

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 162/Rjt/2015  
Assessment Year 2007-08**

The ACIT, Morbi Circle, Morbi  (Appellant)	Vs	M/s. Vishaldeep Spinning Mills Ltd. office of the official liquidate, High Court, Bombay, 5 <sup>th</sup> Floor, Bank of India Building, Mahatma Gandhi Road, Fort, Mumbai-400023 PAN No: AAACV9616N (Respondent)
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**Appellant by : Shri Shramdeep Sinha, CIT/DR  
Respondent by : None**

Date of hearing : 13-09-2022  
Date of pronouncement : 16-09-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

The present appeal has been filed by the Revenue against the order dated 24.02.2015 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot as against the as against the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act,

1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2007-08.

2. The solitary and effective ground raised by the Revenue is the ld. CIT(A) has erred in deleting the addition of Rs. 5,22,76,985/- made on account of disallowance of unabsorbed brought forward depreciation for Assessment Year 1996-97 to 1998-99 which is beyond eight Assessment Years. None appeared on behalf of the assessee in spite of notices issued to the office of the official liquidator.

3. The brief facts of the case is that the assessee was engaged in the business of manufacturing of cotton yarn and also doing job work. For the Assessment Year 2007-08, regular assessment u/s. 143(3) was completed on 30.11.2009 accepting NIL income. Thereafter an assessment was reopened by issuing a notice u/s. 148 and reassessment was completed by making various disallowances and we are concerned only with the addition of carry forward of unabsorbed depreciation to the tune of Rs. 5,22,76,985/- belonging to the Assessment years 1996-97 to 1998-99 which have been set off by the assessee beyond eight assessment years.

3.1. When the assessee challenged this issue before the Ld. CIT(A) who held as follows:

*Ground No.3 is regarding disallowance of unabsorbed brought forward depreciation of Rs.5,22,76,985/- for A.Y. 1996-97 to 1998-99 by erroneously holding that unabsorbed depreciation for this period can be carried forward only for the eight assessment years.*

5.1 It was observed by the AO that the appellant had carried forward unabsorbed depreciation belonging to AYs 96-97 to 98-99, totalling to Rs.5,22,76,985/- for set off. The AO observed that as per the provisions of s.32(2), unabsorbed depreciation cannot be carried forward for more than eight assessment years. The brought forward unabsorbed depreciation has been treated by ACIT as lapsed in view of amended provisions of s.32(2) as, according to the ACIT, the same had lapsed at the end of AY 2006-07, being eight years from the original assessment year.

5.2 During the course of appellate proceedings, it was contended by the appellant that identical issue has been dealt by the Hon'ble ITAT, Rajkot Bench in *Arunoday Mills Ltd. vs. ACIT, Rajkot* vide ITA No.68/RJT/2014 for A.Y. 07-08 relying on the decision of the Hon'ble Gujarat High Court in case of *General Motors India P. Ltd. (supra)*. Relying on these two decisions as well as several other decisions which have been mentioned in its submission earlier, it is prayed that the unabsorbed brought forward depreciation of Rs.5,22,76,985/- should be considered as allowable to be carried forward without restricting the same for eight years.

5.3. I have carefully considered the contention of the appellant and the Assessment orders. The AO has held that the unabsorbed depreciations pertaining to A.Ys. 96-97 & 97-98 cannot be carried forward beyond eight years as per the provisions of s.32(2). This issue has been squarely dealt with by the Hon'ble Jurisdictional High Court in the case of *General Motors P. Ltd.* 354 ITR 244 wherein it is held as under:-

*'The last question which arises for consideration is that whether the unabsorbed depreciation pertaining to A.Y. 1997-98 could be allowed to be carried forward and set off after a period of eight years or it would be governed by Section 32 as amended by Finance Act 2001 ? The reason given by the Assessing Officer under section 147 is that Section 32(2) of the Act was amended by Finance Act No. 2 of 1996 w.e.f A.Y. 1997-98 and the unabsorbed depreciation for the A.Y. 1997-98 could be carried forward up to the maximum period of 8 years from the year in which it was first computed. According to the Assessing Officer, 8 years expired in the A.Y. 2005-06 and only till then, the assessee was eligible to claim unabsorbed depreciation of A.Y. 1997-98 for being carried forward and set off against the income for the A.Y. 2005-06. But the assessee was not entitled for unabsorbed depreciation of Rs. 43,60,22,158/- for A.Y. 1997-98, which was not eligible for being carried forward and set off against the income for the A. Y. 2006-07.*

31. Prior to the Finance Act No. 2 of 1996 the unabsorbed depreciation for any year was allowed to be carry forward indefinitely and by a. deeming fiction became allowance of the immediately succeeding year. The Finance Act No. 2 of 1996 restricted the carry forward of unabsorbed depreciation and set-off to a limit of 8 years, from the A. Y. 1997-98. Circular No. 762 dated 18.2.1998 issued by the Central Board of Direct Taxes (CBDT) in the form of Explanatory Notes categorically provided, that the unabsorbed depreciation allowance for any previous year to which full effect cannot be given in that previous year shall be

