



IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No. 1259/2009

ITA No. 1261/2009 & CM No. 16983/2009

ITA No. 1262/2009 & CM No. 16984/2009

ITA No. 1263/2009 & CM No. 16985/2009

Date of Decision: December 04, 2009

The Commissioner of Income Tax, Delhi-III

. . . Appellant

through : Ms. Sonia Mathur, Adv.

VERSUS

M/s Seagram Distilleries Ltd.

. . . Respondent

through: NEMO

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. In this appeal preferred by the Revenue against the decision of Income Tax Appellate Tribunal, we are concerned with the extent of depreciation to be allowed to the assessee for the assessment year 2002-03.

2. In his assessment order dated 30<sup>th</sup> March, 2006 the Assessing Officer reduced the claim of depreciation from Rs. 5,98,53,774/- to Rs.4,80,53,535/- and disallowed the balance claim on the ground that the



3. On appeal by the assessee, the CIT (A) allowed the appeal in

With regard to the claim of depreciation, CIT (Appeals) accepted the contentions raised by the assessee by referring to the judgment of the Supreme Court in the case of *Mahindra Mills Ltd. 243 ITR 56*, wherein, it was *inter alia*, held by the Supreme Court that statute does not place any mandatory duty on the officer to allow depreciation, if the assessee does not want to claim that. Provision for claim of depreciation is certainly for the benefit of the assessee. If he does not wish to avail that benefit for some reason, benefit cannot be forced upon him. On appeal by the Revenue, the Ld. ITAT has dismissed the appeal and upheld the order of the CIT (A).

4. Challenging this decision of the Tribunal, the present appeal is preferred by the Revenue. It is the contention of the learned Counsel for the Department that the Tribunal has rendered the decision inspite of the fact that the Assessing Officer has allowed depreciation after reducing the depreciation for the preceding year on the reduced written down value, *inter alia*, on the ground that depreciation was an allowable deduction in view of the explanation 5 to Section 32 inserted w.e.f. 1<sup>st</sup> April, 2002 by way of a clarificatory amendment and, thus, was retrospective in nature.

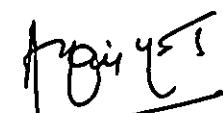
5. It is not in dispute that the claim of the assessee for the assessment year 2001-02 on fixed assets is on the basis of rates specified in the Income Tax Act. However, the Assessing Officer was of the opinion that



revised written down value, the depreciation could be calculated for the assessment year 2001-02. We are unable to accept this submission of the learned Counsel after going through the orders of CIT (A) as well as ITAT. 3

6. We are of the opinion that the approach of the authorities below is correct having regard to the judgment of the Supreme Court in the case of *CIT Vs. Mahendra Mills, 243 ITR 56* holding that since the depreciation for the assessment year 2001-02 was not actually claimed, there was no justification to reduce the written down value by the amount on hypothetical depreciation. Matter would have been different had the Assessing Officer in the assessment proceedings for the assessment year 2000-01 actually granted depreciation to the assessee, may be forced depreciation without there being a claim by the assessee. Without giving such a benefit to the assessee by allowing depreciation in the previous year, there was no justification in reducing the value on the fixed assets. We, thus, are of the view that no question of law arises and, therefore, dismiss this appeal.

No orders as to costs.

  
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(A.K. SIKRI)

  
(SIDDHARTH MRIDUL)