



RESEARCH ARTICLE

USER TEST AND ALLOWANCE DEPRECIATION

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ABSTRACT

Depreciation is necessary to be allowed to compute income over a period of time therefore, there always was a legislative intention to use both words 'use and used' when the Income-Tax Act was passed in the year 1961. The paper would explore the evolution of 'user test' and allowance of depreciation under the Section 32 of the Income Tax Act, 1961. We have analysed in the paper the various areas dealing with user test and tried to understand the legislative intention when the Act was passed in dealing with the connotations "used" and "ready to use". Finally the paper would look into the judgments of High Courts and the Apex Court while dealing with lacuna of allowance of depreciation and the user test. We have adopted the descriptive research attempt to describe systematically a situation, related to the problems in the disparity in use of the word "used" under the section 32 of the Income Tax Act, 1961. It is a secondary form of research involving various books, articles, reports, Acts, cases and internet sources. Also we have deduced conclusions on allowance of depreciation and the user test. Therefore the paper adopts the doctrinal method as research methodology and gives a normative account on the subject. Unbiased and objective analysis on the topic wherein each step is taken in an unbiased manner and each conclusion is drawn to the best of our ability and without introducing our own vested interest.

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INTRODUCTION

Depreciation, as a general principle represents the diminution in the value of a capital asset when applied to the purpose of making profit or gain.¹ The term depreciation means wear and tear of the assets used for the purposes of earning revenue on the user of the assets. Therefore, to enable a business to meet the cost of such replacement, the wear and tear is permitted to be calculated at a notional rate of percentage of the written down value of the assets.² It is for this reason that an estimated amount is required to be provided for such depreciation in order to arrive at the correct profit or loss for the period. Also the underlying principle of tax law is to tax profits without making allowance for capital expenditure unless provided for depreciation is a main deduction in the capital field³. The law relating to depreciation allowance has been substantially altered by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986. Under the old law, a large number of different percentages of depreciation allowance were prescribed for different types of assets. The allowance for each type of asset had to be computed separately, and then the total of the several items had to be deducted as one lump sum.

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The present law which came into force from April 1, 1988 has simplified the position regarding depreciation allowance. There are two broad categories of assets for depreciation: (i) Tangible Assets (ii) Intangible Assets. The tangible assets are divided into three classes—buildings, machinery and plant and furniture. In each class there are a few block of assets and the same percentage of depreciation is prescribed for each block of assets. The allowance has to be made in computing the profits of the business and does not depend on the genuineness of the books of accounts⁴. Controversies centred on the question of user of plant, building or machinery in business and from when the rate of allowance of depreciation is admissible⁵. The "user" test has been applied by the courts to mean that even passive user will suffice. There is a controversy over. The Supreme Court had held that the asset must have been used for the purposes of the business during the accounting year. We have looked into various aspects of depreciation mainly Controversy due to words 'use and used' in old law and word 'used' in new law where a clarification regarding this by the lawmakers is desirable. There is also an important aspect to the provision is that a company may keep its accounts in foreign currency but depreciation will have to be calculated in Indian currency at the point of time of acquisition of the asset⁶. Some other main changes brought under the new law include the rates of

¹ CIT vs. Anand Theatres, 244 ITR 192

² CIT vs. Daudayal Hotels Pvt. Ltd, 282 ITR 132

³ CIT vs. Suman Tea & Plywood Industries P Ltd, 204 ITR 719 (Cal)

⁴ CIT vs. E.I.H. Ltd, 54 DTR 249

⁵ CIT vs. Metalman Auto P. Ltd, 52 DTR 385

⁶ CESC Ltd. vs. CIT, [1998] 233 ITR 50 (SC)

depreciation allowance are on the whole substantially raised. Also extra depreciation allowance on machinery and plant for double and triple shift working is withdrawn. Initial depreciation allowance in respect of certain buildings, machinery and plant under Section 32 (1) (i) (ii) is withdrawn by deletion of clauses (i) (ii) of section 32(1). Furthermore in case of ocean going ships, the straight line method no longer exists and the depreciation is to be calculated only on the written down value. We have dealt with all these research areas subsequently in our paper and approached the subject by the doctrinal method of research with the help of secondary sources.

