

## **Whether use of individual asset is necessary to claim depreciation under Block of Assets Scheme**

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- **M/S. SWATI SYNTHETICS LTD. v. ITO (2010) 38 SOT 208 (Mum)**

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How the scheme of depreciation on block of asset works.

Now let us examine the scheme of depreciation on block of asset, how it works. If there are no changes in block of asset, the procedure is very simple. Section 32(1)(ii) provides that depreciation will be allowed as a prescribed percentage of the written down value of buildings, machinery, plant and furniture. The Amending Act has provided that in the case of any block of assets, depreciation will be allowable at a prescribed percentage of the written down value thereof. The written down value of any asset shall be worked out in accordance with the section 43(6)(c). The written down value of the block of assets in the immediately preceding previous year, shall be reduced by the depreciation actually allowed in respect of the block of assets in relation to the said preceding previous year. All other situations of changes in block of asset are being taken care by respective provisions of the Act. The different changing situations and related provisions for depreciation on block of asset are discussed as under :-

Purchase of new asset.

When any new asset is purchased, for getting depreciation allowance the assessee is to satisfy following two basic conditions as laid down in section 32 of the Act.

(i) That asset is owned, wholly or partly, by the assessee. This condition can be checked and verified then and there at the time of purchases of asset itself.

(ii) That asset is used for the purposes of the business or profession. As regard this condition it is relevant to state that business profit for the purpose of income tax is to be calculated in accordance with books of account maintained on the on the basis of financial year. All the adjustments in books of account including depreciation are to be made only at the end of the year, therefore by that time an assessee can ascertain the situation whether the asset purchased has been used for the purpose of business or not. Whether the proviso to section 32 of the Act is satisfied or not, which requires that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be.

The next step to be taken is to allocate the asset to the respective block. As per the definition, "block of assets" as provided in section 2(11) of the Act, it is to be grouped in assets, which falls within a class of assets, being building, machinery, plant or furniture in respect of which same percentage of depreciation is prescribed. According to the clause (ii) of section 43(6)(c), the opening written down value as on the first day of relevant previous year shall be increased by the actual cost of any asset falling within that block which is acquired by the assessee during the previous year.

Sold, discarded, demolished or destroyed of asset.

Sale, discarded, demolished or destroyed of asset out of block of asset, this situation of block of asset is taken care by the section (iii) of sub-section (1) of section 32 of the Act, which provides that in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (i) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof. The written down aspect is taken care by the clause (iii) of section

of section 43(6)(c) which provides that The sum so arrived at after considering opening written down value and new purchases of asset, shall be reduced by the sale proceeds and other amounts receivable by the assessee in regard to any asset falling within that block which is sold, discarded, demolished or destroyed during that previous year. At the time of introducing this new concept of depreciation on block of asset, the Board issued a (Circular No. 469 dated 23rd September, 1986, 162 ITR 21) and clarified that the objective underlying the terminal adjustment is to ensure that the total depreciation in relation to any particular item of asset is limited to 100 per cent. This is achieved by the existing provisions of section 32(1)(iii) allowing a deduction for the shortfall in the year of sale, etc. Conversely section 41(2) of the Income-tax Act provides for taxing in the year of sale, etc., the excess depreciation allowed in the past. Because of the introduction of the system of allowing depreciation on blocks of assets at enhanced rates, both these provisions have lost their relevance and hence they have been omitted by the Amending Act. Under the new system, the moneys payable in respect of assets sold, discarded, demolished or destroyed will be reduced from the written down value of the block. The existing provisions of sub-sections (2) and (2A) of section 41 of the Income-tax Act and the Explanation there under relating to balancing charge in respect of discarded assets have been omitted. Both the above situations Purchase of new asset and Sold, discarded, demolished or destroyed of asset have been explained by the CBDT by their Circular (Circular No. 469 dated 23rd September, 1986, 162 ITR 21)

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Section 38(2) of the Act deals with this situation of Asset not exclusively used for the purposes of the business or profession, which reads as under :-

"(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, the deductions under sub-clause (ii) of clause (a) and clause (c) of section 30, clauses (i) and (ii) of section 31 and 36 [clause (ii) of sub-section (1)] of section 32 shall be restricted to a fair proportionate part thereof which the 37 [Assessing] Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession."

In the above section a question of proportionate allowance would arise only when the asset in question is not exclusively used for the purpose of business, which means it was used for the purpose of business as well as non business purposes. Thus if the asset is neither used for business purposes nor for non business purposes but remained in block of assets the provision of section 38(2) is not applicable. The above section has been examined by the ITAT Special Bench, Chandigarh in the case of Gulati Saree Centre v. Assistant Commissioner of Income-tax [1999] 71 ITD 73 (Chd.) (SB). The following question was referred for the opinion of the Special Bench :-

"Whether, after the introduction of the concept of block of assets an individual item in a block of assets loses its identity and the depreciation has to be allowed on the total block without considering whether an individual item comprised in the block has been used for business purposes or not, whether fully or partly ?"

The Division Bench happened to refer the aforesaid question to the ITAT Special Bench, Chandigarh because the learned counsel for the assessee had placed reliance on the decision of the Jabalpur Bench of the Tribunal in the case of Packwell Printers v. Asstt. CIT [1996] 59 ITD 340 for the proposition that after the amendment in section 32 with effect from 1-4-1988 an individual asset loses its identity and for allowing depreciation the entire block has to be considered. On the other hand, the case of the Revenue was that such an interpretation would negate the provisions of section 38(2) of the Income-tax Act, 1961 (for short the Act). The Revenue had relied on the decision of the Chandigarh Bench of the Tribunal in the case of Singla Agencies v. Asstt. CIT [1997] 60 ITD 410, which had taken the view that an asset did not lose its identity after introduction of the concept of block of assets and that the provisions of section 38(2) were still applicable.

The ITAT Special Bench, Chandigarh held that even after introduction of the concept of block of assets, the provisions of section 38(2) would continue to apply and the Assessing Officer is empowered to restrict depreciation to a fair proportionate part thereof, having regard to the user of the building, machinery, plant or furniture for the purposes of business or profession. In that case of the assessee, W.D.V. of vehicles was separately worked out and details of vehicles were also given. Thus, it was held that the

provisions of section 38(2) had been rightly invoked by the Commissioner (Appeals) and he was right in sustaining the disallowance out of depreciation as made by the Assessing Officer.

In principle we respectfully agree with the finding of the ITAT Special Bench Chandigarh that even after introduction of the concept of block of assets the individual assets is identifiable and under the circumstances that cars owned by the assessee - firm were being used for personal purposes of the partners also, disallowance of part depreciation was justified. But this decision of ITAT Special Bench Chandigarh does not help to the Revenue as in the case under consideration assets remained in block of assets and were not used for non business purposes like personal use etc.

depreciation and capital gain on transfer of asset.

Section 50 of the Income-tax Act prescribing the manner in which the cost of acquisition in the case of depreciable assets may be computed for the purposes of determining the capital gains has been substituted by new provisions by the Amending Act. The particulars of these provisions, overriding section 2(42A) of the Income-tax Act, are as under :

(A) The newly substituted section 50(1) provides that in a case where any block of assets does not cease to exist but the full value of the consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the following amounts, namely :-

(i) expenditure incurred wholly or exclusively in connection with such transfer or transfers;

(ii) the written down value of the block of assets at the beginning of the previous year; and

(iii) the actual cost of any asset falling within the block of assets acquired during the previous year, such excess shall be deemed to be short-term capital gains.

(B) The newly substituted section 50(2) of the Income-tax Act deals with the cases where any block of assets ceases to exist for the reason that all the assets in that block are transferred during the previous year. In such a case, the cost of acquisition of the block of

assets shall be the written down value of the block at the beginning of the previous year as increased by the actual cost of any asset falling within that block acquired by the assessee during the previous year. The income from such transfer or transfers shall be deemed to be short-term capital gains.

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(v) The above discussion can be summed up as under :-

In the case of block assets, depreciation u/s. 32 can be claimed on the written down value as computed u/s. 43(6) provided as on the last day of the previous year the following two requirements are to be fulfilled :

(1) there must be at least one asset in the block; and

(2) there must be some value for the block on which prescribed percentage can be applied.

When any one or both the above mentioned requirements are not satisfied on transfer of any asset from the block, the provisions of section 32 cease to apply and automatically the provisions of section 50 become applicable resulting in short-term capital gains/loss.

Other relevant amendments.

The existing provisions of sub-sections (2) and (2A) of section 41 of the Income-tax Act and the Explanation there under relating to balancing charge in respect of discarded assets have been omitted. The existing sub-sections (1) and (2) of section 34 of the Income-tax Act provide that the depreciation shall be allowed only if the prescribed particulars for the purposes of clauses (i) and (ii) of section 32(1) of the Income-tax Act have been furnished in respect of the depreciable assets. Further, that the aggregate of all deductions in respect of depreciation shall not exceed the actual cost to the assessee in respect of such assets. By the Amending Act, these sub-sections have been deleted in view of the switch over to the system of allowing depreciation on blocks of assets. Under the new system, the written down value of any block of assets may be reduced to nil for any of the following reasons :

(a) The moneys receivable by the assessee in regard to the assets sold or otherwise transferred during the previous year together with the amount of scrap value may exceed the written down value at the beginning of the year as increased by the actual cost of any new asset acquired, or

(b) All the assets in the relevant block may be transferred during the year.

The existing sub-sections (1) and (2) of section 34 of the Income-tax Act provide that the depreciation shall be allowed only if the prescribed particulars for the purposes of clauses (i) and (ii) of section 32(1) of the Income-tax Act have been furnished in respect of the depreciable assets. Further, that the aggregate of all deductions in respect of depreciation shall not exceed the actual cost to the assessee in respect of such assets. By the Amending Act, these sub-sections have been deleted in view of the switch over to the system of allowing depreciation on blocks of assets.

"Used for the purposes of the business or profession".

As stated above that in the case under consideration the crux of the matter/issue centralises to the word "Used for the purposes of the business or profession", therefore that requires detailed discussions. As stated above that one of the ingredients for depreciation allowance is "used for the purpose of business".

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From above discussions we noticed that the concept of allowing depreciation on block of assets has been introduced in the statutes with certain objects. The calculation of depreciation in respect of each capital asset separately requires elaborate book keeping and process of checking by the AO is time consuming. The practice of granting terminal allowance for taxing the balancing charge under the income tax necessitate the keeping of records and depreciation already availed by each asset eligible for depreciation necessitated simply the system of allowing depreciation of block of assets have been introduced by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986., with effect from 01.04.1988 to give effect to this new system regarding depreciation balancing charge and capital gain relevant provisions were also amended

accordingly. No doubt, the expression used in s. 32 is 'used' for the purposes of the businesses. However, this expression has to be read in commercial sense and it is to be interpreted on the principle of interpretation of harmonious constructions with the expression of the word 'used' in section 32(1), the words "acquired during the previous year" in section 43(6), An Asset not exclusively used for the purposes of the business or profession but used other than business purposes as provided in section 38(2) of the Act and the provisions related to taxability of Capital gain on transfer of asset from block and ceases to exist of block as provided in section 50 of the Act. Section 32(1)(iii) lays down the details and requirement with respect to claim of depreciation inter alia of discarded machinery, obviously, when a thing is discarded it is not used. Thus 'use' and 'discarding' are not in the same field and cannot stand together. However, if we adopt a harmonious reading of the expressions 'used for the purposes of the business' and 'discarded' then it would show that 'used for the purpose of business' only means that the assessee has used the machinery for the purposes of the business in earlier years. This type of interpretation is supported by the judgment of Hon'ble jurisdictional High Court in the case of Commissioner of Income-tax v. Visvanath Bhaskar Sathe [1937] 5 ITR 21 (BOM) where in the Court examined the words "used" and held that the word 'used' in section 10(2)(vi) of 1922 Act denotes actual user, and not merely being capable of being used. But that does not dispose of the question whether, when machinery is kept ready for use at any moment in a particular factory under an express contract from which taxable profits are earned, the machinery can be said to be used for the purposes of the business which earns the profits, although it is not actually worked. The business from which the profits were derived was that of ginning factories, and the contribution of the assessee to that business was the obligation to keep his machinery ready for actual use at any moment. It was further held that the word 'used' in section 10(2)(vi) of 1922 Act may be given a wider meaning and embraces passive as well as active user. Machinery which is kept idle may well depreciate, particularly during the monsoon season. The ultimate test is, whether, without the particular user of the machinery relied upon the profits sought to be taxed could have been made; and in the case, the profits of the assessee during the year under assessment could not have been earned except by his maintaining his factory in good working order, and that involves the user of the factory and the machinery. Recently after

introducing the block concept of depreciation, Hon'ble jurisdictional High Court dismissed the appeal of revenue vide their judgment dated 28.7.2009 for want of substantial question of law appeal filed by the Revenue against the order of the ITAT Mumbai in the case of G.R. Shipping Ltd. ITA No. 822/Mum/05 order dated 17.7.2008. The ITAT held that depreciation on (Ship) Barge which included in block of asset therefore deprecation is allowable even though said Barge was not used for the purpose of business during the financial year. The Hon'ble jurisdictional High Court in the said case of G.R. Shipping Ltd., against the revenue appeal, in Income Tax Appeal No. 598 of 2009, vide order dated 28th July, 2009, held as under :-

"1. Heard learned counsel for the parties.

2. The question sought to be raised in this appeal is based on the ground of non-user of the Barge in the subject A.Y. though they were used in the previous A.Y. According to Revenue, depreciation would not be available under section 32 of the Income Tax Act. The question sought to be canvassed is squarely covered by two judgments of this Court one in the case of Whittle Anderson Ltd. v. CIT 79 ITR 613 and another in the case of CIT v. G. N. Agrawal (Individual) 217 ITR 250. In this view of the matter, appeal stands dismissed for want of substantial question of law."

In concept of deprecation on block assets one doubt comes to the mind that how deprecation can be allowed on assets which were not used for the purpose of business. The reply to this doubt is available in the object of the scheme and respective consequence amendments in the Act. The legislature was aware about this situation therefore various corresponding amendments were made in respective provisions of the Act. If any depreciation has been claimed on an asset of block of assets which was not used, than the profit/income for that year will be reduced but this aspect of the matter has been taken care by the amended section 50 of the Act, when asset is transferred/sold and block ceases the calculation of short term capital gain will be more as in those cases WDV will be less.

In the light of above discussions the condition/requirement of section of word 'used for the purpose of business' as provided in section 32 of (1) Of the Act for the concept of deprecation on block

of assets can be summarized, that use of individual asset for the purpose of business can be examined only in the first year when the asset is purchased. In subsequent years use of block of assets is to be examined. Existence of individual asset in block of asset itself amounts to use for the purpose of business. This view is fully supported by various provisions of the Act which were amended consequence to the scheme of depreciation on block of asset including to proviso to section 32 of the Act of which detailed discussion is made in above Para of this order. The said proviso to section 32 requires that where an asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this subsection in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be. When an asset purchased is satisfied the above condition in the year of purchase that asset will be included in the respective block of asset. Deprecation for that year will be calculated on written down value in accordance with section 43(6) of the act by the increase opening WDV by the actual cost of any asset falling within that block, acquired during the previous year. Once an asset is included in the block of assets it's remained in block for its entire life. The end of asset i.e. to go out from block is only in accordance with the provisions of the Act. There are following three situations provided in the statutes when an individual asset of the block goes out of block :-

(1) an asset is sold or discarded or demolished or destroyed during that previous year as provided in sections 43(6)(C)(i)(B) and 32(1)(iii) of the Act.

(2) An Asset not exclusively used for the purposes of the business or profession but used other then business purposes as provided in section 38(2) of the Act.

(3) where any block of assets does not cease to exist but the full value of the consideration received or accruing as a result of the transfer of the depreciable assets by the assessee during the previous year exceeds the aggregate of the amounts stated in section 50 of the Act and where any block of assets ceases to exist

for the reason that all the assets in that block are transferred during the previous year.

In the case under consideration the admitted facts are that the division of Surat had been closed but the block of assets of the closed unit, (the division of Surat) along with other assets of the block were used for the purpose of business in earlier years. The year under consideration is not the first year of the assets acquired. The assets of closed unit still remained exist/part of the block of assets. The assets did not fall under any of the above exceptional three conditions. The said block of assets was used for the purpose of business during the year. Under the circumstances the assets of the said closed unit amounts to use for the purpose of business in the year under consideration, we are, therefore, of the considered view that the assessee is entitled for depreciation. We accordingly allow the claim of the assessee.

In the result, the appeal of the assessee is allowed.

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- **INDUCTOTHERM (INDIA) LTD. v. DEPUTY COMMISSIONER OF INCOME TAX. 2000-(069)-TTJ -0753 -TAHD = 2000-(073)-ITD -0329 -TAHD**

We have heard both the sides and perused the materials on record. It is not in dispute that w.e.f. 1st April, 1988 there has been a change of system for the purpose of allowing depreciation which is to be allowed on block assets and not on individual assets. In this connection, the provision of s. 32(1)(ii) as substituted w.e.f. 1st April, 1988, is as follows :

"32(1) In respect of depreciation of buildings, machinery, plant or furniture owned by the assessee and used for the purposes of the business or profession, the following deductions shall, subject to the provisions of s. 34, be allowed.

(ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed."

The definition of block assets has been provided in s. 2(11) of the Act according to which 'block of assets' means a group of assets falling within a class of assets, being buildings, machinery, plant or furniture in respect of which the same percentage of depreciation is prescribed. Therefore, the depreciation has to be allowed on the written down value of block assets. Sec. 43(6)(c) is to be considered for the purpose of WDV of block assets which is as follows :

"43(6) "Written down value" means -

(a) \*\*                      \*\*                      \*\* (b) \*\*                      \*\*                      \*\*

(c) in the case of any block of assets,  
(i) in respect of any previous year relevant to the assessment year commencing on the 1st April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted -  
(A) by the increase by the actual cost of any asset falling within that block, acquired during the previous year, and  
(B) by the reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so, however, that the amount of such reduction does not exceed the written down value as so increased; and  
(ii) in respect of any previous year relevant to the assessment year commencing on or after the 1st April, 1989, the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i)."

In this connection, CBDT Circular No. 469 dt. 23rd September, 1986 may be considered which is available at p. 1043 of Chaturvedi & Pithisaria's Income-tax Law, Fourth Edn., Vol. 1 where the relevant position of Budget Speech of Finance Minister has been mentioned which is as follows :

"As promised in the long-term Fiscal Policy Statement, I propose to introduce a system of allowing depreciation in respect of blocks of

assets instead of the present system of depreciation on individual assets."

Further the report of the Economic Administration Reforms Commission has also been mentioned in the said Circular which is as follows :

"The existing system in this regard requires the calculation of depreciation in respect of each capital asset separately and not in respect of block of assets. This requires elaborate book-keeping and the process of checking by the AO is time-consuming. The greater differentiation in rates, according to the date of purchase, the type of asset, the intensity of use, etc. the more disaggregated has to be the record-keeping. Moreover, the practice of granting the terminal allowance as per s. 32(1)(iii) or taxing the balancing charge as per s. 41(2) of the IT Act necessitate the keeping of records of depreciation already availed of by each asset eligible for depreciation. In order to simplify the existing cumbersome provisions, the Amending Act has introduced a system of allowing depreciation on block of assets. This will mean the calculation of lump sum amount of depreciation for the entire block of depreciable assets in each of the four classes of assets, namely, buildings, machinery, plant and furniture."

From the aforesaid circumstances, we find that the legislature has prescribed a different mode for allowing depreciation in respect of block of assets and hence-forth a calculation of depreciation will be in a lump sum for the entire block of depreciable assets. The theory of individual asset which prevailed before 1st April, 1988 cannot be considered after the new provision of block assets came into force. If a particular machinery were owned forming part of block asset is not used during the year, still depreciation is to be allowed even if assets are not used during the present year. After reading provision of block asset, we have to consider whether the block of assets were used or not during the present assessment year for the purpose of allowing depreciation. If one single asset out of the entire block has been discarded or not put to use by the assessee for its business consideration for that ground alone partial depreciation cannot be disallowed. Similar view has been taken in the case of Packwell Printers vs. Asstt. CIT (1996) 59 ITD 340 (Jab). The decision of Patna Bench of the Tribunal, (supra), relied upon by the learned counsel on behalf of the assessee supports similar view. It is not a

case where the assessee has sold the particular asset at a consideration which can be reduced for the purpose of computing WDV of block of assets as provided in s. 43(6)(c) of the IT Act.

In the present case, according to the assessee, it has discarded a particular asset during the present year meaning thereby that particular asset was not put to use during the present year. It is true that under s. 43(6)(c) of the Act, it has been provided to reduce the amount of depreciation by reduction of the moneys payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any. Unless and until scrap value of the machinery which has been discarded, demolished or destroyed during the previous year is ascertained the same cannot be reduced for the purpose of computing depreciation. In the present case, the machinery in question was only scraped during the year that means it has not been used during the previous year. The scrap value of the same has not been ascertained as yet which will be possible only after selling the same. Therefore, nothing can be reduced at present from the written down value of the block assets.

Considering the aforesaid circumstances, we direct the AO to allow depreciation as claimed by the assessee. This ground of appeal is allowable.

- **JOINT COMMISSIONER OF INCOME TAX v. CITICROP OVERSEAS SOFTWARES LTD. 2004-(085)-TTJ -0087 -TBOM**

With regard to ground No. 3 pertaining to depreciation of Rs. 15,32,824 on certain old assets written off in the books on the premise that the assets had not been put to use during the year, the assessee contended before the CIT(A) that it had written off Rs. 61,31,294 in the books on 31st December, 1995, towards certain fixed assets such as xerox machines, UPS machines, computers, etc. as they had become unusable, but the depreciation was claimed on the same as they continue to form a part of block of fixed assets. It was further explained that it is the practice to write off computer related items in the books once they become obsolete as the extent of obsolescence in respect of these types of items is quite high in information technology industry. The assessee

admitted to have actually used these assets. The assessee invited the attention of the CIT(A) to the provisions of s. 43(6)(c)(B) of the Act to state that the written down value in the case of any block of assets means the aggregate of the written down values of all assets falling within that block of assets at the beginning of the previous year as reduced by monies payable in respect of any asset falling within that block, which is sold or discarded or demolished or destroyed during that previous year together with the amount of the scrap value, if any, so however, that the amount of such reduction does not exceed the written down value. It was argued that since no monies have become payable in respect of write off of such assets, they continue to form a part of the block of assets.

The learned CIT(A) observed that the assessee had not received any money in wake of the discarding of the assets, therefore, the assets continue to form a part of the block. Therefore, the assessee was justified in claiming depreciation of Rs. 15,32,824 on the same. While arriving at this conclusion he placed reliance on the decision of the Tribunal, Ahmedabad Bench, in the case of Inductotherm (India) Ltd. v. Dy. CIT (2000) 69 TTJ (Ahd) 753 : (2000) 73 ITD 329 (Ahd), wherein it was held that the claim regarding depreciation is in accordance with law. We have considered the arguments from both sides and perused the material available on record. We do not find any infirmity in the order of the CIT(A). We uphold the same.

- **N. K. Proteins Ltd. V. DCIT 2004-(083)-TTJ -0904 -TAHD**

Ground No. 3 relates to deletion of disallowance of Rs. 39,33,252 made out of depreciation. The AO has discussed this point on pp. 16 to 19 of the assessment order. The AO has relied upon the statement of Shri Mukesh K. Dave, one of the executives of the company, recorded on 25th February, 1999 during the search for arriving at the conclusion that certain assets had not been installed and those assets have been described by the AO as non-performing assets. The AO has reproduced the extract from the statement of Shri M. K. Dave on p. 16 and 17 of the assessment order. The AO has arrived at the conclusion that the assessee has not used these assets as those assets were lying idle due to its non-installation.

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The learned Senior Departmental Representative contended these items such as expellers mentioned at Sr. Nos. 2, 3 and 4 are extra expellers meant for expansion and cannot be held to be eligible for grant of depreciation on the ground that these were ready for use. The learned senior Departmental Representative relied upon elaborate reasons given in the assessment order and urged that the order of the CIT(A) deleting the disallowance of depreciation should be set aside and that of the AO should be restored.

The learned counsel strongly supported the order of the CIT(A). He submitted that the machinery once purchased is merged with the block of assets and thereafter identity of individual asset is lost. The block of assets cannot thereafter be segregated with reference to itemwise claim for depreciation. The CIT(A) after a careful consideration of all the relevant details, material and evidence has come to the conclusion that all these items of machinery were ready for use. The assessee is clearly entitled to grant of depreciation in view of the judgments in the cases reported as CIT vs. Geo Tech Construction Corporation (2000) 162 CTR (Ker) 528 : (2000) 244 ITR 452 (Ker), Inductotherm (India) Ltd. vs. Dy. CIT (2000) 69 TTJ (Ahd) 753 : (2000) 73 ITD 329 (Ahd), 251 ITR 333 (Guj) (sic), CIT vs. Refrigeration & Allied Industries Ltd. (2000) 160 CTR (Del) 498 : (2000) 113 Taxman 103 (Del) and 77 ITD 401 (sic).

We have considered the submissions made by the learned representatives of the parties and have perused the orders of the learned Departmental authorities. The Department has not disputed the correctness of the fact of purchase of these assets by the assessee. According to the assessee, all these items of machinery were ready for use. The reliance placed by the assessee on the statement of Shri M. K. Dave does not in any manner contradict the fact that these so-called non-performing assets were not ready for use. Various judgments relied upon by the learned counsel and the judgments referred to in the said order of the CIT(A) fully support the view taken by the CIT(A). On a careful consideration of the entire relevant facts and various judgments, we are of the view that the CIT(A) has rightly directed the AO to delete the disallowance of depreciation made by him. Hence ground No. 3 of Revenue's appeal is rejected.

- **Packwell Printers (59 ITD 340)(Jab)**

"The legislature felt that keeping the details with regard to each and every depreciable assets was time consuming both for the assessee and the Assessing Officer. Therefore, they amended the law to provide for allowing of the depreciation on the entire block of assets instead of each individual assets. The block of assets has also been defined to include the group of assets falling with the same class of assets. Hence, after the amendment w.e.f. 1-4-1988, the individual assets has lost its identity and for the purpose of allowing of depreciation, only the block of assets has to be considered. If a block of assets is owned by the assessee and used for the purpose of business, depreciation will be allowed. Therefore, the test of user has to be applied upon the block as a whole instead of upon an individual asset.

In the instant case when the two trucks out of the three in the block were used for the purpose of business, the depreciation had to be allowed on the W.D.V. of the said block of assets, as per the percentage of depreciation prescribed in respect of the block of assets. Therefore, the depreciation was allowed on all the trucks of the assessee. On the same basis, the disallowance of depreciation on jeep, car, motorcycle was also deleted."

- **NATCO EXPORTS v. DEPUTY COMMISSIONER OF INCOME-TAX. 2003-(086)-ITD -0445 -THYD = 2004-(089)-TTJ -0503 -THYD**

(b) The CIT(A) ought to have seen that when once the value of asset forms part of block of assets, depreciation is to be allowed on the entire block irrespective of user of any item falling within the block during the assessment year and hence depreciation cannot be disallowed on ponds stating that they were not used by the appellant during the assessment years 1997-98 & 1998-99.

xxx...

From the above, it is clear that as long as an asset forms part of the block of assets and the block continues to exist, provisions of section 50 do not come into play and depreciation has to be allowed on that portion of the W.D.V. of the assets which have been scrapped, after reducing the scrap value from the block of assets.

This view is fortified by the judgments of Jabalpur Bench of the ITAT in the case of Packwell Printers, the judgment of the Ahmedabad Bench of the ITAT in the case of Inductotherm (India) Ltd. (supra) and the judgment of the Patna Bench of the ITAT in the case of Parikh Engg. & Body Bldg. Co. Ltd. (supra). Therefore, in view of the decisions and interpretation of the concept of "block of assets" depreciation on ponds which is forming part of the block of assets has to be allowed as deduction even though these ponds were discarded and not used and not owned by it during the assessment years in question, as the assessee was not entitled to any scrap value whatsoever, consequent to discarding.

Coming to the case law relied upon by the ld. Departmental Representative and by the ld. CIT(A), all of them are distinguishable, as all these cases dealt with grant of depreciation for assessment years before the introduction of the concept of depreciation on "block assets." Thus, we uphold the claim of the assessee for depreciation for both the assessment years and set aside the order of the ld. CIT(A).