

(2008) 02 DEL CK 0262
Delhi High Court
Case No: ITA No. 95 of 2008

The Commissioner of Income
Tax-V

APPELLANT

Vs

Rishab Ispat Ltd.

RESPONDENT

Date of Decision: Feb. 25, 2008

Hon'ble Judges: Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench: Division Bench

Advocate: Rashmi Chopra, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

V.B. Gupta, J.

The Revenue being aggrieved by order dated 16th March, 2007 of Income Tax Appellate Tribunal (for short as Tribunal), Delhi Bench "E" in ITA No. 89/Del/2005 relevant for the Assessment Year 1998-1999 has filed this appeal.

2. The brief facts of this case are that Assessee who is engaged in the business of manufacturing of steel ingots, filed a return of income on 29th September, 1999 showing "Nil" income from business and profession. The Assessing Officer assessed the income of Assessee at Rs. 1,09,19,779/- wherein he disallowed cash credit, wrote off liabilities and added the same to the income of the Assessee liable to tax.

3. Aggrieved with the order passed by the Assessing Officer, the Assessee filed an appeal before Commissioner of Income Tax (Appeal) (CIT(A) for short) and CIT (A) deleted the addition on account of cash credits made by the Assessing Officer and further disallowed the addition of Rs. 73,36,374/- made by the Assessing Officer on account of brought forward balance of unsecured loans on the ground that there was cessation of business.

4. The Assessee thereafter filed an application for rectification u/s 154 of the Act claiming that CIT (A) had not considered brought forward depreciation which forms part of brought forward losses and which had been assessed in the past. The

Assessee contended that brought forward unabsorbed depreciation must be allowed even if the business is discontinued.

5. The CIT (A) rectified order dated 7th March, 2002 and allowed the carry forward depreciation.

6. The Revenue challenged the order of CIT (A) allowing the application of Assessee u/s 154 of the Act before the Tribunal and vide impugned order, the Tribunal dismissed the appeal of the Revenue.

7. Thus, the Revenue is before this Court.

8. It has been contended by learned Counsel for the Revenue that the order of the CIT(A) rectifying its order is erroneous in as much as it allows deduction in respect of unabsorbed depreciation even though Assessee never claimed depreciation and the same was never adjudicated upon by the Assessing Authorities and due to amendment in Section 32(2) of the Act read with first proviso, w.e.f. Assessment Year 1997-98, it is necessary that the Assessee continues the same business.

9. The Tribunal in the impugned order has held that:

The claim for unabsorbed depreciation is a matter of record for which no factual finding is necessary. Thus, after computing the income, the Assessee is always entitled to claim for set off of unabsorbed depreciation. This claim is admissible whether the Assessee carry on the same business or not.

10. Since there is a finding of fact given by the Tribunal that the Assessee was having certain unabsorbed depreciation and the claim is admissible whether the Assessee carry on the same business or not, we do not find any infirmity in the impugned judgment passed by the Tribunal.

11. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law. The present appeal filed by the Revenue is thus hereby dismissed.