The concept of block of asset

Section 2(11) defines the term "block of assets" to mean a group of assets falling within a class of assets comprising –

- Tangible assets being buildings, machinery, plant or furniture⁷;
- Intangible assets are the intellectual property rights like patents, copyrights, trademarks, , franchises licences, or commercial rights of a parallel nature, in the context of which the equal percentage of depreciation is prescribed or any other business.⁸

Accordingly, two assets can form part of the same block, if they are of same class and the same rate of depreciation is provided with respect to the two assets NNMS Section 2(11) defines the term "block of assets" to mean a group of assets⁹. Group in general parlance means more than one. If this view is adopted, there would be difficulty in claiming depreciation in cases where there is only one asset in the block¹⁰. Special Bench in the case of *Chhabria Trust v. ACIT*¹¹ has held that even a single asset would be entitled to depreciation. In the leading case of case of *Pachwell Printers v. Assistant*¹² the court held, that after entering the block the individual assets lose their identity and only the block of assets has to be considered for the purpose of allowing of depreciation¹³.

Thus it is important to be taken notice of if a specific block of assets is possessed by the assessee and used for business purposes only and depreciation is allowed in such cases¹⁴. Therefore, the test of user has to be applied upon the block as a whole instead of upon an individual asset¹⁵. It is important take into notice that the words "put to use" are also contained in the proviso of section 32(1) clause (ii) which proves that the necessity requirement of user still continues even after we introduce the concept of block of assets.¹⁶ The provisions of the second proviso provide any motor car manufactured outside India will not be entitled to depreciation unless it is used in a business of running it on hire for tourists or outside India in a business or Profession in an another country¹⁷. These provisions also show that actual user must there.

The concept of WDV

Depreciation under Section 32 of the Income Tax Act which talks about depreciation, it is on the written down value (WDV) of the block of assets. WDV is defined under section 43(6)¹⁸ which defines it as, in the case of block of assets to understand that the WDV of that block of assets in the immediate year preceding to the previous year as reduced by the depreciation which is actually permissible in respect of that block of assets in relation to the preceding previous year and also it is additionally adjusted by:

- Increased by the actual cost of any asset falling within that block, acquired during the previous year
- Reduced by the money which is payable in the context of any asset that is falling within that block and it is sold or casted off or demolished or damaged during that previous year along with the sum of the scrap value¹⁹.

Condition of allowance

The general scheme of the act is that the income is to be charged regardless of the exhaustion and diminution in the value, of capital. To this hard principle of taxation and exception is afforded by section 32 (1) which grants an allowance in respect of depreciation in the value of certain capital assets.²⁰ Normal depreciation is considered a legitimate deduction in determining true profits.²¹ Five conditions which are necessary to entitle an assessee to the benefit of section 32 (1) are as follows:

- Depreciation allowance is confined to buildings, machinery, plants and furniture.
- Depreciation allowance is in respect of only those buildings, machinery, plants and furniture which are used in the accounting year.
- Depreciation allowance is only in respect of the property that is owned by the assessee.
- Prescribed particulars under rule 5AA which has to be furnished by the assessee for claiming depreciation allowance.
- Depreciation allowances should not in any case exceed the actual cost to the assessee of the buildings, machinery, plants and furniture.

Depreciation allowance is confined to buildings, machinery, plants and furniture

The assets in respect of which depreciation allowance can be claimed must be buildings, machinery, plants and furniture. Depreciation in the value of any other capital asset cannot be deducted from business profits. The meanings of the words 'building' and 'plant' have to be gathered in context of the scheme of the section.²² The words 'machinery' and 'plant' bear the same meaning in various section of the act.²³ The determination in any given case of what is or is not 'machinery' must depend upon the facts and circumstances of the case.²⁴ Depreciation is not allowable on the cost of land on

⁷ CIT vs. Mentha & Allied Products, 47 DTR 284

⁸ Bharatbhai J Vyas vs. ITO, 97 ITD 248 (Ahd)

⁹ Venkadam vs. Laxminarayan, 43 ITR 526

¹⁰ In Re Finolex Cables Ltd, 29 SOT 595

¹¹ 87 ITD 181 (Mum)

¹² (1996) 59 ITD 340 (Jab-Trib)

¹³ CIT vs. Manappuram Central Finance & Leasing Ltd, (2010) 46 DTR 323 (Ker)

¹⁴ CIT vs. Yamaha Motor India Pvt. Ltd, (2010) 328 ITR 297 (Delhi)

¹⁵ CIT vs. Paliwal Glass Works, 326 ITR 407

¹⁶ CIT vs. Xerox India Ltd. (2010) 127 TTJ 84 (Del)

¹⁷ CIT vs. Sri Chamundeshwari Sugar Ltd, 223 CTR 423

¹⁸ The Income Tax Act, 1961

¹⁹ CIT vs. Allied Publishers P.Ltd, 68 ITR 546 (Bom)

²⁰ Burnley Steamship vs. Aikin, 3 TC 275

²¹ CIT vs. Badiani, 105 ITR 642

²² CIT vs. Anand Theatres, 244 ITR 192 (SC)

²³ CIT vs. Mir Mohammad, 53 ITR 165 (SC)

²⁴ Calcutta Corporation vs. Cossipore, AIR 1922 PC 27

which the building is erected²⁵, or on the expenses incurred for locating the plant site²⁶, but is allowable on land development cost.²⁷

Meaning of plant

Plant in its familiar definition comprises whatever tool is used by a businessman for carrying on his occupation though not his stock in trade which he purchases or creates for sale, but all properties and materials that is either fixed or movable and he keeps it for employment in his business with a degree of stability and durability.²⁸ In the context of section 32(1), it means any equipment or article necessary for the purpose of business.²⁹ The Supreme Court held in the landmark case of *Scientific Engineering House Ltd v. CIT*³⁰ that drawings and patterns which constitute know-how and are fundamental to assessee's manufacturing business are plant.

Functional test for determining plant

In deciding whether a building or structure is 'plant', a functional test is to be applied that whether it is an apparatus *with which* the business is carried on or is it the setting or part of the premises *in which* the business is carried on. If the former is satisfied then it is a plant and if the latter is true then it is not a plant.³¹ The popular sense of the term must be taken into account, it must be used in the business of the assessee, it must have some durability and it must be a tool of the trade.³²

On the question that whether a building can be treated as a plant or not, the Supreme Court in the case of *CIT v Karnataka Power Corporation*³³ held that it is a question of fact and where it is found as a fact that a building has been so planned and constructed as to serve assessee's special technical requirements, it will qualify to be treated as a plant.

Depreciation allowance which are used in the accounting year

The allowance is in respect of only those buildings, machinery, plants and furniture which are used for the purposes of the assessee's business, the profits of which are being charged.³⁴ The assessee must establish the use of asset in its business.³⁵ If the plant or machinery is not capable of being put to use in the assessee's business that year,³⁶ or is not actually used,³⁷ or if no such business is carried out in that year,³⁸ no depreciation can be claimed on it. The term 'use' has a wide connotation.³⁹ The assets must be so used during the whole or at least some part of the accounting year.⁴⁰ The word 'used' embraces passive as well as active user⁴¹ and depreciation may be allowed in certain cases even though the machinery has not

been worked during the accounting year.⁴² Depreciation allowance will be granted for the accounting year to the owner who has let on hire his building, machinery, plants and furniture, if the letting amounts to or is in course of business and the assets are used for the purposes of the business.⁴³ However the term 'Hire' and 'Lease' have different meanings. The former connotes that the person licenses the use of the property and the latter implies a transfer of an interest in the property. But this stand is incorrect as a lease is also in nature of a licence given to the hirer to use the machinery for a temporary period as held by the Supreme Court in *Damodar Valley Corporation v State of Bihar*⁴⁴. This section only requires that the asset be used in the business during that assessment year. Therefore where an assessee leases an article to a lessee, whether the lessee uses that article or not is unimportant for once the article has been leased, it has been used in the assessee's business of leasing.⁴⁵

