

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF OCTOBER 2015

PRESENT

THE HON'BLE MR.JUSTICE VINEET SARAN

AND

THE HON'BLE MR.JUSTICE B MANOHAR

ITA No. 339 OF 2009 (IT)

BETWEEN :

M/s.Karnataka Intrade
Corporation Ltd.,
Rep. by its Managing Director
Sri. M.R.Seetharam
(formerly known as M/s.Karnataka
Minerals & Manufacturing Co Ltd.,)
No.1, GEF Administrative Block,
New BEL Road, MSRIT Post,
Bangalore – 560054.

...Appellant

(By Sri. A.Shankar & M.Lava Advs.,)

AND:

The Asst. Commissioner
of Income-Tax,
C.R.Building, Central Circle-2(2),
Queens Road,
Bangalore – 560001.

...Respondent

(By Sri. K.V.Aravind & Sri. G.Kamaladhar, Advs.,)

This ITA is filed U/S.260-A of I.T.Act, 1961 arising out of Order dated 06-02-2009 passed in ITA No.855/BNG/2008, for the Assessment Year 2002-03, praying that this Hon'ble Court may be pleased to:

- i. Formulate the substantial questions of law stated therein,
- ii. Allow the appeal and set aside the order passed by the ITAT Bangalore in ITA No.855/BNG/2008, dated 06-02-2009, in the interest of justice and equity.

This Appeal is coming on for hearing and reserved for orders on **03/09/2015**, this day **B.MANO HAR J.** pronounced the following:

JUDGMENT

The assessee preferred this appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**' for short) being aggrieved by the order dated 6-2-2009 made in ITA No.855/Bang/2008 passed by the Income Tax Appellate Tribunal, Bangalore Bench-A, Bangalore (hereinafter referred to as '**the Tribunal**' for short) for not granting deduction of various expenditures incurred in the computation of income and also not allowing the expenditure incurred

by the appellant-Company for the assessment year 2002-03.

2. The appellant is a Public Limited Company manufacturing cement in a factory situated at Mathodu village, Hosadurga Taluk. The assessee filed return of income for the assessment year 2002-03 declaring the business loss of Rs.2,32,77,931/-. In Schedule-12 attached to the balance sheet filed along with the return, the assessee had declared other income of Rs.34,68,126/- which consists of interest income of Rs.56,482/- and balances written back amounting to Rs.34,01,644/-. In Schedule-13 which was titled as "Notes to the accounts", it was stated that depreciation was not provided during the year on the assets since the Unit is dormant and there is no production during the said year. Notices were issued under Sections 143(2) and also 142(1) of the Act. During the course of assessment proceedings, the Assessing Officer noticed that the assessee-Company entered into an agreement

of sale dated 25-08-1999 with M/s. Madras Cement Limited (hereinafter referred to as 'MCL' for short) for the sale of assets of the Company, both moveable and immovable assets of the Cement Factory. Further, the assessee-Company executed an irrevocable power of attorney on the very same day i.e. on 25-08-1999 in favour of the MCL to operate the Cement factory and also another power of attorney for operating mining lease for a sale consideration of Rs.19.00 crores subject to fulfillment of terms and conditions mentioned in the agreement of sale. In pursuance of the said agreement of sale and power of attorney, the MCL took possession of the Cement Plant and started commercial production on 03-09-2000. The first payment of royalty for mining was made on 02-09-2000. As per the Annual General Meeting of the assessee-company held on 23-09-1999, the assets of the Company were transferred to M/s.MCL and this fact was mentioned in the Annual Report. Further the capital gains have been

taxed for the assessment year 2000-01. When there is no business activity itself, the question of incurring expenditure such as royalty paid, rates and taxes, legal profession fees, travel and conveyance, repairs and maintenance, salary wages, staff welfare, does not arise. Accordingly, a notice was issued under Section 144 of the Act to show cause as to why the books of account shall not be rejected invoking Section 145 of the Act.

