

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.7272 of 2009
(arising out of SLP (C) No. 5677/09)

The Commissioner of Income Tax,
New Delhi

...Appellant(s)

versus

M/s Maruti Udyog Ltd.

... Respondent

O R D E R

By consent, the matter is taken up and disposed of.
Delay condoned.
Leave granted.

Though the High Court has admitted the appeal and though it has framed questions of law, it is the grievance of the Department that the following questions have also arisen for determination by the High Court and they have not been formulated for decision under Section 260A of the Income Tax Act, 1961. The said questions are as follows:

“(i) Whether the Tribunal was right in law in holding that unutilized MODVAT credit of earlier years adjusted in the assessment year in question should be treated as actual payment of excise duty under Section 43B of the Income Tax Act, 1961.

...2/-

(ii) Whether the Tribunal was right in law in holding that customs duty paid and allowed as a deduction under Section 43B cannot be added to the value of the closing stock."

To this extent, the Department succeeds and accordingly we direct the High Court to decide the above questions under Section 260A in the Income Tax Appeal pending before it (ITA 1683 of 2006).

Before concluding, we may state that the Tribunal was right in holding that the claim for depreciation on account of enhanced cost of depreciation due to fluctuation in foreign exchange rate was admissible for deduction under Section 37 of the Income Tax Act, 1961 (see our judgment in CIT v. Woodward Governor India P. Ltd. reported in [2009] 312 ITR 254 (SC). Similarly, the question as to whether interest and miscellaneous income is taxable under the head "Income from Other Sources" under Section 56 of the Income Tax Act, 1961 is not required to be examined in this case as the Department failed to make submissions on this point before the Tribunal.

Accordingly, the civil appeal is allowed with no order as to costs.

.....J.
[S.H. KAPADIA]

.....J.
[AFTAB ALAM]

New Delhi;
October 28, 2009