IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER

ITA No. 3938/Del/2019, Assessment Year: 2009-10

Cargill India Private Limited 65, Ground Floor, Hauz Khas, New Delhi-110016 New Delhi	Vs.	Deputy Commissioner of Income-tax, Circle 5(2), (Earlier Circle 3(1)) Central Revenue Building New Delhi
स्थायीलेखासं./जीआइआरसं./**PAN**/GIR No: AAACC3296J		
Appellant	..	Respondent

ITA No. 4033/Del/2019, Assessment Year: 2009-10

Deputy Commissioner of Income-tax, Circle 5(2), (Earlier Circle 3(1)) Central Revenue Building New Delhi	Vs.	Cargill India Private Limited 65, Ground Floor, Hauz Khas, New Delhi-110016 New Delhi
स्थायीलेखासं./जीआइआरसं./**PAN**/GIR No: AAACC3296J		
Appellant	..	Respondent

Appellant by :	Sh. Kamal Sawhney, Adv. Shri Nikhil Aggarwal, Advocate

	Shri Puru Medhira, Advocate
Respondent by :	Shri Dharm Veer Singh, CIT(DR)

Date of Hearing	20.05.2026
Date of Pronouncement	27.05.2026

O R D E R

PER VIMAL KUMAR, JM:

The cross appeals filed by the Assessee and Revenue are against Order dated 28.02.2019 of the Ld. Commissioner of Income Tax (Appeals)-42, New Delhi (hereinafter referred to as "the CIT(A)") under section 250 of the income Tax Act, 1961 (hereinafter referred to as "the Act") arising out of Assessment Order dated 21.05.2013 of the ld. Assessing Officer/ DCIT, Circle-3(1), New Delhi (hereinafter referred to as "Ld. AO") u/s 144(C) r.w.s. 143(3) of the Act for A.Y. 2009-10.

2. Brief facts of the case are that the assessee company filed return of income on 29.03.2011 declaring NIL income after adjusting brought forward losses the extent of Rs. 1,17,27,45,050/-. The case was selected for scrutiny. The notice u/s 143(2) of the Act dated 20.08.2010 of the Act was issued. Questionnaire dated 01.02.2011 along with notice u/s 142(1)

of the Act was issued. Shri Manish Bansal CA/ARs of the assessee attended proceedings and filed the submissions. The assessee, M/s. Cargill India Private Limited, a company incorporated under the Companies Act, 1956, is a wholly owned Indian Subsidiary of Cargill Mauritius Limited. The assessee is engaged in the business of import, export and domestic trading in edible oils, fertilizers, grains, oil seeds and other food products/ processed food and in the business of processing crude oil.

3. As per the form No. 3CEB filed along with return the assessee had international transactions with associated enterprises/concerns. In order to determine Arm's Length Price ("ALP") in relation to international transactions the case was transferred to Transfer Pricing Officer ("TPO") after obtaining the prior approval of CIT, Delhi-1, New Delhi. Ld. TPO/ Additional CIT, Transfer Pricing-1(1), Delhi passed order u/s 92CA(3) dated 29.01.2013 making upward adjustment of Rs. 18,87,89,452/- while determining the Arm's Length price of the International transactions. The assessee was asked to show cause as to why addition should not be

made on account of Arm's Length Price. The assessee submitted reply dated 11.03.2013.

3.1 On completion of proceedings, Ld. AO vide order dated 21.05.2013 made additions of Rs. 18,83,09,557/- on account of adjustment of Arm's Length Prices of the International Transactions with associated enterprises of Rs. 7,30,21,683/- for expenditure pertaining to project Tartan.

4. Against order dated 21.05.2013 of Ld. AO, the assessee filed appeal before ld. CIT(A) who was partly allowed vide order dated 28.02.2019.

