
**(2008) AIRSCW 1289 : (2008) 2 CLT 690 : (2008) 215 CTR 13 : (2008) 299 ITR 9 :
(2008) 2 JT 399 : (2008) 2 SCALE 387 : (2008) 2 SCC 478 : (2008) 167 TAXMAN 261**

Supreme Court of India

Case No: Civil Appeal No. 1183 of 2008 (Arising out of S.L.P. (C) No. 21331 of 2002)

Jt. Commissioner of
Income Tax, Valsad,
Gujarat

APPELLANT

Vs

United Phosphorous
Ltd.

RESPONDENT

Date of Decision: Feb. 8, 2008

Acts Referred:

Income Tax Act, 1961 " Section 260A, 32(1), 34(1), 36(1)

Citation: (2008) AIRSCW 1289 : (2008) 2 CLT 690 : (2008) 215 CTR 13 : (2008) 299 ITR 9 :
(2008) 2 JT 399 : (2008) 2 SCALE 387 : (2008) 2 SCC 478 : (2008) 167 TAXMAN 261

Hon'ble Judges: S. H. Kapadia, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: P. Vishwanatha Shetty, T. Srinivasa Murthy, Gaurav Agrawal and B.V. Balaram
Das, for the Appellant; Pardiwala and Reena Bagga, for the Respondent

Final Decision: Allowed

Judgement

S.H. Kapadia, J.

Delay condoned. Leave granted.

2. In this civil appeal filed by the Department two questions of law arise for determination which questions are as follow:

(1) Whether interest paid in respect of borrowings on capital assets not put to use in the concerned financial year can be permitted as allowable

deduction u/s 36(1)(iii) of the income tax Act, 1961?

(2) Whether respondent-assessee had an option in law to claim partial depreciation in respect of any block of assets.

3. Our answer to the above-mentioned question No. (1) is squarely covered by our decision in favour of the assessee and against the Department

in the case of 265498 .

4. Regarding the question No. (2), quoted above, it may be noted that the High Court has relied upon the judgment of this Court in 298824 in

which it has been held that the assessee has an option to claim depreciation. However, Section 34(1) of the income tax Act, 1961 (for short,

1961 Act") has been omitted w.e.f. 1.4.88. Therefore, we are remanding the matter to the High Court after setting aside the impugned order of

the High Court on this question, with the direction to the High Court to consider : whether the assessee has an option in law to claim partial

depreciation in respect of block of assets. In the case of Mahendra Mills (supra) the concept of block of assets was not there. In our view,

substantial question of law did arise for determination before the High Court u/s 260A of the 1961 Act, particularly when Section 34(1) of the

1961 Act stood omitted w.e.f. 1.4.88. The High Court is also requested to consider whether the judgment of this Court in the case of Mahendra

Mills (supra) would apply to the assessment years under consideration. In this connection the High Court is also requested to take into account the

scope of Explanation 5 to Section 32(1) of the 1961 Act, made by the Finance Act, 2001.

5. Accordingly question No. (1) is answered in favour of assessee and against the Department and question No. (2) is remitted to the High Court.

Consequently the Department's civil appeal is partly allowed with no order as to cost.