

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 4102/DEL/2016
[Assessment Year: 2006-07]

The A.C.I.T.
Circle - 5(2)
Delhi

Vs.

M/s Central Electronics Ltd
781, Desh Bandhu Gupta Road
Karol Bagh, New Delhi

PAN: AAACC 1261 G

[Appellant]

[Respondent]

Date of Hearing : 14.05.2019
Date of Pronouncement : 16.05.2019

Assessee by : Shri R.S. Singhvi, CA

Revenue by : Shri Abhishek Kumar, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the Commissioner of Income Tax [Appeals] -2, New Delhi dated 23.03.2016 pertaining to assessment year 2006-07.

2. The solitary grievance raised by the Revenue is that the CIT(A) is not justified in deleting the addition of Rs. 6,78,59,423/- on account of unabsorbed depreciation claimed for A.Y 1997-98.

3. Facts relating to this case are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed set off of unabsorbed depreciation of Rs. 6,78,59,423/- pertaining to A.Y 1997-98. The Assessing Officer was of the firm belief that vide amendment by the Finance (No. 2) Act, 1996, the unabsorbed depreciation for A.Y. 1997-98 and earlier years could be carried forward upto a maximum period of 8 years from the year in which it was first computed and this period expired in A.Y 2005-06, the set off claimed by the assessee cannot be allowed in the year under consideration. The Assessing Officer, accordingly, disallowed claim of set off of brought forward unabsorbed depreciation.

4. The assessee carried the matter before the CIT(A) and placed strong reliance on the decisions of the Hon'ble Gujarat High Court in the case of General Motors India 257 CTR 123 and contended that after the subsequent amendment, the assessee is eligible for set off of unabsorbed depreciation.

5. The CIT(A), after considering the facts and submissions and drawing support from various judicial decisions, including the decision of the Hon'ble Gujarat High Court [supra], directed the Assessing Officer to give relief to the assessee regarding brought forward unabsorbed depreciation of Rs. 6.78 crores.

6. Before us, the ld. DR strongly supported the findings of the Assessing Officer but could not bring any distinguishing decision in favour of the revenue.

7. We have given a thoughtful consideration to the orders of the authorities below. We have also gone through the decisions cited by the ld. AR. We find that the issue in now

well settled in favour of the assessee and against the revenue by the decision of the Hon'ble High Court of Delhi in the case of Motor & General Finance Ltd 393 ITR 60.

8. The Hon'ble High Court of Delhi, while allowing the claim of unabsorbed depreciation, has also considered the decision of the Hon'ble Gujarat High Court in the case of General Motors [supra] and held that in view of the amended provisions of section 32(2) w.e.f. 1.4.2002, the assessee's claim for set off of unabsorbed depreciation beyond the period of 8 years has to be allowed.

9. Respectfully following the findings of the Hon'ble High Courts of Delhi and Gujarat [supra], we do not find any error or infirmity in the findings of the CIT(A).

10. For the sake of completeness of the adjudication, the assessee has moved an application u/r 27 of the ITAT Rules in the matter of appeal filed by the Revenue. The assessee contends that since the reopening of the assessment has been upheld by the CIT(A), though the

quantum additions have been deleted, the assessee is eligible to contest the dismissal of the ground dismissing the reopening of the assessment while supporting the order of the CIT(A). We find force in this claim of the assessee. In our considered opinion, the assessee may not have appealed, is free to defend the order before the appellate forum on all grounds including the ground which may have been held against him by the lower authority whose order is otherwise in his favour. For this proposition, we derive support from the decision of the Hon'ble High Court of Gujarat in the case of Sun Pharmaceuticals Industries Ltd 251 Taxman 76.

11. Facts on record show that completed assessment was reopened after four years to deny claim of set off of unabsorbed depreciation while drawing support from the amendment by the Finance (No. 2) Act, 1996 by which the carry forward was allowed upto a maximum period of 8 years from the year in which the unabsorbed depreciation was first computed.

12. On identical set of facts, the Hon'ble High Court of Delhi in the case of Motors & General Finance Ltd [supra] has decided this issue in favour of the assessee and against the

revenue. Relevant facts and findings of the Hon'ble High Court of Delhi read as under:

2. In the return filed on 1-10-2010, the concerned assessment years, the petitioner assessee now unabsorbed depreciation to the tune of Rs. 8,76,43,790/-, of the AY 2001-02. After notice was issued under Section 143(2) of the Act. the scrutiny assessment was framed, accepting nil income. The impugned reassessment notice reads as follows:—

"Reasons for the belief that income has escaped assessment in the ease of M/s. The Motor & General Finance Ltd. (PAN-AAACT2356D) for assessment year 2010-11.

The assessee company has claimed and allowed setting off of unabsorbed depreciation of Rs. 8,76,43,790/- of the assessment year 2001-02 for assessment year 2010-11. The unabsorbed depreciation of the assessment year 2001-02 was carried forward and set off beyond eight years. Therefore, I have reason to believe that income of Rs. 8,76,43,790/- has escaped assessment for assessment year 2010-11."

3. The petitioner contends that 'reasons to believe' cannot stand the test of principles enunciated by this Court as those governing valid reopening of assessment by the Supreme Court in *CIT v. Kelvinator of India Ltd.* [2010] 320 1TR 561/187 Taxman 312. It is submitted that besides the reassessment notice is

also unsustainable because it proceeds on the understanding that set off of unabsorbed depreciation could not be claimed, in respect of past assessments, when the depreciation occasioned first prior to the amendment which was brought into force on 1-4-2002 to Section 32(2) of the Act. In so saying, the petitioner relies upon the Gujarat High Court ruling in *General Motors India (P.) Ltd. v. Dy. CIT* [2013] 354 1TR 244/(2012) 25 taxmann.com 364/210 Taxman 20 (Mag.). This decision was apparently followed by a latter judgment of the Gujarat High Court and of a Bombay High Court.

4. The Revenue, on the other hand, submits that the reopening of assessment was occasioned by an audit objection and contends that the law is applicable at the relevant time posited that depreciation could be carried further only for eight years. Since the eight years period ended before the AY 2010-11, the assessee could not have claimed the benefit at all. Under these circumstances, counsel for the Revenue submits that the reassessment notice is valid and cannot be impeached.

5. The *Kelvinator of India Ltd's*, case (*supra*) is as conclusive as any other precedent be as to the considerations that can weigh with the Revenue for validly reopening any concluded assessment that the assessee had claimed a set off in terms of the then existing Section 32(2) of the Act in 2010-11 is not a disputed fact. The view taken by the Assessment Officer, apparently quite correctly in the light of the subsequent ruling of the Gujarat High Court, was that such

carry forward of the depreciation for the past years was not limited by the pre-existing Section 32(2) of the Act. which ceased to be on the Statute Book with effect from the date it was amended ie. 1-4-2002.

6. In these circumstances, in the absence of any tangible material which can be the only basis for reopening a completed assessment, the Revenue could not have issued the impugned notice. As to the applicability of *General Motors India (P.) Ltd.'s* case (*supra*), the Court is of the opinion that the view taken is sound and an added factor inhibited the Revenue from reopening the assessment. The benefit of carrying forward the depreciation was, in one sense, limited by the pre-existing ruling that can be done for eight years. All that amendment did with effect from 1-4-2002 was to remove the cap which meant that the previously limited benefit was now not subjected to such restrictions.

7. In the light of the foregoing discussion, the impugned notice cannot be sustained. It is hereby quashed alongwith all proceedings emanating therefrom. The writ petition is allowed in the above terms. The application bearing CM No. 11601/2015 also stands disposed off."

13. Respectfully following the findings of the Hon'ble High Court of Delhi [*supra*] and finding parity in the facts, we hold that the notice u/s 148 is bad in law and consequent

assessment claimed u/s of the assessee 147 is hereby quashed.

14. Application filed u/r 27 is allowed.

15. In the result, the appeal filed by the Revenue in ITA No. 4102/DEL/2016 stands dismissed.

The order is pronounced in the open court on 16.05.2019.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 16th May, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

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Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	