5. Being aggrieved, the appellants preferred above cross appeals.

5.1 In ITA No. 3938/Del/2019, the Assessee raised following grounds:

> *"**GROUNDS RELATING TO CORPORATE TAX ADDITIONS***
>
> *1. That on facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in not considering the correct figures of "unabsorbed depreciation" of Rs. 1,15,98,96,613 and "brought forward losses" of Rs. 5,05,08,25,058 submitted by the Appellant instead of incorrect figures of "unabsorbed depreciation" of Rs. 1,00,14,71,896 and "brought forward losses" of Rs. 1,37,50,54,348 for computing book profits under Section 115JB of the Income-tax Act, 1961.*
>
> *1.1. That on facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in contending that the appellant can claim losses as per books of accounts as appearing at the end of previous years without appreciating that the losses were adjusted by a mere book entry whereby the said loss was adjusted against capital items, being share capital and securities premium.*

1.1 That on facts and circumstances of the case and in law, the Hon'ble CIT(A) has failed to take cognizance of the judicial precedents relied upon by the Appellant and the legislative intent behind introduction of section 115JB of the Act whereby it has been held that losses incurred can be recouped against actual profits only.

GROUNDS RELATING TO TRANSFER PRICING ADDITIONS

2 That on facts and in law, the Hon'ble CIT (A) has erred in confirming that the Hon'ble Transfer Pricing Officer ("Hon'ble TPO") has discharged his statutory onus by establishing that the conditions specified in clause (a) to (d) of Section 92C (3) of the Act have been satisfied before disregarding the arm's length price determined by the Appellant and proceeding to determine the arm's length price himself.

3 The Hon'ble CIT(A) has grossly erred in upholding the additions made by the Hon'ble AO/TPO in respect of certain intra group services received by the appellant.

3.1 The Hon'ble CIT (A) has grossly erred in contending that no proper evidence was submitted by the Appellant to prove that certain intra group services were actually received from the associated enterprises (AEs), undermining the reasonableness of the evidence submitted by the Appellant.

3.2 The Hon'ble CIT (A) by upholding the addition made by the Hon'ble AO/TPO, has grossly erred in exceeding his jurisdictional reach by challenging the commercial expediency and business decisions of the Appellant and by expecting the Appellant to demonstrate any tangible/quantitative benefit from the receipt of such services.

3.3 The Hon'ble CIT(A) has failed to take cognizance of the fact that certain intra group services availed by the appellant from its AEs have benefitted the Appellant in the smooth and efficient functioning of its various businesses in India and were of significance to the business of the appellant.

3.4 The Hon'ble CIT(A) has erroneously concluded that services received by the appellant are in the nature of control and supervisory functions and fall under 'stewardship' activity, not management services.

3.5 The Hon'ble CIT(A) has grossly erred in considering an ad-hoc percentage of the certain services for computing amount for the shareholding activity without providing any reasonable basis for the same.

3.6 The Hon'ble CIT(A) has failed to understand that even years prior to AY 2008-09, when facts of these impugned transactions remained same as in AY 2009-10, the Appellant has availed similar services from its group companies and the transaction prices of the Appellant were considered by the Hon'ble AO/TPO at arm's length in those years. Further, the same was not even

questioned at the time of assessment proceedings of the associated enterprises.
4. The Hon'ble CIT(A) has erred in considering the fact that the receivables arise on account of transactions undertaken in the normal course of business with both associated enterprises ('AE') and non-AEs and are not in the nature of financing /unsecured loans.
4.1 The Hon'ble CIT(A) has erred in ignoring the fact that under no circumstances can receivables outstanding be categorized as money/loans advanced even as per the Companies Act, 1956.
4.2 The Hon'ble CIT(A) by upholding the action of the Hon'ble AO/TPO, has grossly erred in not considering the volume and the nature of business while determining the reasonable period for settling the payments in business.
4.3 Without prejudice to the above, the Hon'ble CIT(A) has grossly erred in attributing the interest rate of 6 months LIBOR plus 400 basis points for computing the adjustment on the impugned international transaction without providing any reasonable basis or performing any analysis to determine the arm's length interest rates for such transactions.
The above grounds are independent and without prejudice to each other.
The Appellant craves leave to add, alter, supplement, amend, vary, withdraw or otherwise modify the ground mentioned herein above at or before the time of hearing."

5.2 In ITA No. 4033/Del/2019, the Revenue raised following grounds:

"1. Whether the Ld. CIT(A) has erred on facts and in law in not upholding the CUP method applied by the AO/TPO as no uncontrolled entity would pay any amount for services which do not tantamount to intra group services with demonstrable details and benefits?

2. Whether the Ld. CIT(A) has erred on facts and in law in not upholding the adjustment on the issue of HR Services and partially upholding on the issue of Legal Services and Taxation Services without appreciating the fact that the evidences filed by the assessee are inadequate and do not establish the purpose of availing of Intra Group services and also most of the services are at best duplication of assessee's efforts?
3. Whether the Ld. CIT(A) has erred on facts and in law in allowing the unabsorbed depreciation existing as on 1st April 2002 to be carried forward and set off beyond 8 years.

4. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

6. Ld. Authorized Representative for appellant/assessee submitted that Ld. CIT(A) erred in upholding the order of TPO in respect of Intra Group Services. The nature of services under the agreement under question were identical for assessment year 2008-09. Ld. CIT(A) upheld the order of TPO and confirmed the additions on the following broader grounds:

"- Services are in the nature of shareholder's services (stewardship activity)
- *Services are not required as CIPL already has employees for these services*
- *Bald statement that rendition not proved without going through the additional evidence that was submitted."*

7. ITAT, New Delhi in ITA No. 3060/Del/2015 titled as M/s. Cargill India Private Limited vs. DCIT in order dated 18.05.2020 for assessment year 2008-09 had remanded back the matter to TPO for consideration of evidences.

8. Ld. Authorized Representative for appellant/assessee submitted that

"*The assessee filed revised return of income, wherein the assessee computed book profits amounting to INR 19,55,69,045/- under Section 115JB of the Income-tax Act, 1961 ('Act') and thereby, paid tax @ 10% (excluding surcharge and educational cess) on the said book profits (page 36, para 12.3 of the paperbook).*
2. Assessee for the purposes of computation of MAT, and as per explanation 1 clause (iii), reduced these book profits against the lower of unabsorbed

depreciation or amount of losses brought forward. Thereafter, the Appellant filed an additional ground before CIT(A), contending that for the purposes of adjustment of book profit against accumulated losses, amounts of unabsorbed depreciation of INR 1,15,98,613/- and brought forward loss of INR 5.05.08,25,058/- shall be considered as against amount of unabsorbed depreciation of INR 1,00,14,71,896/- and brought forward loss of INR 1,37,50,54,358 which have been considered in the return of income (page 36, para 12.3 of the paperbook).

3. The reason for claiming these alternative figures is that pursuant to the capital reduction scheme and merger scheme approved by Delhi High Court in 2004 and 2008 respectively, the Appellant passed a book entry to wipe out a portion of the accumulated losses and unabsorbed depreciation against share capital and securities premium. However, as these are notional items, and does not represent actual income / profit of the company, such notional adjustments made to losses and depreciation should be ignored for the purposes of section 115JB. Following are the adjustments:-

Date	*Nature of arrangement*	*Set off against Capital items*
31.03.2004	*Scheme of Capital reduction vide Delhi High Court order dated 03.02.2005 r/w amended order dated 15.03.2005 [para 1-6 of the HC order]*	*Share capital & Securities Premium set off against INR 58,45,12,161/- to Nil [refer Schedule L to the P&L account, and schedule S para 25)) A copy of audited financial statements of FY 2004-05 is exhibited at page 65 of paperbook)*
31.03.2007	*Scheme of arrangement vide Delhi High Court order dated 13 Aug 2008 under Section 391 of CA, 1956 [para 7-64 of the HC order] (clause 16.3 of the scheme read with HC order dated 13.08.2008*	*Share premium account & Equity Share capital account against debit balance of cash loss of 337 crores. (270 for share premium and 66 for share capital) (schedule 23(f) of FY 06-07 financials) (A copy of audited financial statement of FY 2007-08 is exhibited at page 91 of*

		paperbook *For Schedule 23(f), please refer page 120 of corporate tax paperbook).*
01.04.2007	*Appointed date of the scheme of arrangement*	*Adjusted the reserve and lsurplus from profit and loss account, and reduced the total loss from INR 4,029,802,674 to loss 1700,000,00. 00*

CIT(A) OBSERVATION:

4. CIT(A) dismissed the additional ground and held that reduced losses (after setting them off against capital items) are liable to be considered.

5. As per the table showing figures of brought forward loss and unabsorbed depreciation for MAT computation (page 201 of paperbook), brought forward losses of INR 5,05,08,25,058 and unabsorbed depreciation of INR 1,15,98,96,613 was available for purposes of MAT computation. As stated in the above table, it is undisputed that pursuant to scheme of capital reduction of 2004 and scheme of arrangement in 2007, accumulated losses were adjusted against the reduction in share capital and securities premium. Refer to financials of FY 2004-05 (page 90 of paperbook). The entire figure of losses carried forward to FY 2005-06 belongs to FY 2004-05 itself (as entire losses were incurred in FY 2004-05-page 66 of the paperbook). This shows that accumulated losses of previous years (year prior to FY 2004-05) extinguished pursuant to capital reduction (page 86 read with page 90).”

9. Reliance was placed judicial precedents following as under:

(i) Prithvi Softtech Itd. Vs. CIT (ITA No. 797 of 2010) (Chennai ITAT)

(ii) Surat Textile Mills Ltd. vs. Deputy Commissioner of Income –tax, Circle 2(1)(2), Surat, [2016] 70 taxmann.com 158 (Ahmedabad-Trib.)

(iii) PCIT vs. Surat Textiles Mills Ltd. (2017) 246 Taxman 206 (Gujarat)

10. Ld. Authorized Representative for appellant/assessee regarding issue of non-allowance of unabsorbed depreciation existing as on 01.04.2002 to be set off regarding Ground of Appeal No. 3 of Department appeal submitted that:

"14. During AY 2009-10 ('relevant AY'), the Assessee earned the total income of INR 1,17,27,45,050 [Income under the head "Profit and gains from business or profession" and "Income from Other Sources" amounting to INR 1.13,79,03,551 and INR 3,48,41,499 respectively].
15. Following is the breakup of unabsorbed depreciation and brought forward loss used in setting off the taxable income for the relevant AY has been tabulated below (page 4.1 @ page 135 of appeal set):-

AY	Nature of loss	Amount (INR)
1998-99	Unabsorbed depreciation	96,57,505
1999-00	Unabsorbed depreciation	2,36,44,717
2000-01	Unabsorbed depreciation	15,39,277
	Amount set off against income from other sources [A]	**3,48,41,499**
2003-04	Brought forward business loss	17,63,23,480
2004-05	Brought forward business loss	60,28,71,237
2006-07	Brought forward business loss	35,87,08,834
	Amount set off against losses [B]	**1,13,79,03,551**
	Total amount [A+B]	**1,17,27,45,050**

16. In the instant case, the AO has allowed the set off the business loss of AY 2003-04, AY 2005-06 and AY 2006-07 against the Income under head of Profit and Gains from Business and Profession [Component B in the above table amounting to INR 113 crores).

17. However, AO disallowed the set off of income from other sources against unabsorbed depreciation pertaining to AY 1998-99, 1999-00, and 2000-01.

CIT(A) findings (at page 20 @para 7.11 of the appeal set)

18. CIT(A) decided in favour of the assessee by considering the unabsorbed depreciation of AY 1997-08 to AY 2000-01 as current depreciation as they were not set off till FY 2002-03. CIT(A) contended that the unabsorbed depreciation of prior years would lose its tag of relevant year to which it pertains and would get merged with the following previous years.

19. Once it is deemed that the unabsorbed depreciation becomes part of allowance for the current previous year as the current depreciation, then, the same set off limit would be available for such allowance that would be available for the depreciation in that relevant F.Y. 2002-03 (i.e., set off for indefinite period).

Issue is covered in favour of the Assessee by following judicial pronouncements

25. Hon'ble Gujarat High Court in the case of General Motors India Pvt. Ltd v. DCIT reported in (2012) 354 ITR 244 (Guj) (page 224 of the paperbook), held that unabsorbed depreciation of assessment year 1997-98 could be allowed to be carried forward and set off after a period of eight years, in view of amended Section 32(2) of the Act. The Court held that as per the provisions of section 32(2) as amended by Finance Act, 2001, unabsorbed depreciation allowance available in the A.Y. 1997-98, 1999-2000, 2000-01 and 2001-02 can be carried forward to the succeeding years, and if any unabsorbed depreciation or part thereof could not be set off till the A.Y. 2002-03 then it would be carried forward till the time it is set off against the profits and gains of subsequent years.

11. Ld. Departmental Representative submitted that Ld. CIT(A) erred in upholding Cup Method applied by Ld. AO/TPO as no uncontrolled entity would pay any amount for services which do not tantamount to intra group services with demonstrable details and benefits. Ld. CIT(A) erred in upholding the adjustment on the issue of HR Services and partially upholding on the issue of Legal Services and Taxation Services without appreciating the fact that the assessee filed inadequate

evidences. Ld. CIT(A) erred in allowing the unabsorbed depreciation existing as on 1st April, 2002 to be carried forward and set off beyond 8 years.

12. From examination of record in light of aforesaid rival contention, it is crystal clear that the ld. CIT(A) vide order dated 28.02.2019 upheld the order of Ld. AO/TPO for Intra Group Services. Ld. TPO disallowed all expenses incurred on Intra Group Services. Ld. TPO rejected the TNMM and applied CUP, no benchmarking with the comparable was made arm's length was determined as Nil and it was stated that no comparable entity would pay for such services.

13. A Co-ordinate Bench in ITA No. 3060/Del/2015 titled as M/s. Cargill India Private Limited vs. DCIT for Assessment year 2008-09 in order dated 18.05.2020 in para No. 9 to 20 held as under:

> *9. Undisputedly, during the course of first appellate proceedings, the taxpayer has filed additional evidence qua intra group services received from its AEs qua which remand report was called. In the remand report, ld. TPO divided the services received by the taxpayer as under ;-*

S. No.	*Services*
1.	*Administrative Services*
2.	*Corporate IT & other service*
3.	*Treasury Services*
4.	*Admin & Tech training*
5.	*Brokerage Services*
6.	*Other Services*

7.	*Software Sharing*

10. A remand report itself shows that plethora of evidence has been brought on record by the taxpayer to prove the receipt of the intra group services received from the AE but TPO, without making any cogent comment on the evidences, dismissed the same by mentioning that there is no clearly defined evidence in respect of these evidences.

11. Ld. CIT (A) upheld the view taken by the AO that the services are partly in the nature of duplicative of services, incidental services and partly in the nature of shareholder services. Ld. CIT (A) also held that from the additional evidence, it is made out that there is no proper evidence to prove that these services were actually rendered, in other words, the services were actually received by the taxpayer and thereby upheld the determination of ALP by the TPO qua administrative services for the value of Rs.91,17,70,637/-.

