

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 824 of 2016

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

**Sd/-**

**and**

**HONOURABLE MR.JUSTICE B.N. KARIA**

**Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

PR. COMMISSIONER OF INCOME TAX, VADODARA-2....Appellant(s)

Versus

M/S IDMC LIMITED....Opponent(s)

Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MR MANISH J SHAH, ADVOCATE for the Opponent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**

and

**HONOURABLE MR.JUSTICE B.N. KARIA**

Date : 25/01/2017

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

[1.0] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Income Tax Appellate Tribunal, Ahmedabad 'C' Bench (hereinafter referred to as "learned ITAT") in ITA No.143/Ahd/2013 for AY 2006-07, the Revenue has preferred the present Tax Appeal to consider the following substantial question of law.

“Whether on the facts and circumstances of the case and in law, the Tribunal was justified in law in allowing additional depreciation claim of Rs. 2,18,50,976/= @ 20% under Section 32 [1](ia) of the Income-tax Act, 1961 on the machinery purchased before 31<sup>st</sup> March 2005, but installed after 31<sup>st</sup> March 2005 ?”

[2.0] That the assessee is mainly engaged in the business of fabrication and manufacturing of equipment / poly-film rolls used in dairy, pharmaceuticals, beverages and other other industries. That the assessee filed the return of income for the Assessment Year 2006-07. That thereafter the Assessing Officer framed the scrutiny assessment under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘IT Act’) assessing total income at Rs.NIL, after settling of depreciation to the extent of income available of Rs.6,83,33,991/-. That thereafter the assessment for AY 2006-07 was reopened under Section 147 of the IT Act, on the Revenue’s audit objection. It is required to be noted that the assessee claimed the additional depreciation under Section 32(1)(ia) of the IT Act of Rs.2,18,50,976/- at 20% on newly purchased Flexo Printing Machinery of Rs.10,92,54,880/-. The said machinery was purchased on 12.02.2004 i.e. in the previous assessment year. However, the said machinery was installed during the year under consideration on 15.04.2005. Therefore, the Revenue Audit Party raised the objection that as the machinery was purchased before 31.03.2005 and hence, additional claim of depreciation was not allowable to the assessee. Therefore, in reassessment proceedings the Assessing Officer disallowed the assessee’s claim of additional depreciation of Rs.2,18,50,976/- and reassessed the income of the assessee at Rs.4,77,74,100/- vide order under Section 143(3) read with Section 147 of the IT Act on 29.08.2011.

[2.1] Being aggrieved and feeling dissatisfied with the reassessment order passed by the Assessing Officer disallowing the assessee’s claim of

additional depreciation of Rs.2,18,50,976/- claimed on plant and machinery, the assessee carried the matter before the learned CIT(A). The learned CIT(A) partly allowed the appeal of the assessee. The learned CIT(A) upheld the reopening of the assessment under the provisions of Section 147 read with Section 148 of the IT Act. The learned CIT(A) confirmed the disallowance made by the Assessing Officer of Rs.2,18,50,976/- and thereby confirmed the disallowance of the additional depreciation of Rs.2,18,50,976/-.

[2.2] Being aggrieved by the order passed by the learned CIT(A) confirming the addition of Rs.2,18,50,976/- in the hands of the assessee by disallowing the additional depreciation, the assessee preferred appeal before the learned ITAT. By the impugned judgment and order the learned ITAT has allowed the appeal preferred by the assessee and has deleted the disallowance of additional depreciation of Rs.2,18,50,976/-. While passing the impugned judgment and order the learned ITAT has relied upon the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax vs. Surama Tubes (P.) Ltd.** reported in 201 ITR 124 and the decision of the Calcutta High Court in the case of **Bajaj Tempo Ltd. vs. Commissioner of Income Tax** reported in 196 ITR 188.

[2.3] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned ITAT in allowing the additional depreciation claimed of Rs.2,18,50,976/- at 20% under Section 32(1) (iia) of the IT Act on the plant and machinery as claimed by the assessee, the Revenue has preferred the present Tax Appeal to consider the following substantial question of law.

“Whether on the facts and circumstances of the case and in law, the Tribunal was justified in law in allowing additional depreciation claim of Rs. 2,18,50,976/= @ 20% under Section 32 [1](iia) of the

Income-tax Act, 1961 on the machinery purchased before 31<sup>st</sup> March 2005, but installed after 31<sup>st</sup> March 2005 ?”

[3.0] Shri Ketan Parikh, learned Counsel appearing on behalf of the Revenue has vehemently submitted that in the facts and circumstances of the case the learned ITAT has materially erred in allowing the additional depreciation claimed of Rs.2,18,50,976/- at 20% under Section 32(1)(iia) of the IT Act on the plant and machinery as claimed by the assessee.

[3.1] It is further submitted by Shri Parikh, learned Counsel appearing on behalf of the Revenue that in the present case the plant and machinery on which the additional depreciation under Section 32(1)(iia) of the IT Act was claimed was purchased before 31.03.2005 but installed after 31.03.2005 and therefore, the conditions for claiming the additional depreciation under Section 32(1)(iia) of the IT Act are not satisfied.

[3.2] It is vehemently submitted by Shri Parikh, learned Counsel appearing on behalf of the Revenue that for claiming the additional depreciation under Section 32(1)(iia) of the IT Act, the assessee is required to install and use the plant and machinery in the year under consideration. It is submitted that therefore twin conditions of installation and use in the year under consideration is required to be fulfilled and satisfied. It is submitted that as in the present case the twin conditions of installation and use in the year under consideration has not been satisfied and fulfilled the assessee was not entitled to additional depreciation under Section 32(1)(iia) of the IT Act. It is submitted that therefore the learned ITAT has materially erred in not properly considering the language used in section 32(1)(iia) of the IT Act.

[3.3] It is submitted that therefore the learned ITAT has materially

erred in allowing the additional depreciation under Section 32(1)(ia) of the IT Act on the plant and machinery purchased before 31.03.2005 but installed after 31.03.2005.

[3.4] Shri Parikh, learned Counsel appearing on behalf of the Revenue has submitted that in a tax matter the provision of the Statute is required to be interpreted strictly and literally. It is submitted that equitable considerations are irrelevant in interpreting tax laws. It is submitted that therefore if the language used in section 32(1)(ia) of the IT Act is considered as it is and the said provision is construed / interpreted strictly and literally in that case as the plant and machinery was purchased prior to 31.03.2005 and installed in the year under consideration, the assessee shall not be entitled to additional depreciation at 20% under section 32(1)(ia) of the IT Act.

Making above submissions it is requested to allow the present appeal and answer the question in favour of the Revenue and against the assessee.

[4.0] Present Tax Appeal is vehemently opposed by Shri J.P. Shah, learned Counsel appearing on behalf of the assessee. It is submitted that in the facts and circumstances of the case the learned ITAT has not committed any error in allowing the additional depreciation under Section 32(1)(ia) of the IT Act on the plant and machinery as claimed by the assessee.

[4.1] It is submitted by Shri Shah, learned Counsel appearing on behalf of the assessee that as such the issue involved in the present case is squarely covered by the decision of the Hon'ble Supreme Court in the case of Surama Tubes (P) Ltd. (Supra) and the decision of the Calcutta High Court in the case of Bajaj Tempo Ltd. (Supra).

[4.2] It is submitted that looking to the purpose and object of grant of additional depreciation under Section 32(1)(ia) of the IT Act, the learned ITAT has not committed any error in allowing the additional depreciation as claimed by the assessee.

[4.3] It is submitted that it is true that in the present case the plant and machinery was purchased on 12.02.2004 i.e. before 31.03.2005. It is submitted that however certain damaged parts of the machinery were replaced by the supplier at Germany on 13.12.2004. Therefore, the said machinery was installed during the year under consideration on 15.04.2005 i.e. 31.03.2005. It is submitted that if the case on behalf of the Revenue is accepted, in that case, the assessee will never get any additional depreciation either under the previous assessment year or for the year under consideration i.e. either in AY 2005-06 or in AY 2006-07. It is submitted that by such an interpretation grant of additional depreciation under Section 32(1)(ia) of the IT Act shall be frustrated.

[4.4] Shri Shah, learned Counsel appearing on behalf of the assessee has submitted that while interpreting the particular statute the object of enacting the same is required to be considered and the section is required to be interpreted in such a manner as not to nullify the object of enacting particular provision. It is submitted that even while interpreting and/or considering the fiscal statutes the principles of reasonable construction is required to be applied to give effect to the purpose or intention of any particular provision as apparent from the scheme of the IT Act. It is submitted that as held by the Hon'ble Supreme Court in catena of decisions there shall be a purposive construction of a statute to effectuate the object and purpose of the IT Act. It is submitted that where the plain and literal interpretation of a statutory provision produces a manifestly absurd and unjust result, which could never have been intended by the legislature, the Court may modify the language

used by the legislature or even do some violence to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In support of his above submission, Shri Shah, learned Counsel appearing on behalf of the assessee has relied upon the following decisions.

1. Chandulal Harjivandas vs. CIT  
(1967) 63 ITR 627
2. R.B. Jodha Mal Kuthiala vs. CIT  
(1971) 82 ITR 570
3. Shree Sajjan Mills Ltd. vs. CIT  
(1985) 156 ITR 585
4. Rajratna Naranbhai Mills Co. Ltd. vs. STO  
(1991) 189 ITR 90
5. Administrator Municipal Corporation, Bilaspur vs. Dattatray Dahankar  
1992 AIR SC 1846
6. Director of Enforcement vs. Deepak Maharaj  
AIR 1994 SC 1775
7. K.P. Varghese vs. ITO  
(1982) 131 ITR 597 (SC)
8. CIT vs. J.H. Gotla  
(1985) 156 ITR 323
9. C.W.S. (India) Ltd. vs. CIT  
(1994) 208 ITR 649
10. Oxford University Press vs. CIT  
(2001) 3 SCC 359
11. Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd.  
(2008) 4 SCC 755
12. CIT vs. Texttool Co. Ltd.  
(2013) 263 CTR 257

13. Sanjeev Lal vs. CIT  
(2014) 365 ITR 389
14. Shashikala Devi vs. Central Bank of India & Ors.  
(2014) 16 SCC 260
15. Sidhharth Vyas vs. Ravinath Misra  
(2015) 2 SCC 701
16. State of Kerala & Ors. vs. A.P. Mammikutty  
(2015) 10 SCC 632
17. Shailesh Dhairyawan vs. Mohan Balkrishna Lulla  
(2016) 3 SCC 619

Making above submissions and relying upon decisions it is submitted that if the case on behalf of the Revenue and the interpretation put forward by the Revenue is accepted, in that case, the purpose and object of additional depreciation allowable under Section 32(1)(iia) of the IT Act shall be frustrated. It is submitted that in the present case if the case on behalf of the Revenue is accepted, in that case, under no circumstances the assessee shall get the additional depreciation under Section 32(1)(iia) of the IT Act, as in the facts and circumstances of the case, twin conditions of the purchase and installation of the machinery in the same year shall not be fulfilled and in that case the assessee shall never get the additional depreciation under Section 32(1)(iia) of the IT Act. It is submitted that in such a situation the assessee shall not get additional depreciation either in the preceding assessment year in which the assessee purchased the plant and machinery and at the same time shall also not get the additional depreciation in the year under consideration in which the plant and machinery was actually installed. It is submitted that thus the purpose and object of grant of additional depreciation on plant and machinery shall be frustrated. Therefore, it is requested to have a reasonable and purposeful construction of Section 32(1)(iia) of the IT Act.

Making above submissions it is submitted that the learned ITAT

has not committed any error in allowing the additional depreciation under Section 32(1)(ia) of the IT Act as claimed by the assessee.

Making above submissions it is requested to dismiss the present Tax Appeal and answer the question in favour of the assessee and against the Revenue.

[5.0] Heard learned Counsel appearing on behalf of the respective parties at length. The short question posed for consideration of this Court is whether in the facts and circumstances of the case the assessee is entitled to additional depreciation under Section 32(1)(ia) of the IT Act on the machinery produced before 31.03.2005, but installed after 31.03.2005? In the present case the assessee claimed the additional depreciation of Rs.2,18,50,976/- under Section 32(1)(ia) of the IT Act on the plant and machinery which was purchased before 31.03.2005, but installed after 31.03.2005. In the present case the assessee purchased the plant and machinery on 12.02.2004. However, certain damaged parts of the machinery were replaced by the supplier at Germany on 13.12.2004 and therefore the said machinery could be installed during the year under consideration on 15.04.2005. According to the Revenue as the plant and machinery on which the additional depreciation is claimed was not acquired and installed during the year under consideration and therefore, twin conditions of acquisition and installation has not been satisfied, the assessee is not entitled to additional depreciation at 20% under Section 32(1)(ia) of the IT Act. Section 32(1)(ia) of the IT Act reads as under:

“32. Depreciation

(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of section 34, be allowed-

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be

prescribed']:

Provided that where the actual cost of any machinery or plant does not exceed <sup>5</sup> five thousand] rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession:] <sup>6</sup> Provided <sup>7</sup> further] that no deduction shall be allowed under this clause in respect of-

(a) any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975 , unless it is used-

(i) in a business of running it on hire for tourists; or

(ii) outside India in his business or profession in another country; and”

The purpose and object of section 32(1)(ia) of the IT Act seems to be to give a boost to the manufacturing sector by allowing the deduction of a further sum equal to 20% (prior to amendment – 15%) of the actual cost of such machinery or plant acquired and installed. Therefore, underlying object and purpose is to encourage the industries by permitting the assessee setting up the new undertaking / installation of new plant and machinery to claim the benefit of additional depreciation. Keeping in mind the above object and purpose the question posed for consideration of this Court is required to be considered.

[5.1] It is the case on behalf of the Revenue that the language used in section 32(1)(ia) of the IT Act is that a further sum equal to 20% of actual cost of any new machinery or plant **acquired and installed** after 31<sup>st</sup> Day of March 2005 by the assessee engaged in the business of manufacturing or production of any article or thing, is allowed as deduction as further depreciation. Therefore, it is the case on behalf of

the Revenue that on literal interpretation of the provision of Section 32(1)(iia) of the IT Act, while framing the deduction as further depreciation under Section 32(1)(iia) of the IT Act, the assessee must have acquired and installed new plant and machinery on which the additional depreciation is claimed after 31.03.2005. It is the case on behalf of the Revenue that in the present case as the plant and machinery was acquired / purchased before 31.03.2005, the assessee is not entitled to the additional depreciation under Section 32(1)(iia) of the IT Act. On the other hand it is the case on behalf of the assessee that the provision of section 32(1)(iia) of the IT Act is required to be construed purposefully and literally so as to achieve the object and purpose of the additional depreciation allowable under Section 32(1)(iia) of the IT Act.

[6.0] At this stage few decisions of the Hon'ble Supreme Court relied upon by the learned Counsel appearing on behalf of the assessee are required to be referred to and considered.

[6.1] In the case of R.B. Jodha Mal Kuthiala (Supra) the Hon'ble Supreme Court has observed that it is true that equitable considerations are irrelevant in interpreting tax laws. But, those laws, like all other laws, have to be interpreted reasonably and in consonance with justice.

[6.2] In the case of Shree Sajjan Mills Ltd. (Supra), the Hon'ble Supreme Court has observed that the principle that fiscal statutes shall be strictly construed does not rule out the application of the principles of reasonable construction to give effect to the purpose or intention of any particular provision as apparent from the scheme of the IT Act, with the assistance of such external aids as are permissible under the law.

[6.3] While interpreting section 127A of the IT Act, in the case of

Administrator Municipal Corporation, Bilaspur (Supra), the Hon'ble Supreme Court has observed that the mechanical approach to construction is altogether out of step with the modern positive approach. The modern approach is to have a purposeful construction that is to effectuate the object and purpose of the IT Act. Thereafter it is observed and held that section 127A, must therefore, receive a purposeful construction as any other construction would render *provisio* nugatory and defeat the object of the IT Act.

[6.4] In the case of Deepak Maharaj (Supra), it is observed and held as under:

“Normally Courts should be slow to pronounce the legislature to have been mistaken in its constantly manifested opinion upon a matter resting wholly within its will and take its plain ordinary grammatical meaning of the words of the enactment as affording the best guide, but to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislature inane.”

“In given circumstances, it is permissible for Courts to have functional approaches and look into the legislative intention and sometimes it may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result and the legislative exercise and its scope and object may not become futile.”

[6.5] In the case of K.P. Varghese (Supra), it is observed and held as under:

“A statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. Where the plain literal

interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even 'do some violence' to it, so as to achieve the obvious intention of the legislature and produce a rational construction.

LUKE V. IRC (1963) AC 557; (1964) 54 ITR 692 (HL) followed

Speeches made by the members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic though not only in western countries but also in India, that the interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.”

[6.6] In the case of J.H. Gotla (Supra), the Hon'ble Supreme Court has observed and held that if strict literal construction leads to an absurd result i.e. a result not intended to be sub-served by the object of the legislation ascertained from the scheme of the legislation, then, if another construction is possible apart from the strict literal construction, then, that construction should be preferred to the strict legal construction. It is further observed that where the plain literal construction of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational result.

[6.7] In the case of C.W.S. (India) Ltd. (Supra), the Hon'ble Supreme Court has observed and held that literal construction may be the general rule in construing taxing enactments, but that does not mean that it

should be adopted even if it leads to a discriminatory or incongruous result. When a literal interpretation leads to an absurd or unintended result the language of the statute can be modified to accord with the intention of Parliament and to avoid absurdity.

[6.8] In the case of *Textool Co. Ltd.* (Supra) it is observed by the Hon'ble Supreme Court that it is true that a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the section, yet a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the IT Act.

[6.9] In the case of *Sanjeev Lal* (Supra), it is observed by the Hon'ble Supreme Court that purposive interpretation of the provisions of the Act should be given while considering a claim for exemption from tax.

[7.0] Applying law laid down by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the case on hand, if the submission on behalf of the Revenue is accepted, in that case it will lead to an absurd and unjust result and the purpose and object of granting the additional depreciation will be frustrated. If the contention on behalf of the Revenue is accepted, in that case, the assessee shall never get the additional depreciation as provided under Section 32(1)(iia) of the IT Act. In the facts and circumstances of the case, the twin conditions of the acquired and installed shall never be satisfied in a year and therefore, the assessee shall never get any depreciation. The purpose and object of granting additional depreciation under Section 32(1)(iia) of the IT Act is stated hereinabove i.e. to encourage the industries by permitting the assessee setting up the new undertaking / installation of new plant and machinery and to give a boost to the manufacturing sector by allowing

additional depreciation deduction. Thus, as rightly held by the learned ITAT the provision of section 32(1)(ia) of the IT Act is required to be interpreted reasonably and purposively as the strict and literal reading of section 32(1)(ia) of the IT Act will lead to an absurd result denying the additional depreciation to the assessee though admittedly the assessee has installed new plant and machinery. Under the circumstances, no error has been committed by the learned ITAT in allowing the additional depreciation at the rate of 20% on the plant and machinery installed by the assessee after 31<sup>st</sup> Day of March 2005 i.e. the year under consideration. No substantial question of law arise.

[8.0] In view of the above and for the reasons stated above, present Tax Appeal deserves to be dismissed and is, accordingly, dismissed. The question of law is answered against the Revenue and in favour of the assessee.

Sd/-  
(M.R. SHAH, J.)

Sd/-  
(B.N. KARIA, J.)

Ajay

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THE HIGH COURT  
OF GUJARAT

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