

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.1135(Bang)/2018  
(Assessment year : 2011-12)**

The Joint Commissioner of Income Tax (OSD),  
Circle-4(1)(1), II Floor, BMTC Depot. Building,  
Koramangala  
Bangalore

Appellant

**Vs**

M/s Kurlon Ltd.,  
No.301-303, North Block,  
III Floor, Manipal Centre,  
Dickenson Road,  
Bangalore  
Pan No.AABCK2150K

Respondent

**Appellant by : Ms. Neera Malhotra, CIT-DR  
Revenue by : Shri Cuddapah Ramesh, CA**

**Date of hearing : 11-12-2019  
Date of pronouncement : 13-12-2019**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

The present appeal has been filed by revenue against order dated 28/12/17 passed by Ld. CIT (A)-4, Bangalore for assessment year 2011-12 on following grounds of appeal:

1. *The order of the Ld.CIT(A) in so far as it is prejudicial to the interest of the revenue is opposed to law and the facts and circumstances of the case.*

2. *On the facts and circumstances of the case, whether the Ld.CIT(A) is right in allowing the appeal of the assessee relying on the decision in which no uniformity in the case given by the Hon'ble High Court which means the fact and circumstances of the case are completely difference from the case at hand.*

3. *On the facts of the case, whether the Ld.CIT(A) is right in allowing the appeal of the assessee against the provisions enacted in Finance Act 1988-89, in which the limitation for carry forward o the depreciation was restricted to 8 years.*

4. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the AO may be restored.*

5. *The appellant craves leave to add, alter, amend and/or delete any of the grounds that may be urged.*

## **2. Brief facts of the case are as under:**

Assessee is a company engaged in business of manufacturing, trading and distribution of rubberized coir mattresses, furniture, allied produces and e-commerce. It filed its return of income on 30/09/11, declaring total income of Rs.25,47,61,858/- for year under consideration. Ld.AO completed assessment under section 143 (3) making following additions:

- Disallowance of employees contribution to PF/ESI of Rs.10,80,421/- under section 43B
- Disallowance of extra set off of unabsorbed business/depreciation loss of Rs.6,58,41,440/-.

3. Aggrieved by additions made by Ld.AO assessee preferred appeal before the Ld.CIT (A), who partly deleted additions.

4. Aggrieved by order passed by Ld.CIT (A) revenue is in appeal before us now.

5. Ld.CIT DR submitted that in view of amendments made to provisions of section 32 of the Act, unabsorbed depreciation during the period from 1997-98 to 2001-02 could be allowed to be carried forward and set off only up to 8 subsequent assessment years. She submitted that assessee for year under consideration has carry forwardd and set off of unabsorbed depreciation more than 8 years from assessment year 2001-02.

5.1 She placed reliance upon view taken by Ld.AO.

5.2 On the contrary, Ld.AR placed reliance upon observations of Ld. CIT (A).

6. We have perused submissions advanced by both sides in light of records placed before us.

It is observed that the amendment relied upon by Ld.AO has been substituted by Finance Act 2001 w.e.f. 01/04/02, wherein new subsection (2) of section 32 reinstated the provisions, as it stood in assessment year 1996-97. It has been observed that restrictions imposed by Finance Act (No.2) Act, 1996 in the matter of set off of unabsorbed depreciation has been dispensed with and original provision has been restored. Reliance is also been placed on the decision of on coordinate bench of this *Tribunal* in case of as Gran it private limited vs ITO in ITA No. 58 and 59/B/2012 for assessment year 2005-06 and 2006-07, wherein this tribunal relied upon decision of jurisdictional *High Court* in case of *Karnataka Co-Operative Milk Producers Federation Ltd vs DCIT* reported in (2011)

53 DT are (Kar) 81 and various other decisions as has been placed in the paper book filed before us wherein it was held that where ever unabsorbed depreciation was not allowed to be set off against the profit arising after the period of 8 years should be a game considered to be set off after amendment. It was observed that when quantum of unabsorbed depreciation is computed after the amendment, whatever balance of unabsorbed depreciation is available to the credit of assessee must be determined as unabsorbed depreciation eligible for carry forward and set off. *Hon'ble Court* held that the interregnum restriction of limiting claim of eight-year period does not take away right of an assessee to claim balance of unabsorbed depreciation forever. Thus the legislature has resorted to original provisions by amendment brought in by Finance Act 2001, thereby resorting to old position, which allows set off of unabsorbed depreciation and restrictive period of 8 years for claiming set off has been deleted, thereby extending the benefit against profit and gains of subsequent years without any bar.

7. We are therefore, in total agreement with the view, adopted by Ld. CIT(A) and the same is upheld.

**Accordingly the grounds raised by revenue stands dismissed.**

**In the result appeal filed by revenue stands dismissed.**

Order pronounced in the open court on 13-12-2019.

**Sd/-**  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

Dated: 13-1-2019

**\*am**

**Sd/-**  
**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asstt.Registrar