

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 2095/PUN/2016

निर्धारण वर्ष / Assessment Year : 2006-07

The Deputy Commissioner of Income Tax,
Circle- 1(2), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Fresenius Kabi India Pvt. Ltd.
Heritage House, 6E Ramabai
Ambedkar Road,
Pune-411 001
PAN : AAACF2614E

.....प्रत्यर्थी / Respondent

Revenue by : Shri Sanjeev Ghai
Assessee by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 18.10.2018

घोषणा की तारीख / Date of Pronouncement : 24.10.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This is the appeal filed by the Revenue against the order of the CIT(A),
Pune-1 dated 02.06.2016 for the assessment year 2006-07.

2. Grounds raised by the Revenue in appeal reads as under:

- “1. The order of the Ld. Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.*
- 2. The Ld. Commissioner of Income tax (Appeals) grossly erred in allowing set off of unabsorbed depreciation of A.Ys 1997-98 and 1998-99.*
- 3. The Ld. Commissioner of Income tax (Appeals) grossly erred in holding that amended provisions of Section 32(1) of the I.T. Act, 1961 are applicable ignoring the decision of ITAT, Mumbai Special Bench in the case of Times Guarantee Ltd. Vs. DCIT (ITA No.4917/4918/Mum/2008 in which it was held that brought forward unabsorbed depreciation and carry forward of loss cannot be set off against income under the head business and profession for more than eight A.Ys. immediately succeeding the A.Y. for which loss was first computed.*
- 4. For these and such other grounds as may be urged at the time of hearing, the order of the Ld. Commissioner of Income tax (Appeals) may be vacated and that of the assessing Officer be restored.*
- 5. The appellant craves to add, amend, alter or delete any of the grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”*

3. Briefly stated relevant facts include that the assessee-company is a Private Limited Company and is engaged in the business of manufacturing and trading wide range of intravenors (IV), fluid (Saline) and goods (IV Fluids). The assessee filed return of income on 31.10.2006 declaring total loss of Rs.17,93,84,790/-. During scrutiny assessment proceedings u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’), the Assessing Officer determined total loss of Rs.17,90,14,127/-. The Assessing Officer noted that the assessee claimed bad debts of Rs.67.98 Lacs but there was no debit entry in the P & L account of that account. The Assessing Officer further observed that assessee had carried forward unabsorbed depreciation of A.Y.1997-98 and 1998-99 for more than eight assessment years and accordingly, a notice u/s.154 of the Act was issued on 23.08.2012 to the assessee. In the proceedings u/s.154 of the Act, the Assessing Officer held that the unabsorbed depreciation of A.Y.1997-98 and 1998-99 cannot be carried forward to A.Y. 2006-07 and accordingly, disallowed the bad debt claim of Rs.67,98,436/- as the same was not

debited to P & L Account. In the process, the Assessing Officer missed the favourable ratio vide the judgment in the case of General Motors India Ltd. Vs. DCIT in Spl. Civil Application No.1773 of 2012 reported in 354 ITR 244.

4. Aggrieved with the assessment order, assessee filed appeal before the CIT(A). The CIT(A) granted relief to the assessee after relying on the decision of ITAT, Mumbai Special Bench in the case of Times Guarantee Ltd. Vs. DCIT, ITA Nos. 4917 & 4918/Mum./2008.

5. Now, aggrieved with the order of CIT(A), the Revenue is in appeal by raising grounds as extracted above.

6. The Ld. DR for the Revenue heavily placed reliance on the order of CIT(A). Ld. DR also submitted that brought forward unabsorbed depreciation and carry forward of loss cannot be set off against income under the head business and procession for more than eight assessment years immediately succeeding the A.Y. for which loss was first computed and accordingly, he prayed for upholding the order of CIT(A).

7. At the outset, Ld. Counsel for the assessee brought our attention to the grounds and submitted that this is a case where Revenue aggrieved with the decision of CIT(A) who granted set off of unabsorbed depreciation on earlier years against the income of the current year on the ground that the said unabsorbed depreciation exceeded the limitation of period of 8 years. Ld. Counsel for the assessee also submitted that the CIT(A) granted relief to the assessee by placing reliance on the decision of ITAT, Mumbai Special Bench (supra.) which is justified in the eye of law.

8. After hearing both the parties on this aspect, we perused the order of CIT(A) in general and contents of Para 4 to 6 in particular and find that the CIT(A) fairly granted relief to the assessee relying on the decision of ITAT Mumbai Special Bench (supra.) and also the decision of Hon'ble Gujarat High Court in the case of General Motors India Ltd. Vs. DCIT in Spl. Civil Application No. 1773 of 2012 reported in 354 ITR 244 wherein it has been held that the benefit of amended provision will apply to earlier years too. For the sake of completeness, relevant paras are extracted herein below:

“4. In ground No. 1 and its sub grounds, the appellant is aggrieved on account of action of the AO in not allowing unabsorbed depreciation of A.Y.1997-98 and 1998-99 beyond period of eight years disregarding the decision of Hon. Gujarat High Court in the case of General Motors India Pvt. Ltd. The appellant also claims that the issue is debatable and cannot be rectified u/s.154 of the I.T. Act, 1961.

5. During the course of appellate proceedings, the appellant has filed following submissions in this regard.

“All the above grounds relate to the issue whether the appellant company was entitled to carry forward the unabsorbed depreciation of Rs.3,52,93,686/- and Rs.6,03,96,592 pertaining to A.Y. 1997-98 and A.Y.1998-99 on the ground that the unabsorbed depreciation for the above two Ass. Years could be carried forward only for 8 years.

At the outset, in this matter we would like to submit that the said issue has already been settled by the decision of Hon. Gujarat High Court in the case of General Motors India Pvt. Ltd. Vs. Deputy Commissioner of Income Tax, in Special Civil Application No. 1773 of 2012 and also 354 ITR 0244. Copy of the said decision is enclosed for the ready reference of Your Honour. We strongly rely on the said decision and request Your Honour to follow the same.

In this case the Hon. High Court has clearly held that tile provisions of Section 32 (2) as amended by Finance Act, 2001 would allow the unabsorbed depreciation allowance available in A.Y.1997-98, 1999-2000, 2000-01 & 2001-02 to be carried forward to the succeeding years and if any unabsorbed depreciation or part thereof could not be set off till the A.Y. 2002-03, then it would be carried forward till the time it is set off against the profits & gains of subsequent years.

It is therefore requested to allow the set off of unabsorbed depreciation pertaining to A.Y.1997-98 and 1998-99 beyond the period of 8 years.

For the ready reference of Your Honour, we are also enclosing our submission made before the learned DCIT during the assessment proceedings u/s.154 of the Income Tax Act.

6. I have carefully considered the facts of the case as well as reply of the appellant. The AO's decision is based on law existing for A.Y.1997-98 and 1998-99 as per which unabsorbed depreciation cannot be carried forward for more than eight years. However, Finance Act 2001

has removed the cap of eight years for carry forward of unabsorbed depreciation. Hon. Gujarat High Court in the case of General Motors India Pvt. Ltd. vs. DCIT in Spl. Civil Application No.1773 of 2012 reported in 354 ITR 0244 has held that the benefit of amended provision will apply to earlier years too. This being so, the stand of the AO in restricting the unabsorbed depreciation of A.Y. 1997-98 and 1998-99 for 8 years cannot be accepted and he is directed to allow the same as per amended provisions vide Finance Act 2001 even beyond period of eight years as per law. Accordingly, ground NO.1 is allowed.”

9. We also peruse the judgment of Hon'ble Gujarat High Court in the case of General Motors India Pvt. Ltd. Vs. DCIT (supra.) and held portion of the said judgment reads as under:

“Even on the merits the provisions of section 32(2), as amended by the Finance Act, 2001, would allow the unabsorbed depreciation allowance available in the assessment years 1997-98, 1999-2000, 2000-01 and 2001-02 to be carried forward to the succeeding years and if any unabsorbed depreciation or part thereof could not be set off till the assessment year 2002-03 then it would be carried forward till the time it is set off against the profits and gains of subsequent years. The order of reassessment was not valid and was liable to be quashed.”

10. Considering the above settled position of law on this issue, we are of the opinion that the order of CIT(A) is fair and reasonable and it does not call for any interference. Accordingly, grounds raised by the Revenue are dismissed.

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

Order pronounced on 24th day of October, 2018.

Sd/-	Sd/-
(विकास अवस्थी /VIKAS AWASTHY)	(डी. करुणाकरा राव/D. KARUNAKARA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th October, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeal), Pune-1.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.