

Dep. couldn't be denied if business activities were temporary shut down due to stay order of Court

Summary – The Ahmedabad ITAT in a recent case of Babul Products (P.) Ltd., (the Assessee) held that where assessee had not closed its business permanently, rather on account of stay from court manufacturing activities were stopped and also assets were ready for use for purpose of business and after litigation was over, business had commenced, depreciation could not be denied on account of closure of business

Section [32](#) of the Income-tax Act, 1961 - Depreciation - Allowance/ Rate of (User of assets) - Assessment year 2009-10 - Assessee company claimed depreciation which was disallowed by Assessing Officer on ground that business of assessee was closed down and there was no business income during year - It was noted that assessee had not closed its business permanently, rather on account of stay from Court manufacturing activities were stopped - Assets were ready for use for purpose of business and there was constructive user of asset - In subsequent year after litigation was over, business had commenced - Whether on facts, depreciation was to be granted to assessee - Held, yes [Para 5] [In favour of assessee]

Facts

- The assessee-company had filed its return of income and claimed depreciation of certain amount.
- This claim of the assessee was disallowed by the Assessing Officer on the ground that the business of the assessee was closed down and there was no business income during the year. The Assessing Officer further observed that these assets were not used for the purpose of business, therefore, the assessee was not entitled for depreciation.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second appeal:

Held

- A perusal of section 32 would indicate that for grant of depreciation this section contemplates two conditions. The assessee should be owner of the asset, and the asset has been used for the purpose of business. According to the Assessing Officer the expression 'used' employed in this section would construed as actual user and in case in any year the asset is not used then the assessee will not be entitled for the depreciation. However, in a large number of authoritative pronouncements it has been observed that expression 'used' employed in section would embrace deemed user of the asset. The assessee has not closed its business permanently, rather on account of stay operation from the Court manufacturing activities were stopped. Assets were ready for use for the purpose of the business and there was constructive user of the asset. Therefore, depreciation ought to be granted to the assessee.