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T.C.A No. 177 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

T.C.A No. 177 of 2013

The Commissioner of Income tax,
Chennai.

.. Appellant

VS

M/s. Kothari Sugars and Chemicals Ltd.,
Kothari Buildings,
No.115, Mahatma Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

.. Respondent

Prayer : Appeal filed under Section 260-A of the Income-Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, Madras 'C'
Bench, Chennai dated 18.05.2012 passed in ITA No.597/Mds/2012.

For Appellant : Mrs.V.Pushpa
Senior Standing Counsel

For Respondent : Mr.R.Vijayaraghavan
for M/s. Subbaraya Aiyar Padmanabhan



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JUDGMENT

(Delivered by Dr. ANITA SUMANTH, J.)

This is a Departmental appeal and challenge is to an order of the Income Tax Appellate Tribunal ('Tribunal') dated 18.05.2012.

2. The substantial question of law admitted on 29.04.2013 reads as follows:

'Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in upholding the order of CIT(A) who had directed the AO to allow the depreciation claimed on certain units after making certain adjustment as per Section 43(6) especially when three of the units were not used at all during the financial year 2002-03 relevant to the AY 2003-04?'

3. We have heard Mrs.V.Pushpa, learned Senior Standing Counsel for the Revenue and Mr.Vijayaraghavan, learned counsel for the assessee/respondent.

4. An assessment was framed on 30.12.2010 for Assessment Year (AY) 2003-04. One of the disallowances was on estimated basis, and pertained to a disclaim of depreciation. The estimate was in relation to three units (i) Cane Separation System in Kattur, Tiruchirapalli, (ii) Chloro Benzene Unit, Nitro Chloro Benzene Plant, Amination and Hydrogenation Unit at Karaikal and (iii) Nitric Acid Plant in Sangareddy, Andhra Pradesh, and on the basis that aforesaid plants/units had not been



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operated during the financial year relevant to the subject assessment year.

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5. Since the assessee had not supplied the complete details in relation to the functioning of the three units as above, the assessing authority completed the assessment, disallowing 60% of the claim of depreciation by the assessee, amounting to Rs.6.87 crores (approx.), as against the total claim of Rs.11.46 crores.

6. As against the above assessment, a first appeal was filed. The argument of the assessee was that since the assets relating to the above three units constituted a block of assets, the question of reduction in the claim of depreciation did not arise. In fact, the very same issue had arisen for consideration in the earlier assessment year, and the Tribunal had accepted the argument of the assessee vide its order dated 04.02.2011, that had attained finality. The Commissioner of Income Tax (Appeals) hence allowed the appeal following the decision of the Tribunal for the earlier assessment year.

7. Aggrieved, the revenue filed an appeal before the Tribunal that also followed its own order for the previous assessment year dismissing the revenue's appeal. Hence, the present appeal, laying out the question of law as extracted in paragraph 2 supra.

8. The admitted position in this case is that the three units as stipulated above have not been operated for several years, and ultimately,



were sold in 2005. The units were not in use till then. The question that arises for consideration is as to whether, considering the fact that the three units had not been used for the purpose of business, depreciation will have to be attributed to those three units and proportionately reduced from the total claim of depreciation.

9. The argument of the assessee is that with effect from 01.04.1988, the computation of deduction proceeds on the basis of block, and not individual assets. The assessee relies on a decision of the Delhi High Court in *Commissioner of Income Tax v. Oswal Agro Mills Ltd.* (341 ITR 467), wherein an identical argument has been accepted.

10. Per contra, learned Senior Standing Counsel would argue that depreciation has always to relate to whether a particular asset has been put to use for the purposes of business. Hence, depreciation on such assets that had not been put to use, would necessarily have to be reduced from the claim for depreciation.

11. Having heard both learned counsel, we are inclined to accept the argument of the assessee. The concept of block of assets was inserted in the Income Tax Act by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, with effect from 1-4-1988. A '*block of assets*' was defined to mean a group of assets falling within a class of assets, being buildings, machinery, plant or furniture, in respect of which



the same percentage of depreciation is prescribed. The definition was substituted vide Finance (No.2) Act, 1998, with effect from 1-4-1999 to read as follows:

‘.....
[(11) “block of assets” means a group of assets falling within a class of assets comprising-
(a) tangible assets, being buildings, machinery, plant or furniture;
(b) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, [not being goodwill of a business or profession,]
in respect of which the same percentage of depreciation is prescribed;]’

12. Thus, on and from 01.04.1999, the claim of depreciation of any assessee would be in relation to business assets, either tangible or intangible, that fall within the block of assets. Hence, the question of attribution of a specific asset to a specific unit does not arise, and as and when there were changes to the composition of the block, the value thereof would be adjusted to make way for those changes.

13. The argument of the assessee that the assets comprising the block are not required to correspond to any specific unit/plant is thus correct. As long as the assessee continues in business, which is admitted in this case, the assets in the block are ‘put to use’ and depreciation is to be granted in respect of that block of assets.



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14. Learned revenue counsel has referred to the provisions of Section 38(2), that states that ‘*where any machinery, is not exclusively used for the purposes of business or profession, the deductions must be restricted to a fair proportionate value thereof which the Assessing Officer may determine, having regard to the user of such machinery, for the purposes of business or profession.*’

15. That provision has no application in the present case as there is no dispute that the assets are being used exclusively only for the purposes of business or profession of the assessee. It is nobody’s case that the machine has been diverted for personal or other uses. This argument is hence rejected.

16. The Delhi High Court, in *Oswal Agro Mills Ltd.*, has referred to CBDT Circular No.469 dated 23.09.1986 (59 CTR (St) 9) that sets out the rationale behind the insertion of the concept of block of assets, and at paragraph nos. 31, 32 and 33 states:

“31. It becomes manifest from the reading of the aforesaid Circular that the Legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual asset. The block of assets has also been defined to include the group of asset falling within the same class of assets.

32. Another significant and contemporaneous



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development, which needs to be noticed is that the Legislature has also deleted the provision for allowing terminal depreciation in respect of each asset, which was previously allowable under section 32(1)(iii) and also taxing of balancing charge under section 41(2) in the year of sale. Instead of these two provisions, now whatever is the sale proceed of sale of any depreciable asset, it has to be reduced from the block of assets. This amendment was made because now the assesseees are not required to maintain particulars of each asset separately and in the absence of such particular, it cannot be ascertained whether on sale of any asset, there was any profit liable to be taxed under section 41(2) or terminal loss allowable under section 32(1)(iii). This amendment also strengthen the claim that now only detail for "block of assets" has to be maintained and not separately for each asset.

33. Having regard to this legislative intent contained in the aforesaid amendment, it is difficult to accept the submission of the learned counsel for the Revenue that for allowing the depreciation, user of each and every asset is essential even when a particular asset forms part of "block of assets". Acceptance of this contention would mean that the assessee is to be directed to maintain the details of each asset separately and that would frustrate the very purpose for which the amendment was brought about. It is also essential to point out that the Revenue is not put to any loss by adopting such method and allowing depreciation on a particular asset, forming part of the "block of assets" even when that particular asset is not used in the relevant assessment year. Whenever such an asset is sold, it would result in short term capital gain, which would be exigible to tax and for this reason, we say that there is no loss to Revenue either.'

17. We concur with the above observations. In fact, this very issue had arisen for AY 2002-03 and the Tribunal has answered the issue in favour of the assessee, the operative portion of its order reading as follows:



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‘5. We have considered the facts of the case, the submissions and the citations quoted by AR. Sec.32(1)(ii) of the Act stipulates that depreciation shall be allowed on the written down value of a block of assets at such percentage as may be prescribed. Sec.43(6)(c) of the Act, has defined written down value of a block of assets as follows:

(c) in the case of any block of assets,—

(i) in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,—

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year; and

(B) by the reductions of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the WDV so increased;

The concept of Block of Assets (BOA) was introduced w.e.f. 01.04.88. BOA has been defined to mean group of assets falling within a class of assets in respect of which the same percentage of depreciation is prescribed (Sec.2(11)). The CBDT Circular No.469 dt.23.09.86 has clearly stated that the object of that amendment is to allow depreciation on ‘block of assets’ as against individual assets thereby obviating the need to maintain details of individual assets, their WDV etc. Once an asset enters a block, there is no individual identity for the asset as it gets merged into the block. The concepts of terminal depreciation arising on sale of a particular asset as well as the taxability of balancing charge u/s 41(2) are also done away with. It is well settled law in various juridical authorities that the factum of individual asset losing its identity after becoming part of the block of assets, which has been affirmed by Coordinate Bench in assessee’s own case for the assessment year 2003-04 in ITA No.1917/Mds/2007.



