IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.661 OF 2017

Pr. Commissioner of Income Tax, Central-2 ... Appellant
versus
Supreme Petrochem Ltd. ... Respondent

WITH

INCOME TAX APPEAL NO.669 OF 2017

Pr. Commissioner of Income Tax, Central-2 ... Appellant
versus
Supreme Petrochem Ltd. ... Respondent

Mr. N.C.Mohanty, for Appellants.
Mr. P. Pardiwala, Senior Advocate with Mr. Nitesh Joshi, Mr. Damodar I/by M/s. Kanga and Co., for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 7th JUNE, 2019

P.C.:

1. These Appeals are filed by the Revenue challenging the Judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). Issues being common, for convenience, we may refer to facts in Income Tax Appeal No.661 of 2017. Following questions are presented for consideration :

(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in allowing the carried forward and set off of unabsorbed depreciation of Rs.7,23,04,034 for A.Y. 1994-95 to 1998-99 of the amalgamating company amalgamated on 01-07-2007 against the income for A.Y. 2008-09 of amalgamated company even when the loss of A.Y. 1994-95 to 1996-97 carried forward as on 01-04-1997 cannot be carried forward beyond assessment year 2004-05 i.e. 7 assessment years subsequent to assessment year 1997-98 and the loss for A.Y. 1997-98 to A.Y. 1998-99 cannot be carried forward beyond 8 years of the determination of such unabsorbed depreciation i.e. beyond A.Y. 2004-05 and 2005-06 respectively ?

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified to direct the A.O. to set off unabsorbed depreciation prior to A.Y. 1994-95 to 1998-99 beyond 8 years, by relying on the decision of Hon'ble Gujarat High Court in the case of General Motors without appreciating that the revenue has not accepted the ratio of the said decision and has been contesting the same since the Hon'ble Supreme Court has held that the question of law is kept open, while deciding the SLP in the case of General Motors ?

2. It is undisputed that the issue raised by the Revenue in the above Appeals is squarely covered by the Judgment of the Division Bench of Gujarat High Court in case of General Motors India P. Ltd. V/s. Deputy Commissioner of Income Tax[1]. The said view has been constantly followed by this Court also. We may refer to an order dated 3rd August, 2018 in Income Tax Appeal No.293 of 2016 in which the Court made the following observations :

> *"5. However, this Appeal alongwith other Appeals including the Appeal in Milton Private Ltd. (supra) and Confidence Petroleum (I) Ltd. (supra),*

1 [2013) 354 ITR 244 (Guj)

are kept today for final disposal. Therefore, the order at the stage of admission will not govern the decision to be taken at the final disposal. We pointed out to Mr. Pinto that, the issue raised herein stood concluded so far as this Court is concerned by its decision in Commissioner of Income-Tax-1, Mumbai V/s. M/s.Hindustan Unilever Ltd. 394 ITR 73. The above decision placed reliance upon the decisions of the Gujarat High Court in ***Deputy Commissioner of Income Tax Vs. General Motors India P. Limited, 354 ITR 244*** *and the Central Board of Direct Taxes Circular dated 22nd November, 2001. Infact, the above Order of this Court records the fact that the Revenue was not able to point out any reason as to why the decision of the Gujarat High Court in General Motors (I) Ltd. (Supra) should not be followed. In the above facts, the appeal of the Revenue was dismissed.*

*6. Thereafter, appeals filed by the Revenue on identical question of law were not entertained by following the decisions of this Court in Hindustan Unilever Ltd. (Supra). Attention is invited to T**he Commissioner of Income Tax, Central-III V/s. M/s. Arch Fine Chemicals Pvt. Ltd.** (Income Tax Appeal No.1037 of 2014) dismissed on 6th December, 2016. Further, the respondents point out the case of* ***Commissioner of Income Tax-3 V/s. M/s. Bajaj Hindustan Ltd.*** *(Income Tax Appeal No.134 of 2016, 135 of 2016, 136 of 2016, 140 of 2016, 141 of 2016 and 148 of 2016) this Court on 13th June, 2018 dismissed the above Revenue's Appeal. This, we find is on the basis that the Counsel for the Revenue very fairly stated that the issue stands concluded against the appellant-Revenue by the decision of this Court in Hindustan Unilever Ltd. (supra). Similarly, in the case of The Principal Commissioner of Income-tax-5 V/s. Hindustan Antibiotics Limited (Income Tax Appeal No. 1042 of 2015) identical* *questions raised by the Revenue was dismissed on 20th February, 2018. In this also, the Counsel for the Revenue fairly conceded that the issue stands covered by the decision of this Court in Hindustan Unilever (supra).*

7. On the aforesaid decision being pointed out, Mr. Pinto, submits that all these appeals be referred to a larger Bench as there are two contradictory views of this Court, one in the case of Hindustan Unilever (supra) and others taking one view and the other in the case of Miltons Private Limited (supra) and Confidence Petroleum (supra). The two orders are not comparable. One is at the time of admission and the other is, finally disposing of the appeal. The decision in Hindustan Unilver (supra) finally disposed off the Appeal. While the decision in the case of Miltons Private Limited (supra) and Confidence Petroleum (supra) have only been admitted for further consideration. Therefore, this submission of referring the question to a larger Bench cannot be accepted because as pointed out above, the decision in Miltons Private Limited (supra) and Confidence Petroleum (supra) were at the admission stage and therefore not a concluding view so as to hold that it has definitely taken a different view from the one taken in Hindustan Unilever (supra). Thus, this submission of Mr. Pinto is without any merits.

8. Mr. Pinto, next submits that the decision of this Court in Hindustan Unilever (supra) is not correct. However, no submissions in support thereof are made . Therefore, no reason has been shown to us at the final hearing, why the decision is Hindustan Unilever Ltd. (supra) is not to be followed. Merely filing of an SLP from the order of Hindustan Unilever Ltd. (supra) would not make the order of this Court bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. The Revenue is entitled to challenge the view taken by us *following our decision in Hindustan Unilever (supra) by challenging this decision in the Apex Court. However, in the present facts, at this stage, there can be no question of our not following the order in Hindustan Unilever (supra). It may be pointed out that the Delhi High Court in Motor and General Fine Ltd. Vs. Income-Tax Officer, 393 ITR 60 has also adopted the view of the Gujarat High Court in General Motors (supra).*

9. In the above view, as the question raised herein stands finally concluded by the decision of this Court in Hindustan Unilever (Supra) against the Revenue. Thus Appeal Dismissed."

3. In the result, the Income Tax Appeals are dismissed.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**