

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ 'B'- अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH 'B'

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
&SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकरअपीलसं.ITA No. 2121/Ahd/2017

निर्धारणवर्ष/Asstt. Year: 2014-15

DCIT BK Circle, Palanpur	Vs.	<b>Banaskantha District Oil Seeds Growers Co- operative Union Ltd.</b> Palanpur Deesa Highway, At & Post:- Badarpura Taluka, Planpur Road, Palanpur- 385001  PAN:AAA AS1 902 L
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	<b>Shri Santosh Kashani, Sr. DR</b>
Revenue by :	<b>Shri Nilesh Thakkar, AR</b>

सुनवाईकीतारीख/Date of Hearing : 13/02/2019

घोषणाकीतारीख/Date of Pronouncement: 28/03/2019

**आदेश/ORDER**

**PER MADHUMITA ROY- JM:**

The instant appeal preferred by the Revenue is against the order dated. 24.07.2017 passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad arising out of the order dated 26.11.2016 passed by the DCIT, Banaskantha Circle, Palanpur u/s. 143(3) of the Act whereby and where under the disallowance of depreciation of Rs. 38,01,74,420/- u/s. 32 has been deleted.

2. The assessee has filed the return of income on 22.11.2014 declaring total income of Rs. NIL. Upon compulsory scrutiny notice u/s. 143(2) of the Act dated. 31.08.2015 followed by a questionnaire was served upon the assessee. It appears from the record that during the assessment proceedings it was found that the

assessee has brought forward depreciation of Rs. 38,01,74,402/- pertaining to assessment year 2001-02. The Ld. AO was of the view that the assessee since completed time limit for set off of business loss and unabsorbed depreciation in 2009-10, the same cannot be set off against the income for assessment year 2014-15. It was further observed that Sec. 32(2) does not permit depreciation to be carried forward for more than eight years. Hence disallowed. In appeal relying upon the order passed by the appellate authority for assessment year 2013-14 the Ld. CIT(A) taking into consideration of the judgment passed by the Hon'ble judicial High Court in the case of General Motors India Pvt. Ltd. vs. DCIT reported in 354 ITR 244 (2012) allowed such claim of the assessee with the following observation :-

*"The second ground of appeal is against the disallowance of claim of unabsorbed depreciation of Rs. 38,01,74,402/- pertaining to AY 2001-02 and earlier years. While disallowing the claim the AO stated as under:*

*"Scrutiny of the Assessment order revealed that the assessee had brought forward business loss of Rs. 4,58,19,842/- and unabsorbed depreciation of Rs. 38,01,74,402/- pertaining to A.Y. 2001-02. As the time limit for set off of business loss and unabsorbed depreciation was completed in A.Y. 2009-10, the assessee had not carried forward the business loss of Rs. 4,85,19,842/- but the assessee had merged depreciation loss of Rs. 38,01,74,402/- of A.Y. 2001-02 with A.Y. 2002-03 and claimed carry forward to subsequent years.*

*As the depreciation loss as per the provisions of Section 32(2) and judgment quoted above, cannot be carried forward beyond eight years, the depreciation loss of Rs.38,01,74,402/-of A.Y. 2001-02 was irregular. In view of the above discussion, carry forward of unabsorbed depreciation of A.Y. 2001-02 Rs. 38,01,74,402/- will not be allowed to the assessee."*

*6.2 Alongwith the contention and other case laws the appellant cited the judgment of the Hon'ble jurisdictional High Court of Gujarat, Ahmedabad in the case of General Motors India (P.) Ltd. Vs. DCIT [354 ITR 244 ] [ 2012 ] "The said CBDT Circular clarifies the intent of the amendment that it is for enabling the industry to conserve sufficient funds to replace plant and machinery and, accordingly, the amendment dispenses with the restriction of 8 years for carry forward and set off of unabsorbed depreciation. This amendment has become applicable from assessment year 2002-03 and subsequent years meaning that any unabsorbed depreciation available to an assessee on 1st day of April, 2002 (assessment year 2002-03) will be dealt with in accordance with the provisions of section 32(2) as amended by Finance Act, 2001 and not by the provisions of section 32(2) as it stood before the said amendment. It the intention of the Legislature has been to allow the unabsorbed depreciation allowance worked out in assessment year 1997-98 only for eight subsequent assessment years even after the amendment of section 32(2) by Finance Act, 2001, it would have*

*incorporated a provision to that effect. However, it does not contain any such provision. Hence, a purposive and harmonious interpretation has to be taken keeping in view the purpose of amendment of section 32(2). While construing taxing statutes, rule of strict interpretation has to be applied, giving fair and reasonable construction to the language of the section without leaning to the side of assessee or the revenue. But if the Legislature fails to express clearly and the assessee becomes entitled for a benefit within the ambit of section by the clear words used in section, the benefit accruing to the assessee cannot be denied. However, Circular No. 14 of 2001 had clarified that under section 32(2), in computing the profits and gains of business or profession for any previous year, deduction of depreciation under section 32 shall be mandatory. Therefore, the provisions of section 32(2) as amended by 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."*

*It further stated that "It is held 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 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 Finance Act, 2001 and available for carry forward and set off against the profits and gains of subsequent years, without any limit whatsoever."*

*After going through the facts of the case and the judgment of Hon'ble High Court of Gujarat, Ahmedabad in the above mentioned case which contains identical facts, the disallowance made by the AO deserves to be deleted, therefore, it is deleted. This ground of appeal is allowed."*

*As the issue involved during the year under consideration is same, as decided earlier, the disallowance of carried forward of depreciation of Rs. 38,01,74,402/- is not found justified. The A.O. is directed to allow the carried forward of depreciation of Rs. 38,01,74,402/- pertaining to A.Y. 2001-02 to next assessment years. This ground of appeal is **allowed**.*

3. At the time of hearing of the matter the Ld. Counsel appearing for the assessee submitted before us that the assessee's case is also covered by the judgment passed by the Coordinate Bench in assessee's own case for Assessment Year 2009-10 and 2012-13 copy whereof have also been handed over to us. However, the Ld. DR failed to controvert the contentions made by the Ld. AR in this respect.

Heard the rival contentions; perused the relevant materials available on record. We have also carefully considered the order passed by the Coordinate Bench in ITA Nos. 1993-1994/Ahd/2016 for Assessment Years 2009-10 and 2012-13 operative portion whereof is as follows:

*"We have heard rival contentions and perused the material on record carefully. We have noticed that the Coordinate Bench of ITAT Ahmedabad vide ITA No. 2393/Ahd/2013 dated 03.05.2017 in the case of Gujarat Lease Finance Ltd. has decided the identical issue in favour of assessee. The part of the judicial findings and the principles laid down by the Hon'ble Jurisdictional High Court in the case of General Motors Pvt. Ltd. are reproduced here 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 up to 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. "*

*The relevant part of the decision of the Co-ordinate Bench of the ITAT decided in the case of Gujarat Lease Finance Ltd. vide ITA No. 2393/Ahd/2013 dated 03/05/2017 is reproduced" as hereunder:-*

*"6. We have heard the rival contentions. We have also perused the judicial pronouncement delivered by the Hon'ble High Court of Gujarat in the case of General Motors India (P.) Ltd vs. DCIT (2012) 25 taxmann.com which was elaborated in detail by the Ld. CIT(A) in his order as supra in this order. We have also perused the judicial pronouncement of Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Themis Biosyn Ltd. [2014] 44 taxmann. com 204 (Gujarat) in which after considering the judgment given in General Motors India (P) Ltd, it was held that carry forward of unabsorbed depreciation concerning impugned assessment years could be set off in subsequent years without any set time limit. In view of the above judicial pronouncement on the issue and the elaborate findings of the Ld. CIT(A), we do not find any reason to interfere in the decision of the Id. CIT(A)."*

*Respectfully following the decision of the Co-ordinate Bench as supra, we do not find any error in the finding of Ld. CIT(A), therefore, the appeal of the revenue is dismissed. In the result, both the appeals of the revenue are dismissed."*

5. Respectfully relying upon the order passed by the Coordinate Bench we do not find any infirmity in the order passed by the Ld. CIT(A) so, as to warrant

interference. The question is accordingly answered in the affirmative that is in favour of the assessee and against the Revenue. Consequently the appeal fails and is accordingly dismissed.

6. In the result, Revenue's appeal is dismissed.

[Order pronounced in the Court on 28-03-2019.]

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

Ahmedabad; Dated 28/03/2019

*Tanmay*

*True Copy*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad