

Unabsorbed depreciation of earlier years to be allowed as deduction while computing book profits: HC

Summary – The High Court of Gujarat in a recent case of Surat Textile Mills Ltd., (the Assessee) held that While computing book profits, assessee's claim for deduction of accumulated unabsorbed depreciation of earlier years was to be allowed

Facts

- The assessee-company was engaged in the business of manufacturing of polyester chips and polyester yarn and property development. The assessee claimed deduction of accumulated unabsorbed depreciation of earlier years while computing the book profit under section 115JB.
- The Assessing Officer rejected assessee's claim.
- The Tribunal, following the order passed in assessee's own case relating to earlier assessment years, allowed assessee's claim.
- On revenue's appeal:

Held

- At the outset, it is required to be noted that in assessment year 2012-13, the Assessing Officer disallowed deduction of alleged accumulated unabsorbed depreciation of earlier years while computing the book profit for the purpose of section 115JB. The same came to be confirmed by the Commissioner (Appeals), which has been set-aside by the Tribunal on the ground that in the earlier years *i.e.*, assessment years 2009-10 and 2011-12, similar deduction was allowed and the book profit was accordingly computed for the purpose of section 115JB.
- From the material on record, it appears that for assessment year 2009-10, the Assessing Officer had allowed deduction of alleged accumulated unabsorbed depreciation of earlier years and computed the book profit for the purpose of section 115JB accordingly.
- It is required to be noted that assessment for assessment year 2009-10, there was a scrutiny assessment under section 143(3). A similar treatment was given by the Assessing Officer for assessment year 2011-12. It is not in dispute that the aforesaid assessments for assessment years 2009-10 and 2011-12 have attained finality. During the relevant assessment year, the Assessing Officer has taken a contrary view which has been confirmed by the Commissioner (Appeals) by observing that each assessment year is a distinct year and therefore, the principle of *res judicata* shall not be applicable. However, it is required to be noted that the question in the earlier years was also with respect to the similar/same deduction of alleged accumulated unabsorbed depreciation of earlier years, which came to be allowed by the Assessing Officer while computing the book profit for the purpose of section 115JB.

- It was not the case on behalf of the Assessing Officer and even before this Court, it is not the case of the revenue, that there are changes in circumstances with respect to the year under consideration. In absence of any change in the circumstances, it was not open for the Assessing Officer to take a different view.
- In view of the above set of facts and circumstances, it cannot be said that the Tribunal has committed any error in quashing and setting aside the action of Assessing Officer in disallowing the deduction of alleged accumulated unabsorbed depreciation of earlier years, while computing the book profit for the purpose of section 115JB on the ground that in the earlier years, *i.e.*, assessment year 2009-10 such deduction was allowed for the purpose of computing the book profit under section 115JB. There is no reason to interfere with the impugned judgment and order passed by the Tribunal.
- In view of the above, the revenue's appeal fails and the same deserves to be dismissed.