IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.377 of 2010 (O&M)
Date of Decision: 09.05.2017

The Commissioner of Income Tax-II, Ludhiana ----Appellant

Versus

M/s National Auto Roadline Carriers ----Respondent

Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Z.S. Klar, Advocate
for the appellant-Revenue.

Mr. S.K. Mukhi, Advocate
for the respondent-assessee.
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Ajay Kumar Mittal, J.

The Revenue has filed the present appeal under Section 260-A of the Income Tax Act, 1961 (for short 'the Act') against the order dated 30.04.2009 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B' in ITA No.562/Chd/2008, for the assessment year 2004-05, claiming the following substantial question of law:

> "Whether on the facts and in law, the Hon'ble ITAT was justified in dismissing the appeal of the Revenue and upholding the order of CIT(A) by holding that brought forward unabsorbed depreciation can be set off against the income of the current year under any head including income under the head short term capital gain ignoring the provisions of section 32(2) read with Section 72(2) and 73(3) of the Income Tax Act, 1961?"

2. At the outset, learned counsel for the assessee submitted that the Assessing Officer under Section 154 of the Act has passed an order

dated 08.07.2016 in respect of unabsorbed depreciation for the earlier years. A copy of the said order has been produced before us. The same is taken on record.

3. In the light of the aforesaid, it was urged by the learned counsel for the respondent-assessee that it would be appropriate that the order of the Tribunal is set aside and the matter is remitted back to the Assessing Officer to decide the issue regarding unabsorbed depreciation in the current year 2004-05 in accordance with law. Learned counsel for the Revenue has no objection to the aforesaid proposal of the learned counsel for the respondent. Ordered accordingly.

4. As a result,, the present appeal is disposed of. Order dated 30.04.2009 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B' in ITA No.562/Chd/2008 is set aside and the matter is remitted back to the Assessing Officer, who shall decide the issue of unabsorbed depreciation relating to the year 2004-05 afresh after affording an opportunity of hearing to the assessee.

(Ajay Kumar Mittal)
Judge

(Harinder Singh Sidhu)
Judge

09.05.2017
Atul

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No