

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 943/JP/2018  
निर्धारण वर्ष / Assessment Year :2012-13

M/s Golden Triangle Fort & Palace Pvt. Ltd., 312, 3 <sup>rd</sup> Floor, Ganpati Plaza, Jaipur-302001	बनाम Vs.	D.C.I.T., Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCG 3600 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)  
राजस्व की ओर से / Revenue by : Shri Karni Dan (JCIT)

सुनवाई की तारीख / Date of Hearing : 04/02/2019  
उदघोषणा की तारीख / Date of Pronouncement : 05/02/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is the appeal filed by assessee against the order of Id.CIT(A)-4, Jaipur dated 10/05/2018 for the A.Y. 2012-13 in the matter of order passed U/s 154 of the Income Tax Act, 1961 (in short the Act). Following grounds have been taken by the assessee:

- "1. On the facts and in the circumstances of the case, Id. CIT(A) has grossly erred in rejecting the appeal of assessee in limine solely for the reason that appeal was filed belatedly. Appellant prays that delay in filing appeal was due to bona fide reasons which were duly explained and thus the delay deserved to be condoned.

2. *That, the Id.CIT(A) has further erred in not appreciating that the disallowance of depreciation of Rs. 15,34,000/- so made by the Id.AO was not mistake apparent on record, and was not rectifiable under section u/s 154 of the Act, as the same is a debatable issue and on similar issue matter had travelled up to High Courts and therefore is outside the ambit of provisions of sec 154 of the Act. Thus the order so passed deserves to be held void ab- initio and the consequent additions deserve to be deleted.*
  3. *On the facts and in the circumstances of the case, the Ld. CIT has grossly erred in not appreciating the facts and circumstances of the case and not giving favourable finding on merits after considering the submissions made .Thus, the addition of Rs. 15,34,000/- deserves to be deleted.*
  - 3.1 *That, the Ld. CIT(A) has further erred in ignoring the amendment made w.e.f. AY 2002-03 that the unabsorbed depreciation available as on 01.04.2002 would become the part of current year depreciation and thereafter is treated as current year depreciation which could be carried forward for next years, thus in accordance with the said amendment, the unabsorbed depreciation deserves to be allowed.*
  4. *That the Id. CIT(A) further erred in just ignoring the decision of Hon'ble Gujarat High Court in the case of M/s General Motors (India) Ltd Vs. DCIT, reported in 354 ITR 244, and dismissing the appeal ab-initio. Appellant prays that on considering the said decision, the impugned disallowance deserves to be deleted.*
  5. *That the appellant craves the right to add, delete or amend any of the grounds of appeal either before or at the time of hearing of appeal."*
2. Grievance of the assessee relates to withdrawal of assessee's claim of set off of brought forward unabsorbed depreciation in terms of Section 32(2) of the Act from the current years business profit by invoking

provisions of Section 154 of the Act, when such claim was allowed while framing assessment U/s 143(3) r.w.s. 153A of the Act.

3. At the outset, the Id AR of the assessee has placed on record the order of the Tribunal in assessee's own case for the A.Y. 2010-11 and 2011-12 dated 02/07/2018 wherein under similar facts and circumstances, the order passed by the Assessing Officer U/s 154 of the Act so as to decline set off of brought forward unabsorbed depreciation was held in favour of the assessee. It was the contention of the Id AR that exactly similar claim of set off of unabsorbed depreciation was declined by the Assessing Officer by passing the order U/s 154 of the Act in the case of the assessee for the A.Y. 2010-11 to 2012-13. However, the Tribunal by passing the order in the assessee's own case for the A.Y. 2010-11 and 2011-12 has allowed the claim of the assessee and decided the issue in assessee's favour by holding that the A.O. cannot invoke provisions of Section 154 for withdrawal of claim allowed while framing assessment U/s 153A r.w.s. 143(3) of the Act. Accordingly, the issue is covered by the order of the Tribunal in assessee's own case.

4. On the other hand, the Id DR has relied on the orders of the authorities below.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record, we found that the assessee's claim of set off of unabsorbed depreciation was allowed while completing of assessment U/s 153A read with Section 143(3) of the Act. Thereafter, the Assessing Officer passed order U/s 154 of the Act wherein set off of brought forward unabsorbed depreciation so allowed U/s 153A r.w.s. 143(3) of the Act was withdrawn. The Id. CIT(A) has confirmed the disallowance and the assessee is in further appeal before the Tribunal.

6. We had carefully gone through the order of the Tribunal in assessee's own case for the A.Y. 2010-11 and 2011-12 dated 02/07/2018 wherein the Tribunal held that the withdrawal of assessee's claim for set off of brought forward unabsorbed depreciation by invoking powers U/s 154 is not justified, after having a following observation:

*"2.5 We have heard the rival contention and perused the material available on record. In this case the assessment was completed u/s 143(3) r.w.s. 153A wherein the AO has allowed the set-off of unabsorbed brought forward depreciation pertaining to assessment years 2000-01 & 2001-02 totalling to Rs. 28,01,624/- [Rs. 21,32,776/- & Rs. 6,68,848/- respectively]. Thereafter u/s 154 a rectification order was passed withdrawing the set-off by holding that the same related to the assessment years prior to the amendment made by Finance Act, 2001 u/s 32(2) and accordingly the same is eligible to be carried forward for 8*

*years only which stood expired and therefore assessee is not eligible for such set-off in A.Y. 2010-11 i.e. the year under appeal. The Id. AR of the assessee contended that the issue is debatable and has therefore to be decided by various High Courts. Therefore the order of the assessee cannot be rectified u/s 154 which is meant for rectification of mistake apparent on record and as such the issue of allowance of brought forward unabsorbed depreciation pertaining to assessment year 2000-01 and 2001-02 is not mistake apparent of record, accordingly the Id. AR prayed for the cancellation of the rectification order. On merits, the Id. AR referred the amendment made in Finance Act, 2001 by which the section 32(2) has been substituted w.e.f. 01.04.2002 which reads as under:*

*“32(2) Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-s. (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-s. (2) of s. 72 and sub-s. (3) of s. 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.”*

*The Id. AR submitted that as per the new amended provisions unabsorbed depreciation of A.Yrs. 2000-01 and 2001-02 which are legitimately eligible for brought forward and to be set off in A.Y. 2002-03 became the part of the current depreciation allowance of A.Y. 2002-03 and is eligible for set-off as per the new amended provision for unlimited period as current depreciation of next year and so on till there fully absorbed. Besides this the Id. AR also referred the CBDT Circular No. 14 in which the amendment made by Finance Act, 2001 the section 32(2) is*

*discussed and observed that with a view to enable the industry to conserve sufficient funds to replace plant and machinery, especially in an era where obsolescence takes place so often, the Act has dispensed with the restriction of 8 years for carry forward and set off of unabsorbed depreciation. For this reliance is placed on the direct decision of Hon'ble Gujarat High Court in the case of General Motors (I) Pvt. Ltd. Vs. DCIT 354 ITR 244 wherein it has been held as under:*

*“We are of the considered opinion that any unabsorbed depreciation available to an assessee on 1st day of April 2002 (A. Y. 2002-03) will be dealt with in accordance with the provisions of section 32(2) as amended by Finance Act, 2001. And once the Circular No. 14 of 2001 clarified that the restriction of 8 years for carry forward and set off of unabsorbed depreciation had been dispensed with, the 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 reliance is placed on the following decisions:*

- (i) CIT vs. Gujarat Themis Biosyn Ltd. (2014) 105 DTR 72 (Guj.)*
- (ii) Bengal Tea & Fabrics Limited (ITA No 467/Kol/2012) dated 26th July, 2012*
- iii) Cooperative Milk producers Federation Ltd. -vs.- DCIT 53 DTR 81 (Kar)*
- (iv) ITO -vs- Suraj Solvent Vanaspati Industries Ltd. (2008) 16 DTR 492 (Amritsar)*
- (v) Minda Sai Ltd Vs. ITO (ITAT DEL) dated 09.01.2015*
- (vi) ACIT Vs. M/s J K Tyre and Industries Ltd (ITAT Kol) dated 12.08.2016*
- vii) DCIT Vs. M/s Orient Paper & Industries Ltd. (ITAT Kol) dated 09.06.2017*

*Taking into consideration the materials and arguments of both the parties, we find that the assessment order passed u/s 143(3) r.w.s. 153A was rectified by taking shelter of section 154 though it is not a mistake apparent on record and the issue is debatable. Further the Hon'ble Gujarat High Court in the case of General Motors (I) P. Ltd. (supra) has categorically decided this issue and held that any unabsorbed depreciation from A.Yrs. 1997-98 to 2001-02 got carried forward to A.Y. 2002-03 and became part thereof is to be governed by the provisions of amended section 32(2) and were available for carried forward and set-off against the profit and gains of subsequent years without any limit whatsoever. Following the decision of Hon'ble Gujarat High Court in the case of General Motors (I) Pvt. Ltd. Vs. DCIT, and CIT Vs. Gujarat Themis Biosyn Ltd. (Supra), we hold that the assessee is eligible for carried forward and set-off of the unabsorbed brought forward depreciation of A.Yrs. 2000-01 and 2001-02 in the impugned assessment years i.e. 2010-11 and in subsequent years without any time limit. Thus the addition made by the AO on this account is deleted and the appeal of the assessee is allowed.*

- 3.1 *It is further noted that the similar issue has been raised by the assessee in ITA No. 278/JP/18 for the Assessment Year 2011-12 (supra). It is pertinent to mention that identical issues have been decided by us in the case of the assessee for A.Y. 2010-11 in ITA No. 277/JP/18 wherein we have deleted the additions made by the AO and allowed the appeal of the assessee by holding that the assessee is eligible for set-off for unabsorbed depreciation of A.Y. 2000-01 & 2001-02 without any time limit. In view of the decision taken by us in the case of the assessee for the Assessment Year, 2010-11, the same shall apply mutatis mutandis in the Assessment Year 2011-12 of the assessee. Accordingly the appeal of the assessee is allowed.*

4.0 *In the result, both the appeals of the assessee are allowed."*

7. It is clear from the above order of the Tribunal that exactly similar claim was allowed after considering various judicial pronouncements as referred in the said order dated 02/07/2018. It was held by the Tribunal that set off of unabsorbed depreciation allowed U/s 153A r.w.s. 143(3) is not a mistake apparent on record and the issue is debatable. Accordingly, such claim cannot be withdrawn by taking recourse of Section 154 of the Act. As the facts and circumstances during the year under consideration are pari materia, respectfully following the order of the Tribunal in assessee's own case for the A.Y. 2010-11 and 2011-12, we do not find any justification for declining assessee's claim of set off out of brought forward unabsorbed depreciation by passing order U/s 154 of the Act.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 05<sup>th</sup> February, 2019.

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur  
दिनांक / Dated:- 05<sup>th</sup> February, 2019

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Golden Triangle Fort & Palace Pvt. Ltd., Jaipur.

2. प्रत्यर्धी/ The Respondent- The D.C.I.T., Central Circle-3, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 943/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar