

Disallowing excess depreciation doesnot justify re-assessment if assessee was subjected to MAT provisions

Summary – The Gujarat of High Court in a recent case of Garden Silk Mills Ltd., (the Assessee) held that where assessee challenged initiation of reassessment proceedings contending that it was a MAT company under section 115JA/115JB and even after discarding higher rate of depreciation claimed as alleged by revenue, it would have no tax liability higher than what was computed under section 115JA, since said contention had not been raised earlier, matter was to be remanded back to Assessing Officer for disposing of assessee's objection in accordance with law.

JUDGMENT

- The petitioner has challenged notice under section 148 of the Income-tax Act issued by the Assessing Officer on 10-3-2003 seeking to reopen the assessment of the petitioner company for the assessment year 1998-1999. The company filed its return of income for the year under consideration and claimed depreciation at the rate of 40% on the Written Down Value of the commercial vehicle owned by the company. Such return was accepted under section 143(1) of the Act without scrutiny. Such return was sought to be reopened for which impugned notice came to be issued. The Assessing Officer had recorded the reasons in which it was primarily pointed out that the claim of depreciation at the rate of 40% on the Written Down Value of the cost of vehicle of was excessive. According to the Assessing Officer such depreciation was available at the reduced rate of 20% and further that since the petitioner company had acquired such vehicles only in second half of the year, it was entitled to 50% of such depreciation in any case.
- The petitioner challenged the notice without raising any objection with the Assessing Officer though by the time impugned notice came to be issued, the Supreme Court had already given its decision in case of *GKN Driveshafts (India) Ltd. v. ITO* [\[2003\] 259 ITR 19/\[2002\] 125 Taxman 963](#).
- Counsel for the petitioner submitted that the petitioner company was a MAT company under sections 115JA/115JB of the Act. Even after discarding higher rate of depreciation claimed and accepting the original return, the company would have no tax liability higher than what is computed under section 115JA of the Act. He therefore, submitted that it cannot be stated that income chargeable to tax had escaped assessment.
- The court directed that in view of the decision of *GKN Driveshafts (India) Ltd. (supra)*, the petitioners may raise all the objections before the Assessing Officer who shall dispose of such objections in accordance with law before proceeding further with the assessment.