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IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "G" DELHI)

BEFORE SHRI C.L. SETHI AND SHRI DEEPAK R.SHAH

ITA Nos. 1986 & 1987(Del)2005  
Assessment years: 2000-01 & 2001-02

Yamaha Motor India Pvt. Ltd. Assistant Commissioner of I.Tax,  
C-582, LGF, Defence Colony, v. Circle 18(1), New Delhi.  
New Delhi.

(Appellant)

(Respondent)

Appellant by: Shri Ved Jain, CA  
Respondent by: Shri Sukesh K.Jain, Sr. DR

ORDER

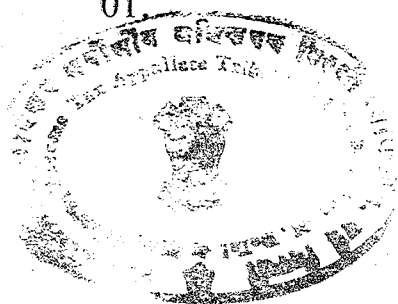
PER C.L. SETHI, J.M.

These two appeals have been filed by the assessee against two separate orders dated 31.02.2005 and 31.01.2005 passed by the CIT(A) for the assessment years 2000-01 and 2001-02.

2. The issue raised in these two appeals is common and identical based on similar facts, and, thus, these two appeals were heard together, and a common order is being passed for the sake of convenience.

3. We shall first take the appeal pertaining to the assessment year 2000-

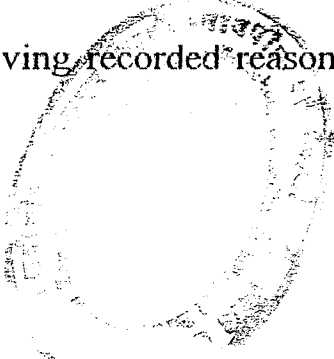
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4. In these appeals the only ground raised by the assessee is with regard to disallowance of Rs. 58,01,785/- towards depreciation in respect of the assets discarded by the assessee during the year under consideration.

5. In this assessment year, the original assessment was made u/s 143(3) vide AO's order dated 28.3.2003 assessing the income at a loss of Rs. (-)51,67,75,548/-. Later on, while completing the assessment for the assessment year 2001-02, it was noticed by the AO that the assessee company has claimed depreciation on assets written off of Rs. 4,71,51,016/- on 31.12.1999. These appeals were capitalized at Rs.4,71,51,016/- as on 1.11.1996. The written down value as on the end of the immediate preceding financial year ended on 31.3.1999 was Rs. 2,32,07,141/-. The depreciation claimed during this year under consideration was of Rs. 58,01,785/- on the aforesaid assets written off in the year under consideration. The AO had a reason to believe that the excess depreciation of Rs. 58,01,785/- claimed on the assets, which were written off in the books, was not allowable inasmuch as the assets which were written off could not be put to use after the same having been written off. However, the depreciation to that extent was claimed and allowed in the original assessment completed u/s 143(3) of the Act. The AO, therefore, after having recorded reasons, reopened the assessment u/s 147 of the Act and

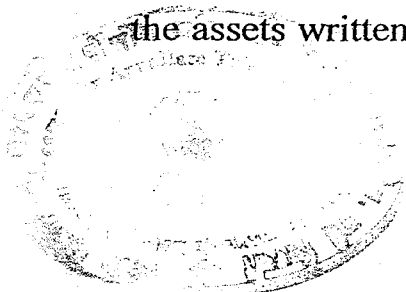


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issued notice u/s 148 to the assessee, in compliance of which the assessee filed return of income on 24.9.2004 disclosing net loss at Rs.(-)51,78,95,964/-.

6. During the course of reassessment proceedings, the assessee was asked by the AO to explain as to why the depreciation amounting to Rs. 58,01,785/- should not be disallowed as claimed on the assets written off in the year under consideration and not used for the purpose of business. In reply thereto, the assessee submitted that having regard to the provisions contained in section 32 of the Act and having regard to the meaning of the expression "written down value" as defined in sub-section (6) of section 43 of the Act, the assessee has rightly claimed depreciation on the assets, which were written off in the books of account, in respect of which no loss was claimed by the assessee in the computation of income by adding back the amount of assets actually written off for calculating the income as per the provisions of I.T. Act.

7. The assessee's explanation was not found to be acceptable to the AO for the reason that as for the purpose of allowing depreciation u/s 32(1) of the Act, the assets must be owned, wholly or partly, by the assessee and also must be used for the purpose of business or profession, the depreciation on the assets written off by the assessee is not allowable inasmuch as the same



were discarded and were not used for the purpose of business or profession during the year under consideration. The AO also rejected the assessee's claim that the discarded assets were used by the assessee in the year under consideration.

8. On an appeal, the CIT(A) confirmed the AO's action for the reasons as given in detail in assessee's own case for assessment year 2001-02. In the assessment year 2001-02, the identical issue has been decided by the CIT(A) against the assessee by holding that the assessee was not entitled to depreciation on the assets, which have been discarded inasmuch as the assets were not used for the purpose of business during the year under consideration.

9. Still aggrieved, the assessee has filed this appeal before the Tribunal.

10. The learned counsel for the assessee submitted that in the light of definition of the expression "written down value" as given in section 43(6) of the Act, the moneys payable in respect of assets discarded or sold or destroyed is only required to be deducted for arriving at the written down value on which depreciation u/s 32(1) is allowable. It was further submitted that the term "moneys payable" in respect of any building, machinery, plant or furniture includes the price for which such building, machinery, plant or furniture is sold. The expression "moneys payable" has to be interpreted



only as actual money payable in cash or by cheque or draft and not any other thing or benefit which can be converted in money. In support of this proposition, the learned counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in the case of CIT v. Kasturi & Sons Ltd. [1999] 103 Taxman 342(SC). He, therefore, submitted that although the assessee company discarded certain assets, since the assets were not disposed of or sold during the relevant financial year, nothing on that account can be reduced from the WDV of the block of assets brought forward from immediate preceding assessment year and, hence, the depreciation claimed made by the assessee is admissible on the WDV of the entire block of assets. He, therefore, submitted that the AO's action in reducing the entire WDV of the assets, which were discarded during the year from the block of the assets is not in conformity with the scheme of depreciation allowable u/s 32(1) of the Act read with section 43(6) of the Act. He further submitted that what was actually written off from the fixed assets in the books of account, was not claimed as deduction while computing the income for the purpose of tax under the I.T. Act. He, therefore, submitted that the assessee's claim of depreciation reduced by Rs. 58,01,785/- by the AO is not justified and in conformity with the provisions of law contained in that behalf.

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11. The Id. DR, on the other hand, supported the orders of the authorities below to contend that as the assessee has itself discarded certain assets by writing off the same in the books of account, it was apparent that these assets discarded were not used for the purpose of business and as such the WDV of the respective assets as computed by the AO was to be reduced from the WDV of the block of assets brought forward from the immediate preceding assessment year, and the depreciation was to be allowed only on the resultant WDV for the year under consideration. The reasons and the basis given by the AO and further confirmed by the CIT(A) in reducing depreciation by Rs.58,01,785/- were reiterated by the DR.

12. We have considered the rival contentions and have carefully gone through the orders of the authorities below. The materials on record have also been perused. The question that arises for our consideration is as to whether the WDV of the block of assets carried forward from immediate preceding assessment year can be reduced by the WDV of each and every item of assets, which have been written off by the assessee in the books of account, for the purpose of computing depreciation allowable to the assessee u/s 32(1) of the Act.

13. It is quite apparent on bare perusal of section 32(1) of the Act (as substituted w.e.f. 1.4.1988) that in respect of depreciation of buildings, plant

and machinery, furniture etc. being tangible assets, and in respect of specified intangible assets acquired or after the first day of April, 1998, which are owned, wholly or partially by the assessee, and used for the purpose of business or profession, a deduction of depreciation shall be allowed in the case of any block of assets, at such percentage on the WDV thereof as may be prescribed. It is pertinent to note that for the purpose of allowable depreciation on assets under the Income Tax Act, block system has been introduced from the assessment year 1988-89. There has been a major shift in substituting asset-wise depreciation by block depreciation by pulling the assets entitled to same rate of depreciation w.e.f. 1.4.1988. In other words, the change made in section 32(1) of the Act was to substitute a portion of depreciation on block of assets inspite of depreciation on every item or building, machinery, plant or furniture. The base for depreciation would be with reference to the WDV so that the entire concept of depreciation was to be understood on this basis. The Explanation 2 to section 32 provides that for the purpose of section 32(1) of the Act "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act. The expression "block of assets" has been defined in section 2(11) of the Act stating that "block of assets" means a group of assets falling within a class of assets, being

buildings, machinery, plant or furniture, in respect of which the same percentage of depreciation is prescribed. Clause (c) of sub-section (6) of section 43 gives meaning of "written down value" in respect of any block of assets. Sub-clause (ii) of clause (c) of sub-section (6) of section 43 defines the meaning of written down value in the case of any block of assets in respect of any previous year relevant to the assessment year commencing on or before 1<sup>st</sup> day of April, 1989. It provides that the WDV in the case of any block of assets in respect of any previous year, relevant to the assessment year commencing on or after the first day of April, 1989 would mean that the WDV of that block of assets in the immediate preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said previous year and as further adjusted by the increase or reduction referred to in item No. (i) of sub-clause (c) of sub-section (6) of section 43 of the Act. The adjustment by the increase or reduction referred to in item No.(i) are as under:-

1. Increase by the actual cost of any asset falling within that block, acquired during the previous year;
2. Reduced by the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of scrap value, if any, so, however, that amount of such reduction does not exceed the WDV as so increased.



14. The scope and effect of the amendments relating to the depreciation allowance with effect from 1<sup>st</sup> April, 1988 has been explained by the Board in Circular No. 469, dated 23<sup>rd</sup> September, 1986 (reported in [1986] 162 ITR (St.)24 where it has been explained that a "block of assets" as defined in the new clause (11) inserted in section 2 of the Act means a group of assets falling within a class of assets being building, machinery, plant and furniture in respect of which the same percentage of depreciation is prescribed. It has been further explained in the said circular that a mandatory section 32(1)(ii) provides that in the case of any block of assets, depreciation will be allowed at a prescribed percentage of the written down value thereof, and the written down value of any asset in relation to the assessment year 1989-90, and any subsequent assessment years shall be worked out as under in accordance with the newly inserted section 43(6)(c) of the Act:-

- i) The written down value of the block of assets in the immediately preceding previous year, shall be reduced by the depreciation actually allowed in respect of the block of assets in relation to the said preceding previous year.
  - ii) The sum arrived at as above shall be increased by the actual cost of any asset falling within that block which is acquired by the assessee during the previous year.
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- iii) The sum so arrived at shall be reduced by the sale proceeds and other amounts receivable by the assessee in regard to any asset falling within that block which is sold, discarded, demolished or destroyed during that previous year.

15. In this connection we may refer to a decision of ITAT, Delhi Bench 'A' in the case of ACIT v. SRF Ltd. reported in [2008] 21 SOT 122(Del)(the Accountant Member in this Bench was the author of the said decision) has held as under:-

*"7. We have considered rival submissions. Under section 32(1) depreciation on certain assets owned and used for the purpose of business is allowable and the same is allowable at the prescribed percentage on the written down value of block of assets, which comprises various assets entitled to same rate of depreciation. Thus, the ownership and user both are the criteria for claim of depreciation. However, the user criteria is to be fulfilled at the time when the asset is to form part of block of assets. Once the assets are part of block of assets, it loses its individual cost or written down value. In a way it loses its identity. Thereafter the depreciation is allowable on the entire block of assets. In the present case, it is seen that the assets of international division is not a separate block of assets. The block of assets of the entire assets of all the divisions form block of assets. Even these were ready for use though not used actually. Accordingly, applying the ratio laid down by the Hon'ble Delhi High Court in the case of Capital Bus Service (P)Ltd. (supra) the claim is allowable. This ground accordingly fails."*

16. It is thus clear that a depreciation will be allowed at a prescribed percentage of the written down value of any block of assets, and the written

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down value shall be worked out in accordance with the provisions contained in section 43(6)(c) of the Act.

17. Having said so, we now proceed to examine and appreciate the facts of the present case to determine the amount of depreciation allowable under the Act to the present assessee in the year under consideration.

18. It is an admitted position that the assets that has been written off in the books of account on 31.12.1999 were part of the block of assets on which depreciation was allowed in earlier years. The depreciation in respect of the aforesaid block of assets has been allowed to the assessee upto the assessment year 1999-2000. During the financial year 1999-2000, the assessee had written off certain assets in the books of account. Since some of the assets forming part of the block of assets brought forward from earlier years were discarded during the year under consideration, the AO reduced the WDV of the block of assets by WDV of the respective assets written off in the year under consideration, which, in our considered opinion, is not justified. As already observed above, the scheme of depreciation effective from 1.4.1988 has been done away with asset-wise depreciation by substituting the same by the scheme of block depreciation by pulling all the assets entitled to same rate of depreciation in one block of assets. The WDV in respect of any block of assets can now be adjusted only in the

manner as provided in sub-section (6) of section 43 of the Act. The assessment year involved is assessment year 2000-01. Therefore, the WDV for this assessment year would be the WDV of the aforesaid block of assets as at the beginning of the current asstt. year under consideration which is to be increased by the actual cost of any asset falling within that block which is acquired by the assessee during the previous year and shall be reduced by the moneys payable in respect of any asset falling within that block, which is sold or discarded or damaged or destroyed during the relevant year under consideration together with the amount of scrap value, if any, so, however, that amount of such deduction does not exceed of the WDV of the block of assets as so increased. With regard to the determination of the amount on account of assets which have been discarded and written off in the year, by which the WDV of block of assets is to be reduced for the purpose of depreciation allowable under the Act. It is an admitted position that no money was payable in respect of the assets written off during the year. However, the amount of scrap value of the assets which has been discarded and written off in the year under consideration, is invariably to be reduced from the WDV as provided in section 43(6) of the Act. The AO has reduced the WDV of a block of assets by WDV of individual assets, by working out the same on the basis of asset-wise depreciation which is, in

our opinion, not in the manner provided in section 43 (6) (c) of the Act. What can be reduced from WDV of a block of assets in the present case is only the scrap value of the assets, which have been discarded during the year under consideration. Therefore, having regard to the scheme of block allowing depreciation in respect of the block of assets on the WDV thereof, the reduction of the value of any assets which have either been discarded or destroyed or sold can only be made in the manner provided in section 43(6) and not with reference to the individual WDV of each assets that has been sold or discarded or damaged. We, therefore, hold that the scrap value of the assets, which have been written off and discarded during the year, is to be reduced from the WDV for the purpose of granting depreciation under the Act. The AO shall recomputed the depreciation only after ascertaining the scrap value of the assets, which have been discarded and written off in the books in the year under consideration. This issue is thus disposed off in manner as indicated above.

19. The identical issue is also raised in the assessment year 2001-02, and the same shall also stand disposed of in terms of our order pertaining to assessment year 2000-01. The AO shall recomputed the depreciation for the assessment year 2001-02 also in terms of our order given above

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pertaining to the assessment year 2000-01, which would be equally applicable for the asstt.year 2001-02 .

20. Ground No.2 for assessment year 2001-02 is directed against disallowance of Rs. 15,210/- towards interest on advances given to related parties.

21. This disallowance has been made by the AO on the ground that interest on advances was given to related parties and the assessee company has incurred interest expenses on the same.

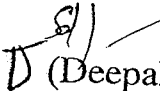
22. The learned counsel for the assessee has submitted that the assessee company was carrying out regular transaction with the related parties, namely, (1) Escorts Finance Ltd. (2) Escorts Construction Equipment Ltd. (3) Escorts Employees Welfare Ltd., and the amount of advance that was paid by the assessee company to these related entities was towards bona fide business transaction. He, therefore, submitted that the same cannot be construed as interest free advances to the related parties without any commercial considerations.

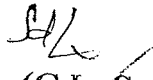
23. We have heard both the parties and have gone through the orders of the authorities below. The AO has not been able to point out that the advances given by the assessee to these entities were not for the purpose of business or for commercial expediency. The assessee's explanation has

been rejected without examining and verifying the facts of the case. Various documents placed by the assessee before us indicate that the assessee did not advance the money without any commercial consideration. The payment made to the related parties were for business considerations and expediency, and as such no proportionate interest paid on the borrowed capital can be disallowed. We, therefore, delete the same.

24. In the result, the appeals filed by the assessee for assessment years 2000-01 & 2001-02 are partly allowed in the manner indicated above.

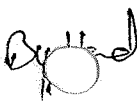
This order was pronounced in the open court on 23.05.2008.

  
(Deepak R. Shah)  
Accountant Member

  
(C.L. Sethi)  
Judicial Member

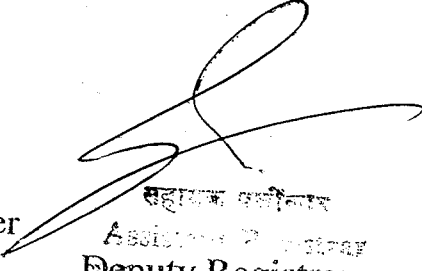
Dated: 23.05.2008  
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Copy forwarded to:

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2. ACIT, Circle 18(1), New Delhi.  
3. CIT  
4. CIT(A)  
5. DR

True copy

By order

  
Assistant Registrar  
Deputy Registrar  
Income Tax  
Delhi Benches, New Delhi

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