Exception to the rule of accounting year

The Act that stands amended on the beginning of any financial year is applied to the assessment or valuation of that year. Even if the assessment is essentially done after the amendment came into force, such amendment to the Act or Rule which is coming into force after 1st April of a financial year will not apply to the assessment or valuation of that year, this has been the established view of various High Courts.⁴⁶ But we can also interpret this aspect in a way that till the amendment to the depreciation rules are concerned; the important date for the rule to come into force should not be the date when the amendment was made. A new interpretation has now come on this issue from the Allahabad High Court in the Motor and General Sales Ltd vs. CIT case. In this case the Allahabad High Court gave a new interpretation that the law on the very first day of the assessment year should be applied. Also the High Court rejected the Revenue's argument which stated that the higher rate of depreciation becomes valid from a period which ends after the accounting period. It is also further refers to the charging of Section 4 of the Act that holds that in potency in the assessment year in question related to this at the rate of tax applicable in this case the income of the previous year is brought to tax. Therefore the law which is in force on the very first day of the assessment year should be applied. No depreciation allowance is allowable if the lease is found to be a sham.⁴⁷ Sale and lease transactions are becoming increasingly popular in the light of the fact that the lessor can claim depreciation and the lessee can claim deductions on the lease rentals. The Karnataka High Court in the case of *Avasara Automation v CIT*⁴⁸ held that this device was a sham and being used to avoid tax liability and declined to grant depreciation to the lessor. But this decision must only be confined to the facts of its case, since in this case the genuineness of the transaction was in question. On the other hand the High Courts of Orissa⁴⁹, Delhi⁵⁰, Bombay⁵¹ has held that if the transaction of sale and lease is genuine, then the depreciation cannot be denied. What is required for a valid sale and lease back transaction is that the

²⁵ CIT vs. Alps, 65 ITR 377 (SC)

²⁶ CIT vs. Periyar, 181 ITR 396

²⁷ CIT vs. Herdillia, 216 ITR 742

²⁸ CIT vs. Sundaram, 71 ITR 587; Hinton vs. Maden, 39 ITR 357

²⁹ CIT vs. Saurashtra Bottling, 232 ITR 270

³⁰ 157 ITR 86

³¹ R C Chemicals vs. CIT, 134 ITR 330

³² CIT vs. Hotel Luciya, 231 ITR 492

³³ 247 ITR 268

³⁴ Gopalji vs. CIT, 5 ITC 257

³⁵ K.M. Sugar Mills Ltd vs. CIT, 262 ITR 70

³⁶ CIT vs. Air Travel Enterprises India Ltd, 265 ITR 537

³⁷ Dinesh Kumar Agarwal vs. CIT, 267 ITR 768

³⁸ CIT vs. Union Carbide, 254 ITR 488

³⁹ CIT vs. Ashima Syntex, 251 ITR 133

⁴⁰ Liquidators of Pursa vs. CIT, 25 ITR 265

⁴¹ State of Madras vs. Glenburn, 44 ITR 643

⁴² CIT vs. Visvanath, 5 ITR 621

⁴³ CIT vs. Bosotto, 8 ITR 41

⁴⁴ AIR 1961 SC 440

⁴⁵ CIT vs. Kotak Mahindra Finance Ltd, 317 ITR 236

⁴⁶ CIT vs. Doom Dooma India Ltd, 310 ITR 392 (SC)

⁴⁷ CIT vs. Ashok Leyland, 297 ITR 107

⁴⁸ 266 ITR 178

⁴⁹ Industrial Development Corporation of Orissa vs. CIT, 268 ITR 130

⁵⁰ Span Holdings vs. CIT, 294 ITR 83

⁵¹ CIT vs. Zuari Finance Ltd, 271 ITR 538

legal incidents of sale and the lease must be present in the transaction. The buyer must become the owner of the machinery which he leases back to the lessee. As long as the machinery to be bought and sold back is identified and in existence, empty formalities such as delivery of the machinery are irrelevant. It is strange that the assessee gets the benefit of a higher rate of depreciation even though such rate became applicable after the close of the accounting year.

The cases wherein the asset should have been used in the previous year where the depreciation can be claimable if:

- The asset, if it is used for less than 180 days then in such a case 50% of the depreciation is claimable;
- But in the case if the use is for 180 days or more then full depreciation claim can be allowed.

Depreciation allowance is only for property owned by the assessee

It is only in respect of the property owned by the assessee that depreciation allowance can be granted. No depreciation allowance is granted in respect of any capital expenditure which the assessee may be obliged to incur on the property of others⁵² or if he is not the owner of the property but has only the use or demise of them and has hired them under a hire-purchase agreement.⁵³ However under certain types of hire purchase agreements the assessee may be treated as the owner. A lessee can claim depreciation allowance on a property if the lessee exercises ownership in his own right and not on behalf of the lessor as held in *CIT v Shree Rajasthan Syntex Ltd*⁵⁴.

In *Mysore Minerals v CIT*⁵⁵ the Supreme Court observed that:

- (a) The terms 'own', 'ownership' and 'owned' are generic and relative terms; that they have a wide and also a narrow connotation, and the meaning would depend on the context in which the terms are used.
- (b) The term 'owned' as occurring in section 32(1) must be assigned a wider meaning and anyone in possession of property in his own title exercising such dominions over the property as would enable others being excluded there from and having the right to use and occupy the property or to enjoy its usufruct in his own right would be the owner of the building though a formal deed or title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc.

Having regard to the ground realities and the object of the Income Tax Act, a person who has the right to receive income from the property will be treated as the "owner".⁵⁶ If the property is held as a partnership property, the firm would be entitled to depreciation, although on dissolution, the property is to go to some partners only, or all partners except one are merely working partners and have no right or claim to the property.⁵⁷ An assessee can also claim depreciation allowance on the part performance of the contract if he derives some ownership by it and derives benefits as a result of such

ownership.⁵⁸ The conditions for claiming depreciation allowance on the part performance of the contract are:

- The part performance has to be in lieu of a consideration. It cannot be a gift.
- The part performance has to be in writing. If it is an oral agreement, you cannot claim depreciation allowance on it.
- It should be signed by the transferor himself.
- Claiming of depreciation allowance should be in relation to an immovable property.

User test

The basic condition u/s 32 is that asset should be used for the purpose of business or profession i.e. active use versus passive use which is ready to use. Section 32 uses the word "used". The allowance is dependent on fulfillment of two critical conditions. In the first place the asset should have been owned by an individual who claims for the allowance. Also it's not necessary that the owner should have the right to dispose off the property. Just authority and control over property as a matter of right will be adequate. The second place it is important that the asset should have been used in the business wherein the allowance relates. It is also while applying the user test that the difficulties arise in the interpretation of the Section 32.⁵⁹ The common opinion is that 'use' does not mean 'actual use' but 'kept ready for use'. The apparatus which is in question should have been engaged by the assessee for no other business than that particular business. It should also be preserved by him for genuine use in the commercial apparatus whenever the need arises. Although passive use also suffices. In a leading case the Madras High Court deliberated that the depreciation is allowable even in the case when standby spare-parts are though not taken in for use during the year.⁶⁰ The contradictory view also holds that the 'user' does not denote merely kept ready for use but actual use. But the Karnataka High Court stated that in the Act the legislature has used the word 'used' so full meaning should be given to it. Although the High Courts have taken conflicting views on the topic of user but they depend a lot on the verdicts by the Supreme Court. The user does not amount to simple preparation for use. There should be actual, and real user in the profit making sense and the user necessarily are associated with the business and that it can be said for that there is an immediate link between the user in this context and the real business of the assessee. In this situation, the matter was taken to the Supreme Court by the I-T department in the *N. K. Industries Ltd*⁶¹ case. The court was concerned with the block period April 1, 1988 to February 24, 1999. The IT department contended that for the allowance for depreciation, the asset mustn't be possessed by the assessee but it should also be used for the business or trade of the assessee. The department also further contended that the word "used" which is given in Section 32 of the IT Act denotes the actual use of the asset. 'Use' does not mean 'actual use' but means 'kept ready for use'. But the allowance for ordinary depreciation does not rest on the real working of the machinery rather it is sufficient if the machinery which is in question is hired by the assessee for the business purposes only and for no other use and it is kept by him prepared for actual use in the

⁵² Poona Electricals vs. CIT, 14 ITR 618

⁵³ Tara Singh vs. CIT, 47 ITR 756

⁵⁴ MANU/IO/0046/2011

⁵⁵ 239 ITR 775 (SC)

⁵⁶ CIT vs. Poddar Cement Pvt Ltd, 226 ITR 625

⁵⁷ CIT vs. Rajeshwari, 86 ITR 753

⁵⁸ Kanga & Palkhivala's, The Law and Practice of Income Tax, Arvind P. Datar, Vol. 1, 10th Edition (2014), Lexis Nexis

⁵⁹ R.G. Keshwani vs. ACIT, (2009) 116 ITD 133

⁶⁰ 292 ITR 362

⁶¹ 305 ITR 274

commercial machinery the moment a use arises⁶². Thus regarding this scheme of the I-T Act, and mainly after introducing the notion of the “block of assets”, the actual use is only a condition apart from possession under Section 32 for allowance of depreciation. Further the IT department contended that the Gujarat High Court was not reasonable in discarding to take up this issue stating that it does not give any rise to any significant question of law while determining the case against the Revenue. The expression ‘used’ for the purposes of section 32 should have a wider meaning so as to include not only actual user but also passive user.⁶³

Depreciation on intangible assets

This was brought in by the Finance Act (No 2) in the year 1998. Under this section 32 (1) (ii) of the IT Act, depreciation can be allowed even on certain definite intangible assets, like:

- Know-how
- Patents
- Copyrights
- Trademarks
- Licenses
- Franchises
- Any other business or commercial rights of similar nature

ADDITIONAL DEPRECIATION

Section 32(1) (ii) (a) of the IT Act has been introduced by the Legislature by which additional depreciation at a percentage of 15% of the value of the new plants and machineries which are acquired and installed on or after 1st April 2002. But this is above the general depreciation. It is important to note that both on normal and additional depreciation the assets are acquired after October 1 and are used by the business for a period which is less than One hundred and eighty days and depreciation is available only at a rate of 50% according to second proviso to section 32(1) (b) of the IT Act.

Basic Conditions for eligibility:

- New mechanical undertaking should not be shaped by method for part up or recreation of the business effectively in presence or by exchange or hardware or plant at one time utilized for any reason.
- Such machinery has not been utilized before establishment either inside or outside India by any other individual. This restriction is different from sections 80IB (2), 10A, 10B etc. where machinery used outside India is also eligible.
- It is not installed in office premises or private settlement, including visitor house. It might not be office apparatus or street transport vehicle.

Conclusion and analysis

The allowance has to be made in computing the profits of the business and does not depend on the genuineness of the books of accounts. *Controversies were centered on the question of the expression ‘used for the purposes of the business’ means*

used for the purposes of the business during the accounting year and that allowance and that allowance can be claimed if the machinery and plant had not at all been used at any time during the accounting year. The “user” test is also construed by the courts to understand that even passive user suffices. There has been lots of controversy regarding this matter. In a leading case Hon’ble Supreme Court has held that during the accounting year the asset must have been used for business purposes. The word ‘used’ denotes actually used and not merely ready for use. The expression ‘used’ means actually used for the purposes of the business.⁶⁴ There has to be actual and real user in the commercial sense; and mere preparation for use does not meet the requirements or aggregate to be a user. Further also the user must be directly linked with the business and it can be said that there is an immediate connection between the user and the actual business of the assessee.⁶⁵

