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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INCOME TAX APPEAL NO.598 OF 2009

The Commissioner of Income Tax

..Appellant

Vs.

G.R.Shipping Ltd.

..Respondent

Mr.Suresh Kumar for appellant.

Mr.R.Murlicharani/b. M/s.Rajesh Shah & Co. for respondent.

CORAM :- VC.DAGA &  
J.PDEVADHAR, JJ.

DATE : 28TH JULY, 2009

PC.

1. Heard learned Counsel for the parties.

2. The question sought to be raised in this appeal is based on the ground of non user of the Barge in the subject A.Y., though they were used in the previous A.Y. According to Revenue, depreciation would not be available under Section 32 of the Income Tax Act. The question sought to be canvassed is squarely covered by two judgments of this Court one in the case of Whittle Anderson Ltd. Vs. CIT 79 ITR 613 and another in the case of CIT Vs. G.N.Agrawal (Individual) 217 ITR 250. In this view of the matter, appeal stands dismissed for want of substantial question of law. No order as to costs.

(J.PDEVADHAR,J.)

(VC.DAGA,J.)

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D"

Before S/Shri N.V. Vasudevan (JM) & B. Ramakotaiah (AM)

I.T.A.No. 822/Mum/05  
(Assessment year: 2001-2002)

G.R. Shipping Ltd.  
Poonam Chambers,  
Dr. Annie Besant Road,  
Worli,  
Mumbai - 400 018

Vs.

DCIT,  
Circle 5(1),  
Aayakar Bhavan,  
M.K.Road,  
Churchgate,  
Mumbai-400 020

APPELLANT

RESPONDENT

PAN/GIR No.: AAA CG 2336 C

Assessee by: Shri Jitendra Sanghavi  
Department by: Shri Mohit Jain

ORDER

Per N.V. Vasudevan, J.M.

This is an appeal by the Assessee against the order dated 17.12.04 of CIT (A)-V, Mumbai, relating to assessment year 2001-02.

2. The grievance of the assessee projected in its grounds of appeal is with regard to disallowance of depreciation of Rs. 12,89,541/- in respect of one barge named Jay - II.

3. During the assessment proceedings the Assessing Officer observed that the assessee company, which is engaged in shipping business, was owning one Barge named Jay - II, which was included in the block of

assets, had suffered an accident on 06.03.2000 and sunk. It was also observed that though the assessee retrieved the Barge it did not get it repaired finding it uneconomical and therefore, the same was sold as on where is basis for Rs. 55,00,000/-. The aforesaid Barge was sold in the month of May/ June 2001. Thus, according to the Assessing Officer, the Barge was not used for the purpose of the business during the whole year as it met with an accident and was non operational nor was sent for any repairs. Hence, according to the Assessing Officer, depreciation on the value of such Barge included in the block of asset was not allowable.

4. Before the CIT(A), the assessee submitted that after the amended scheme of depreciation on block of asset, the individual asset loses its identity and that depreciation should be allowed in respect of whole of block. In this regards the assessee relied on the provisions of section 43(6) of the Act. The assessee further submitted that condition of user required for allowing the depreciation applies only in respect of first year where the individual asset enters the block for the first time and thereafter the depreciation should be allowed on the entire block on routine basis and that irrespective of user condition. Since the barge was under repairs the condition required was fulfilled as per the decision of the Jurisdictional High Court in the case of G N Agarwal, reported in 217 ITR 250 (Bom). The assessee also relied on various other judgements one such being decision of Hyderabad Tribunal in the case of Natco Export Vs. DCIT, 86 ITD 445 wherein it has been held that as long as an asset forms part of the block of asset and the block continues to exist depreciation should be allowed.

5. The CIT(A) however did not accept the contentions on behalf of the assessee and he held that the user of the asset was condition precedent to allow deduction on account of depreciation. Aggrieved by the order of

the CIT(A) the assessee has preferred the present appeal before the Tribunal. We have heard the rival submissions.

6. The Taxation Law (Amendment) Act, 1986, had changed thoroughly the system of allowing depreciation with effect from 01.04.1988. By these provisions, the concept of block of assets brought into statute book for the purpose of allowing depreciation. The relevant provisions as it stood after the amendment that is applicable to the year under consideration reads as under: -

*"32. (1) In respect of depreciation of buildings, machinery, plant or furniture, ~~not~~ 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.*

*(i) \*\**

*\*\**

*(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 (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."*

7. From the above, it is clear that depreciation is to be allowed on the written down value of the block of assets at such percentage as may be prescribed.

8. Block of assets is defined in section 2(11) as under:

*" "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."*

8.1 Section 43(6) provides definition of W.D.V. Clause (c) of section 43(6) reads as under: -

"43(6) - "Written down value" means -

- (a) \*\* \*\*
- (b) \*\* \*\*

(c) in the case of any block of assets, --

(i) in respect of any previous year relevant to the assessment year commencing on the 1<sup>st</sup> day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted, --

(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year; and

(B) by the reduction of 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 the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and

(ii) in respect of any previous year relevant to the assessment year commencing on or after the 1<sup>st</sup> day of April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i)."

9. Thus, for the assessment year 1988-89, the W.D.V. of any block of assets shall be the aggregate of the W.D.V. of all the assets falling within that block of assets at the beginning of the previous year. From this, the adjustment has to be made for the increase or reduction in the block of assets during the year under consideration.

10. The Legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual assets. The block of assets has also been defined to include the group of assets falling with the same class of assets. Hence, after the amendment with effect from 01.04.1988, the individual assets have lost its identity and for the purpose of allowing of depreciation, only the block of assets has to be considered. If a block of assets is owned by the assessee and used for the purpose of business, depreciation will be allowed. Therefore, the test of user has to be applied upon the block as a whole instead of upon an individual asset.

11. The above principle has been laid down in the following decisions relied upon by the ld. Counsel for the assessee namely;

- (A) Notco Exports. Vs. DCIT, 86 ITD 445 (Hyd.),
- (B) ACIT Vs. SRF Ltd., Vol. 21 SOT 122 (Del.), &
- (C) Unitex products Ltd. Vs. ITO, Vol. 22 SOT 429 (Mum).

12. The ld. DR however submitted the user was a condition for allowing depreciation and in this regard relied to the decision of the Hon'ble Bombay High Court in the case of Dineshkumar Gulabchand Agrawal vs. CIT, 267 ITR 768 (Bom). We have perused the aforesaid decision and are of the view that the same is not applicable to the facts of the present case. In the present case, the assessee has already used the asset for the purpose of business. The asset has already entered the block of assets. In the case before the Hon'ble Bombay High Court, the asset in question was not at all put to use. We therefore, find the decision relied upon the ld. DR. is of no assistance to the plea of the DR. Respectfully following the decisions of the Tribunals referred to the

above, we hold that the assessee was entitled to claim depreciation and the Assessing Officer directed to allow the same.

13. In the result appeal by the Assessee is allowed.

Order pronounced in open court on 17<sup>th</sup> July, 2008.

Sd/-

**(B. RAMAKOTIAH)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.V.VASUDEVAN)**  
**JUDICIAL MEMBER**

Mumbai: 17<sup>th</sup> July, 2008  
Neelam

Copy to:

~~The Appellant~~

The Respondent

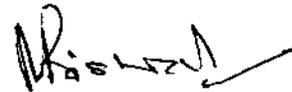
The CIT (A) concerned

The CIT concerned

The DR 'D' Bench

True copy

BY ORDER



ASST. REGISTRAR,  
ITAT, MUMBAI