The relevant portions are as under:-

“We have considered the rival submissions carefully in light of the material on record and find that Delhi Bench of the Tribunal in the case of ACIT Vs. SRF Ltd (supra) has held that the ownership and user both are criteria for claiming of depreciation. However, the user criteria has to be fulfilled only when an asset has formed part of the block of assets and once the asset is a part of the block of assets, it would loose its individual cost or WDV and thereafter depreciation has to be allowed on the entire block of assets. The concept was introduced wef 1.4.88. However, if an asset has been discarded then that has to be reduced from the written down value as per this new concept and these details have not been examined by the lower authorities. Therefore in the interest of justice, we set aside the order of the CIT(A) on this issue.”

6. *The Hon'ble Delhi High Court in the case of CIT v Bharat Aluminium Co LTd (2010) 187 Taxman 111 (Delhi) has held with regard to depreciation in respect of certain assets which were not used during the previous year and which formed part of a block assets as under:-*

“Once we understand and appreciate this scheme contained in the aforesaid provisions, it is not possible to accept the contention of the Ld.Counsel for the Revenue that unless a particular asset is used for the purpose of business or provision, depreciation is not allowed. No doubt, as per Sec.32(1), in order to be entitled to claim depreciation, the asset is to be owned by the assessee and it is also to be used for the purpose of business or profession. However, the expression ‘used for the purpose of business’ when applied to block asset would mean use of block asset and not any specific building machinery, plant or furniture in the said block asset as individual assets have lost their identity after becoming inseparable part of the block asset. That is the only manner in which



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various provisions can be harmonized.

33. Once we look into the provisions of this angle, answer to the argument of the Ld.counsel for the Revenue predicated on second proviso to Sec.32 shall also be provided. It was her submission that if a particular asset is acquired after 30th September during the previous year and is put to use for a period of less than 180 days in the previous year, the deduction under sub-section (1) of Sec.32 is restricted to 50% of amount admissible. On that basis, she had argued that requirement of user or individual asset remains intact. Answer to this argument is that this would be the position in the first year when the particular asset is required. With the user, it would meet the requirement of Sec.32. In the subsequent years, it is the use of block asset, which becomes the yardstick and not the individual asst already acquired in the earlier years, other than the previous year in which it is first brought to use.

34. In the instant case, the PSL equipment was purchased and put to use by the assessee in previous year relevant to the Assessment Year 1990-91 and the same had entered into the block asset in that year. It thus lost individual identity for the allowance of depreciation in that year. Since it is not in dispute for the year in question and block of assets was used, the assessee was rightly given the benefit of depreciation in the years in question. The question stands answered against the Revenue.”

7. Similar view has also been taken in the following cases:-

(a) DCIT vs Udaiput Distillery Co. Ltd., 119 Taxman 206 (Jodh.Mag)

(b) Packwel Printers vs. ACIT 591 ITD 340 (Jbp.)

(c) Natco Exports v DCIT 86 ITD 495 (Hyd.)

(d) United Products Ltd v ITO ITA No. 153 & 154 of 2003 (Mum.)



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(e) *ACIT v SRF Ltd 21 SOT 122 (Del)*
(f) *Nathani Steels Ltd Vs DCIT 56 TTJ 240*
(Bom.)

8. *Since this issue is already crystallized by various co-ordinate bench decisions, the order of the CIT (A) does not require any interference. In fact one unit, as stated by the CIT (A) in his order, has stopped only in August, 2001 relevant for the assessment year and was used partly during the year itself. Disallowing the depreciation on that unit also by the AO is not correct. However, the Assessing Officer is directed to keep in mind the provision of Sec.43(6) while working out the depreciation, if any assets were discarded or destroyed or demolished, then scrap value if any to be adjusted to the block of assets as per the provisions. With this direction, the revenue grounds are treated as dismissed.'*

This order has become final and has not been challenged by the revenue. Hence also for this reason, we find no merit in the present appeal.

18. In light of the discussion as above, the substantial question is answered in favour of the assessee and this tax case (appeal) is dismissed.

No costs.

[A.S.M, J.] [M.S.K, J.]
11.12.2025

Index: Yes
Neutral Citation: Yes
Speaking order
vs



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To

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Chennai



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