(2019) 08 GUJ CK 0044

In the Gujarat High Court

Case No : R/Tax Appeal No. 403 Of 2019

Principal Commissioner Of Income Tax — APPELLANT

Vs

SNS Textiles Ltd — RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Income Tax Act, 1961 — Section 32(2)(iii)(b), 147, 260A
Finance Act, 2001 — Section 32, 32(2)

Citation : (2019) 08 GUJ CK 0044

Hon'ble Judges : J.B. Pardiwala, J;A.C. Rao, J

Bench : Division Bench

Advocate : Varun K. Patel, Vaibhavi K. Parikh

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J

1. This Tax Appeal under Section 260-A of the Income Tax Act 1961 (for short "the Act, 1961") is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal Surat Bench, Surat, dated 25.05.2018 in the ITA No. 3015/Ahd/2015 for the Assessment Year 2007-08.

2. The Revenue has proposed the following substantial question of law for the consideration of this Court:

"(a) Whether in the facts and circumstances of the case, the learned ITAT has erred in law in allowing carry forward of unabsorbed depreciation for the A.Ys. 1996-97, 1997-98 & 1998-99 beyond the period of eight assessment years in contravention of applicable provisions being section 32(2)(iii)(b) of the Income Tax Act as amended by Finance (No.2) Act, 1996 w.e.f 1st April, 1997?

(b) Whether on the facts and in circumstances of the case, the learned ITAT has erred in law and on facts in directing the Assessing Officer to allow carry forward of unabsorbed depreciation after verification of carry forward of unabsorbed depreciation for the A.Y. 1996-97, 1997-98 & 1998-99 by holding that carry forward of unabsorbed depreciation prior to assessment can be set off in subsequent years without setting time limit, without appreciating that the Hon'ble Supreme Court vide record of proceedings dated 11.03.2013 in SLP Civil CC No. 5424/2013, in the case of Pr. C.I.T. v. General Motors India Pvt. Ltd. has kept the question of law on this issue and hence the issue involved has not attained finality?"

3. The questions of law as proposed by the Revenue are no longer res integra in view of the decision of this Court in the case of General Motors India Pvt. Ltd. v. Deputy Commissioner of Income-Tax reported in [2013] 354 ITR 244 (Guj.), wherein, this Court, in paragraph 32 held as under:

"32. The last question which arises for consideration is that whether the unabsorbed depreciation pertaining to the assessment year 1997-98 could be allowed to be carried forward and set off after a period of eight years or it would be governed by section 32 as amended by the Finance Act, 2001? The reason given by the Assessing Officer under section 147 is that section 32(2) of the Act was amended by the Finance (No. 2) Act of 1996, with effect from the assessment year 1997-98 and the unabsorbed depreciation for the assessment year 1997-98 could be carried forward up to the maximum period of eight years from the year in which it was first computed. According to the Assessing Officer, eight years expired in the assessment year 2005-06 and only till then, the assessee was eligible to claim unabsorbed depreciation of the assessment year 1997-98 for being carried forward and set off against the income for the assessment year 2005-06. But the assessee was not entitled for unabsorbed depreciation of Rs. 43,60,22,158/- for the assessment year 1997-98, which was not eligible for being carried forward and set off against the income for the assessment year 2006-07."

4. The decision in General Motors India Pvt. Ltd. (supra), later came to be followed by this Court in the case of Principal Commissioner of Income-tax v. Panchmahal Steel Ltd. reported in [2019] 106 taxmann.com 131 (Guj.).

5. We are informed that the SLP preferred by the Revenue before the Supreme Court against the order passed in Panchmahal Steel Ltd. (supra) has been dismissed.

6. In view of the above, this Tax Appeal fails and is hereby dismissed.