

(2005) 03 AHC CK 0264

Allahabad High Court

Case No: IT Reference No. 151 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Brigadier Parmanand

RESPONDENT

Date of Decision: March 29, 2005

Acts Referred:

- Income Tax Act, 1961 - Section 139(1), 256(2), 32(2), 72, 73

Citation: (2007) 208 CTR 255 : (2006) 287 ITR 142 : (2006) 152 TAXMAN 123

Hon'ble Judges: R.K. Agrawal, J; Prakash Krishna, J

Bench: Division Bench

Advocate: Shambhu Chopra, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The Income Tax Appellate Tribunal, New Delhi has referred the following question of law u/s 256(2) of the Income Tax Act, 1961, hereinafter referred to as "the Act" for opinion to this Court:

1. Whether on the facts and in the circumstances of the case, the Tribunal was in law justified in upholding the decision of the Dy. Commissioner of Income Tax (Appeals) who allowed the assessee's claim for carry forward and set off unabsorbed depreciation of the earlier year?

2. The present Reference relates to the assessment year 1986-87.

3. The respondent-assessee is an individual. He had filed return of income showing loss of Rs. 2,75,850. While completing the assessment, the Assessing Officer observed that the loss for the earlier year could not be allowed to be carried forward and set off as per provisions of section 80 of the Act and he, accordingly, completed the assessment on a total income of Rs. 21,740. Feeling aggrieved the respondent preferred an appeal before the Deputy Commissioner of Income Tax (Appeals), who

had held that the Assessing Officer was not justified in refusing to carry forward unabsorbed depreciation and section 80 did not speak of unabsorbed depreciation. The Dy. Commissioner of Income Tax (Appeals), therefore, directed to carry forward the unabsorbed depreciation amounting to Rs. 1,98,476 for the assessment year in question. Revenue feeling aggrieved preferred an appeal before the Tribunal.

The Tribunal has dismissed the appeal by the following orders:--

The order of the Dy. Commissioner of Income Tax (Appeals) shows that the assessee's claim for carry forward and set off was in respect of unaborbed depreciation and not in respect of business losses falling under Sections 72: 73: 74 or 74A of the IT Act, Section 72 deals with carry forward of unabsorbed business loss other than losses on account of depreciation has been specifically provided for in Section 32(2). The manner of carry forward in the two provisions is different. Unabsorbed depreciation is carried forward and added to the depreciation of the following year. The total amount of depreciation thus arriving is deemed to be depreciation of the following year. The total amount of depreciation thus arriving is deemed to be depreciation of the subsequent year. In view of the amendment introduced in Section 80 w.e.f. 1-4-1985, business losses other than unabsorbed depreciation can be carried forward and set off under Sections 72: 73: 74 and 74A if such losses have been determined in pursuance of a return filed u/s 139(1). If return has not been filed u/s 139(1) or within such time as may be allowed by the ITO, in such a case, business loss other than unabsorbed depreciation cannot be allowed to be carried forward and set off in the subsequent years in view of the amended provisions of Section 80. However, Section 80 is not at all applicable to unabsorbed depreciation for which provision is separately made u/s 32(2). The provisions contained u/s 32(2) does not confine the benefit of carry forward of unabsorbed depreciation only to cases where a return is filed u/s 139(1) or within such time as may be allowed by the ITO. I am, therefore, of the opinion that the Dy. Commissioner of Income Tax (Appeals) was justified in allowing the assessee's claim for carry forward and set off and unabsorbed depreciation of the earlier year.

4. We have heard Sri Shambhu Chopra, learned Standing Counsel for the revenue. No body has appeared on behalf of the respondent-assessee.

5. Learned Standing Counsel submitted that as the loss for the earlier year had not been determined in terms of Sections 72 to 74A of the Act the respondent was not entitled to carry forward unabsorbed depreciation in view of the provisions of Section 80 of the Act. His submission is misconceived. Section 80 of the Act confines itself to the losses mentioned in Sub-section (1) of Section 72 or Sub-section (2) of Section 73 or Sub-section (1) or Sub-section (3) of Section 74 or Sub-section (3) of Section 74A. It does not talk about the unabsorbed depreciation which is allowed to be carried forward under Sub-section (2) of Section 32 of the Act. Thus, the respondent was entitled for carry forward unabsorbed depreciation u/s 32(2) of the Act notwithstanding the fact that the losses had not been determined.

6. We, accordingly, answer the question referred to us in the affirmative ie., in favour of the assessee and against the revenue. However, there shall be no order as to costs.