‘Use’ must be during relevant accounting year. The expression ‘used for the purposes of the business’ means used for the purposes of the business during the accounting year. The machinery and plant must be such as were used, in whatever sense that word was taken, at least for a part of the accounting year. If the machinery and plant had not at all been used at any time during the accounting year, no allowance could be claimed⁶⁶. In section 32(1) there is no requirement that assets should be used for whole of the previous year in question.⁶⁷ In several other judgments passive use or ready for use condition of asset was considered as used for business and depreciation was allowed. For the reason behind claiming of depreciation a ‘kept ready’ concept is not presented, to the assessee even when the Legislature chose to use the word ‘used’. One has to give a full meaning to it and avoid reading something not intended by the legislature. After all, these benefits are provided for certain purposes and i.e. ‘used’ in the terms of the statute. But in a case when the apparatus is not used then the section 32 of the IT Act is not applicable.⁶⁸

Conditions precedent for allowance of depreciation is that the assets shall be owned, wholly or partly by the assessee and used for the purposes of his business or profession. Depreciation is treated as allowance under section 32(2). Depreciation allowance is a reduction which is granted by the State in order for the calculation of income which is centered on numerous factors which are relevant to full fiscal administration. It signifies reduction in the worth of the asset when applied to making revenues. Under this section depreciation allowance is statutory and is not limited clearly to depreciation in the value of asset by purpose of wear and tear. It may be permissible according to accounting principles. Once asset merged into block it does not have separate identity evidence of use. Though amalgamation, reduction and disallowance of depreciation could not be dealt in the paper due to constraint of words. So we concentrated specifically on User Test and allowance of depreciation. It is therefore always desirable to establish the actual use and authorisation for the same from employers and government authorities whenever

⁶⁴ Dinesh Kumar Gulabchand Agrawal vs. CIT, [2004] 267 ITR 768/141 Taxman 62 (Bom)

⁶⁵ CIT vs. Suhrid Geigy Ltd, [1982] 133 ITR 884 (Guj)

⁶⁶ Liquidators of Pursa Ltd. vs. CIT, [1954] 25 ITR 265 (SC)

⁶⁷ CIT vs. Refrigeration & Allied Industries Ltd, [2000] 113 Taxman 103 (Delhi)

⁶⁸ CIT vs. Yellamma Dasappa Hospital [2007] 159 Taxman 58/290 ITR 353 (Kar)

⁶² Capital Bus Service Ltd. vs. CIT, [1980] 123 ITR 404

⁶³ CIT vs. India Tea & Timber Trading Co, [1996] 221 ITR 857 (Gauhati).

needed. Therefore there should also be circumstantial evidence to show the use lie consumption of raw material, or manufacture of goods or facilities rendered etc. Therefore, it is important that one should firstly depend on the evidences and then only court be approached. Because if the evidences and situations as per the Section 32 are not in the favor of the person then law cannot do anything about it.

Suggestions

In view of the above discussion it is always advisable that any asset should be timely purchased, steps should be taken for the purpose of putting the asset to its proper and main business use well in advance. Necessary permission and licenses from the government authorities must be obtained well before the crucial date so that facts are in your favor. Mere reliance of provisions on law and old judgments may not help because of changing times, changing thought process, and in some cases the misuse of law coming into picture, causing difficulties to all. Thus in the context of controversy it is probably that the case is undecided or in future such similar issues can be litigated before the Hon'ble Supreme Court of India. It is wanted that the amendment is made to use the words 'use and used' else at least clarify the legal position in the matter and depreciation is necessarily be permissible to calculate income over a period of time. Although there is isn't ant apparent reason as for that there was varied legislative intention when the IT Act was passed in 1961. Thus it can be construed that the omission of word 'use' is merely a drafting error which does not have a support by any object to show that the legislative intention has been altered.

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