

IN THE HIGH COURT OF DELHI AT NEW DELHI

01.12.2009

**Present: Mr. N.P. Sahni, Adv. for the Appellant.
Mr. Ruchesh Sinha, Adv. for the Respondent.**

ITA No. 1255/2009

COMMISSIONER OF INCOME TAX

Vs.

M/S JCL INTERNATIONAL LTD

The issue which is involved in this case is as to whether the brought forward unabsorbed depreciation (since assessment year 1988-89 to 1994-95) can be set off with the long term capital gain in view of the amendment made to

Section 32(2) of the Finance Act, 1997 w.e.f. 1997-98. The Tribunal has answered this issue in affirmative and for this purpose it relied upon its earlier decision in the case of Income Tax Officer vs. Selchem Engineers (P) Ltd, 272 ITR 10 (AT). While giving this interpretation to Section 32(2) as amended w.e.f. 1st April, 1997, the Tribunal referred to the speech of the Finance Minister while moving the proposed amendment and clearly stating that the proposed amendment was only prospective inasmuch as the ?cumulative unabsorbed depreciation brought forward as on 1st April, 1997 can still be set off against taxable business profits or income under any other head for the assessment year 1997-98 and seven subsequent assessment years?. It is not only the view of the Tribunal but we find that even Madras High Court in the case of Commissioner of Income

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Tax vs. S and S Power Switchgear Limited, 218 CTR 701 has interpreted the said provision in the same manner relying upon the aforesaid speech of the Minister. From perusal of the bare provision, we also find that it is possible to construe the said provision in the manner decided by the Madras High Court as well as the Tribunal. In such circumstances, the speech of the Minister while introducing the proposed amendment which verified the intentions for introducing such an amendment would come to the aid of interpretation. We, thus, are of the opinion that no question of law arises and accordingly dismiss this appeal

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.
DECEMBER 1, 2009
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