(2008) 09 MAD CK 0039

In the Madras High Court

Case No : Tax Case Appeal No. 1546 of 2008

Commissioner of Income Tax APPELLANT

Vs

RPIL Signalling Systems Ltd. RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:
Income Tax Act, 1961 — Section 32(2)

Citation : (2010) 328 ITR 283

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The appeal is filed against the order of the Income Tax Appellate Tribunal Madras ""B"" Bench dated April 25,

2008 made in I. T. A. No. 383/Mds/2006 for the assessment year 1999-2000.

2. The facts of the case culminating in filing of the above appeal culled out from the statement of facts contained in the memorandum of appeal go

as follows:

3. For the assessment year 1999-2000, the Assessee had set off prior years'' business loss and unabsorbed depreciation against short-term capital

gains. Aggrieved by the assessment order, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of

Income Tax (Appeals) allowed the claim of the Assessee and directed the Assessing Officer to set off the claim. The Revenue filed a second

appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal following the decision of the Supreme Court in the case of

Commissioner of Income Tax, Andhra Pradesh Vs. Cocanada Radhaswami Bank Ltd., allowed the appeal in favour of the Assessee.

4 The correctness of the said order is canvassed by the Revenue by filing the present appeal by formulating the following question of law:

Whether, in the facts and circumstances of the case the Tribunal was right in allowing set off of prior years'' business loss and unabsorbed

depreciation against short-term capital gains ?

5. We heard the argument of the learned Counsel appearing for the Revenue, who in all his fairness submitted that the question of law framed in

this appeal is covered against the Revenue in the case of Commissioner of Income Tax Vs. Pioneer Asia Packing (P) Limited, decided by this

Court on November 21, 2007, in T. C. (A) No. 1423 of 2007.

6. As per the amended provisions of Section 32(2) of the Act, with effect from April 1, 1997, if the income from business for the assessment year

is insufficient to absorb the depreciation allowance of that assessment year, the amended provision permits absorption of depreciation allowance of

a business against profits and gains of any other business of the same assessment year. When the depreciation allowance of a business of the

assessment year is not absorbed by any other business of the same assessment year then the remaining unabsorbed depreciation allowance could

be set off against the income under any other head, that is assessable for the same assessment year. In the event of depreciation allowance of the

year is unable to be absorbed by any other business income or from income under any other head in the same assessment year, the remaining

unabsorbed depreciation allowance shall be carried forward to the following year and (a) unabsorbed allowance shall be set off against the profits

and gains of any business carried by a person, (b) if the unabsorbed depreciation allowance cannot be wholly set off of, it shall be allowed to be

carried forward for the following eight assessment years immediately succeeding the assessment year in which it was first computed. The proviso

provides that the business to which depreciation allowance is related to must be carried on in the succeeding year so as to allow such set off. Thus,

by the amendment, the deeming fiction of treating the earlier years'' unabsorbed depreciation as current year depreciation was removed. The

period available for absorbing the unabsorbed depreciation against the profit of the succeeding years was limited to eight years. The clarification of

the Finance Minister in Parliament is also to the effect that inasmuch as the cumulated unabsorbed depreciation brought forward as on April 1,

1997 could still be set off against the taxable business profit, or income under any other head for the assessment year 1991-98 and seven

subsequent years, vide [1996] 222 ITR 36. Circular of the Central Board of Direct Taxes No. 762 dated February 18, 1998 [1998] 230 ITR 12,

also clarifies the issue to the following effect:

Sub-section (2) of Section 32, as it existed up to the assessment year 1996-97, provided that the unabsorbed depreciation of a year shall be

added to the amount of the allowance for depreciation of the following previous year and deemed to be part of that allowance. Therefore, the

unabsorbed depreciation allowance, if any, of the assessment year 1996-97 shall be added to the amount of the allowance for depreciation of

assessment year 1997-98 and deemed to be part of the allowance for this year. In other words, the unabsorbed depreciation allowance of

assessment year 1996-97 shall be added to the allowance of 1997-98 and will be deemed to be the allowance of that year. The limitation of eight

years shall start from the assessment year 1997-98.

7. In view of the above position of law, we are of the view that the Tribunal has rightly come to the conclusion that the Assessee is entitled to the

unabsorbed depreciation brought forward as on April 1, 1997, and could be set off against the business profits.

8. For the foregoing reasons, the appeal is dismissed as no question of law, much less a substantial question of law is involved.