

# CALCUTTA HIGH COURT

Ramesh Cotton Mills Ltd

Vs

Commissioner of Income Tax

(Deb, J.)

25.07.1978

## JUDGEMENT

**Deb, J.**

( 1. ) THE following question is involved in this reference under Section 256(1) of the I.T. Act, 1961 "Whether, on the facts and in the circumstances of the case, the Tribunal was right in rejecting the assessee's claim for adjustment of unabsorbed depreciation of the earlier years against the income of the assessment years 1969-70 and 1970-71 ?"

( 2. ) THE assessment years involved are 1969-70 and 1970-71, for which the relevant previous years ended on 31st December, 1968, and 31st December, 1969, respectively. THE assessee is a company. In earlier years, the assessee ran a cotton mill at Morvi in the State of Gujarat. THE said business was closed long long ago and in those earlier years there was some unabsorbed depreciation which remained unadjusted. During the relevant accounting years the assessee earned income from rent collected in respect of workers' chawls, sale of scrap, machinery, articles, etc., and also income under Section 41(2) of the Act in the assessment year 1969-70. The assessee also claimed certain losses from the business which were disallowed by the ITO with a finding that the assessee did not carry on any business in the accounting years. The assessee filed appeals. Before the AAC the assessee took an additional ground, namely, that the ITO should have set off the aforesaid unabsorbed depreciation against the profits for the years under reference. The AAC found that in the earlier assessment orders unabsorbed depreciation was not carried forward from year to year. The assessee admitted before the AAC that no business was done by the assessee for the last several years. In those circumstances, the AAC rejected the claim of the assessee.

( 3. ) THE Tribunal also dismissed the appeals filed by the assessee. Mr. Sanjay Bhattacharjee, learned counsel for the assessee, argues before us that under Section 32(2) read with Section 72 of the Act, the unabsorbed depreciation of the earlier years is liable to be set off against the income of the assessment years notwithstanding the fact that the aforesaid business of the

assessee was closed long before the start of the accounting years. In support of this contention he cites the case of CIT v. Rampur Timber and Turnery Co. Ltd. In the aforesaid case, the assessee was carrying on business of manufacture of bobbins. Electric charges paid by the assessee in the accounting years relevant to the assessment years 1951-52 to 1954-55 were allowed as revenue expenditure in those assessment years. The assessee, however, stopped that business with effect from the previous year relevant to the assessment year 1955-56. There was some unabsorbed depreciation and the income from house property was assessed to tax. During the previous year relevant to the assessment year 1962-63, the assessee received certain sums from the electricity department out of electricity charges already paid by the assessee in the aforesaid years and the ITO included the aforesaid sums as the business income of the assessee in view of Section 41(1) of the I.T. Act, 1961. The Tribunal held that the aforesaid unabsorbed depreciation should be set off against the said sums. The High Court held that the unabsorbed depreciation carried forward by the assessee from the assessment year 1954-55 was liable to be set off against the income of the assessee from the house property. ;