3. In pursuance of the notice issued, the authorized representative of the assessee filed his reply contending that though the assessee-Company entered into an agreement dated 25-08-1999 with the MCL, the physical possession was handed over during the financial year 2000-01 relevant to assessment year 2001-02. The agreement of sale contains stipulations such as, passing of title over all the properties including the mines owned by the assessee. In order to perfect the title of moveable and also immovable, the assessee has to incur huge expenditures. He has to pay royalty to the Mysore

Minerals, rates and taxes to the Government, repairs and maintenance has to be made to convert the factory into running Concern. For that, traveling and conveyance expenses, legal and professional fees have to be paid. These expenditures are allowable expenditures. Unless these obligations are fulfilled, the conditions of the agreement of sale will be violated, or in the alternative, if the Assessing Officer is of the opinion that these expenditures are not revenue expenditures, the Company may be allowed to deduct these expenses, out of sale consideration received from M/s.Madras Cement Limited and adjust the sale consideration accordingly.

4. The Assessing Officer after considering the matter in detail and taking into consideration all the relevant facts, denied all the expenditure claimed by the assessee except the expenditure with regard to maintenance of Corporate office i.e. the salaries, remuneration to Directors, electricity charges, staff

welfare, audit fees, the postage and telephone, printing and stationary and general expenditures of Rs.5,85,832/- and Bank charges. All other expenditures are denied by the Assessing Officer, which are as under:

<i>(a) Rates and taxes</i>	<i>Rs. 1,48,45,881</i>
<i>(b) Traveling and Conveyance</i>	<i>Rs. 3,02,476</i>
<i>(c) Legal and Professional fees</i>	<i>Rs. 37,99,032</i>
<i>(d) Repairs and maintenance</i>	<i>Rs. 25,389</i>
<i>(e) Royalty</i>	<i>Rs. 71,71,643</i>

Further, no claim has been made towards the rates and taxes to the Department of Mines and Geology for the assessment year 2002-03. The alternative claim with regard to capitalization of expenditure was also rejected by the Assessing Officer on the ground that the expenditure has been claimed as revenue expenditure. Out of the other declared income of Rs.34,68,126/-, the Assessing Officer assessed the total income at Rs.28,82,294/-. Being aggrieved by the assessment order dated 10-03-2005, the assessee preferred an appeal before the Commissioner of Income Tax

(Appeals), (hereinafter referred to as '**the First Appellate Authority**' for short) on various grounds.

5. The First Appellate Authority granted the relief insofar as traveling and conveyance, legal and professional fees, repairs and maintenance amounting to Rs.41,26,897/- and remanded the matter in respect of rates and taxes amounting to Rs.1,48,45,881/- paid to the Government and directed the Assessing Officer to verify the challans and if the proof of payment is produced, the same has to be allowed. Further, directed the Assessing Officer to examine the issue with regard to carry forward of loss and depreciation and allow the same from the income. However, the First Appellate Authority rejected the prayer insofar as Rs.34,68,126/- and declared as income from other sources. No relief has been granted insofar as the royalty is concerned. The First Appellate Authority was of the view that the assessee has shown the capital gain for the assessment year 2004-05 and that was accepted

by the Department. Even though the moveable and immovable assets of the company were transferred, the assessee has to incur other expenditure for the transfer of moveable and immovable. Accordingly, partly allowed the appeal by its order dated 31-3-2008. Being aggrieved by the said order, the assessee as well as the Revenue preferred appeals before the Income Tax Appellate Tribunal, Bangalore.

6. The Revenue mainly contended that allowance of expenditure on traveling and conveyance, legal and professional expenses, repairs and maintenance amounting to Rs.41,26,897/- even though no business activity was carried on, is contrary to law. When the business of the appellant-Company has already been transferred, the question of incurring of expenditure for the business does not arise. Further, allowing carry forward of business loss and the unabsorbed depreciation is contrary to law since the assessee is not carrying on the business from the year 1995 itself.

Hence, the order passed by the First Appellate Authority is contrary to law.

7. On the other hand, the assessee contended that denial of relief insofar as royalty and remanding the matter to the Assessing Officer insofar as the rates and taxes is contrary to law. Further, the balances written back from the creditors had to be treated as business income under Section 41(1) of the Act. The assessee is entitled to claim deduction of the expenses of the previous year. Hence, sought for setting aside the order passed by the First Appellate Authority by allowing their appeal.

8. The Tribunal, by its order dated 06-02-2009 allowed the appeal filed by the Revenue denying the deduction in respect of expenditure of Rs.41,26,897/- and denied the deduction in respect of royalty. Further, the Tribunal has clearly held that the assessee is not entitled for set-off of brought forward unabsorbed

depreciation in income of Rs.34,01,644/- though it was held to be assessable under the head "Profit and Gain" of business. Further, the Tribunal allowed the appeal of the assessee in part. The assessee being aggrieved by the order passed by the Tribunal has filed this appeal.

9. The above appeal was admitted for considering the following substantial questions of law:

"(1) Whether the Tribunal was justified in law in not granting deduction of various expenditures incurred in the computation of income of the appellant on the facts and circumstances of the case?"

(2) Whether the Tribunal was justified in law in not allowing the expenditure incurred by the Appellant-Company, which expenses have all been incurred wholly and exclusively for the purpose of earning income?"

(3) Whether the Tribunal erred in law holding that the appellant is not in the activity of business and consequently not entitled to

the allowance of expenses as an allowable deduction?

(4) Whether the Tribunal was justified in law in not setting off unabsorbed depreciation against the income of the current assessment year on the facts and in the circumstances of the case?

(5) Whether the Tribunal was justified in law in holding that the CIT (A) erred in directing the assessing officer to allow the brought forwards loss and depreciation against the income assessed for the year under appeal under any head?

(6) Without prejudice, whether the Tribunal was justified in law in not holding that the above expenditure ought to have been allowed in the computation of income on the sale of the assets of the appellant?

10. Sri. A.Shankar, learned counsel appearing for the appellant contended that the order passed by the Tribunal denying the deduction of various expenditure incurred in computation of the income of the appellant

is contrary to law. Though the appellant entered into an agreement to sell the land, building, plant and machinery of the Cement Factory along with mining lease right to M/s. MCL on 25-08-1999, the actual transfer took place only during the assessment year 2001-02. In fact, the business of the appellant was not transferred since certain obligations could not be fulfilled. The transfer took place in a phased manner and the payments are being made only on fulfillment of the said conditions. In fact, the first installment of Rs.4.75 Crores was paid in the year 1999. The subsequent payments have been made in the years 2001-02, 2003-04, 2004-05 and 2006-07. The appellant has to incur expenditure for passing over clear title of all the properties including mines owned by the Company after complying with the conditions of the agreement. To perfect various titles of the properties, the appellant has to spend lot of money. During the relevant year, the Company has to incur various

expenses in the form of payment of rates and taxes to the Department of Mines and Geology, traveling and conveyance expenses, legal and professional fees, maintenance and repairs of the machines, etc. All these expenses are to be met in order to fulfill the obligations contained in the agreement. In view of that, the same were required to be deducted. Though the First Appellate Authority granted relief to an extent of Rs.41,26,897/-, the Tribunal erroneously denied the said deduction which is contrary to law. The Tribunal has failed to consider that in the returns, the appellant has clearly stated that the appellant has earned a sum of Rs.34,68,126/- towards income from other sources, out of which, Rs.66,482/- is the rental income. Though the Tribunal held the said income as "income from business", however, refused to grant set-off of brought forward unabsorbed depreciation from the heads of Profit and Gain from business, which contrary to law. In view of deeming fiction under Section 41(1) of the Act,

the Tribunal ought to have taken the deeming fiction to its logical end and allowed the expenditure against such income. Further, the order made by the Assessing Authority for the assessment year 2000-01 was set aside by the First Appellate Authority and the said order was confirmed by the Tribunal in ITA No.378/Bng/2006, wherein the Tribunal clearly held that there is no transfer of cement factory in the year under appeal. When there is no sale at all in the year under appeal, there is no need to consider the question of slump sale. The capital gain earned out of sale of cement factory has been taxed during the assessment years 2001-02, 2003-04, 2004-05. The payment has been made in a phased manner and as and when the payment was made, it was brought to tax under the capital gain. In order to keep the cement factory in workable condition, the assessee had to incur expenditure and these expenditure are allowable. The order passed by the Tribunal runs contrary to the law

laid down by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax V/S. M/s. Virmani Industries Pvt. Limited* reported in (1995) 216 ITR 607 (SC); *Commissioner of Income Tax V/S Rampur Timber and Turnery Co. Ltd., (Allahabad)* (1973) 89 ITR 150 and also another judgment of this Court in the case of *Additional Commissioner of Income Tax, Karnataka V/S Kapila Textiles (P) Ltd.* reported in (1981) 129 ITR 458.

11. Learned counsel further submitted that denial of expenditure with regard to payment of royalty is in the nature of statutory liability referred to in Section 43B of the Act which is allowable in the year of actual payment and not on accrual basis. The Assessing Authority denied the said deduction solely on the ground that the assessee has not carried on business for the assessment year 2002-03. The said order was confirmed by the First Appellate Authority. However, the Tribunal has not taken into consideration the statutory expenditure. Though the Assessing Authority has granted the

expenditure in respect of maintenance of corporate office of the appellant-Company, the said deduction was upheld by the First Appellate Authority. Even though the Revenue has not preferred any appeal challenging the deduction of expenditure in respect of maintenance of Corporate Office, the Tribunal has wrongly deducted the said expenditure which is also contrary to law. In support of the contention of the learned counsel for the appellant, he relied upon a judgment reported in *Mcorp Global P. Ltd. V/S. Commissioner of Income Tax (2009) 309 ITR 434 (SC)*.

12. Sri.K.V.Aravind, learned counsel appearing for the respondent-Revenue argued in support of the order passed by the Tribunal and contended that as per the agreement dated 25-08-1999, cement factory, land, plant and machinery has been sold to M/s. MCL along with the irrevocable power of attorney for operating cement plant as well as the mining lease. The MCL also acknowledged that it has taken the cement plant and

started commercial production on 3-9-2000. Further, first payment of royalty for mining was made on 2-9-2000. In view of the transfer of cement plant, the claim of the assessee in respect of various expenses is to be disallowed. The Assessing Officer, taking into consideration all these aspects of the matter disallowed all the expenditure including royalty except the expenses with regard to maintenance of Corporate Office. The agreement of sale executed by the assessee in favour of M/s.MCL has resulted in transfer in terms of Section 247(v) and resulted in slump sale. Since the assessee has already sold the property, the question of incurring expenditure does not arise. He relied upon Section 28(1) and 41(1) of the Act in this regard. Further with regard to depreciation is concerned, the assessee declared the income of Rs.34,68,126/-, which consists of interest income of Rs.66,482/- and balances written back of RS.34,01,644/-. The assessee themselves have admitted in Schedule-13 that the unit

is dormant and there is no production during the relevant assessment year. Hence, there is no question of depreciation of income from other sources. Accordingly, the Assessing Authority rightly denied the claim of depreciation, which was confirmed by the First Appellate Authority as well as the Tribunal. He further submitted that certain deductions can be made only on actual payment under Section 43-B of the Act. No document has been produced to show that the assessee had incurred business expenditure and no receipt has been produced to prove the said expenditure. The First Appellate Authority remanded the matter to the Assessing Authority insofar as rates and taxes is concerned. The Tribunal set aside the expenditure incurred with regard to traveling and conveyance, legal and professional fees, repairs and maintenance. No document has been produced to show that the assessee had incurred any expenditure with regard to payment of royalty. In support of his contention, he relied upon the

judgments reported in (1986) 161 ITR 135 (Mad) (EAST ASIATIC COMPANY (INDIA) PRIVATE LTD. v/s COMMISSIONER OF THE INCOME TAX) and (1985) 155 ITR 711 (SC) COMMISSIONER OF INCOME TAX v/s MOTHER INDIA REFRIGERATION INDUSTRIES (P). LTD. and sought for dismissal of the appeal.

13. We have carefully considered the arguments addressed by the learned counsel for the parties and perused the orders impugned and other relevant records.

14. Issues Nos. 1 to 3 are with regard to denial of expenditure incurred in computation of income of the appellant-assessee. The records clearly disclose that the appellant-Company was under the rehabilitation scheme of Board of Industrial and Financial Reconstruction (BIFR). They could not continue the production from the year 1995. In order to come out of the clutches of BIFR, they entered into an agreement

with M/s. MCL to sell the cement factory, along with plant and machinery including the mining lease as per the agreement dated 25-8-1999 subject to certain conditions. Initial payment of Rs.4.75 crores has been made to M/s. MCL on 25-08-1999 and the remaining amount has been paid in six installments on fulfilling the conditions imposed in the agreement. For the assessment year 2000-01, the capital gain towards the sale of factory was assessed. The said assessment order was challenged before the First Appellate Authority and the First Appellate Authority has given some relief. Against the said order, the Revenue went up in appeal before the Tribunal and the said appeal has been dismissed on 19-09-2008. The specific case of the assessee is that though there was an agreement to sell on 25-08-1999, the actual transfer of the cement factory took place only in the subsequent assessment year. There is no transfer of business to M/s. MCL. All that the appellant has agreed to sell was only business

assets consisting of land, building, plant and machinery of cement factory along with mining lease right. The appellant has claimed expenditure to an extent of Rs.41,26,987/- in respect of traveling and conveyance, legal and professional fees, repairs and maintenance. However, the Assessing Authority disallowed the said expenditure on the ground that the cement factory has already been transferred in the year 1999 and the appellant has not carried on any business during the assessment years in question and hence they are not entitled for any deduction towards the expenditure. However, the First Appellate Authority reversed the said finding and held that the appellant is entitled for deduction of expenditure as there was no transfer of the entire property of the assessee for the assessment year 2000-01. The capital gain earned by selling of the cement factory was assessed for the assessment years 2004-05 and 2006-07. The department has accepted the same. However, the Tribunal disallowed the said

expenditure holding that the assessee had closed the business in the year 1995 itself and no document has been shown that they had incurred any expenditure during the relevant period, though the plant and machinery has been transferred in the year 1999 itself, by giving irrevocable power of attorney to operate the cement factory and mining lease.

15. As per the conditions of agreement of sale, the appellant-assessee has to hand over the cement factory in running condition; to renew the mining lease license and perfect various titles to the property and to purchase the remaining lands, for which, the assessee has to incur expenditure. These expenditure are the expenditure incurred to perfect the title and other expenditure are the revenue expenditure. Hence the assessee is entitled for deduction of the same. Though the assessee has not earned any income, to perfect the title to the properties the expenditure incurred are allowable deductions against the balances written back

of Rs.34,01,644/-, which is assessable as business income. This Court in a judgment reported in **(2011) 203 Taxmann 200 (Kar) (Commissioner of Income-Tax, Bangalore V/S Lawrence D'souza)** held that though the business was stopped in the year 1994, the expenses are incurred in connection with the business. This Court allowed the deduction holding that the expenses are continued to be incurred in connection with the business, until it is sold. The Tribunal denied the expenditure solely on the ground that the business activities are closed in view of the transfer of cement factory, plant and machinery. However, as per the agreement, the assessee has to fulfill other obligations, for which they have to incur expenditure and these are the revenue expenditure. Hence, the assessee is entitled for deduction in respect of expenditure incurred in relation to transfer of plant and machinery to M/s. MCL. As stated earlier, the Assessing Officer has accepted the expenditure for the assessment year

2004-05 and 2006-07. Hence, issues Nos. 1 and 2 are held in favour of the assessee and against the Revenue.

16. With regard to disallowance of deduction on royalty expenditure is concerned, the assessee has not produced any documents to show that they have paid royalty during the assessment year 2002-03. As per the agreement of sale entered into between the assessee and M/s. MCL, by executing the irrevocable power of attorney, mining lease was allowed to operate. In fact, the MCL themselves have admitted that the first payment of royalty for mining was made on 2-9-2000 itself. In the absence of any material with regard to expenditure on royalty, all the authorities concurrently held that the assessee has not incurred any expenditure in respect of royalty. Hence, the assessee is not entitled for the deduction towards royalty. We find there is no infirmity or irregularity in the said finding. Hence, issue No.3 is answered in favour of the Revenue and against the assessee.

17. Issues Nos.4 and 5 are with regard to denial of setting off of unabsorbed depreciation against the income is concerned. The assessee while filing the return declared interest income of Rs.66,482/- and Rs.34,01,644/- in respect of balances written back. The Assessing Officer as well as the First Appellate Authority held that the said amount is income from other sources. However, the First Appellate Authority directed the Assessing Officer to examine the issue of carry forward loss and depreciation and allow the same. But, the Tribunal denied the carry forward loss and depreciation to be set-off against the income, even though it was held that the income of Rs.34,01,644/- is a business income. The Tribunal failed to appreciate the fact that when once the income on written back is assessed as business income by virtue of Section 41(1) of the Act, the expenditure incurred has to be allowed as deduction in arriving at business income.

18. Section 28 of the Income Tax Act, 1961 provides that the profit and gain of any business or profession carried on by the assessee, at any time during the previous year shall be chargeable to income tax under the head "Profits and Gains" of business or profession. Section 29 of the Act provides that income from profits and gains of the business or profession referred to in Section 28 shall be computed in accordance with the provisions contained in Sections 30 to 43-D. Therefore in computing the income from business, the provisions of Section 32 as well as Section 41 of the Act would be applicable. Therefore, once the amount realized by the assessee by sale of building, plant and machinery is treated as income arising out of the profits and gains from the business by virtue of sub-Section (2) of Section 41 of the Act, notwithstanding the fact that the assessee was not carrying on any business during the relevant assessment year, the provision contained in sub-Section (2) of Section 32 become applicable and consequently,

the set-off has to be given for unabsorbed depreciation allowances of previous year brought forward in terms of that provision.

19. The Hon'ble Supreme Court in VIRMANI INDUSTRIES case (*supra*) examined Section 32(2) of the Act and held that while availing benefit of Section 32(2), it is not necessary that the business carried on in the following previous year should be the same business as was carried on in the preceding previous year. The Hon'ble Supreme Court held that “*We are of the opinion that in the absence of any words to that effect, no such requirement ought to be read into the said sub-section. A look at Section 72 shows that where Parliament intended to provide such a limitation, it did so expressly. Section 72 deals with carry forward and set-off of business loss. The proviso to clause (i) of sub-Section (1) Section 72 expressly provides that such a course is permissible only where “the business or profession for which the loss was originally computed continued to be carried on by him in*

the previous year relevant for that assessment year". In the absence of any words to that effect, it must be held that for availing of the benefit of Section 32(2), it is not necessary that the business carried on in the following year is the same business as was carried on in the previous year."

20. In the judgment referred to above, the Hon'ble Supreme Court allowed the unabsorbed depreciation relating to the assessment year 1956-57 as against the total income of assessment year 1965-66. Further, the Division Bench of this Court in *Commissioner of Income Tax V/S Kapila Textiles Private Limited (supra)* held that the benefit under sub-Section(2) of Section 32 of the Act is not subject to the condition that the business must have been carried on by the assessee during the relevant assessment year. Therefore, the Tribunal was right in accepting the claim of the assessee and confirming the orders of Additional Commissioner of Income Tax applying the ratio of judgment of Allahabad

High Court in *Rampura Timber and Turnery Company* case.

