

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 203/2009 & ITA No. 60/2009**

Reserved on : July 09, 2009

Date of decision : August 19, 2009

1. **ITA No. 203/2009**

COMMISSIONER OF INCOME TAX ... Appellant.

Through: Ms. P.L. Bansal with Mr. Paras
Chaudhary, Ms. Anshul Sharma,
Advocates

VERSUS

YAMAHA MOTOR INDIA PVT. LTD.Respondent

Through: Mr. Vijay Nair, Mr. Lalan Sinha,
Mr. Rajat Juneja, Advocates

2. **ITA No.60/2009**

COMMISSIONER OF INCOME TAX ... Appellant.

Through: Ms. P.L. Bansal with Mr. Paras
Chaudhary, Ms. Anshul Sharma,
Advocates

VERSUS

YAMAHA MOTOR INDIA PVT. LTD.Respondent

Through: Mr. Vijay Nair, Mr. Lalan Sinha,
Mr. Rajat Juneja, Advocates

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? yes

3. Whether the judgment should be reported in the Digest? yes

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JUDGMENT

VALMIKI J.MEHTA, J.

1. The following two questions of law have been framed for determination by this Court:

(a) Whether Income Tax Appellate Tribunal (hereinafter “ITAT”) was correct in law in directing the Assessing Officer to re-compute the depreciation after reducing scarp value of the assets, which have been discarded and written off in the books of accounts for the year under consideration from the WDV of the block of asset?

(b) Whether provisions of Section sub-clause (iii) to Section 32(1) R/W Section 43(vi)(c)(B) are applicable to the present case when the assessee had not complied with the primary conditions for eligibility of depreciation?

2. The crux of the matter is: what is the meaning to be ascribed to the expression “used for the purposes of the business” as found in Section 32 of the Income Tax Act, 1961. The provision of Section 32 pertains to depreciation. The contention of the Revenue is that with respect to any

machinery for which depreciation is claimed under Section 32, the same cannot be allowed unless such machinery is used in the business and since discarded machinery is not used in the business, therefore, with respect to the discarded machinery no depreciation can be allowed.

3. Both the appellants and the respondents have predicated their arguments on the ground that whether passive use is included or excluded from the expression “used for the purposes of the business” as found in Section 32. The Revenue contends that passive use is excluded whereas the assessee contends that passive use is included. The Revenue relies upon **Deputy Commissioner of Income-Tax vs. Yellamma Dasappa Hospital, 290 ITR 353, Commissioner of income-tax vs. Oriental Coal Ltd., 206 ITR 682 and Dineshkumar Gulabchand Agrawal vs. Commissioner of Income-Tax and Anr., 267 ITR 768.** The counsel for the assessee relied upon **Commissioner of Income-Tax vs. Nahar Exports Ltd., 296 ITR 419, Commissioner of Income-Tax vs. Vir Khanna, 306 ITR 14.**

4. The issue, therefore, needs to be looked at from two perspectives, firstly, whether passive use is included in the expression “used for the purposes of the business” and, secondly, whether there is at all any need of use of machinery for the business when machinery has been discarded in the previous year and such machinery formed part of a block of assets.

5. The facts of the case are that during the relevant assessment years 2000-2001 and 2001-2002, the assessee company claimed depreciation on assets written off. The assets were capitalised at Rs. 4,71,51,016/- on 1.11.1996. The written down value at the end of the financial year ending on 31.3.1999 was Rs. 2,32,07,141/-. The depreciation claimed during this year was Rs. 58,01,785/-. The depreciation was allowed in the original assessment completed under Section 143(3) of the Act. The Assessing Officer, however, after having recorded reasons, re-opened the assessment under Section 147 of the Act and issued notice under Section 148 to the assessee. The Assessing Officer sought explanation from the assessee as to why the depreciation amount should not be disallowed on the assets written off in the year under consideration since they were not used for the purposes of the business. The assessee claimed that it was entitled to benefit of depreciation.

6. The relevant and related provisions, in this regard, for decision of the issue are Section 32(1) {which requires that the assets are used for the purposes of the business}, Section 32(1)(iii) {lays down the details and requirements with respect to claim of depreciation inter alia of discarded machinery}, Section 43(6)(c)(B) {defines written down value with respect to block of assets}, Section 50(2) {under the head of profits chargeable to tax on the aspect of discarded machinery}.

7. On the aspect of passive user, there are two decisions of two Division Benches of this Court in the cases reported as **CIT Vs. Refrigeration & Allied Industries Ltd., 247 ITR 12** and **Capital Bus Services vs. CIT, 123 ITR 404**. In this view of the matter, we need not refer the judgments of any other Court as we are bound by the earlier judgments of this Court. In fact, we also agree with the ratio of both the decisions which hold that as long as the machinery is available for use, though not actually used, it falls within the expression “used for the purposes of the business” and the assessee can claim the benefit of depreciation.

Looking at the facts from this point of view, an actual user is not required as has been contended by the Revenue.

8. The matter can be looked at from another angle also. No doubt, the expression used in Section 32 is “used for the purposes of the business”. However, this expression has to be read harmoniously with the expression “discarded” as found in Sub-sub-section (iii) of Sub-Section (1). Obviously, when a thing is discarded it is not used. Thus ‘use’ and ‘discarding’ are not in the same field and cannot stand together. However, if we adopt a harmonious reading of the expressions “used for the purposes of the business” and “discarded” then it would show that “used for the purposes of the business” only means that the assessee has used the machinery for the purposes of the business in earlier years. It is not disputed that in the facts of the present case,

and as discussed above, that the machinery in question was in fact used in the previous year and depreciation was allowed on the block of assets in the previous years. Taking therefore a realistic approach and adopting a harmonious construction, we feel that the expression “used for the purpose of the business” as found in Section 32 when used with respect to discarded machinery would mean that the user in the business is not in the relevant financial year/previous year but in the earlier financial years. Any other interpretation would lead to an incongruous situation because on the one hand the depreciation is allowed on discarded machinery after allowing inter alia an adjustment for scrap value, yet, on the other hand user would be required of the discarded machinery which use is not possible because of various reasons viz. the age of the machinery, or that it has become obsolete as new technology has come in and so on. We thus hold that the discarded machinery may not be actually used in the relevant previous year as long as it is used for the purposes of business in the earlier years.

9. We, therefore, answer the two questions of law by holding that the ITAT was correct in law in directing the Assessing Officer to re-compute depreciation after reducing the scrap value of the assets which have been discarded and written off in the books of accounts for the year under consideration from the written down value of the block of assets. Actual user of the machinery is not required with respect to discarded machinery and the condition for eligibility for

depreciation that the machinery being used for the purpose of the business would mean that the discarded machinery is used for the purpose of the business in the earlier years for which depreciation has been allowed.

10. The questions of law having been answered as above, these appeals against the judgments of the ITAT are dismissed.

VALMIKI J.MEHTA, J

A. K. SIKRI, J

August 19, 2009

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