IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOE TAX APPEAL NO. 6 OF 2016

The Pr. Commissioner of Income Tax-1,
Aurangabad .. **Appellant**

Versus

M/s Goodyear South Asia Tyres Pvt. Ltd.,
Aurangabad .. **Respondent**

Shri Alok M. Sharma, Advocate for the Appellant.
Shri Himanshu Sinha h/f Shri G. K. Naik Thigle a/w D. D. Deshmukh, Advocate for Respondent.

CORAM : S. V. GANGAPURWALA & A. M. DHAVALE, JJ.

DATE : 26th February, 2018

PER COURT :

1. Mr. Sharma, learned advocate submits that appeal is filed on the following substantial question of law -

(i) Whether on the facts and in circumstances of the case, the Hon'ble Tribunal was right in law by allowing the 'Unabsorbed Depreciation' allowances worked out even after eight subsequent assessment years, ignoring the amendment of section 32 (2) by the Finance Act, 2001?

(ii) Whether on the facts and in circumstances of the case, the Hon'ble Tribunal was right in law to allow the unabsorbed depreciation allowances even after completion of eight years by relying upon the decision of Non jurisdictional Hon'ble High Court, even though it is not binding upon it ?

2. Learned advocate submits that Unabsorbed Depreciation Allowance could not have been worked out even after subsequent eight assessment years. More particularly, in view of the amended Section 32 (2) of the Finance Act, 2001. The said aspect has not been considered. The learned advocate for the respondent, relies on the judgment of the jurisdictional High Court in a case of **Commissioner of Income Tax – 1 Vs. Hindustan Unilever Ltd.** reported in **[2016] 72 Taxmann.com 325 (Bombay)** to submit that such issue is no longer *res integra*.

3. This court in the aforesaid judgment observed as under-

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6 (c) We find that the impugned order of the Tribunal while allowing the Assessee – respondents' claim follows the decision of the Gujarat High Court in General Motors India (P.) Ltd. V. Dy. CIT [2013] 354 ITR 244/[2012] 210 Taxman 20/25 taxmann.com 364 wherein on identical facts it was held that the unabsorbed depreciation for the Assessment Year 1997-98 upto Assessment Year 2001-02 could be allowed to be set off, if it was still unabsorbed on 1st April, 2001. The above decision also placed upon the

CBDT circular No. 14 of 2001 dated 22nd November, 2001 to hold that any unabsorbed depreciation which is available on 1st day of April, 2001 would be dealt with in accordance with the provisions of Section 32(2) of the Act as amended by the Finance Act of 2001. Moreover, the Circular No. 14 of 2001 issued by the CBDT clarifies that restriction of eight years to carry forward and set off the unabsorbed depreciation has been dispensed with. Consequently, unabsorbed depreciation for the intervening periods between assessment 1997-98 upto 2001-02, if available in the assessment year 2002-03 would be allowable as part of carried forward depreciation from Assessment Year 2002-03 onwards. No decision contrary to the decision of the Gujarat High Court has been shown to us. It is clarified that although the decision of the Gujarat High Court was rendered in context of re-opening notice it has also examined the issue on merits and drew support from the CBDT circular which is beneficial to the assessee to conclude as aforesaid. Nothing has been shown to us to indicate why the decision of the Gujarat High Court in General Motors (India) Ltd. Should not be followed in the present facts."

4. Similar view has been taken by the Gujarat High Court in a case of **Principal Commissioner of Income-tax Vs. Accura Polytech (P.) Ltd.** reported in **[2018] 89 taxmann.com 183 (Gujarat)**.

5. In the light of above, no substantial question of law arises.

6. The Income Tax Appeal is dismissed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

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