

A JT. COMMISSIONER OF INCOME TAX, VALSAD, GUJARAT
v.
M/S.UNITED PHOSPHOROUS LTD.
(Civil Appeal No. 1183 of 2008)

FEBRUARY 8, 2008

B [S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Income Tax Act, 1961:

C s.36(1)(iii) – *Interest paid in respect of borrowings on capital assets not put to use in the concerned financial year – Held: Can be permitted as allowable deduction under s.36(1)(iii).*

D s.34(1) and Explan. 5 to s.32(1) – *Option to claim partial depreciation in respect of block of assets – If available – High Court relied upon Mahendra Mills case, in which it was held that assessee has option to claim depreciation – Held: In Mahendra Mills case, the concept of block of assets was not there – Also, s.34(1) has been omitted w.e.f. 1.4.1988 – Hence, matter remitted to High Court for re-consideration.*

E The two questions which arose for consideration in the present appeal are 1) Whether interest paid in respect of borrowings on capital assets not put to use in the concerned financial year can be permitted as allowable deduction under s.36(1)(iii) of the Income-tax Act, 1961 and
F 2) Whether respondent-assessee had an option in law to claim partial depreciation in respect of any block of assets.

G Partly allowing the appeal, by answering the first question in favour of the assessee and remitting the second question to the High Court, the Court

HELD: 1. Question No.1 is squarely covered by decision of this Court in favour of the assessee and against the Department in the *Core Health Care Ltd.* case

[Para 4] [660-D]

Dy. Commr. of Income Tax, Ahmedabad v. M/s. Core Health Care Ltd. (2008) 2 SCALE 327 – relied on.

2. Regarding Question No.2, the High Court has relied upon the judgment of this Court in the case of *Mahendra Mills* in which it has been held that the assessee has an option to claim depreciation. However, s.34(1) of the Income-tax Act, 1961 has been omitted w.e.f. 1.4.88. Therefore, the matter is being remanded to the High Court, with the direction to consider: whether the assessee has an option in law to claim partial depreciation in respect of block of assets. In the case of *Mahendra Mills* the concept of block of assets was not there. Substantial question of law did arise for determination before the High Court under s.260A of the 1961 Act, particularly when s.34(1) of the 1961 Act stood omitted w.e.f. 1.4.88. The High Court is also requested to consider whether the judgment of this Court in the case of *Mahendra Mills* would apply to the assessment years under consideration. In this connection the High Court is also requested to take into account the scope of Explanation 5 to s. 32(1) of the 1961 Act, made by the Finance Act, 2001. [Para 5] [660-E-H, 661-A, B]

Commissioner of Income-tax v. Mahendra Mills and Anr. (2000) 243 ITR 56 – referred to.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1183 of 2008

From the Judgment and Order dated 08.01.2002 of the High Court of Judicature of Gujarat at Ahmedabad in Tax Appeal No. 2 of 2002.

P. Vishwanatha Shetty, T. Srinivasa Murthy, Gaurav Agrawal and B.V. Balaram Das for the Appellant.

Pardiwala, Jay Savla and Reena Bagga for the Respondent.

A The Judgment of the Court was delivered by
KAPADIA, J. 1. Delay condoned.

2. Leave granted.

B 3. In this civil appeal filed by the Department two questions of law arise for determination which questions are as follow:

C (1) Whether interest paid in respect of borrowings on capital assets not put to use in the concerned financial year can be permitted as allowable deduction under Section 36(1)(iii) of the Income-tax Act, 1961?

(2) Whether respondent-assessee had an option in law to claim partial depreciation in respect of any block of assets.

D 4. Our answer to the above-mentioned question No.(1) is squarely covered by our decision in favour of the assessee and against the Department in the case of **Dy. Commr. of Income Tax, Ahmedabad v. M/s. Core Health Care Ltd.** in Civil Appeal Nos.3952-55 of 2002.

E 5. Regarding the question No.(2), quoted above, it may be noted that the High Court has relied upon the judgment of this Court in **Commissioner of Income-tax v. Mahendra Mills & Anr. – (2000) 243 ITR 56** in which it has been held that the assessee has an option to claim depreciation. However, Section 34(1) of the Income-tax Act, 1961 (for short, "1961 Act") has been omitted w.e.f. 1.4.88. Therefore, we are remanding the matter to the High Court after setting aside the impugned order of the High Court on this question, with the direction to the High Court to consider : whether the assessee has an option in law to claim partial depreciation *in respect of block of assets*. in the case of **Mahendra Mills (supra)** the concept of block of assets was not there. In our view, substantial question of law did arise for determination before the High Court under Section 260A of the 1961 Act, particularly when Section 34(1) of the 1961 Act

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stood omitted w.e.f. 1.4.88. The High Court is also requested to A
consider whether the judgment of this Court in the case of
Mahendra Mills (supra) would apply to the assessment years
under consideration. In this connection the High Court is also
requested to take into account the scope of Explanation 5 to
Section 32(1) of the 1961 Act, made by the Finance Act, 2001. B

6. Accordingly question No.(1) is answered in favour of
assessee and against the Department and question No.(2) is
remitted to the High Court. Consequently the Department's civil
appeal is partly allowed with no order as to cost.

B.B.B.

Appeal partly allowed. C