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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1493 OF 2014

Commissioner of Income Tax-5 ..Appellant
Versus
M/s. Hickson & Dadajee Pvt. Ltd. ..Respondent

....

Mr. Ashok Kotangale i/b. Ms. Padma Divakar for the Appellant.
Mr. Vipul Shah for the Respondent.

....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 28th FEBRUARY, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-2010.

2. This appeal raises the following question of law for our consideration :-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing set off of brought forward business loss against deemed short term capital gains arising from sale of building and plant and machinery?*
>
> *(ii) Whether on the facts and in circumstances of the case and*

in law, the Tribunal was justified in allowing set of brought forward unabsorbed depreciation available to the assessee on the first day of April 2002 for the Assessment Year 2002-03 without the restriction of 8 years carry forward which was during the Assessment Years 1997-98 to 2001-02?"

3. Regarding question no.(i):-

(a) The impugned order of the Tribunal allowed the appeal of the respondent-assessee on the issue of set off of brought forward business losses against deemed short term capital gains arising on sale of building, plant and machinery. This was by following the decision of its Co-ordinate Bench in ***Digital Electronics Ltd. v/s. Additional Commissioner of Income Tax 49 SOT 65.*** In Digital Electronics Ltd. (supra) the Tribunal held that under Section 72 of the Act, the loss under the head 'profits and gains of business or profession' can be carried forward and the same can be set off against profits of any business or profession. It is not the requirement of Section 72 of the Act that such gain or profit must be taxable under the head 'profit and gains of business or profession'. Thus carry forward business loss was set off against short term capital gains on sale of building.

(b) Mr. Kotangale, the learned counsel, appearing for the Revenue very fairly states that the decision of the Tribunal in Digital Electronics Ltd. (supra) has been accepted by the Revenue. Further no distinguishing features in the present facts have been shown to us, which would warrant taking of a different view from that taken by the Tribunal in Digital Electronics Ltd. (supra) and accepted by the Revenue.

(c) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus not entertained.

4. **Regarding question no.(ii):-**

(a) The impugned order allowed the respondent-assessee's appeal on this issue by following a decision of the Gujarat High Court in ***General Motors India (P.) Ltd. v/s. Dy. CIT 354 ITR 244***. Mr. Kotangale very fairly bring to our notice the decision of this Court in ***CIT v/s. Hindustan Unilever Ltd. (2016) 72 taxman.com 325*** wherein this Court upheld the view of the Tribunal in following the decision of Gujarat High Court in General Motors India (P.)Ltd. (supra), which in turn placed reliance upon Circular no.14 of 2001 dated 22nd November, 2001. The above Circular clarifies that the restriction of eight years as existing between Assessment Year 1997-98 upto 2001-02 to carry forward and set off the unabsorbed depreciation has been dispensed with effect from Assessment Year 2002-03. Consequently the unabsorbed depreciation as available on 1st April, 2001 will be allowable from the Assessment Year 2002-03 onwards.

(b) In the above view, as the issue stands concluded in favour of the respondent-assessee by the decision of this Court in Hindustan Unilever Ltd. (supra). The question as proposed does not give rise to any substantial question of law. Thus not entertained.

5. Accordingly appeal dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa