

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2182/PUN/2017
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Damodar Jagannath Malpani
S. No.50, Malpani Estate,
Akole Road,
Sangamner-422 605
PAN : AACFD1713B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-3, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Deepak Garg

सुनवाई की तारीख / Date of Hearing : 06.10.2021
घोषणा की तारीख / Date of Pronouncement : 07.10.2021

आदेश / ORDER

PER BENCH :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-2, Pune dated 20.07.2017 for the assessment year 2014-15
as per the following grounds of appeal on record:

"1.The learned CIT(A) erred in holding that the income on sale of Certified Emission Reduction/ Carbon Credit was taxable as profits and gains of the assessee and thereby, erred in confirming the addition of Rs.5,62,56,822/- in the hands of the assessee.

2. *The learned CIT(A) failed to appreciate that the amount received by the assessee on sale of Certified Emission Reduction/ Carbon Credit was a capital receipt in the hands of the assessee which was not taxable at all.*
3. *The learned CIT(A) erred in holding that the amount received on sale of Certified Emission Reduction/ Carbon Credit was a benefit derived during the course of the business of the assessee and therefore, the same was taxable u/s.28(iv) r.w.s.2(24)(vd).*
4. *The learned CIT(A) failed to appreciate that Certified Emission Reduction/ Carbon Credit was received by the assessee on account of environmental concerns and not arising out of the business carried out and hence, the same could not be treated as an income of the assessee u/s.28(iv) r.w.s. 2(24)(vd).*
5. *Without prejudice to the above grounds, the learned CIT(A) erred in holding that the income received on sale of Certified Emission Reduction/Carbon Credit was not derived from the Industrial Undertaking and hence, the deduction u/s.80IA was not allowable to the assessee.*
6. *The learned CIT(A) erred in confirming the disallowance of additional depreciation of Rs.10,98,27,376/- being 50% of the claim of additional depreciation made by the assessee firm in respect of plant and machinery acquired and installed by it after 30th September, 2012 on the ground that the additional depreciation could be claimed only in the year of purchase and the same was not available in the subsequent year.*
7. *The CIT(A) failed to appreciate that the assessee firm had claimed 50% of the additional depreciation in AY 2013-14 since the plant and machinery was acquired after 30th September, 2012 and hence, the balance additional depreciation of 50% was claimed in this year which was justified in law.*
8. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

2. At the very outset, the Ld. Counsel for the assessee submitted that **Grounds No. 1 to 4** pertains to issue whether the income on sale of certified emission reduction/carbon credit was capital receipt or revenue receipt. **Grounds No. 6 and 7** pertains to the issue of ‘additional depreciation’.
3. The Ld. Counsel for the assessee submitted that he is not pressing **Ground No.5**. After recording the submissions of the Ld. Counsel, **Ground No.5 is dismissed as not pressed.**
4. **Ground No.8** is general in nature and hence, no adjudication is required.

5. That as regards **Grounds No. 1 to 4**, the facts are that the Assessing Officer during the assessment proceedings, noticed from the Audit Report that during the year, the assessee had received net amount of Rs.5,62,56,822/- on sale of carbon credit. However, the said amount was not offered to tax and the assessee treated the same as capital receipt. However, this contention of the assessee was not accepted by the Assessing Officer and he treated the entire amount realized from transfer of CERs/RECs as business receipt and added the same to the total income of the assessee. The Assessing Officer has discussed this issue from Para 4 onwards in his order and has given detailed reasoning for his decision.

6. The Ld. CIT(Appeals) from Para 4.2 onwards of his order has analyzed this issue. He observed that the assessee has treated the CERs as entitlement or privilege generated in the course of business activity and treated the same as capital receipt. The assessee is also into generation of electricity and in the process of generation of power, reduced the emission of carbon dioxide in the atmosphere. Therefore, the CERs/Carbon Credit was given to the assessee under the United Nations Framework convention on climate change. In this regard, it was opined by the Ld. CIT(Appeals) that such CERs/carbon credit was obtained by the assessee in the course of its business activity. The Ld. CIT(Appeals) further held that this carbon credit also has a market in carbon trade exchange. When the carbon credit is an entitlement or privilege accrued to the assessee in the course of carrying of the business, it could not be said that such carbon credit is an accretion to capital asset. Thereafter, the Ld. CIT(Appeals) goes to uphold the findings of the Assessing Officer and taxing the income on such sale of carbon credit as revenue receipt.

7. At the time of hearing, the Ld. Counsel for the assessee brought to our notice the judgment of the Hon'ble Jurisdictional High Court in the case of **Pr. CIT Vs. M/s. Dodson Lindblom Hydro Power Pvt. Ltd. ITA No.1820 of 2016, ITA No.1821 of 2016 and ITA No.1840 of 2016** wherein the issue before the Hon'ble High Court for adjudication was as follows:

“3 Income Tax Appeal No.1820 of 2016 relates to Assessment Year 2007-2008. Revenue has urged the following questions for our consideration:-

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that sale of carbon credit is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?”

The Hon'ble jurisdictional High Court observed that though there are two questions framed, the single issue is whether the receipts of the assessee arising out of sale of carbon credit is to be considered as capital receipt and therefore, not liable to tax.

8. This issue is considered by the several High Courts starting from the judgment of Andhra Pradesh High Court in the case of **Commissioner of Income Tax v/s. My Home Power Ltd reported in (2014) 365 ITR 82 (AP)** holding the receipts to be capital in nature. This was further elaborated by the Division Bench of Karnataka High Court in the case of **Commissioner of Income Tax v/s. Subhash Kabini Power Corporation Ltd. reported in (2016) 385 ITR 592 (Karn)** and followed by Allahabad High Court and Rajasthan High Court, (Allahabad High Court decision is in the case of **Principal Commissioner of Income Tax v/s. L Sugar Factory Pvt. Ltd reported in (2017) 392 ITR 568 (All)**). In view of the consistent view of

different High Courts in the country, the Hon'ble Jurisdictional High Court has held as follows:

"5 In view of such consistent view of the different High Courts in the country, we see no reason to take a different stand. No question of law arises in these Appeals. Hence not entertained. The Income Tax Appeals are dismissed."

9. Per contra, the Ld. DR placed strong reliance on the orders of the Subordinate Authorities but principally conceded that this issue has already been decided in favour of the assessee by the Hon'ble Jurisdictional High Court (supra).

10. We further find that this decision of the Hon'ble Jurisdictional High Court was even followed by the Pune Bench of the Tribunal in **ITA No.2181/PUN/2017 for the assessment year 2014-15 in the case of Malpani Tea Corporation Vs. DCIT dated 19.11.2019**. In this case also, the Tribunal relying on the decision of the **Pr. CIT Vs. M/s. Dodson Lindblom Hydro Power Pvt. Ltd. (supra.)** has held that the said carbon credits is outside the scope of the chargeability of tax as the same constitutes 'capital receipts'. The relevant extract of the findings reads as follows:

"3. Before us, at the outset, ld. Counsel for the assessee brought our attention to the ground nos.1 to 4 and submitted that all these grounds revolve around "the taxability of carbon credit receipts". The assessee has been argued before the revenue authorities and submitted that the same constitutes capital receipts and therefore it is taxable receipts. However, the revenue authorities rejected the assessee's contention and treated the same as taxable receipt. In this regard, ld. Counsel brought our attention to various decisions of the Tribunal where I am one of the party. Relying on the Hon'ble Andhra Pradesh High Court's judgement in the case of CIT vs. My Home Power Ltd. 46 taxmann.com 314 where the Hon'ble High Court already decided the issue in favour of the assessee holding that the carbon credit receipt are the capital receipts. In this regard, ld. Counsel brought our attention to para 3 to 7 of this judgement (supra). Further, ld. Counsel for the assessee mentioned that the said view of the Hon'ble Andhra Pradesh High Court was upheld by the Jurisdictional High Court in the case of Pr.CIT vs. M/s. Dodson Lindblom Hydro Power Pvt. Ltd. vide Income Tax Appeal No.1820 of 2016 dated 27.02.2019 and read out the relevant para 3 to 5 of the said judgement (supra).

4. On hearing both the sides and considering the above binding judgement in the case of M/s. Dodson Lindblom Hydro Power Pvt. Ltd. (supra), we find relevant to extract the operational para 3 to 5 of the said judgement (supra) and the same are as under :-

"3 Income Tax Appeal No.1820 of 2016 relates to Assessment Year 2007- 2008. Revenue has urged the following questions for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that sale of carbon credit is to be considered as Capital Receipt and not liable for tax under any head of income under Income Tax Act, 1961?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT, is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the Carbon Credits, without appreciating that generation of Carbon Credits is intricately linked to the machinery and processes employed in the production process by the assessee?

4 Though two questions are framed, singular issue is whether the receipts of the Assessee arising out of sale of carbon credit is to be considered as capital receipt and therefore not liable to tax. This issue is considered by the several High Courts starting from the judgment of Andhra Pradesh High Court in the case of Commissioner of Income Tax v/s. My Home Power Ltd reported in (2014) 365 ITR 82 (AP) holding the receipts to be capital in nature. This was further elaborated by the Division Bench of Karnataka High Court in the case of Commissioner of Income Tax v/s. Subhash Kabini Power Corporation Ltd. reported in (2016) 385 ITR 592 (Karn) and followed by Igc 2 of 3 (16) itxa-1820.16ors.doc Allahabad High Court and Rajasthan High Court, (Allahabad High Court decision is in the case of Principal Commissioner of Income Tax v/s. L Sugar Factory Pvt. Ltd reported in (2017) 392 ITR 568 (All)).

5 In view of such consistent view of the different High Courts in the country, we see no reason to take a different stand. No question of law arises in these Appeals. Hence not entertained. The Income Tax Appeals are dismissed."

5. Considering the above binding judgement (supra) as well as the decision of the Co-ordinate Bench of the Tribunal in the case of M/s. Dodson Lindblom Hydro Power Pvt. Ltd. (supra), we find the issue stands covered and decided in favour of the assessee. Following the parity of reasoning, we are of the opinion that the said carbon credits is outside the scope of the chargeability of tax as the same constitutes "capital receipts". Thus, the ground nos.1 to 4 are allowed in favour of the assessee."

11. In view of the above, we are of the considered view, going by the similar set of facts and circumstances involved in the case before us, on same parity of reasoning and respectfully following the decision of the Hon'ble

Jurisdictional High Court (supra.), **we allow Grounds No.1 to 4 raised in this appeal in favour of the assessee.**

12. **Grounds No. 6 and 7** pertains to the confirming of disallowance of additional depreciation of Rs.10,98,27,376/- being 50% of the claim of additional depreciation made by the assessee firm in respect of the plant and machinery acquired and installed by it after 30th September, 2012. The Department's view was that this additional depreciation could be claimed only in the year of purchase and the same was not available in the subsequent year.

13. It is also the contention of the assessee that it had claimed 50% of the additional depreciation in assessment year 2013-14 since the plant and machinery was acquired after 30th September, 2012 and the balance additional depreciation of 50% was claimed in the assessment year 2014-15 and hence, the same was justified in law.

14. The Assessing Officer vide Para 5.2 of his order after considering the submissions of the assessee opined that at the outset, it is to reiterate that there is no provision in the Act to allow the 50% of additional depreciation in the subsequent assessment year. The assessee during assessment had also relied upon the newly inserted proviso to Section 32 of the Act for its claim of allowance of additional depreciation. The Assessing Officer was of the opinion that the said proviso is inserted in the Act w.e.f. 01.04.2016 and hence, it could not be applied for the year under consideration i.e. assessment year 2014-15. The Assessing Officer analyzed the CBDT Circular No.19 of 2015 dated 27.11.2015 which was the legislative intention behind the amendment of inserting the proviso to Section 32 of the Act w.e.f. 01.04.2016. The

Assessing Officer accordingly held that as per the circular (supra.), the proviso inserted in the Act w.e.f. 01.04.2016 will be applicable from assessment years 2016-17 and subsequent assessment years. The claim of additional depreciation for the assessment year 2014-15 was rejected and the amount was added to the total income of the assessee.

15. The Ld. CIT(Appeals) upheld the findings of the Assessing Officer vide Para 6.2 of his order wherein he has held, the Assessing Officer correctly held that prior to 01.04.2016, there was no provision in the Act to allow 50% of the additional depreciation in the subsequent assessment year. The new proviso in Section 32 of the Act has been inserted w.e.f.01.04.2016 and the same is only prospective in nature and not retrospective. The Ld. CIT(Appeals) relied on the decision of the Hon'ble Bombay High Court in the case of **CIT Vs. Bramha Associates, 333 ITR 289**, wherein it was held that when the amendment has been mentioned with effect from a particular date when it is prospective in nature and not retrospective and therefore, the same cannot be applied to a prior period. That also in the CBDT Circular No.19 of 2015 (supra.) which was referred by the Assessing Officer in his order has also stated that the new proviso to Section 32(1)(ii) of the Act takes effect from 01.04.2016 and therefore, the same will apply from assessment year 2016-17 and subsequent assessment years. Accordingly, the addition made by the Assessing Officer was upheld.

16. In this regard, the Ld. Counsel for the assessee brought to our notice the decision of the Hon'ble Jurisdictional High Court in the case of **Pr. CIT Vs. M/s. Godrej Industries Ltd., Income Tax Appeal No. 511 of 2016** wherein the issue before the Hon'ble High Court was as follows:

“2. Revenue has challenged the Judgment of Income Tax Appellate Tribunal (the Tribunal) dated 1 June, 2015. Following question is presented for our consideration:—

“Whether, on the facts and circumstances of the case and in law, the Tribunal is right in law in holding that the Assessee is entitled to 50% of the additional depreciation under Section 32(1)(iia) of the IT Act, 1961?”

17. That the issue pertains to assessment year 2007-08 and on this issue the Hon’ble Jurisdictional High Court has held as follows:

“5. Having heard Counsel for the Revenue and for the Assessee, we notice that the Assessee's claim of additional depreciation arises out of clause (iia) of sub-section 1 of Section 32 of the Act. Clause (ii) of subsection 1 of Section 32 of the Act recognizes the depreciation on block of assets. Clause (iia) grants additional depreciation in case of acquisition and installation of new machinery or plant by an Assessee after 31 March, 2005, the Assessee being engaged in business of manufacture or production of an article or things.

6. We may also notice that the second proviso to clause (ii) of sub-section 1 of Section 32 of the Act, would restrict Assessee's claim of depreciation to 50% in case, the assets are acquired by the Assessee during the previous year and put to use for the purposes of business or profession for a period less than 180 days in the said previous year.

*7. In the context of such statutory provisions, the Revenue has raised the question - whether when 50% of the additional depreciation is claimed by the Assessee in a particular Assessment Year, since the acquisition and putting in to use of the assets in the previous Year was for less than 180 days, the Assessee can claim the remaining depreciation in the subsequent Assessment Year. Such a question came up for consideration before the Division Bench of Karnataka High Court in **Commissioner of Income Tax v. Rittal India Pvt. Ltd.**, reported in **380 ITR 423**. The Court, after referring to the statutory provisions, held and observed in para 8 as under:—*

“8:- The aforesaid two conditions, i.e., the undertaking acquiring new plant and machinery should be a new industrial undertaking, or that it should be claimed in one year, have been done away by substituting clause (iia) with effect from April 1, 2006. The grant of additional depreciation, under the aforesaid provision, is for the benefit of the assessee and with the purpose of encouraging industrialization, by either setting up a new industrial unit or by expanding the existing unit by purchase of new plant and machinery, and putting it to use for the purposes of business. The proviso to clause (ii) of the said section makes it clear that only 50 per cent of the 20 per cent would be allowable, if the new plant and machinery so acquired is out to use for less than 180 days in a financial year. However, it nowhere restricts that the balance 10 per cent would not be allowed to be claimed by the assessee in the next assessment year.

The language used in clause (iia) of the said section clearly provides that “a further sum equal to 20 per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii)”. The word “shall” used in the said clause is very significant. The benefit which is to be granted is 20 per cent

additional depreciation. By virtue of the proviso referred to above, only 10 per cent can be claimed in one year, if plant and machinery is put to use for less than 180 days in the said financial year. This would necessarily mean that the balance 10 per cent additional deduction can be availed of in the subsequent assessment year, otherwise the very purpose of insertion of clause (iia) would be defeated because it provides for 20 per cent deduction which shall be allowed.

It has been consistently held by this Court, as well as the apex court, that the beneficial legislation, as in the present case, should be given liberal interpretation so as to benefit the assessee. In this case, the intention of the legislation is absolutely clear, that the assessee shall be allowed certain additional benefit, which was restricted by the proviso to only half of the same being granted in one assessment year, if certain condition was not fulfilled. But, that, in our considered view, would not restrain the assessee from claiming the balance of the benefit in the subsequent assessment year. The Tribunal, in our view, has rightly held, that additional depreciation allowed under Section 32(1)(iia) of the Act is a onetime benefit to encourage industrialization, and the provisions related to it have to be construed reasonably, liberally and purposively, to make the provision meaningful while granting the additional allowance. We are in full agreement with such observations made by the Tribunal.

In view of the aforesaid, we do not find that any interference is called for with the order of the Tribunal, or that any question of law arises in this appeal for determination by this court.”

After the said judgment of the Karnataka High Court in Rittal India Pvt. Ltd., (supra), legislation has also amended the statutory provisions by adding the third proviso to clause (ii) of sub-section 1 of Section 32 of the Act, which reads as under:—

“Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset.”

*8. The third proviso, thus, now recognizes the right of an Assessee to claim the remaining 50% depreciation in subsequent year in a case where machinery and plant being acquired and put to use for less than 180 days in the previous year, the depreciation was restricted to 50%. Such a situation as in the present case, was considered by the Division Bench of the Madras High Court in **Commissioner of Income Tax v. Shri T.P. Textiles Pvt. Ltd., 394 ITR 483**, the Court referred to the judgment of the Karnataka High Court in Rittal India Pvt. Ltd., (supra) as well as the addition of third proviso to clause (ii) of sub-section 1 of Section 32 of the Act and observed as under:—*

“10.1:- The plain language of section 32(1)(iia) read along with relevant proviso would have us come to the conclusion that, there is no limitation in the assessee claiming the balance 10 per cent of additional depreciation in the succeeding assessment year.

10.2:- As a matter of fact, with effect from April 1, 2016, the ambiguity, if any, in this regard, in the mind of the Assessing Officer, stands removed by virtue of the Legislature, incorporating in the Statute, the necessary clarificatory amendment.

10.3

11:- We may only indicate that during the course of the arguments, our attention was drawn to the "Memorandum explaining the provisions in Finance Bill, 2015" whereby, the aforementioned amendment was brought about.

11.1:- The relevant part of the memorandum is extracted hereafter:—

"... To remove the discrimination in the matter of allowing additional depreciation on plant or machinery used for less than 180 days and used for 180 days or more, it is proposed to provide that the balance 50 per cent of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."

11.2:- A perusal of the extract of the memorandum relied upon would show that the legislature recognized the fact that the manner in which the Revenue chose to interpret the provision, as it stood prior to its amendment would lead to discrimination, in respect of plant and machinery, which was used for less than 180 days, as against that, which was used for 180 days or more.

11.3:- In our opinion, as indicated above, the amendment is clarificatory in nature and not prospective, as is sought to be contended by the Revenue. The memorandum cannot be read in the manner, in which, the Revenue has sought to read it, which is, that the amendment brought in would apply only prospectively.

11.4:- We are, clearly, of the view that the memorandum, which is sought to be relied upon by the Revenue, only clarifies as to how the unamended provision had to be read all along.

11.5:- In any event, in so far as the court is concerned, it has to go by the plain language of the unamended provision, and then, come to a conclusion in the matter. As alluded to above, our view, is that, upon a plain reading of the unamended provision, it could not be said that the assessee could not claim balance depreciation in the assessment year, which follows the assessment year, in which, the machinery had been bought and used, albeit, for less than 180 days."

9. It could be thus, to seen that the Karnataka High Court in Rittal India Pvt., Ltd., (supra) even without the aid of the statutory amendment held that remaining 50% unclaimed depreciation would be available to the Assessee in the succeeding Assessment Year. Now the legislation has amended the provision by adding a proviso which, specifically recognizes the said right. The Madras High Court in Shri T.P. Textiles Pvt. Ltd., (supra) ruled that such proviso being clarificatory in nature, would apply to pending cases, covering past period also.

10. We have no reason to take view different from two High Courts, examining the situation at considerable length. In the result, no question of law arises."

18. The Hon'ble Jurisdictional High Court observed that after the decision in the case of Rittal India Pvt. Ltd. (supra.) by the Hon'ble Karnataka High Court, there has been legislative amendment wherein the third proviso to clause (ii) of sub section 1 of Section 32 of the Act had been added which is as follows:

“Provided also that where an asset referred to in clause (iia) or the first proviso to clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business for a period of less than one hundred and eighty days in that previous year, and the deduction under this sub-section in respect of such asset is restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (iia) for that previous year, then, the deduction for the balance fifty per cent of the amount calculated at the percentage prescribed for such asset under clause (iia) shall be allowed under this sub-section in the immediately succeeding previous year in respect of such asset.”

Therefore, the third proviso, thus now recognizes the right of an assessee to claim the remaining 50% depreciation in subsequent year. But the fact remains even without the aid of statutory amendment, the Hon'ble Karnataka High Court in Rittal India Pvt. Ltd. case (supra.) had held that *“the assessee can claim the remaining depreciation in the subsequent assessment years.”* Now with the introduction to the proviso to Section 32 of the Act, it was held by the Hon'ble Madras High Court in the case of **CIT Vs. Shri T.P Textiles Pvt. Ltd., 294 ITR 483** that such proviso being clarificatory in nature and hence, would apply to pending cases, covering past period also. The matter before the Hon'ble Jurisdictional High Court pertained to assessment year 2007-08 and accordingly, it was covered by the aforesaid judicial findings.

19. That while considering the view taken by these two Hon'ble High Courts in the above referred judgments, it was held by the Hon'ble Jurisdictional

High Court that there is no justification in taking any different view and hence, no question of law arose.

20. The aforesaid decision of the Hon'ble Jurisdictional High Court was also referred by the Pune Bench of the Tribunal in the case of **Cummins India Limited Vs. DCIT, ITA No.685/PUN/2017 dated 22.11.2019** wherein the Tribunal on the issue has held as follows:

*".....In this judgment of the Hon'ble Bombay High Court, there is reference made to the decision of the Hon'ble Karnataka High Court in the case of Commissioner of Income Tax and another Vs. Rittal India Pvt. Ltd., 380 ITR 423 and the decision of the Hon'ble Madras High Court in the case of in the case of Commissioner of Income Tax Vs. Shri T.P. Textiles Pvt. Ltd., 394 ITR 483 and in both these cases, it has been unanimously observed and held that the assessee can claim balance depreciation in the subsequent assessment year. The Hon'ble Bombay High Court was of the opinion that there emerges no reason to take a different view from that taken by the aforesaid two High Courts, examining the situation at considerable length. Therefore, appeal of the Revenue was dismissed by the Hon'ble Jurisdictional High Court. Respectfully, following the binding judgment of the Hon'ble Jurisdictional High Court, **we allow ground No.8 raised by the assessee.**"*

Therefore, the view that emerges from the aforesaid judicial precedent is that the Hon'ble Karnataka High Court in the Rittal India Pvt. Ltd. case had given the right to the assessee to claim the remaining unclaimed 50% depreciation in the subsequent assessment year and at that time the proviso to section 32 was also not there but right now with the insertion of such proviso, this right has been statutorily recognized. That as regards, whether such proviso would apply to past periods or not, the judgment of the Hon'ble Madras High Court (supra.) which is still operational and it has been held that the said proviso was only clarificatory in nature and would thus apply to pending cases covering past periods also. Thus, **Grounds No.6 and 7 raised in appeal by the assessee are allowed.**

21. In the result, **appeal of the assessee is partly allowed.**

Order pronounced on 07th day of October, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07th October, 2021.
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	06.10.2021	Sr.PS/PS
2	Draft placed before author	07.10.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		