

(1996) 08 MP CK 0039

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 104 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Kedia Leather and Liquor Pvt.
Ltd.

RESPONDENT

Date of Decision: Aug. 23, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 115J

Citation: (1998) 233 ITR 410

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

Bench: Division Bench

Advocate: Vivek Saran, for the Appellant; D.D. Vyas, for the Respondent

Judgement

A.R. Tiwari, J.

At the instance of the applicant (Commissioner of Income Tax, Bhopal), the Tribunal has stated the case and referred the under noted questions, labelling them as of law, on application registered as R. A. No. 77/Ind of 1994 for the assessment year 1990-91 arising out of the order dated May 12, 1994, passed by the Tribunal in I. T. A. No. 850/ Ind of 1992, for our consideration :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing the unabsorbed depreciation of Rs. 15,49,066 representing earlier years in the place of unabsorbed business loss of Rs. 7,78,541 for determining the book profit of the year ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing extra depreciation of Rs. 21,19,371 from the book profit arising due to change in method of depreciation ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in directing the Assessing Officer not to interfere with the

balance-sheet of the assessee for working out the book profit ?"

2. Briefly stated, the facts of the case are that after making adjustments u/s 143(1)(a) of the Income Tax Act, 1961 (for short "the Act"), the book profit u/s 115J of the Act was worked out at Rs. 14,87,574, total income at 30 per cent, was determined at Rs. 4,46,272 by the Assessing Officer, vide his order dated March 27, 1991. The assessee had debited to the profit and loss account the current year's depreciation of Rs. 40,70,691, while making deduction u/s 205 of the Companies Act, arrears of depreciation have been deducted at Rs. 21,19,371. Thereafter, the depreciation of earlier years has further been deducted amounting to Rs.15,49,066 for computation of income as per provisions of Section 115J of the Act. For the purposes of computing the book profit of the assessee, the adjustment as provided in Explanation (iv) to Sub-section (1A) of Section 115J is required to be made and the account is required to be prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. The assessee deducted the current year's depreciation of Rs. 40,70,691. Further, it also deducted depreciation of earlier years amounting to Rs. 21,19,371. After depreciation of earlier years, it also deducted the sum amounting to Rs.15,49,066. The assessee also changed the method of calculation of depreciation from the straight line method to the written down value method. The Assessing Officer negated the claim of deduction of depreciation of Rs. 15,49,066. The assessee then filed an application u/s 154 of the Act with a prayer to allow depreciation of earlier years amounting to Rs. 15,49,066 from the profit while calculating book profit u/s 115J as it was less than the total of business loss including unabsorbed depreciation. The Assessing Officer rejected the application. In appeal, the Commissioner of Income Tax (Appeals) confirmed the order of the Assessing Officer. The Tribunal on further appeal held that the provisions of the Companies Act should be construed to mean that the loss includes the depreciation and unabsorbed depreciation also. The Tribunal, thus, held that computation of loss should necessarily include the amount of depreciation and unabsorbed depreciation. The Tribunal decided the issue in favour of the assessee following its own decision in the case of Brite Automotive Plastics Ltd. v. CIT registered as I. T. A. No. 601/Ind of 1992 on May 10, 1993. The Tribunal, thus allowed the appeal, I. T. A. No. 850/Ind of 1992 for the assessment year 1990-91 on May 12, 1994. Aggrieved, the Revenue filed the application u/s 256(1) of the Act. On this application, the Tribunal stated the case and referred the aforesaid questions of law.

3. We have heard Shri Vivek Sharan, learned counsel for the applicant/ Revenue and Shri D. D. Vyas, learned counsel for the non-applicant/ assessee.

4. Right at the threshold, counsel for the applicant submitted that in case question No. (i) is answered in favour of the assessee, answers to questions Nos. (ii) and (iii), as proposed and noted above, will not be necessary. Counsel for the non-applicant also submitted that consideration of question Nos. (ii) and (iii) will depend on adverse answer to the assessee on question No. (i).

5. Counsel for the applicant submitted that question No. (i) merits to be answered in favour of the Revenue. This contention is controverted by counsel for the non-applicant. He also submitted that the point covered by question No. (i) is already answered by this court on February 16, 1996, in Miscellaneous Civil Case No. 147 of 1990 [Azad Bus Service Vs. Commissioner of Income Tax](#)), in favour of the assessee and against the Revenue on placing reliance on the decisions in [Commissioner of Income Tax Vs. R.J. Trivedi and Sons](#), and [M/s. Garden Silk Weaving Factory, Surat Vs. The Commissioner of Income Tax, Gujarat, Ahmedabad](#) .

6. In the case of [Commissioner of Income Tax Vs. R.J. Trivedi and Sons](#) , it is held as under (page 427) :

"Depreciation represents the diminution in the value of an asset, when applied to the purpose of making profit or gain (see [Workmen of National and Grindlays Bank Ltd. Vs. The National and Grindlays Bank Ltd.](#) , . Depreciation is thus related to an asset and is a notional loss as against the actual loss in the sense of outgoings of a business. So far as carrying forward of loss is concerned, Section 75 places the restriction that it can be carried forward only in the hands of a partner of a firm. But there is no such restriction so far as carrying forward of depreciation u/s 32 of the Act is concerned. The absence of such restriction or limitation in Section 32 of the Act in permitting carrying forward of depreciation is a clear indication of the legislative intent that depreciation, if not fully absorbed in an earlier assessment year in"-the case of a registered firm or an unregistered firm assessed as registered firm in the assessment of its partners, can be carried forward to subsequent years subject only to "the priority to be given to carrying forward of loss as provided in Section 32(2) read with Section 73(3) of the Act."

7. In the case of [M/s. Garden Silk Weaving Factory, Surat Vs. The Commissioner of Income Tax, Gujarat, Ahmedabad](#) , it is held as under (page 522) :

"From the above discussion, it will be seen that unabsorbed losses and unabsorbed depreciation are to be carried forward to future years to be set off against future income. There is, however, one important difference. Unabsorbed losses can be carried forward only for a period of eight years whereas unabsorbed depreciation can be carried forward indefinitely."

8. Similar view is taken by this court in Miscellaneous Civil Case No. 42 of 1989 Azad Bus Service v. CIT decided on August 21, 1996 (sic).

9. It is thus clear that unabsorbed depreciation can be carried forward indefinitely. That being so, we are satisfied that the Tribunal was justified in law in allowing the unabsorbed depreciation of Rs. 15,49,066 representing earlier years, in the place of unabsorbed business loss of Rs. 7,78,541, for determining the book profit of the year.

10. In the result, we answer question No. (i) in favour of the assessee and against the Revenue. In view of this answer, we do not consider and answer questions Nos. (ii) and (iii) as submitted and noted above.

11. This miscellaneous civil case is thus disposed of in terms indicated above, but without any order as to costs. Counsel fee for each side is, however, fixed at Rs. 750, if certified.

12. Transmit a copy of this order to the Tribunal.