

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'A', BENGALURU

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.2463/Bang/2017
(Assessment Year : 2011-12)

Deputy Commissioner of Income-tax,
Circle – 4(1)(1), Bengaluru .. Appellant

v.

M/s. Karnataka Silk Industries Corporation Ltd,
3rd & 4th floor, Public Utility Building,
M. G. Road, Bengaluru 560 001 .. Respondent
PAN : AAACK6554A

Assessee by : Shri. Sachin Mehta, CA
Revenue by : Shri. Siddappaji R. N. Addl. CIT

Heard on : 25.09.2018
Pronounced on : 28.09.2017

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the Revenue against the order of the CIT (A) -4, Bengaluru, dt.30.08.2017, for the assessment year 2011-12, on the following effective grounds of appeal :

2. *On facts of the case, whether the Ld CIT (A) is justified in law as well as on facts in holding that unabsorbed depreciation is covered by the provisions of*

Section 32(2) of the Act, as amended by the Finance Act, 2001 and therefore, the assessee is entitled to carry forward and set off against profit and gains of subsequent year?

3. *On facts of the case, the decision of the Ld CIT (A) is right in allowing the appeal of the assessee ignoring the amendments to the Finance Act amended as on 01/04.1997, wherein it was mentioned that the depreciation ought to be allowed upto 8 Asst. Years only?*

02. From a perusal of the grounds of appeal, it is clear that the CIT (A) had allowed the carry forward of depreciation beyond a period of eight years, relying on the amendment brought into the Finance Act, 2001 and therefore feeling aggrieved by the order of the CIT (A), the Revenue is in appeal.

03. The Ld. DR has drawn our attention to para 6 of the order of the CIT (A), wherein it was held as under :

I have considered the AC's observations I findings and submission made /the case laws relied upon by the assessee company. The case laws cited by the appellant pertain to similar situation as arising in the present case. It is seen that, the jurisdictional Karnataka High Court (in case of Karnataka Cooperative milk producers) has held that unabsorbed depreciation u/s. 32(2) can be carried-forward for over the relevant period.

The Assessee has placed reliance on the judgment of the Hon'ble Gujarat High Court in the case of General Motors India (P) Ltd. (50 ITCL 255), wherein it has been held that, unabsorbed depreciation pertaining to assessment year 1997-98 to 2001-02, can be carried forward to the assessment year 2002-03 and the same became part thereof. The Hon'ble Court observed that, the question of carry-forward loss came to be governed by the provisions of section 32(2), as amended by Finance Act, 2001 and the same were available for carry forward and set off, against the profits

and gains of subsequent years, without any bar. The jurisdictional Hon'ble Karnataka High Court in the case of Karnataka co-operative Milk Producers' Federation Ltd. Vs. DCIT 53 DTR (Kar) 81, in respect of the similar issue of adjustment of unabsorbed depreciation for AY: 1993-94 (against AY:2006-07), decided the issue in favour of the Assessee. The Appellant in its written submission has also pointed out that the decision of the special Bench of ITAT (Mumbai) in DCIT v. Times Guaranty Ltd. (relied on by the AO) has since been reversed by the aforesaid Hon'ble Gujarat High Court in General Motors India Pvt Ltd.

In background of the above detailed discussion, facts & circumstances of the case and binding judicial precedents on the subject, the Assessee's grounds of appeal are allowed. The AO is therefore directed to give necessary appeal-effect, and the grounds of appeal on this account are therefore allowed.

The Ld. DR relied on the order passed by the AO and has submitted that the provision inserted by the Finance Act, 2001 cannot be made applicable retrospectively.

05. Per contra the Ld. AR has submitted that the order passed by the CIT (A) is based on the judgments of the Hon'ble jurisdictional High Court in the matter of Karnataka co-operative Milk Producers' Federation Ltd. Vs. DCIT 53 DTR (Kar) 81, and also on the judgment of the Hon'ble Gujarat High Court in the matter of General Motors India p. Ltd [354 ITR 244] and has submitted that since the issue is covered in favour of the assessee by the judgments of the Hon'ble jurisdictional and Gujarat

High Courts, therefore the appeal of the Revenue is required to be dismissed.

06. We have heard the rival submissions and perused the record as also the citations quoted before us. The Hon'ble jurisdictional High Court in Karnataka Milk Producers Federation Ltd (supra), in para 7, has held as under :

7. The order passed at Annex. Q by the CIT that the unabsorbed depreciation incurred for the asst. yr. 1993-94 gets lapsed on 31st March, 2002. The said order has affected the petitioner, since according to the petitioner, prior to the amendment introduced during 1996-97, it was permissible to carry forward the unabsorbed depreciation and from 1993-94 to 1996-97, the unabsorbed depreciation has been carried forward. The amendment introduced limiting the time for carrying forward for a period of eight years has to be reckoned not from 1993-94 but from 1996-97 and the same was carried forward and by the year 2006-07 since again there is an amendment introduced during 2002 making this period of eight years as unlimited, from 2002 onwards even till 2006-07, it is permissible to carry forward the unabsorbed depreciation in view of the change in position of law. This aspect has not been considered by the revisional authority as such, the impugned order passed at Annex. Q is without taking into consideration the provisions under s. 32(2) of the Act which came to be introduced limiting/extending the period from eight years for an unlimited period. Further, carrying forward of unabsorbed depreciation for every year has to be calculated individually based on the audit report and to arrive at the exact amount to be carried forward.

Similarly the Hon'ble Gujarat High Court in para 40, has held as under :

40. Therefore, it can be said that, current depreciation is deductible in the first place from the income of the business to

which it relates. If such depreciation amount is larger than the amount of the profits of that business, then such excess comes for absorption from the profits and gains from any other business or business, if any, carried on by the assessee. If a balance is left even thereafter, that becomes deductible from out of income from any source under any of the other heads of income during that year. In case there is a still balance left over, it is to be treated as unabsorbed depreciation and it is taken to the next succeeding year. Where there is current depreciation for such succeeding year the unabsorbed depreciation is added to the current depreciation for such succeeding year and is deemed as part thereof. If, however, there is no current depreciation for such succeeding year, the unabsorbed depreciation becomes the depreciation allowance for such succeeding year. We are of the considered opinion that any unabsorbed depreciation available to an assessee on the 1st day of April, 2002 (the assessment year 2002-03), will be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001. And once Circular No. 14 of 2001 clarified that the restriction of eight years for carry forward and set off of unabsorbed depreciation had been dispensed with, the unabsorbed depreciation from the assessment year 1997-98 up to the assessment year 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 the Finance Act, 2001, and were available for carry forward and set off against the profits and gains of subsequent years, without any limit whatsoever.

In both these judgments cited before us, it is crystal clear that unabsorbed depreciation after lifting of the eight years period ceiling, is now available to be carried forward beyond the period of eight years and therefore the ground raised before us by the Revenue are not sustainable in law. Therefore respectfully following the judgment of the Hon'ble jurisdictional High Court, we dismiss the appeal of the Revenue.

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

Order pronounced in the open court on 28th day of September, 2018.

Sd/-
(JASON P. BOAZ)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 28.09.2018

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.