
(1996) 07 MP CK 0036

In the Madhya Pradesh High Court

Case No : Income-tax Reference No. 8 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Adoon Electronics P. Ltd.

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 115J

Citation : (1998) 232 ITR 528

Hon'ble Judges : S.B. Sakrikar, J;A.R. Tiwari, J

Bench : Division Bench

Advocate : A.M. Mathur and A.K. Shrivastava, for the Appellant; S.C. Bagadia and Pankaj Bagadia, for the Respondent

Judgement

A.R. Tiwari, J.—On an application by the Department (CIT, Bhopal), u/s 256(1) of the Income Tax Act, 1961, registered as RA No. 350/Ind. of 1993, the Tribunal stated the case and referred the under-noted question, categorised it as one of law, arising out of the order dated October 6, 1993, passed in ITA No. 59/Ind. of 1991 for the assessment year 1988-89, for our opinion :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in directing the Assessing Officer that while computing the profits for the purposes of Section 115J of the Income Tax Act, 1961, to take into account the total amount of unabsorbed depreciation together with the total amount of business loss and to allow deduction of the amount of either the business loss or the unabsorbed depreciation whichever is less in comparison to the total of the unabsorbed depreciation and the business loss ?"

2. Briefly stated, the facts of the case are that in the assessment proceedings, it was claimed by the assessee that there was unabsorbed depreciation of Rs. 1,93,663 and business loss of Rs. 78,973 at the end of the assessment year 1987-88. Thus, there was a total loss of Rs. 2,72,656. The net profit of the assessee as per the profit and loss account after adding back the amount of tax was Rs. 2,68,314. It was contended by the assessee that for the purpose of

computation of income u/s 115J of the Income Tax Act, 1961 (for short the "Act"), it was entitled to set off the unabsorbed depreciation of Rs. 1,93,683 as the same was less than the total loss of Rs. 2,72,656. This contention was negated by the Assessing Officer. He allowed the deduction of Rs. 20,365 only. The assessment was completed u/s 143(1) of the Act. The assessee then filed an application u/s 154 of the Act for rectification. The application was rejected. The assessee then filed the appeal before the Commissioner of Income Tax (Appeals), but the fortune did not fluctuate. The assessee then filed another appeal before the Tribunal. The appeal was allowed following the order dated May 10, 1993, passed by it in ITA No. 601/Ind. of 1992 in the case, Brite Automotive and Plastic v. DCIT. The Assessing Officer was directed to take into account the total amount of unabsorbed depreciation together with the total amount of business loss and to allow deduction of the amount of either the business loss or the unabsorbed depreciation whichever was less in comparison to the total of the unabsorbed depreciation and the business loss. Dissatisfied by this order, the Department filed the application u/s 256(1) of the Act, on which the Tribunal stated the case and referred the aforesaid question for our opinion.

3. We have heard Shri Anand Mohan Mathur, learned senior counsel, with Shri A.K. Shrivastava for the applicant and Shri S.C. Bagadia, learned senior counsel, with Shri Pankaj Bagadia for the non-applicant.

4. In the order dated May 10, 1993, passed in ITA No. 601/Ind of 1992 (supra), the Tribunal considered the observations in Commissioner of Income Tax, Calcutta Vs. Jaipuria China Clay Mines (P) Ltd., and concluded as under :

"Thus, the expression "the amount of loss" appearing in Clause (b) of the first proviso to Section 205(1) of the Companies Act should be construed to mean the loss including depreciation and unabsorbed depreciation. In view of the above discussion, it is held that the computation of loss must necessarily include the amount of depreciation and unabsorbed depreciation. In the instant case, the loss being larger than the unabsorbed depreciation, the assessee is entitled to set off the amount of unabsorbed depreciation. In the instant case, the unabsorbed depreciation is also not fully absorbed and, therefore, the book profit needs to be taken at nil."

5. The apex court noted in M/s. Garden Silk Weaving Factory, Surat Vs. The Commissioner of Income Tax, Gujarat, Ahmedabad, , that there was a strong cleavage of opinion among the various High Courts in regard to the point in question and after consideration held as under (page 534) :

"For the reasons discussed above, we are of the opinion that the assessee-appellant-firm is entitled to a carry forward of the unabsorbed depreciation computed for the assessment year 1967-68 and have it set off in its assessment for 1968-69."

6. In view of the aforesaid factual matrix and legal position, it becomes luculent that the Tribunal committed no error of law in rendering the order. In our view,

the Tribunal was thus justified in making the direction to the Assessing Officer in terms indicated above and incorporated in the question.

7. Consequently, we answer the question in the affirmative, i.e., in favour of the assessee and against the Department.

8. This reference thus stands disposed of in terms indicated above, but without any orders as to costs. Counsel fee, however, is fixed at Rs. 750 for either side, if certified.

9. A copy of this order shall be transmitted to the Tribunal in accordance with law.