IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

INCOME TAX Appeal No.379 of 2014 (O&M)
DATE OF DECISION: 02.03.2015

Commissioner of Income Tax, Hisar

…..Appellant

versus

United Textiles Ltd.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Tajender K. Joshi, Advocate for the appellant

••

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is an appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal dismissing the appellant's appeal against the order of the CIT (Appeals) allowing the respondent's appeal against the order of the Assessing Officer.

2. The issue pertains to the Assessment Year 2006-07. The respondent had filed its return of income on 15.12.2008. The unabsorbed depreciation at the end of the year i.e. 31.03.2005 relevant to the Assessment Year 1998-99 to 2004-05 was about Rs.2.53 crores. The unabsorbed depreciation and an amount of Rs.16,36,286/- was set off to the extent of the available profit. The remaining unabsorbed depreciation was allowed to be carried forward to the subsequent years.

3. The Assessing Officer issued a notice under Section 154 of the Act in view of a subsequent decision of the Income Tax Appellate Tribunal, Special Bench at Mumbai, in the case of *DCIT vs. Times Guarantee Limited*. The respondent's case is supported by the judgment of the Gujarat High Court in the case of *General Motors (India) Private Limited vs. DCIT, Special Civil Application No.1773 of 2012*. The Tribunal apart from following the judgment of the Gujarat High Court noted that this was a debatable issue and not a question of law alone. As noted by the Tribunal, the option for set off and carry forward of the unabsorbed depreciation should be of the period which is more beneficial to the assessee and depreciation of the year which lapses first should have a priority in setting off. Thus, even assuming that the question of law is decided in favour of the department, it would be necessary to revisit the issue even on facts regarding which period is more beneficial to the assessee.

4. In the circumstances, no question of law arises.

5. The appeal is accordingly dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

02.03.2015
parkash*

(G.S.SANDHAWALIA)
JUDGE