IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER

ITA No.319/PN/2010
(Assessment Year: 2006-07)

Zal Sam Cooper .. Appellant
C/o Cooper Corporation Pvt.Ltd.,
L-3, Addl. MIDC,
Satara – 415 004.
PAN ABAPC1125D

Vs.
A.C.I.T. Satara Circle, Satara .. Respondent

Appellant by: Shri C.H.Naniwadekar, AR
Respondent by: Shri S.K.Ambashta, DR

ORDER

PER D.KARUNAKARA RAO, AM:

This appeal by the assessee is directed against the order of the Commissioner of Income tax (A)-III, Pune dated 16/11/2009 for the assessment year 2006-07 in connection with the set off of the unabsorbed depreciation against the income taxable under the head 'salary' invoking of the provisions of section 154 of the Act.

2. In the impugned order, CIT(A) dismissed the assessee's appeal holding that the **unabsorbed depreciation cannot be set off against the income computed under the head 'salary**. For this proposition, the CIT(A) relied upon the express provisions of sub-section (2A) of 71 of the Act which were inserted by the Finance Act 2004 w.e.f. 01/04/2005.

3. During the proceeding before us, both the parties mentioned that this issue stands covered by the order of the Tribunal of Chennai Bench in the case of Chandrakumar 129 TTJ (Chennai) 489. After hearing of parties, we perused the said order of the Tribunal and facts of this case. In the instant case, there is undisputedly an '***unobserved depreciation'*** which is computed under the head of '***profits and gains from business and profession'***. Assessee is of the opinion that such an unabsorbed depreciation is eligible for set off against the assessee's income taxable under the head salary. In our opinion, whether such set off is legally valid or not is

already decided against the assessee in view of the express provisions of the said subsection (2A) of section 71, which reads as under.

> *"2(A) Notwithstanding anything contained in sub-s. (1) or sub-s. (2), where in respect of any assessment year, the net result of the computation under the head 'Profits and gains of business or profession' is a loss and the assessee has income assessable under the head 'Salaries', the assessee shall not be entitled to have such loss set off against such income."*

4. Further, we have also perused the decision in the case of ***Chandrakumar*** (Supra) and relevant conclusion in this regard is as under.

> *"Unabsorbed depreciation is to be considered as falling under the head 'Profits and gains of business or profession', and therefore set off of such unabsorbed depreciation of earlier years cannot be made against income assessable under the head 'salary'."*

5. From the above provisions as well as the precedent mentioned above, it is clear that the 'unabsorbed depreciation' computed under the heads of 'business and profession' **shall not be eligible** for set off against the income taxable under the head of salary. When this is a law, the claim of the assessee is patently illegal, erroneous and unsustainable legally. Therefore, we are of the opinion that the Income-tax Authorities have rightly rejected the claim of the assessee. Thus, the grounds raised in the appeal are **dismissed**.

6. In the result, appeal of the assessee is **dismissed.**

Order pronounced in the court on 05-10-2011.

Sd/-	**Sd/-**
(SHAILENDRA KUMAR YADAV)	**(D.KARUNAKARA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Pune, Dated: 05-10-2011

Ashwini

Copy to:-

1) Assessee
2) The A.C.I.T. Satara Circle, Satara
3) The CIT(A) –III, Pune
4) The CIT concerned
5) The Departmental Representative, "A" Bench, I.T.A.T., Pune.
6) Guard File

By Order

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Asst. Registrar,
I.T.A.T., Pune