IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 521 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX 1
Versus
ADANI RETAIL LTD

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Appearance:
MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 11/06/2018

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 13.12.2017 raising following question for our consideration:

> *"Whether the Appellate Tribunal has erred in law and on facts in remitting the issue to the file of Assessing Officer without appreciating the fact that brought forward losses & unabsorbed depreciation cannot be said to be related to transferred undertaking in absence of separate accounts as per Section 72A(4)(b) of the Act ?"*

2. The record suggests that pursuant to the scheme of de-merger approved by the High Court, all assessed properties and liabilities of the Demerged Company were to be transferred to the Resulting Company. In

this context, for the assessment year 2008-09, the question of carry-forward losses or unabsorbed depreciation of the Demerged Company to be available to the Resultant Company in view of section 72A of the Income Tax Act, 1961 ('the Act' for short) came up for consideration. The Assessing Officer rejected the claim on the ground that the assessee had not maintained separate accounts, a view which the Commissioner of Income Tax (Appeals) upheld. The Tribunal however, was of the opinion that no such requirement arose out of sub-section (4) of section 72A of the Act. After referring to the said provision, the Tribunal held and observed as under:

> *"8. Clearly, therefore, as long as brought forward losses and ubabsorbed depreciation can be directly relatable to the undertakings transferred to the resulting company (i.e. Advantage Retail Pvt Ltd.) in this case, the same is to be carried forward in the hands of resulting company. What it essentially requires is that the explanation of the assessee, on how is it directly relatable to the units transferred to resulting company, is to be examined on merits and, if no defects are found in the same, it is to be accepted. These explanations cannot be brushed aside on the ground that separate books of accounts are not maintained, which is not a condition precedent for invoking section 72A(4)(a) anyway, or that these explanations were not furnished at the time of demerger. Nor, for that purpose, rejection of the explanation*

> *on the basis of sweeping generalizations or vague reasons can meet our approval either. The approach adopted by the authorities below, thus, does not meet our approval.*
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> *9. In view of the above discussions, as also bearing in mind entirety of the case, we are of the considered view that the matter is required to be remitted to the file of the Assessing Officer for adjudication de novo in the light of our observations above, in accordance with the law, by way of a speaking order dealing with specific justifications for bifurcation, as may be given by the assessee, after giving a fair and reasonable opportunity of hearing to the assessee."*

3. Section 72A of the Act pertains to provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. Sub-section (4) of section 72A starts with nonobstant clause. As per clause (a) of sub-section (4), in case of a demerger, the accumulating loss and allowance for unabsorbed depreciation of the Demerged Company shall, where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the Resulting Company, be allowed to be carried forward and set off in the hands of the Resulting Company. As per clause (b) of sub-section (4) where such loss or unabsorbed depreciation is not directly relatable,

the same would be apportioned between the Demerged Company and the Resulting Company in the same proportion in which assets of the undertakings have been retained by the Demerged Company and transferred to the Resulting Company which would be allowed to be carried forward and set off in the hands of the Demerged Company or the Resulting Company, as the case may be.

4. The Tribunal is thus correct in commenting that if the brought forward losses and unabsorbed depreciation are directly relatable to the Transferred Company, the same has to be carried forward in the hands of the Resultant Company. This is a purport of clause (a) of sub-section (4) of section 72A. The only question in the present case is how would the assessee establish the same. The Tribunal noted and correctly, that the statutory provision do not command that in order to avail the benefit of clause (a), separate books of accounts must be maintained. The Tribunal therefore required the Assessing Officer to examine the explanation of the assessee on merits. It was for this purpose, the Tribunal has remanded the issue back to the Assessing

Officer.

5. We see no error in the view of the Tribunal. Contrary to what was apprehended by the counsel for the Revenue, we do not find any finding of the Tribunal that in case of the assessee, the brought forward losses and unabsorbed depreciation are directly relatable to the Transferred Company. The Tribunal has not given any such declaration but has merely required the Assessing Officer to examine such a question in light of the evidence on record.

6. No question of law arises. Tax Appeal is dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

ANKIT SHAH