

**SUPREME COURT OF INDIA**

Jt. Commissioner of Income Tax, Valsad, Gujarat

Vs.

United Phosphorous Ltd

C. A. No. 1183 of 2008

(S.H. Kapadia and B. Sudershan Reddy JJ.)

08.02.2008

**JUDGMENT**

**S.H.Kapadia, J.**

1. Delay condoned.
2. Leave granted.
3. In this civil appeal filed by the Department two questions of law arise for determination which questions are as follow:

“(1) Whether interest paid in respect of borrowings on capital assets not put to use in the concerned financial year can be permitted as allowable deduction under Section 36(1)(iii) of the Income-tax Act, 1961?

(2) Whether respondent-assesses had an option in law to claim partial depreciation in respect of any block of assets.”

4. Our answer to the above-mentioned question no. (1) Is squarely covered by our decision in favor of the assesses and against the Department in the case of Dy. Commr. of Income Tax, Ahmadabad v. M/s. Core Health Care Ltd. in Civil Appeal Nos.3952-55 of 2002.

5. Regarding the question No (2), quoted above, it may be noted that the High Court has relied upon the judgment of this *Court in Commissioner of Income-tax v. Mahendra Mills & Anr<sup>1</sup>* in which it has been held that the assesses has an option to claim depreciation. However, Section 34(1) of the Income-tax Act, 1961 (for short, "1961 Act") has been omitted w.e.f. 1.4.88. Therefore, we are remanding the matter to the High Court after setting aside

the impugned order of the High Court on this question, with the direction to the High Court to consider:

“Whether the assessee has an option in law to claim partial depreciation in respect of block of assets. In the case of Mahendra Mills (supra) the concept of block of assets was not there. In our view, substantial question of law did arise for determination before the High Court under Section 260A of the 1961 Act, particularly when Section 34(1) of the 1961 Act stood omitted w.e.f. 1.4.88. The High Court is also requested to consider whether the judgment of this Court in the case of Mahendra Mills (supra) would apply to the assessment years under consideration. In this connection the High Court is also requested to take into account the scope of Explanation 5 to Section 32(1) of the 1961 Act, made by the Finance Act, 2001.”

6. Accordingly question no. (1) is answered in favor of assessee and against the Department and question No.(2) is remitted to the High Court. Consequently the Department's civil appeal is partly allowed with no order as to cost.

*Cases Referred*

*1(2000) 243 ITR 0056*