

SUPREME COURT OF INDIA

Dy. Commr. of Income Tax, Ahmedabad

Vs.

N.K. Industries Ltd

C.A.No.2976 of 2008

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

22.04.2008

ORDER

1. Leave granted.

2. This Civil Appeal is filed by the Department against the judgment and Order dated 17th October, 2005 passed by the Gujarat High Court in Tax Appeals Nos.240/2003 and 261/2003.

3. We are concerned with the block period 1-4-1988 to 24-2-1999. The main contention advanced on behalf of the Department is that for allowance of deduction for depreciation, the asset must not only be owned by the assessee but it must also be used for the purposes of business or profession of the assessee. It is the case of the Department that the word "used" in Section 32 of the *Income Tax Act, 1961* refers to actual use of the asset. It is the case of the Department that having regard to the scheme of the Income Tax Act, 1961 and, particularly, after the introduction of the concept of "block of assets", actual use is the only requirement apart from ownership for allowance of depreciation under Section 32. It is the case of the Department that important question of law arose for determination before the High Court. That, the High Court has failed to examine the said question and that it had erred in dismissing the Tax Appeals only on the ground that no substantial question of law had arisen.

4. In the present case, the Tribunal has examined the statements of certain witnesses and after analysing the material on record, it has come to the conclusion on facts that there is nothing to show that the machinery, namely, expellers remained idle for the entire block period 1-4-1988 to 24-2-1999. Having examined the record ourselves, we agree with the view expressed by the Tribunal on the facts of the present case. Hence, it is not necessary for us to go into the larger question of law regarding the connotation of the word "used" appearing in Section 32 of the Income Tax Act, 1961.

5. For the afore-stated reasons, Civil Appeal filed by the Department stands dismissed. Question of law is kept open. No order as to costs.