21. Sri. K.V.Aravind, learned counsel appearing for the Revenue contended that for claiming benefit under Section 32(2) of the Act, the assessee has to establish that they must be carrying on the same business as was carried in the previous year and that if the business is not in existence in the following year, unabsorbed depreciation of previous year cannot be adjusted. The continuation of business is a condition precedent for carry forward loss and set-off of the unabsorbed depreciation of the previous year. Relying upon the judgment reported in (1986) 161 ITR 135 (***supra***), the said contention of the learned counsel for the Revenue cannot be accepted in view of the authoritative pronouncement of Hon'ble Supreme Court in *Viramani Industries* case.

22. The Hon'ble Supreme Court in a judgment reported in (1966) 59 ITR 555 (CIT V/S JAIPURIA CHAINA CLAY MINES (P) LIMITED) held that unabsorbed depreciation can be carried forward and would be set-off even against the profit under the head other than the "business income". The relevant paragraph reads as under:

"It is, therefore, clear that effect must be given to depreciation allowance first against the profits or gains of the particular business whose income is being computed under section 10 and if the profits of that business are not sufficient to absorb the depreciation allowance, the allowance to the extent to which it is not absorbed would be set off against the profits of any other business and if a part of the depreciation allowance still remains unabsorbed, it would be liable to be set off against the profits or gains chargeable under any other head and it is only if some part of the depreciation allowance still remains unabsorbed that it can be carried forward to the next assessment year..... But

where any part of the depreciation allowance remains unabsorbed after being set off against the total income chargeable to tax, it can be carried forward under proviso (b) to clause (vi) to the following year and set off against that year's income and so on for succeeding years. The method adopted by the statute for achieving this result is that the carried forward depreciation allowance is deemed to be part of and stands on exactly the same footing as the current depreciation for the assessment year and is thus allowable as a deduction under clause (vi)."

Hence, we are of the opinion that the assessee is entitled to carry forward the unabsorbed depreciation and set-off. Accordingly, the substantial question of law 4 and 5 are held in favour of the assessee.

23. The Tribunal is not justified in law in holding that the expenditure allowed by the Assessing Officer as well as the First Appellate Authority to an extent of Rs.5,85,832/- towards the maintenance of corporate

office is not deductible from the income of written back. The Revenue has not challenged the deduction allowed by the Assessing Officer as well as the First Appellate Authority. However, the Tribunal disallowed the said allowance made by the authorities below which is contrary to law. The Hon'ble Supreme Court in a judgment reported in *Mcorp Global Pvt. Limited*, relying upon *HUKUMCHAND MILLS v/s CIT*, held that the Tribunal is not authorized to take back the benefit granted to the assessee by the Assessing Officer. The Tribunal has no power to enhance the assessment. In view of the judgment of the Supreme Court, the Tribunal has no power to enhance the assessment, though the said deduction is challenged before the Tribunal. Hence, the assessee is entitled deduction towards the maintenance of the corporate office.

23. Accordingly, we pass the following:-

ORDER

The appeal is allowed in part. The assessee is entitled to deduction in respect of expenditure incurred in relation to transfer of plant and machinery, traveling and conveyance, repairs and maintenance and also entitled to carry forward the unabsorbed depreciation and set-off. However, the assessee is not entitled to deduction towards royalty. Hence, Issue Nos.1, 2, 4 and 5 are answered in favour of the assessee and against the Revenue. Issue No.3 is answered in favour of the Revenue and against the assessee. Since issue Nos. 1 and 2 are answered in favour of the assessee, issue No.6 need not be answered.

Sd/-
JUDGE

Sd/-
JUDGE

mpk/-*