

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.41/Rjt/2023
(Assessment Year: 2005-06)

ACIT Circle-1(1), Rajkot	Vs.	M/s. Micro Melt Pvt. Ltd., Plot No. 2, Survey No. 196/P, Village Veraval (Shapar), Taluka Kotda Sangani, Rajkot- 360002
[PAN No.AABCM4327N]		
(Appellant)	..	(Respondent)

Appellant by :	Shri M. N. Manvar, A.R.
Respondent by:	Shri K. L. Solanki, Sr. DR
Date of Hearing	05.06.2023
Date of Pronouncement	16.06.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax(Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), in Order No. ITBA/NFAC/S/250/2022-23/1048126689(1) vide order dated 21.12.2022 passed for Assessment Year 2005-06.

2. The Revenue has taken the following grounds of appeals:-

“1. Whether on the facts and in the circumstances of the case the Ld. CIT(A) has erred in allowing appeal of the assessee by directing the AO to verify loss amounting to Rs.8,33,500/- whether a business loss or

- 2 -

unabsorbed depreciation, without appreciating the fact that it is very much evident from the Computation of Income annexed to the Return of Income that the assessee has specifically mentioned that the loss of A.Y.1996-97 claimed to be set off against the income of current year is “business loss”?

2. *It is prayed that the order U/s. 154 passed by the AO dated 18/10/2010 to be upheld as the assessee has neither in the return of income nor in the assessment proceedings as well as in the rectification proceedings u/s. 154 of the Act has ever claimed that the business loss of A.Y. 1996-97 which has been claimed as set off against the income for the year under consideration i.e. A.Y. 2005-06 consists unabsorbed depreciation loss of A.Y. 1996-97?*

3. *The appeal is being filed in view of the fact that the case falls under the exception No. 7(c) of the amendment to Board’s circular No. 3/2018 dated 20th August, 2018.*

4. *The appellant craves leave to add, amend, alter or withdraw any of more grounds of appeal at the time of hearing of appeal.”*

3. The brief facts of the case are that for the year under consideration, the DCIT, Rajkot passed order under section 154 of the Act dated 18-10-2010 and re-assessed the income of the assessee by disallowing the claim of set off of business loss of ₹ 8,33,500/- for assessment year 1996-97, on the ground that the assessee is not eligible for set off of business losses as the immediate succeeding 8 years expired in assessment year 2004-05.

4. In appeal before Ld. CIT(Appeals), the assessee submitted that the assessee filed its return of income for assessment year 1996-97 declaring total loss of ₹ 8,90,812/- which consists of depreciation amounting to ₹ 8,78,248/- and business loss of ₹ 12,564/-, and out of the same, unabsorbed depreciation amounting to ₹ 8,33,500/- was set off by the assessee against returned income for assessment year 1996-97. The Ld. CIT(Appeals) allowed the appeal of the assessee on the ground that the assessee is entitled to set off unabsorbed depreciation of assessment year 1996-97 in the impugned assessment year i.e. assessment year 2005-06 in view of the various judicial pronouncement cited by the assessee, including the decision rendered by the jurisdictional Gujarat High Court. He further directed the assessing officer to verify the claim of the assessee that the amounts which is the subject matter of appeal is unabsorbed depreciation or business loss. If the assessing officer arrives at a finding that the aforesaid amount is unabsorbed depreciation, then the same may be allowed in accordance with law. While allowing the appeal of the assessee, Ld. CIT(Appeals) observed as under:-

“5.1 The only issue for adjudication in the instant case is whether the appellant is entitled to claim of set of unabsorbed depreciation of Assessment Year 1995-96 in the relevant assessment year i.e. 2005-06.

5.2 In the instant appeal the appellant has submitted that vide order u/s 154 of IT Act dated 22.10.2010, the AO had disallowed setting off losses of Rs. 8,33,500/- considering it as business loss for the AY 1996-97, while the assesses insisted the amount was unabsorbed

depreciation. The assessee filed an application u/s 154 of the IT Act before the AO on 21.12.2010, requesting allowance of set off of unabsorbed depreciation of Rs. 8,33,500/-, However, the AO vide his order dated 03.03.2017 dismissed the application of the appellant and the appellant has filed the instant appeal.

5.3 *In its submission the assessee has also relied upon the judgment of jurisdictional High Court of Gujarat in case of M/S General Motors India Pvt. Ltd. vs. DCIT (SPECIAL CIVIL APPLICATION No. 1773 of 2012). In the aforesaid judgment the Hon'ble High Court in para 38 has observed as under:*

"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 AY.7997-98 up to 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 -

Similar view has been taken by the Hon'ble High Court of Madras in the case of CIT Vs KMC Specialty Hospitals India ltd (TCA no. 62/2015).

In view of the above judicial pronouncements especially that of a jurisdictional High Court, it is held that the assessee is entitled to set off of unabsorbed depreciation of AY 1996-97 in the relevant assessment year i.e. 2005-06.

In view of the above discussion, the Assessing Officer is directed to verify the claim of the assessee that the amount which is subject matter of this appeal is unabsorbed depreciation or business loss. If the Assessing Officer arrives to a finding that the aforesaid amount is unabsorbed depreciation, he/she is directed to allow set off of the same.

5.4 *The instant appeal is disposed in terms of the directions made above.*

6.0 *Accordingly, the appeal of assessee is partly allowed.”*

5. The Department is in appeal before us against the order passed by Ld. CIT(Appeals) allowing the appeal of the assessee. On going through the case records, the decisions cited by the assessee, the observations made by Ld. CIT(Appeals) in the appellate order and the arguments put forth before us during the course of hearing, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in allowing the appeal of the assessee in the instant facts, so as to call for any

- 6 -

interference. The assessee has made a valid claim of unabsorbed depreciation, which has been directed to be allowed by Ld. CIT(Appeals) after carrying out the necessary verification, in accordance with law.

6. In the result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on	16/06/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 16/06/2023

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot