

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "जी", नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं. / ITA No.2302/Del/2016

निर्धारण वर्ष / Assessment Year 2012-13

Hindon River Mills Ltd.,
P.O-Hindon Nagar, Dasne,
Ghaziabad.

PAN-AAACH9966

.....अपीलार्थी / Appellant

vs

The DCIT,
Circle-1, Ghaziabad.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Salil Kapoor &
Sh. Sumit Lal Chandani, Adv.

प्रत्यर्थी की ओर से / Respondent by : Sh. Saras Kumar, Sr.DR

सुनवाई की तारीख / Date of Hearing : 02.01.2020	घोषणा की तारीख / Date of Pronouncement: .01.2020
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The present appeal filed by assessee is against order of CIT(A), Aligarh dated 08.02.2016 relating to assessment year 2012-13 against the order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Ld.AR for the assessee at the outset pointed out that the issue raised in the present appeal stands squarely covered by the order of

Tribunal in assessee's own case in ITA No.2301/Del/2016 relating to Assessment Year 2011-12 order dated 28.08.2019.

3. The Ld.DR on the other hand placed reliance on the orders of the authorities below.

4. We have heard the rival contentions and perused the record. The only issue raised by the assessee in the present appeal is against the enhancement order of CIT(A) by not allowing set off of unabsorbed depreciation against the income earned by the assessee.

5. Briefly in the facts of the case the assessee company was engaged in the business of manufacturing of yarn and fabric. The assessee due to heavy loss, labour problems and other factors had to temporarily discontinue the manufacturing operation in the year 2000. During the year under consideration, the assessee had declared income from house property from lease of factory premises. The submissions of the assessee before the authorities below were that the premises were temporarily given on lease to meet day to day expenses. The case of the assessee was taken up for scrutiny. The Assessing Officer noted that the assessee had declared business loss of Rs.98,65,80,356/- as per the P&L A/c and after making disallowance of expenses claimed in the P&L A/c at Rs.1,01,07,61,214/-, the income was shown as Rs.2,41,80,858/-. The assessee deducted rental income of Rs.4,17,50,849/-, depreciation of Rs.9,06,430/- and interest income of Rs.4,09,400/- and net loss declared by the assessee company was Rs.1,88,85,821/-. The Assessing Officer

was of the view that the assessee was not entitled to claim depreciation on fixed assets as the business assets were not used for business purposes for the past 10 years. Hence, depreciation on claim of Rs.9,06,430/- was disallowed. The Assessing Officer further notes that the assessee had adjusted unabsorbed depreciation of Rs.1,16,55,603/- against the net income for the year under consideration. The Assessing Officer computed the net income at NIL.

6. The CIT(A) while deciding the issue of allowance of depreciation of Rs.9,06,430/- sought certain information from the assessee with regard to claim of depreciation and also claim of set off of unabsorbed depreciation against non-business income. The assessee filed its reply and relied on various case laws, which is reproduced in the appellate order. The CIT(A) was of the view that the issue of set off of unabsorbed depreciation against the other income needs to be deliberated upon. After referring to various provisions of the Act, he came to the conclusion that in a particular year, depreciation could be deducted only on the profits chargeable under the head business income. Referring to the provisions of section 72 & 73 of the Act, the CIT(A) held that there was nothing in the Income Tax Act, which would allow set off of brought forward unabsorbed depreciation against the income under any head other than the income from business or profession. The CIT(A) also refers to the provisions to section 32(2) of the Act, which were modified w.e.f. 01.04.2002 and observed that under the earlier provision, there was specific clause where brought forward,

unabsorbed depreciation allowance could be set off from income under any head. However, under the amended provisions w.e.f. 01.04.2002, the unabsorbed depreciation allowance could not be set off only from the income under the head income from business or profession. Consequently, the unabsorbed depreciation had to be carried forward and it could be set off against any other income. Another aspect which was decided by the CIT(A) was that u/s 32(2) of the Act, depreciation allowance was to be allowed only to the extent of available profits and as such there could not be loss on account of depreciation. He thus holds that if there could not be any loss on account of depreciation, no loss could be set off against any other income. The assessee is in appeal against the order of CIT(A).

7. We have heard the rival contentions and perused the record. The limited issue which arises in the present appeal is whether unabsorbed depreciation available in the hands of the assessee, where the business of the assessee has been temporarily closed and the assets leased for a short period in order to tide over the losses of business, then can the unabsorbed depreciation be adjusted against the income from property earned from leasing of the said assets.

8. We find that similar issue arose before the Tribunal (supra) in assessee's own case in Assessment Year 2011-12. Similar disallowance was made in the hands of the assessee and the set off of unabsorbed depreciation against income from house property and income from other

sources was not allowed by the CIT(A)/Assessing Officer. The Tribunal relied on the ratio laid down by the Mumbai Bench of the Tribunal in M/s. Suresh Industries Pvt. Ltd. relating to Assessment Year 2007-08 in ITA No. 5374/Mum/2011 dated 10.10.2012 which in turn relied on the decision of Hon'ble Supreme Court in Jaipuria China Clay Mines Pvt.Ltd. 59 ITR 555, Rajapalayam Mills 115 ITR 77 and Virmani Industries Pvt.Ltd. 216 ITR 607 and applied the said propositions vide paras 14 & 15 at pages 05 to 12 and allowed the claim of the assessee, by holding that brought forward depreciation had to be treated as current year depreciation under the provisions of section 32(2) of the Act. The Tribunal (supra) also noted that in Assessment Year 2007-08, the CIT(A) allowed the claim of set off in assessee's own case and in Assessment Year 2013-14, the Assessing Officer himself had allowed the said claim of set off of unabsorbed depreciation against the income from house property and other sources.

9. We find that the issue arising in the present appeal is at parity with the issue before the Tribunal in assessee's own case relating to Assessment Year 2011-12. Relying on the said findings of the Tribunal in paras 14 & 15, to which reference is being made, but not being reproduced for the sake of brevity, we allow the claim of the assessee in entirety. The Assessing Officer is directed to set off brought forward unabsorbed depreciation as part of current depreciation against the income from house property and income from other source, since the brought forward

unabsorbed depreciation was the depreciation of the current year. Thus, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open court on 17th January, 2020.

Sd/-

Sd/-

(B.R.R.KUMAR)

(SUSHMA CHOWLA)

लेखा सदस्य/ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / दिनांक Dated : 17th January, 2020/ * Amit Kumar *

आदेश की प्रतिलिपि अद्योषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi