

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING AT
INCOME TAX APPELLATE TRIBUNAL : PUNE BENCHES : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.249/NAG./2018
Assessment Year 2008-2009

The DCIT, Circle-3, Room No.302, Saraf Chambers, Sadar, Nagpur – 440 001. Maharashtra.	vs.	M/s. ACC Nihon Casting Limited, Plot No.A-1/2, Butibori Industrial Area, Wardha Road, Ruikhairi, Nagpur – 441 122. PAN AACCA4961B Maharashtra.
(Appellant)		(Respondent)

For Revenue :	Shri Kailash Kanojiya, Sr. DR
For Assessee :	Shri Abhay Agrawal, Advocate

Date of Hearing :	30.08.2023
Date of Pronouncement :	28.09.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue's appeal for assessment year 2008-2009, arises against the CIT(A)-2, Nagpur's Order No.CIT(A)-2/103/2014-15, dated 13.08.2018, involving proceedings u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue raises the following substantive grounds in the instant appeal :

1. *“On the facts and circumstances of the case, the learned CIT(A)-2, Nagpur erred in allowing claim of assessee to carry forward of business loss and set off unabsorbed depreciation Rs.20,19,09,580/- relating to earlier years i.e. 1995- 96 to AY 1999-2000 contrary to judgment in the case of CIT -vs- Pioneer Aisa Packing (P) Ltd. (2009) 310 ITR 1981 in which it was held that the unabsorbed depreciation brought forward as on 1/4/1997 could be set off against the business income or income under any other head for AY 1997-98 and seven subsequent AYs.*
2. *On the facts and circumstances of the case, the Ld. CIT(A)-2, Nagpur has erred in interpreting the amended provisions of section 32(2) of the Income Tax Act, 1961 vide Finance Act 2001.*
3. *Any other ground which may be raised during the course of hearing.”*

3. Both the learned representatives next invited our attention to the CIT(A)'s detailed discussion reversing the assessment findings thereby accepting the assessee's claim of carry forward of business loss and set-off of unabsorbed depreciation in question pertaining to the assessment years 1995-96 to 1999-2000 as under :

6.0 Ground No.3:

6.1 I have considered the facts of the case and submissions filed by the appellant. The facts of the case are that, during the course of assessment proceedings, the AO observed that unabsorbed depreciation and business losses can be carried forward only for 8 succeeding years. The AO placed reliance on the decision of Hon'ble Mumbai ITAT in the case of DCIT v. Times Guaranty Ltd (40 SOT 14) and denied set-off of following losses & unabsorbed depreciation of earlier years as under:

- i. Unabsorbed depreciation for the period AY 1995-96 to AY 1999-2000 amounting to Rs.20,19,09,580
- ii. Business loss pertaining to AY 1999-2000 of Rs.1,29,19,515

6.2 The appellant has submitted that, the AO has grossly erred in denying the set-off of unabsorbed depreciation of earlier years i.e for the period AY 1995-96 to AY 1999-2000 amounting to Rs. 20,19,09,580 as under:

Sr.No	Assessment Year	Unabsorbed Depreciation
1.	1995-96	11,55,82,287
2.	1996-97	3,03,04,809
3.	1997-98	1,56,97,978
4.	1998-99	2,19,28,630
5.	1999-00	1,83,95,876
	Total	20,19,09,580

6.3 The appellant further submitted that the provision of section 32(2) was amended vide Finance Act 2001 with effect from 1-4-2002 and unabsorbed depreciation losses were allowed to be carried forward and set-off in subsequent years without any time limit. The appellant has contended that the AO has erred in placing reliance on decision of Hon'ble Mumbai Tribunal in the case of ACIT v. Times Guaranty Ltd (*supra*), as the law interpreted by the Hon'ble Tribunal is no longer a good law in view of the subsequent decision of Hon'ble Gujarat High Court in the case of **General Motors India (P) Ltd v. DCIT (354 ITR 244)**.

6.4 I have considered the legal proposition laid down by the Hon'ble Gujarat High Court in the case of *General Motors* (*supra*). I find that, the Hon'ble High Court has considered the intention of introducing the amendment to section 32(2) vide Finance Act 2001 with effect from 1-04-2002 and has held that, carry forward of unabsorbed depreciation available to the assessee on the first day of April 2002 (i.e., assessment year 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 as it stood before the amendment. In other words, the Hon'ble High Court held that, if any unabsorbed depreciation or part thereof, could not be set-off till Assessment Year 2002-03, then it

would be carried forward till the time it is set-off against the profits and gains of subsequent years without any limit whatsoever. The relevant extract of decision is reproduced as under:

"It is held 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 assessment year 1997-98 up to the assessment year 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. [Para 38]"
(Emphasis Supplied)

6.5 I find that, the decision of Hon'ble Gujarat High Court in the case of *General Motors* (supra) has been followed by following judicial precedents and same interpretation of law has being upheld:

1. CIT v. Gujarat Themis Biosyn Ltd (228 Taxman 359) (Gujarat HC), wherein it has been held as under:

"4. We notice that in the instant case, the Tribunal while dealing with this case has noted that the carry forward of unabsorbed depreciation concerning A.Y. 2001-02 and assessment years prior thereto can be set off in subsequent years without any set time limit, considering the decision in the case of General Motors India (P.) Ltd. (supra) wherein this Court has held that carry forward of unabsorbed depreciation prior to assessment can be set off in subsequent years without setting time limit. The Tribunal has rightly applied the law to the facts of the instant case." (Emphasis Supplied)

