the outset, the Learned Counsel for the assessee submitted that the issue in appeal is squarely covered by the decision of the Hon'ble Gujarat High Court in the case of General Motors India Pvt Ltd. v. DCIT (supra) which decision has been followed by the Ld.CIT(A) and allowed claim for set off unabsorbed depreciation of the Assessment Years 1996-97 & 1998-99 against the profits for the Assessment Year 2002-03.

4. Ld. DR fairly submitted that issue has been decided in favour of the assessee but however the judgment of the Hon'ble Gujarat High Court has been contested before the Hon'ble Supreme Court by the Revenue.

5. We have heard the rival submissions, perused the orders of the authorities below. The only issue to be decided is whether the assessee is eligible to be set off of brought forward unabsorbed depreciation pertaining to Assessment Years 1996-97 to 1998-99. Ld.CIT(A) following the decision of the Hon'ble Gujarat High Court in the case of General Motors India Pvt Ltd. v. DCIT (supra) allowed the claim of the assessee observing as under: -

“6.4.2 From the above referred decisions it is observed that the Hon'ble Gujarat High Court in the case of General Motors India P Ltd (supra) has held that restriction of 8 years for carry forward and set off of unabsorbed depreciation from A.Y. 1997-98 upto the A.Y. 2001-02 got carried forward to the assessment year 2002-03 and became part thereof, it came to be governed by the provisions of section 32(2) as amended by Finance Act, 2001 and were available for carry

forward and set off against the profits and gains of subsequent years, without any limit whatsoever. Further the Hon'ble ITAT, Mumbai in the case of Hindustan Unilever Limited (supra) after considering the decision of the Hon'ble ITAT Mumbai Special Bench in the case of Times Guaranty Ltd has held that since the decision of Hon'ble Gujarat High Court in the case of General Motors India P Ltd, is in favour of assessee and from higher judicial authority, we are bound by the decision of the Gujarat High Court in preference to the Special Bench decision of the ITAT and following the same had allowed the appeal of the assessee. In view of the facts and circumstances of the case and law discussed, respectfully following the decision of the Hon'ble Gujarat High Court in the case of General Motors India P Ltd (supra) and Hon'ble ITAT, Mumbai in the case of Hindustan Unilever Ltd the Ld. AO is directed to verify the records and allow set off of unabsorbed depreciation pertaining to A.Ys. 1996-97 to 1998-99 carried forward and as available as per records, against the profit of current year. Accordingly, the Ground No.1 raised in appeal is ALLOWED, subject to above directions.”

6. Respectfully following the decision of the Hon'ble Gujarat High Court in the case of General Motors India Pvt Ltd. v. DCIT (supra) we sustain the order of the Ld.CIT(A).

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 12<sup>th</sup> September, 2018.

Sd/-  
**(RAJESH KUMAR)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 12/09/2018  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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,

(Asstt. Registrar)  
**ITAT, Mumbai**