

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**TAX APPEAL NO. 1203 of 2006**

**With**

**TAX APPEAL NO. 1204 of 2006**

**With**

**TAX APPEAL NO. 1205 of 2006**

**With**

**TAX APPEAL NO. 71 of 2009**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE KS JHAVERI**

**and**

**HONOURABLE MR.JUSTICE G.R.UDHWANI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

M/S. NIRMA CREDIT & CAPITAL LTD.....Appellant(s)

Versus

ASST. COMMISSIONER OF INCOME TAX....Opponent(s)

Appearance:

**IN TAX APPEAL Nos.1203/2006 TO 1205/2006 :**

**MR SN SOPARKAR, SR. ADVOCATE WITH MRS SWATI SOPARKAR,**

ADVOCATE for the Appellant(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Opponent(s) No. 1

**IN TAX APPEAL Nos.71/2009 :**

MR BD KARIA WITH MR. DARSHAN R PATEL FOR MR. R.K. PATEL,  
ADVOCATES for the Appellant(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE G.R.UDHWANI**

Date : 28/06/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Tax Appeal Nos.1203/2006 to 1205/2006 under Section 260A of the Income-tax Act, 1961 are filed against the common order dated 19.05.2006 passed by the Income Tax Appellate Tribunal in ITA Nos.18, 2515 & 2516/Ahd/2000 raising the following substantial question of law:

“Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assessee was not entitled to depreciation on plant and machinery not put to use during the year under consideration ?”

1.1 Tax Appeal No.71/2009 is filed against the order dated 13.06.2008 passed by the Income Tax

Appellate Tribunal in ITA No.2455/Ahd/2000 raising the following substantial question of law:

"Whether on facts the Tribunal's finding and conclusion of upholding the disallowance of Rs.32,81,666/- towards claim of depreciation is 'vitiating' on facts and sustainable in law on interpretation of Section 32 ?"

1.2 As the appeals involve identical questions on law and were ordered to be heard together, they are decided by this common judgment. For the purpose of this judgment, Tax Appeal No.1203/2006 is taken as the lead matter.

2. Briefly stated, the assessee company is engaged in the business of manufacture of detergents. During the year under consideration, manufacturing activity was not carried out by the assessee. Therefore, the assessee claimed depreciation on the block of Plant & Machinery from the earlier year. However, the Assessing Officer passed the assessment order on 05.01.1998 disallowing the depreciation. Against the said order, the assessee preferred appeal before the CIT(A). The CIT(A) partly allowed the appeal vide order dated 04.10.1999. Being dissatisfied with the same, the Revenue filed appeals before the

Tribunal. However, all the appeals filed by the Revenue were dismissed. Hence, these Tax Appeals.

3. When the matters were called out in the first round, learned Standing Counsel Mr. Nitin Mehta was not present. Therefore, the matters were kept-back. When the matters were called out again in the second round, Mr. Nitin Mehta was not present. Therefore, a request was made to learned counsel Mr. Sudhir Mehta to assist the Court in these matters, which he agreed. Therefore, the matters were heard and decided on merits.

4. We have heard learned Senior Advocate Mr. S.N. Soparkar for the assessee in Tax Appeal Nos.1203/2006 to 1205/2006, learned counsel Mr. B.D. Karia for the assessee in Tax Appeal No.71/2009 and learned counsel Mr. Sudhir Mehta for the Revenue.

5. Learned counsel appearing on behalf of the assessee submitted that the authorities below as also the Tribunal did not allow deduction mainly on the ground that the assets for which depreciation was claimed, was not put to actual use for the year under consideration or that a part of the assets were not installed for undertaking the manufacturing process. It was submitted that the reasoning adopted by the

Tribunal is erroneous since it is not necessary that all assets falling within plant and machinery have to be simultaneously used for being entitled to depreciation once it is found that the assets are used for business.

6. In support of the submission, learned Senior Advocate placed reliance upon a judgment of this Court rendered in the case of **Commissioner of Income-tax v. Sonal Gum Industries, [2010] 322 ITR 542 (Guj)**, wherein, it has been held that once that factory building is put to use, it is not possible to restrict the depreciation on the said building by stating that only a portion thereof had been put to use. Similarly, in relation to the block of assets, it is not possible to segregate items falling within the block for the purposes of granting depreciation or restricting the claim thereof and once it is found that the assets are used for business, it is not necessary that all the items falling within plant and machinery have to be simultaneously used for being entitled to depreciation. Reliance was also placed on an unreported decision of this Court passed in Tax Appeal No. 429/2007 dated 18.12.2014.

7. Mr. Sudhir Mehta, learned counsel for the

Revenue, supported the impugned order of the Tribunal and the authorities below and submitted that the word "used" in section 32 of the Act denotes that the asset has been actually used and not that it is merely ready for use. In the instant case, there was nothing to show that the asset had been actually put to use. Therefore, the authorities below and the Tribunal were justified in disallowing the depreciation.

7.1 In support of his submission, learned counsel Mr. Sudhir Mehta placed reliance upon the decision of Bombay High Court rendered in the case of **Dineshkumar Gulabchand Agrawal v. Commissioner of Income-tax and another**, [2004] 267 ITR 768 and of the Karnataka High Court rendered in **Deputy Commissioner of Income-tax v. Yellamma Dasappa Hospital**, [2007] 290 ITR 353 (Karn).

8. The record reveals that the reason assigned by the Assessing Officer for rejecting the depreciation is that the assessee had stopped the manufacturing activity and therefore, the question of use of machinery does not arise. However, the CIT(A) reversed the findings of the Assessing Officer on the premise that individual items included in the block are not to be considered separately for the purposes of

granting depreciation in light of the amended provisions. We do not find any legal infirmity in the aforesaid view adopted by the first appellate authority since the assessment order itself reveals that it is not the case of Assessing Officer that the assets were not put to use at all. Once the factory building is put to use, it is not possible to restrict the depreciation on the said building by stating that only a portion thereof has been put to use. Similarly, in relation to block of assets, it is not possible to segregate items falling within the block for the purposes of granting depreciation or restricting the claim thereof. Once it is found that the assets are used for business, it is not necessary that all the items falling within plant and machinery have to be simultaneously used for being entitled to depreciation.

9. In view of the above discussion, we hold that the Tribunal committed serious error in law in disallowing the depreciation. Thus, the question raised in these appeals are answered in the negative, i.e. in favour of the assessee and against the Revenue. The appeals stand disposed of accordingly. No order as to costs.

**(K.S.JHAVERI, J.)**

(G.R.UDHWANI, J.)

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