12. For treasury services, ld. TPO has again observed that no documentation regarding the services received from the AE has been brought on record. Ld. CIT (A) on the basis of remand report and documents brought on record by the taxpayer held that, "there is no proper evidence to prove that these services were actually rendered by its AE. The taxpayer could not demonstrate that services were actually received by it from its AE and accordingly upheld the order of TPO determining treasury services of Rs.47,46,129/- at nil".

13. So far as administrative and technical training services are concerned, the taxpayer claimed to have received these services from CTSFA to the tune of Rs.77,21,643/-. Ld. TPO again determined its ALP at nil on the ground that no documentation has been filed by the taxpayer in respect of services availed and the taxpayer has failed to provide any basis for making this payment. Ld. CIT (A) again upheld the findings of the TPO by observing that the taxpayer has engaged legal professionals for administrative and technical training services by incurring huge expenses, so these services are in the nature of duplicative of services/incidental services/shareholder services.

14. Ld. CIT (A) also observed that no proper evidence to prove that these services are actually rendered by its AE. For brokerage services, the taxpayer also entered into agreement with Cargill Tarim Ve Gida Sayani Ticaret AS (Cargill, Turkey) for availing brokerage/commission agency services in the nature of marketing / sales support services. Ld. TPO determined its value at nil on the ground that the taxpayer has not received any service from Cargill, Turkey. Ld. CIT (A) also upheld the findings of the TPO and proceeded to hold that brokerage services are in

the nature of duplicative of services / incidental services and not supported by proper evidence.

15. In case of "other services", the taxpayer was also charged for one-off services provided by Cargill BV, Cargill BA-Cargill PLC Cargill SRL and Cargill Agri Purina Inc. for Rs.86,40,242/-. Ld. TPO determined the ALP of other services at nil by observing that from the details of evidence submitted by the taxpayer, most of it is irrelevant since it consists of invoices and simply filing of invoices cannot be considered services rendered. Ld. CIT (A) also upheld the findings returned by the TPO by holding that other services are in the nature of duplicative/incidental services and are not supported by proper evidence.

16. In case of software sharing services of the value of Rs.15,60,534/-, ld. TPO again determined the ALP of the services at nil on the ground that the taxpayer has failed to bring on record any basis to claim that it is sharing the trading terminals and it has not shown what kind of project work has been undertaken and even HR services that it refers to. Ld. CIT (A) again upheld the findings of the ld. TPO by holding that these services in the nature of duplicative/ incidental/ shareholder services. Ld. CIT (A) accordingly determined the intra group services at Rs.2,27,84,103/- as against nil computed by the TPO.

17. We are of the considered view that when we examine the order passed by the ld. TPO as well as ld. CIT (A), they have determined the ALP of intra group services viz. administrative services, corporate IT & other services, treasury services, administrative and technical training services, brokerage services, other services and software sharing services at nil by using the same terminology without discussing the plethora of evidences brought on record by the taxpayer inter alia that the taxpayer has not filed any evidence as to how it has been benefited from the receipt of these services; that the taxpayer has engaged local professionals for administrative services and incurred huge expenses of these accounts; that there is no proper evidence to prove that these services were actually rendered; that most of the evidences filed by the taxpayer consist of invoices which is not sufficient to prove that the services were actually rendered; that ld. CIT (A) upheld the findings returned by the ld. TPO by merely observing that the services claimed to have been received by the taxpayer are in the nature of duplication of services, incidental of services and shareholder services.

18. It is settled principle of law as has been held by Hon'ble High Court of Delhi in case of CIT vs. EKL Appliances Ltd. 345 ITR 241 that there is no need to establish necessity and benefit especially in proceedings before the

TPO. In case of Cushman Wakefield 46 taxmann.com 317, similar view has been expressed by Hon'ble Delhi High Court.

19. Ld. TPO/AO/CIT (A) have also proceeded to apply CUP as MAM without any basis and without having reference to any uncontrolled transaction rather relying upon irrelevant aspects eg. services received in questions are duplicate in nature or tangible benefits accrued to the taxpayer has not been established or that there was no need for procuring such services.

20. So, in these circumstances, we are of the considered view that the matter is required to be remanded back to the TPO to decide afresh after examining the evidence/additional evidence brought on record by the taxpayer without harping on the irrelevant aspect that services received in question being duplicative in nature or tangible benefit accrued to the taxpayer has not been established and that there is no need for procuring such services in the light of the decisions rendered by Hon'ble Delhi High Court in case of EKL Appliances Ltd. and Cushman Wakefield (supra) after providing an opportunity of being heard to the taxpayer."

14. In view of the above material facts, non-appreciation of evidence and additional evidence by Ld. TPO and Ld. CIT(A), and respectfully following the judicial precedents, impugned order is set aside and the matter is remanded back to the TPO to decide the issue afresh after examining the evidence/ additional evidence brought on record by the assessee, after affording a fair opportunity of hearing. **Accordingly, Ground of Appeal Nos. 2 and 3 for the assessee and Ground of Appeal Nos. 1 and 2 for the department are partly allowed for statistical purposes.**

15. Regarding Ground of appeal Nos. 1 to 1.1 of the Assessee and Ground No. 3 of the Revenue are relating to Corporate Tax Additions, the Assessee had brought forward losses and claimed losses as per the books of account as appearing at the end of the previous year. Ld. CIT(A), by considering unabsorbed depreciation for Assessment Years 1997-98 to assessment year 2000-2001 as current appreciation, as the same had not been set off till Financial Year 2002-03, decided the issue in favour of the assessee.

15.1 The issue is covered by judgment of High Court of Gujarat in *General Motors India Pvt. Ltd v. DCIT (supra)* holding that unabsorbed depreciation of Assessment Year 1997-98 could be allowed to be carried forward and set off after a period of 8 years in view of amended Section 32(2) of the Act. Hon'ble High Court of Delhi in PCIT vs. British Motor Car Co. Ltd. (2018) 400 ITR 569. Relevant portion is reproduced as under:

> *"2. The question of law urged by the Revenue in the appeal is whether the interpretation of Section 32(2) of the Income Tax Act, 1961 ('the Act') as amended by Finance Act, 2001, could be given effect to beyond the period of eight years, prior to its commencement?*
> *3. The assessee in this case had carried forward depreciation for a number of years - the earliest of which, was 1998-99*

9. This Court is in agreement with the reasoning of the Gujarat High Court. The rationale for the amendment appears to be that the restriction against set off and carry forward limited to 8 years, beyond which the benefit could not be claimed under provisions of the Income Tax Act, was for the reasons deemed appropriate by the Parliament. The limit was imposed in 1996 through Finance Act No.2. As the Gujarat High Court observed, Had the intention of Parliament being really to restrict the benefit (of unlimited carry forward prospectively), there were more decisive ways of doing so-such as, an expressed provision or an exception or proviso etc. The absence of any such legislative device meant that provisions had to be construed in its own term and not so as to restrict the benefit or advantage, it sought to confirm.

10. For these reasons, the Court is of the opinion that the reasoning in Motor & General Finance Ltd. (supra) does not call for re-examination.

11. The Court also approves and follows the judgment in General Motors India Ltd. (supra) of the Gujarat High Court. No substantive question of law arises."

16. In view of the material facts and well settled principle of law, Ground of Appeal No. 1 to 1.1 of assessee is accepted and Ground of Appeal No. 3 of Revenue is rejected. Ground of Appeal No. 4 to 4.3 of assessee are left open.

17. In view of above, the appeal filed by assessee and revenue are partly allowed for statistical purposes.

Order pronounced in the open court on 27th .05.2026

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	(VIMAL KUMAR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 27.05.2026
Binita, Sr. PS
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI