

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2675/Del/2007  
Asstt. Year: 2004-05

Anand and Anand B-41 Nizamuddin East, New Delhi -110 013 PAN AAFA0186F	Vs.	ACIT, Circle 37(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Tarandeep Singh, Adv.
Department by :	Shri Kanav Bali, Sr. DR
Date of Hearing	02.12.2022
Date of pronouncement	06.12.2022

**ORDER**

**PER ASTHA CHANDRA, JM**

1. It is a recalled matter.
2. The assessee is a firm of advocates. The assessment for the AY 2004-05 was completed by the Ld. Assessing Officer ("**AO**") on 29.12.2006 under section 143(3) of the Income Tax Act, 1961 (**the "Act"**) wherein the Ld. AO disallowed an amount of Rs. 56,79,040/- debited in the P&L account under the head "write-off of assets". He, however, allowed depreciation of Rs. 5,67,904/- @ 10% on Rs. 56,79,040/- on the said assets as per depreciation rules. Thus the disallowance of Rs. 51,11,136/- was made. This amount was added to the income of the assessee. On appeal by the assessee, the said disallowance was confirmed by the Ld. CIT(A) vide his order dated 15.03.2007. The assessee filed second appeal before the Tribunal. Apart from agitating the above disallowance, the assessee took additional ground that loss incurred by the assessee on the transfer of Gurgaon office structure is allowable under section 32(1)(iii) of the Act and not under

section 50 of the Act. The Tribunal vide order in ITA No. 2675/D/2007 dated 17.07.2009 dismissed the appeal of the assessee and confirmed the order of the Ld. CIT(A) on the issue of addition of Rs. 51,11,136/- on account of 'write-off of assets' as also rejected the additional ground taken before it. The assessee moved an MA petition No. 383/Del/2010 against the order of the Tribunal (supra) on the ground that the Tribunal did not consider the decision of Mumbai Tribunal in the case of Mukand Global Finance Ltd. 117 ITD 20 (Mum) which was cited at the bar in support of the additional ground. The Tribunal recalled its order dated 17.07.2009 vide its order dated 28<sup>th</sup> September, 2012 in MA No. 383/Del/2010 (in ITA No. 2675/D/2007). It is this recalled matter which came up for hearing before us.

3. We have heard the Ld. Representative of both the parties. The Ld. AR invited our attention to the decisions of Mumbai Bench of the Tribunal in Mukand Global Finance Ltd. (supra) and International Metro Civil Contractors vs. ACIT (2014) 52 taxmann.com 137 (Mumbai-Trib), Copies of which appear at pages 42-68 of the assessee's paper book. In Mukand Global Finance Ltd. (supra), the Ld. AR pointed out that it has been held that where loss is incurred on sale of block of assets of the assessee, section 50 has no application and the assessee's case falls within the provisions of section 32(1)(iii) of the Act and the loss is to be computed as per sub-clause(iii) and deduction of the same is allowable to the assessee from the business profit provided such deficiency is actually written off in the books of the assessee. He further submitted that identical claim was made in the case of International Metro Civil Contractors (supra) by way of additional ground and the decisions in Mukand Global Finance Ltd. (supra) was relied upon. However, the issue has been restored to the file of the Ld. AO by the Tribunal to verify whether the assessee has actually written off the difference of WDV and the sale realisable value of the assets in its books of account.

4. The Ld. DR on the other hand submitted that with the insertion of Section 50, the benefit of terminal allowance under section 32(1)(iii) of the Act is no longer available to the assessee which the assessee is seeking. He relied on the decision of Hon'ble Delhi High Court in CIT vs. Brawn Pharmaceutical Ltd. in ITA No.926/2015 dated 04.05.2017, a copy of which was submitted before us. He submitted that this order of the Hon'ble Delhi High Court was rendered in 2017 whereas the order in MA No. 383/Del/2010 was passed by the Tribunal in 2012. The Tribunal did not have the benefit of Hon'ble Delhi High Court's order (supra) while passing order recalling its earlier order in ITA No. 2675/D/2007 dated 17.07.2009.

5. We have considered the submissions of the parties and perused the material on the records. We agree with the submission of the Ld. DR. In Brawn Pharmaceutical Ltd. (supra) since reported in 394 ITR 478 (Delhi) the Hon'ble Delhi High Court has held that clause (iii) of section 32(1) applies only to undertaking engaged in the generation and distribution of power. Thus, the assessee which was not a power generation company was not entitled to write-off the value of assets under section 32(1)(iii) of the Act on closure of pharmaceutical business; it would only be entitled to depreciation under section 32(1)(i) of the Act. The Ld. AR was candid enough to concede that the decision (supra) of Hon'ble Delhi High Court is in favour of the Revenue and that the assessee not being in the business of generation and distribution of power, it is not entitled to the benefit of section 32(1)(iii) of the Act.

6. In the result, the recalled order dated 17.07.2009 passed by the Tribunal in the appeal of the assessee in ITA No. 2675/D/2007 is hereby restored.

**Order pronounced in the open court on 6<sup>th</sup> December, 2022.**

sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

sd/-  
**(ASTHA CHANDRA)**  
**JUDICIAL MEMBER**

Dated: 06/12/2022

**Veena**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

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