*carried forward and added to the depreciation allowance of the next year and be deemed to be part thereof.*

*32. So, the unabsorbed depreciation allowance of A.Y. 1996-97 would be added to the allowance of A. Y. 1997-98 and the limitation of 8 years for the carry-forward and set-off of such unabsorbed depreciation would start from A.Y. 1997-98.....'*

*35. Section 32(2) of the Act was amended by Finance Act, 2001 and the provision so amended reads as under :-*

*"Where, in the assessment of the assessee, full effect cannot be given to any allowance under sub-section (1) in any previous year, owing to there being no 'profits or gains chargeable for that previous year, or owing to the profits or gains chargeable for that previous year, owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of sub-section (2) of section 72 and sub-section (3) of section 73, the allowance or the part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following previous year and deemed to be part of that allowance, or if there is no such allowance for that previous year, be deemed to be allowance of that previous year, and so on for the succeeding previous years. "*

*36. The purpose of this amendment has been clarified by Central Board of Direct Taxes in the Circular No. 14 of 2001. The relevant portion of the said Circular reads as under:-*

*"Modification of provisions relating to depreciation*

*30.1 Under the existing provisions of section 32 of the Income-tax Act, carry forward and set off of unabsorbed depreciation is allowed for 8 assessment years.*

*30.2 With a view to enable the industry to conserve sufficient funds to replace plant and machinery, especially in an era where obsolescence takes place so often, the Act has dispensed with the restriction of 8 years for carry forward and set off of unabsorbed depreciation. The Act has also clarified that in computing the profits and gains of business or profession for any previous year, deduction of depreciation under section 32 shall be mandatory.*

*30.3 Under the existing provisions, no deduction for depreciation is allowed on any motor car manufactured outside India unless it is used (i) in the business of running it on hire for tourists, or (ii) outside in the assessee's business or profession in another country.*

*30.4 The Act has allowed depreciation allowance on all imported motor cars acquired on or after 1st April, 2001.*

30.5 These amendments will take effect from the 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent years. "

37. The 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. The amendment is applicable from assessment year 2002-03 and subsequent years. This means 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 not by the provisions of section 32(2) as it stood before the said amendment. Had the intention of the Legislature been to allow the unabsorbed depreciation allowance worked out in A. Y. 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 keeping in view the purpose of amendment of section 32(2) of the Act, a purposive and harmonious interpretation has to be taken. 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 the section by the clear words used in the 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 ion 32(2) as amended by Finance Act, 2001 would allow the unabsorbed depreciation allowance available in the A.Y. 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 A. Y. 2002-03 then it would be carried forward till the time it is set off against the profits and gains of subsequent years.

38. Therefore, it can be said that, current depreciation is deductible in the first place from the income of the business to which it relates. If such depreciation amount is larger than the amount of the profits of that business, then such excess comes for absorption from the profits and gains from any other business or business, if any, carried on by the assessee. If a balance is left even thereafter, that becomes deductible from out of income from any source under any of the other heads of income during that year. In case there is a still balance left over, it is to be treated as unabsorbed depreciation and it is taken to the next succeeding year. Where there is current depreciation for such succeeding year the unabsorbed depreciation is added to the current depreciation for such succeeding year and is deemed as part thereof. If, however, there is no current depreciation for such succeeding year, the unabsorbed depreciation becomes the

*depreciation allowance for such succeeding year. 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 upto 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."*

*5.4 Respectfully following the decision of the Hon'ble Gujarat High Court (supra), it is held that the appellant is entitled to carry forward the unabsorbed depreciation of Rs.5,22,76,985/- for the period 96-97 to 98-99 restricting the same for eight years. The AO is directed to allow the carry forward of the unabsorbed depreciation and recomputed the income accordingly. This ground of appeal is allowed.*

3.2. During the course of the hearing, the Ld. D.R. Mr. Shramdeep Sinha fairly admitted this issue is squarely covered by Jurisdictional High Court which has considered the amendments made in the Finance Act, 2001 and CBDT Circular No. 14 of 2002, which 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 to 2001-02 got carried forward to the assessment year 2002-03 and became part thereof. Thus the assessee is eligible to carry forward and the set off against the profits and gains of subsequent years, without any limit whatsoever.

4. Recording the above submission of the Ld. D.R. and ld. CIT(A) who has followed the jurisdictional High Court judgment in the case of General Motors (India) Pvt. Ltd. (cited supra). Thus we have

no hesitation in following the ratio of the judgment of the jurisdictional High Court, we don't find any merits in the grounds raised by the Revenue.

5. In the result, appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 16 -09-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 16/09/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट