

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.722/Hyd/2017		
Assessment Year: 2008-09		
Kumar's Metallurgical Corporation Limited, Hyderabad. PAN: AAACK 4425 A	Vs.	ACIT, Circle-2(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri P. Murali Mohana Rao	
Revenue by:	Sri Y.V.S.T. Sai, CIT-DR	
Date of hearing:	27/01/2020	
Date of pronouncement:	11/06/2020	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-2, Hyderabad in appeal No. 0429/2010-11, dated 30/05/2016 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2008-09.

2. The assessee has raised several grounds in its appeal however, the crux of the issue is that the Ld. CIT (A) has erred in upholding the order of the Ld. AO who had disallowed carried forward & setoff of the unabsorbed depreciation amounting to Rs. 45,52,19,550 relating to the assessment year 2001-02 in the relevant assessment year.

3. The brief facts of the case are that the assessee is a limited company engaged in the business of producing and selling sponge iron e-filed its return of income for the relevant AY 2008-09 on 30/09/2008 admitting loss of Rs. 108.27 Crs which includes depreciation loss. Thereafter the assessee company revised its return of income on 09/2/2009 admitting income of Rs. 1,20,02,406/- before claiming set off of carry forward losses. Subsequently, the case was taken up for scrutiny and assessment was completed U/s. 143(3) of the Act on 31/12/2010 wherein the Ld. AO disallowed carry forward and setoff of the unabsorbed depreciation amounting to Rs. 45,52,19,550 pertaining up to the assessment year 2000-01. While doing so the Ld. AO relied on the decision of the Special Bench of the Mumbai Tribunal in the case of DCIT vs. M/s. Times Guarantee Limited in ITA No. 4917& 4918/Mum/2008 for the AY 2003-04 and 2004-05. On appeal, the Ld. CIT (A) upheld the order of the Ld. AO by agreeing with his view.

4. At the outset, the Ld. AR submitted before us that subsequent to the decision of the Special Bench of the Mumbai Tribunal cited supra various High Courts have decided the issue in favour of the assessee such as :-

- (i) Hon'ble Gujarat High Court in the case of General Motors Pvt Ltd vs. DCIT for the AY 2006-07 reported in 354 ITR 244 it was held that unabsorbed depreciation of the AY 1997-98 shall be

allowed to be carried forward and set off after a period of 8 years in view of the amendment to section 32(2) of the Act and accordingly the same can be set off in the AY 2006-07.

- (ii) Hon'ble Delhi High Court in the case of DCIT vs. British Motor Company for the AY 2010-11 reported in 400 ITR 569 held that unabsorbed depreciation is entitled to be carry forward and set off against profits and gains of subsequent years without any limit whatsoever.

5. The Ld. DR could not controvert to the submission of the Ld. AR.

6. We have heard the rival submissions and carefully perused the materials on record. As pointed out by the Ld. AR the issue is decided in favour of the assessee by various High Courts. Therefore, respectfully following the orders of the Hon'ble High Courts we hereby hold that the assessee shall be entitled to set off its unabsorbed depreciation pertaining up to the assessment year 2000-01 amounting to Rs. 45,52,19,550 in the relevant AY.

6.1 Before parting, it is worthwhile to mention that this order is pronounced after 90 days of hearing the appeal which is though against the usual norms, we find it appropriate, taking into consideration of the extra-ordinary situation in the light of the lock-down due to Covid-19 pandemic. While doing so, we have relied in the decision of Mumbai Bench of the Tribunal in the case of DCIT vs. JSW Ltd. In ITA

No.6264/M/2018 and 6103/M/2018 for AY 2013-14 order dated 14th May 2020.

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

Pronounced in the open Court on 11th June, 2020.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 11th June, 2020.

OKK

Copy to:-

- 1) M/s. Kumar's Metallurgical Corporation Ltd C/o. P. Murali & Co, Chartered Accountants, 6-3-655/2/3, 1st Floor, Somajiguda, Hyderabad-82.
- 2) ACIT, Circle-2(1), Hyderabad.
- 3) The CIT(A)-2, Hyderabad
- 4) The Pr. CIT-2, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File