

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).6024/2007

(From the judgement and order dated 17/10/2005 in TA No.240/2003 & TA No.261/2003 of the HIGH COURT OF GUJARAT AT AHMEDABAD)

DY.COMMR.OF INCOME TAX,AHMEDABAD

Petitioner(s)

VERSUS

N.K.INDUSTRIES LTD.

Respondent(s)

Date: 22/04/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Mohan Parasaran, ASG
Mr. Vikram Gulati, Adv.
Mr. Naresh Kaushik, Adv.
Mr. Satish Dayanand, Adv.
Mr. Manish Kaushik, Adv.
Ms. Aditi Gupta, Adv.
Mrs. Amita K. Chaudhary, Adv.
Mr. B.V. Balaram Das,Adv.

For Respondent(s) Mr. M.S. Syali, Sr.Adv.
Mr. R.S. Paliwal, Adv.
Ms. Mahua C. Kalra, Adv.
Mr. Pranab Kumar Mullick,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

Civil Appeal is dismissed in terms of the signed order. No
order as to costs.

(N. ANNAPURNA)
COURT MASTER

(MADHU SAXENA)
COURT MASTER

(Signed order is placed on file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2976 OF 2008
(Arising out of S.L.P.(C) No.6024/2007)

Dy. Commr. of Income Tax, Ahmedabad

...Appellant(s)

Versus

ORDER

Leave granted.

This Civil Appeal is filed by the Department against the judgment and Order dated 17th October, 2005 passed by the Gujarat High Court in Tax Appeals Nos.240/2003 and 261/2003.

We are concerned with the block period 1-4-1988 to 24-2-1999. The main contention advanced on behalf of the Department is that for allowance of deduction for depreciation, the asset must not only be owned by the assessee but it must also be used for the purposes of business or profession of the assessee. It is the case of the Department that the word "used" in Section 32 of the Income Tax Act, 1961 refers to actual use of the asset. It is the case of the Department that having regard to the scheme of the Income Tax Act, 1961 and, particularly, after the introduction of the concept of "block of assets", actual use is the only requirement apart from ownership for allowance of depreciation under Section 32. It is the case

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of the Department that important question of law arose for determination before the High Court. That, the High Court has failed to examine the said question and that it had erred in dismissing the Tax Appeals only on the ground that no substantial question of law had arisen.

In the present case, the Tribunal has examined the statements of certain witnesses and after analysing the material on record, it has come to the conclusion on facts that there is nothing to show that the machinery, namely, expellers remained idle for the entire block period 1-4-1988 to 24-2-1999. Having examined the record ourselves, we agree with the view expressed by the Tribunal on the facts of the present case. Hence, it is not necessary for us to go into the larger question of law regarding the connotation of the word "used" appearing in Section 32 of the Income Tax Act, 1961.

For the afore-stated reasons, Civil Appeal filed by the

Department stands dismissed. Question of law is kept open.

No order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
April 22, 2008.
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