2. Pr. CIT v. British Motor Car Co. Ltd (400 ITR 569) (Delhi HC), wherein it has been held as under:

"9. This Court is in agreement with the reasoning of the Gujarat High Court. The rationale for the amendment appears to be that the restriction against set off and carry forward limited to 8 years, beyond which the benefit could not be claimed under provisions of the Income Tax Act, was for the reasons deemed appropriate"

by the Parliament. The limit was imposed in 1996 through Finance Act No.2. As the Gujarat High Court observed, Had the intention of Parliament being really to restrict the benefit (of unlimited carry forward prospectively), there were more decisive ways of doing so-such as, an expressed provision or an exception or proviso etc. **The absence of any such legislative device meant that provisions had to be construed in its own term and not so as to restrict the benefit or advantage, it sought to confirm.**

11. The Court also approves and follows the judgment in General Motors India Ltd. (supra) of the Gujarat High Court. No substantive question of law arises" (Emphasis Supplied)

3. Smith & Nephew Healthcare (P) Ltd v. DCIT (66 SOT 154) (Mumbai ITAT), wherein it has been held as under:

"8. In view of the above judicial pronouncement, we do not find any merit in the action of the lower authorities for declining the assessee's claim for set off of carried forward unabsorbed depreciation pertaining to the assessment years 1995-96 to 2001-02, against the current year business income of the assessment year 2008-09." (Emphasis Supplied)

4.RB Polymers Ltd v. CIT (89 Taxmann.com 87) (Kolkata ITAT), wherein it has been held as under:

"Therefore, considering the factual position discussed above, we allow the appeal of the assessee and we direct the AO to allow set off, of depreciation pertaining to A.Y 1995-96 to 2000-01, against income of assessment year 2009-10." (Emphasis Supplied)

5. ITO v. M/s Searock Enterprises Pvt Ltd (ITA No.972/Mum/2016) (Mumbai ITAT), wherein it has been held as under:



"4. We have heard the rival contentions and gone through the facts and circumstances of the case. The learned Sr. Departmental Representative also admitted that this issue is covered in favour of assessee by the decision of Hon'ble Gujarat High Court in the case of General Motors India Pvt. Ltd. (supra). Respectfully following the same, we confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed." (Emphasis Supplied)

6. DCIT v. Fenoplast Ltd (68 taxmann.com 387)(Hyderabad ITAT), wherein it has been held as under:

"7. As things stand now, the restriction of eight years was removed. Even though Special Bench decision of the ITAT in the case of Dy. CIT v. Times Guaranty Ltd. [2010] 40 SOT 14 (Mum.) was relied on by the CIT at the time of passing the order u/s. 263, subsequently, Hon'ble Gujarat High Court in the case of General Motors India (P.) Ltd. (supra) has held that restriction is not valid and unabsorbed depreciation could be set-off against the profits and gains of subsequent years. In view of this, I agree with the order of the CIT(A) and reiterate that assessee is entitled to set-off the carried forward depreciation of AY 1996-97 and 1997-98. In view of this, we direct the AO to modify the orders if not done so far and allow the set-off accordingly." (Emphasis Supplied)

6.6 On careful examination of facts and law, I find that the appellant is eligible to carry forward and set-off unabsorbed depreciation amounting to Rs.20,19,09,580/- relating to earlier years i.e. AY 1995-96 to AY 1999-2000. Therefore, the AO is directed to allow the set-off accordingly, having regard to provision of section 72(2). **Accordingly, this Ground of Appeal No.3 is allowed.**

4. Mr. Kanojiya vehemently argued in favour of the Revenue's pleadings that the CIT(A) has erred in law and on facts in accepting the assessee's foregoing carry forward of business losses and set-off of unabsorbed depreciation claim thereby applying the amended provisions in sec.32(2) vide Finance Act, 2001 with retrospective effect. We find no substance in Revenue's instant sole grievance once it has come on record that hon'ble jurisdictional high court's decision in CIT vs. Bajaj Hindusthan Ltd., [2019] 103 taxmann.com 31 (Bom.) has already declined the department's arguments. The same has also been upheld in hon'ble apex court's decision in [2019] 103 taxmann.com 32 (SC). That being the case, we find no merit in the Revenue's instant sole substantive grievance. Rejected accordingly.

5. This Revenue's appeal is dismissed.

Order pronounced in the open Court on 28.09.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th September, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-2, Nagpur.
4.	The PCIT concerned
5.	D.R. ITAT, Nagpur Bench, Nagpur.
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches, Pune.

S.No.	Details	Date	
1	Draft dictated on	25.09.2023	Sr.PS
2	Draft placed before author	26.09.2023	Sr.PS
3	Draft proposed & placed before the Author	.09.2023	J.M.
4	Draft discussed/approved by Second Member	.09.2023	A.M.
5	Approved Draft comes to the Sr. PS/PS	.09.2023	Sr.PS
6	Kept for pronouncement on	.09.2023	Sr.PS
7	Date of uploading of Order	.09.2023	Sr.PS
8	File sent to Bench Clerk	.09.2023	Sr.PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		