

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Malwa Sugar Mills Co Ltd

(Sudhindra Mohan Guha, J.)

01.06.1981

JUDGEMENT

Sudhindra Mohan Guha, J.

(1.) THIS reference, at the instance of the Commissioner of Income-tax, West Bengal-IV, Calcutta, under Section 256(1) of the I.T. Act, 1961, relates to the assessment year 1968-69, for which the relevant previous year ended on 30th June, 1967.

(2.) THE assessee is a manufacturer of sugar. As per its profit and loss account for the year under reference, there was a loss of Rs. 73,535. THE ITO, after disallowing the depreciation claimed and some other expenses. determined it at a profit of Rs. 3,15,064. Out of this, he deducted profit on sale of fixed assets of Rs. 3,207 resulting in a net profit of Rs. 3,11,857. THE depreciation claimed in this year, as per rules, worked out to Rs. 3,18,430. This was set off by the ITO against the profit of Rs. 3,11,857 as worked out above resulting in a net loss of Rs. 6,573 (Rs. 3,18,430 minus Rs. 3,11,857). Ultimately, he carried forward this amount as unearned depreciation to be set off against the income of future years. THE assessee was also carrying forward unabsorbed business loss of Rs. 75,720 from the assessment year 1965-66. The assessee filed an appeal to the AAC and among others claimed that the carried forward business loss of Rs. 75,728 first should be set off from the income of Rs. 3,11,857 and only the balance sum should be set off against the current depreciation of Rs. 3,18,430. This was rejected by the AAC. The assessee came in further appeal to the Tribunal. The learned advocate for the assessee relied on the decision of the Allahabad High Court in Mother India Refrigeration Industries (P.) Ltd. v. CIT , which followed the decision of the Supreme Court in Jaipuria China Clay Mines (P.) Ltd.

(3.) THE departmental representative, on the other hand, supported the order of the AAC and submitted that the current depreciation had to be allowed first before computation of income from business under Section 28 of the Act and the carried forward losses would have to wait till there were enough profits after absorbing the current depreciation. The Tribunal found that the

case of the assessee was on all fours with that of the Allahabad High Court in Mother India Refrigeration Industries (P.) Ltd. In that case also the ITO first adjusted the current depreciation and the business losses were set off only thereafter. Following the principle laid down in that case, the Tribunal directed in the case of the assessee that the unabsorbed business loss of Rs. 75,728 should first be set off against the income of Rs. 3,11,857 and only the balance of the income should be set off against the current depreciation of Rs. 3,18,430. The unabsorbed depreciation was directed to be carried forward to be set off against the income of future years. ;