

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

श्री जी०सी० गुप्ता, उपाध्यक्ष एवं श्री एन०एस० सैनी, लेखा सदस्य के समक्ष
BEFORE SHRI G.C. GUPTA, VICE PRESIDENT AND
SHRI N.S. SAINI, ACCOUNTANT

आयकर अपील सं./ ITA No. 256/Ahd/2011
निर्धारण वर्ष/Assessment Year: 2004-05

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| Asstt. Commissioner of Income Tax, Circle-4, Surat. | Vs | M/s. Shree Raghupati Fibres Pvt. Ltd. 116, Jeevan Deep Complex, Opp. J.K. Tower, Ring Road, Surat. PAN: AABCR1184Q |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

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| Revenue by : | Smt. Sonia Kumar, Sr. D.R. |
| Assessee(s) by : | None |

सुनवाई की तारीख/Date of Hearing : 08/09/2014
घोषणा की तारीख/Date of Pronouncement: 12/09/2014

आदेश/ORDER

PER SHRI N.S. SAINI, ACCOUNTANT MEMBER:

This is an appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-IV, Ahmedabad dated 25.10.2010.

2. The sole ground taken by the Revenue is that the Commissioner of Income Tax (Appeals) erred in allowing set off of addition made u/s. 68 of the Act of Rs 13,80,000/- against the unabsorbed depreciation loss.

3. The Commissioner of Income Tax (Appeals) has decided the issue as under:

"4. Ground no. (d) is against the Assessing Officer withdrawing set off of addition made u/s. 68 of the I.T. Act against b/f. unabsorbed depreciation. In the original assessment, an addition of Rs 32,87,109/- was made. Out of this, an addition of Rs 13,80,000/- was made u/s. 68 of the I.T. Act. The A.O. had, in the original assessment, allowed set off of b/f. depreciation against all the additions made. However, he was of the opinion that set off had been wrongly allowed against income determined u/s. 68 and therefore income had been not assessed to that extent. He therefore reopened the assessment.

4.1. During the course of re-assessment proceedings, in reply to show cause, the appellant submitted that the addition u/s. 68 will form part of current year's income and set off of b/f depreciation was permissible. The A.O. was of the opinion that addition u/s 68 of the Act does not form part of any specific head of income and it is definitely not business income. He therefore held that b/f. unabsorbed depreciation cannot be allowed set off against income u/s 68 of the I.T. Act. He withdrew the set off granted earlier.

4.2 During the course of appeal proceedings, the A.R submitted that the additions made in the original assessment were not correct and introduced additional evidences which were forwarded to the A.O by my predecessor in office for remand. Remand report received was forwarded to the appellant for his comments but have been received back unserved. I have held in my decision for earlier ground that the issues which have attained finally in original assessment are not opened for adjudication now having been accepted in the original assessment. It is hold now that the addition u/s 68 had become final and was not open in reassessment proceedings.

4.3 It is seen that no submissions have been made as to why b./f depreciation loss was allowable against addition made u/s 68 of the I.T. Act. The matter is therefore being decided on merits.

4.4 The issue, in my opinion, is whether b/f. depreciation loss can be set off against income under any head other than business in subsequent years. Reading of section-32 shows that b/f. depreciation loss merges with the depreciation of the current year and therefore becomes current year's business loss which is permitted to be set off against any income of the current year other than salary. Income determined u/s 68 of the I.T. Act is income under other sources. B/f. depreciation loss which merges with the current year's depreciation will therefore have to be allowed as a set off against the income

determined u/s 68 of the I.T. Act. Rules of set off to be followed will be the one applicable in the year in which set off is being claimed. It is therefore held that appellant was entitled to the set off to b/f. depreciation loss against income determined u/s. 68 of the I.T. Act. This ground of the appellant is allowed."

4. We have heard the rival submissions and perused the orders of lower authorities and material available on record. In the instant case, the Assessing Officer observed that the addition of Rs 13,80,000/- was made u/s. 68 of the Income Tax Act which does not form part of any specific head of income and is also not business income, therefore brought forward unabsorbed depreciation cannot be allowed set off against the same.

5. On appeal, the Commissioner of Income Tax (Appeals) observed that brought forward depreciation can be set off against income under any other head other than business in subsequent years as section 32 provides that brought forward depreciation merges with the depreciation of the current year and becomes current year's depreciation which is permitted to be set off against any income of the current year other than salary. Income determined u/s. 68 of the Income Tax Act is income under other sources and therefore the brought forward depreciation will have to be allowed as a set off against income determined u/s. 68 of the Income Tax Act.

6. Being aggrieved by the said order of the Commissioner of Income Tax (Appeals), the Revenue is in appeal before us.

7. We find that the Hon'ble Supreme Court in the case of CIT Vs. D.P. Sandu Bros. Chembur (P) Ltd. (2005) 273 ITR 1 (SC) has held as under:

"Section 14 of the Income-tax Act, 1961 as it stood at the relevant time similarly provided that "all income shall for the purposes of charge of income-tax and computation of total income be classified under six heads of income," namely:-

- (A) Salaries;*
- (B) Interest on Securities;*
- (C) Income from house property;*
- (D) Profits and gains of business or profession;*
- (E) Capital gains;*
- (F) Income from other sources unless otherwise, provided in the Act.*

Section 56 provides for the chargeability of income of every kind which has not to be excluded from the total income under the Act, only if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E."

8. Thus, in view of the above decision of the Hon'ble Supreme Court, the amount which has been deemed as income u/s. 68 is assessable as income from other sources and because of the same, it forms part of the total income of the assessee.

9. It is not in dispute that brought forward unabsorbed depreciation can be set off against the income which is assessable under the head 'income from other sources'. We, therefore, do not find any error in the order of the Commissioner of Income Tax (Appeals). It is confirmed. The ground of appeal of Revenue is dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on Friday, the 12th of September, 2014 at Ahmedabad.

Sd/-

(G.C. GUPTA)
VICE PRESIDENT

Ahmedabad; Dated 12/09/2014
Ghanshyam Maurya, Sr. P.S.

Sd/-

(N.S. SAINI)
ACCOUNTANT MEMBER