

IN THE HIGH COURT OF DELHI AT NEW DELHI
I.T. APPEAL NO. R.S.S. OF 2009

IN THE MATTER OF:

COMMISSIONER OF INCOME TAX-II
NEW DELHI

..... APPELLANT

VERSUS

M/S JCL INTERNATIONAL LTD.
206, SOUTH EXTN PLAZA-I, MAJIIS MODH, SOUHT EXTENSION
PART-II, N.D

..... RESPONDENT

MEMO OF PARTIES

COMMISSIONER OF INCOME TAX-II
NEW DELHI

..... APPELLANT

VERSUS

M/S JCL INTERNATIONAL LTD.
206, SOUTH EXTN PLAZA-I, MAJIIS MODH, SOUHT EXTENSION
PART-II, N.D

..... RESPONDENT

THROUGH

N.P.
N.P. SAHNI ADVOCATE
Sr. Standing counsel (IT)

PLACE: NEW DELHI
DATED. 18/05/09

Certified to be True Copy

Sinh
Examiner Judicial Department
High Court of Delhi
Authorised Under Section 10
Indian Evidence Act.

Examined
For Private Use



→ 2001-2002

vs. U.K. International Ltd.

Issue is as to whether the brought forward

For Private Use
to
Grant
active
97-98

7

% 01.12.2009

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

+ ITA No. 1255/2009

* 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 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*

ITA No. 1255/2009

Page 1 of 2

Certified to be True Copy

Sinh
Examiner Judicial Department
High Court of Delhi of
Anti-Counterfeit Section 70
Income Tax Act.



A.Y. → 2001-2002

CIT vs. JCK International Ltd.

Issue is as to whether the brought forward

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



Certified to be True Copy

Examiner, Judicial Department
High Court of Delhi of
Authorised Under Section 70
Indian Evidence Act.

ITA No. 1255/2009