Reserved On : 30/03/2026
Pronounced On : 09/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 1973 of 2009
With
R/TAX APPEAL NO. 1972 of 2009

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI Sd/-

==========

Approved for Reporting	Yes	No
	✓	

==========

COMMISSIONER OF INCOME TAX GANDHINAGAR
Versus
GUJARAT STATE ENERGY GENERATION LTD

==========

Appearance:
MS MAITHILI D MEHTA, WITH MR. KARAN SANGHANI, SENIOR STANDING COUNSEL for the Appellant(s) No. 1
MR. B.S.SOPARKAR, ADVOCATE WITH MRS SWATI SOPARKAR(870) for the Opponent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

COMMON CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. By the order dated 20.06.2011, the Coordinate Bench of this Court had admitted Tax Appeal No.1973 of 2009 for answering the following substantial questions of law:

> *"[A] "Whether the Appellate Tribunal was justified in upholding the revised return as a valid return and in directing the Assessing Officer to allow the assessee's claim as per the revised return on the basis of the revised claim made under WDV method?"*
>
> *[B] "Whether the Appellate Tribunal was justified in directing the Assessing Officer to allow claim made by the GEB as the same was found to be incurred by the assessee during the course of business?"*

[C] "Whether the Appellate Tribunal was justified in directing the Assessing Officer not to charge interest under Section 234D of the IT Act for A.Y 2002-2003?"

1.1 The proposed substantial question of law [B] was rejected by the Coordinate Bench of this Court. The same is as under:

"[B] Whether the Appellate Tribunal was justified in directing the Assessing Officer to allow claim made by the GEB as the same was found to be incurred by the assessee during the course of business?"

1.2 In Tax Appeal No. 1972 of 2009, by the order of the even date, the tax appeal was admitted for the following substantial question of law:

"Whether the Appellate Tribunal is right in law and on facts in holding that the revised return was a valid return.?"

1.3 Thus, the substantial question of law [A] in Tax Appeal No. 1973 of 2009 will encompass the sole substantial question of law in Tax Appeal No. 1972 of 2009.

BRIEF FACTS

2. The respondent is a Company promoted by Central and State PSUs and is engaged in the business of generation and distribution of power. The Company commenced its business operations during the previous year relevant to the Assessment Year 2002-03 by starting first phase of its project on 01.12.2001. The Company filed its Return of Income on 31.10.2002 declaring total income of Rs.3,29,21,310/-. While computing income from business, it claimed depreciation at Rs.11,51,34,221/- on Straight Line Method (for short "SLM") basis as per Appendix-IA to Rule 5 of the Income Tax Rules,

1962 (for short “the Rules”). The Company being engaged in the generation of power, is entitled to have an option of claiming depreciation either as per Written Down Value (for short “WDV”) method under Rule 5 of the Rules and Appendix-IA or as per the SLM basis.

2.1 The return of income was processed under Section 143(1) of the Income Tax Act, 1961 (for short “the Act”) and a refund of Rs.11,53,840/- was issued. Subsequently, the Company filed a revised return on 31.03.2003 declaring net loss of Rs.21,65,72,270/- and total income was admitted at Rs.31,52,683/- as per Section 115JB of the Act.

2.2 The revised return was filed for the claims to the extent that in the previous year relevant to the Assessment Year 2002-03, the Gujarat Electricity Board (for short “the GEB”) did not confirm sale of power by the Company to the extent of Rs.2,85,37,373/- out of Bill No.4. There was a charge of Rs.14,00,291/- raised by the GEB against the Company for the power consumed by it which was supplied by the GEB. The Company had originally preferred its claim of depreciation inadvertently on the rate applicable under Appendix-IA at the time of its filing original return of income and now the depreciation was claimed on the basis of WDV rates.

2.3 The assessment was scrutinized by the Assessing Officer by issuing notice under Section 143(2) of the Act on 20.10.2003. The Assessing Officer did not accept the revised return and the assessment was completed on the basis of

original return by the order dated 30.03.2005 and further made disallowance of Rs.6 lakhs under Section 14A of the Act.

2.4 The Commissioner of Income-Tax (Appeals) (for short 'CIT (Appeals)'), by order dated 02.02.2006, accepted the revised Return of Income, but on merits, did not accept the change in method of depreciation, reduction of income by Rs.2.99 crores, claim of expenses of Rs.14 lakhs and CIT (Appeals) also confirmed the disallowance of Rs.6 lakhs under Section 14A of the Act.

2.5 Both i.e. the revenue and the assessee challenged the order of CIT(Appeals). The revenue filed appeal being ITA No. 1221 of 2006 on the acceptance of the revised return while the assessee filed appeal being ITA No. 1271 of 2006 challenging the additions/disallowance on merits. The Income Tax Appellate Tribunal (for short "the Tribunal") dismissed the revenue's appeal confirming the order of accepting revised return of income, whereas the Tribunal partly allowed the assesse's appeal by accepting change in method of depreciation, accepted reduction in income of Rs.2.99 crores, and claim of expenditure of Rs.14 lakhs and remanded the issue on Section 14A of the Act to the assessee and had also held that interest under Section 234D of the Act is not chargeable for the Assessment Year 2002-03.

3. Being aggrieved by the judgement and order passed by the Tribunal, the revenue has filed the captioned appeals being Tax Appeal Nos.1972 and 1973 of 2009.

SUBMISSIONS ON BEHALF OF REVENUE

4. Learned Senior Standing Counsels Ms.Maithili Mehta and Mr.Karan Sanghani for the appellant – revenue, have submitted that the Appellate Tribunal fell in error in accepting the revised return. It is submitted that the Assessing Officer has precisely held that the assessee did not fulfill all the conditions as mentioned in Section 139(5) of the Act and hence rejected the revised return which was premised on the change of methodology as per WDV method for claiming the depreciation which is impermissible in view of Rule 5 read with Appendix-IA of the Income-Tax Rules.

4.1 It is submitted that in the original return of income filed on 31.10.2002, the assessee claimed depreciation on SLM under Rule 5 and Appendix-IA of the Rules and the same could not have been allowed to be modified by the assessee by filing the revised return dated 31.03.2003 by adopting the depreciation on WDV method. It is submitted that the judgement and order of the Tribunal is erroneous as there was no omission or wrong statement made in the original return dated 31.10.2002 by the assessee and since the note of Rs.74,08,70,284/- had also been considered in the books and the unutilized sale proceeds were shown as debt in the balance-sheet and as such there were no fresh or new points which could be said to be an omission or wrong statement justifying the filing of revised return.

4.2 It is submitted that even if the issue of revised claim of depreciation is held to be valid, the provision of Section 139(1) of the Act did not intend to give any fresh option which is barred by the provision of Rule 5 (1A) of the Rules. It is

submitted that the rules provide a special privilege of claiming depreciation on the basis of SLM, and having exercised the option once, as per the provision of Rule 5(1A) of the Rules, the said option becomes final and applies to all the subsequent assessment years. It is submitted that as such, there was no conflict between the relevant Income Tax Rules and the provision of the Act, and hence, the Appellate Tribunal was not justified in directing the Assessing Officer to allow the assessee's claim as per its revised claim of depreciation.

4.3 While referring to the decision of the Supreme Court in the case of *Principal Commissioner of Income-tax vs. Wipro Ltd., [2022] 140 taxmann.com 223 (SC),* learned Senior Standing Counsel Mr.Sanghani has urged that since the view expressed by the Tribunal runs contrary to the decision of the Supreme Court, the same is required to be quashed and set aside.

4.4 It is submitted that in a similarly worded Section 10B(8) of the Act, the Supreme Court, while examining the effect of a revised return filed under Section 139(5) of the Act read with Section 139(1) of the Act, has categorically held that by filing the revised return of income, the assessee cannot be permitted to substitute the return of income filed under Section 139(1) of the Act and any benefit which is to be claimed which requires furnishing of a declaration or an option at the time of filing of the original return, before the due date, the same is impermissible by filing the revised return under Section 139(5) of the Act after the due date.

4.5 It is submitted that in the present case, the assessee, initially had opted for SLM in its original return of income dated 31.10.2002 which was the due date under Rule 5(1A) of the Rules and the revised return which was filed on 31.03.2003 under Section 139(5) of the Act, the due date would be extended to 31.03.2004 and hence, the methodology of SLM which was initially adopted by the assessee before the due date of 31.10.2002 cannot be extended to 31.03.2004. It is submitted that there was no discovery of any omission by the assessee which enables him to file the revised return under Section 139(5) of the Act, which further also enables him to change the methodology from SLM to WDV method.

4.6 Thus, it is urged that since the issue is squarely covered by the decision of the Supreme Court in the case of ***Wipro Ltd. (supra)***, the substantial question of law as formulated in these tax appeals may be allowed in favour of the revenue.

SUBMISSIONS ON BEHALF OF ASSESSEE:

5. Opposing the aforesaid submissions, learned advocate Mr.Soparkar for the respondent, at the outset, has submitted that the Coordinate Bench of this Court, vide order dated 20.06.2011, has upheld the decision of the Tribunal for accepting the revised return and hence once the revised return becomes valid, it partakes the colour of the original return filed under Section 139(1) of the Act and hence it is always permissible for the assessee to again adopt for a fresh methodology.

5.1 It is submitted that in the present case, the revised return dated 31.03.2003 was not filed only for the change of methodology of claiming depreciation on WDV method, but has been premised on three factors. It is submitted that the Tribunal has precisely accepted the revised return filed by the assessee by holding that it was an omission by the assessee as the assessee had subsequently noted that the GEB to whom the assessee had sold the power and, had not confirmed the part of sales made through Bill No.4. It is submitted that there was a dispute with regard to number of units supplied by the GEB and the GEB did not confirm the sale of power by the assessee which was noted after furnishing of original return which would amount to discovery of an omission or wrong statement in the original return.

5.2 It is contended that the GEB raised a bill on the assessee for the power supplied by them. Though, the assessee had consumed such power in the course of carrying on their business, the expenses were not counted for and hence the discovery of such fact would always permit the assessee to file a revised return. It is submitted that though the assessee incurred the expenditure in the course of business but were not claimed due to the sales made through Bill No.4 to the GEB, the same would amount to omission and by filing the revised return, the assessee has claimed such reduction through revised return. It is submitted that thus the Tribunal, by observing the effect of the revised return and the omission of the assessee, has held the revised return as valid which has been confirmed by the Coordinate Bench that there cannot be

two returns one under Section 139(1) of the Act and another under Section 139(5) of the Act.

5.3 Mr.Soparkar, learned advocate for the respondent – assessee, has submitted that under the settled legal fiction governing Section 139(5) of the Act, a revised return does not create a new filing event. It relates back to and substitutes the original return, taking effect from the date of the original filing. It is submitted that second proviso to Rule 5(1A) of the Rules prescribes a condition of eligibility, not a condition of irrevocability. It says that the assessee "may be allowed depreciation under Rule 5(1) / Appendix-I if such option is exercised before the due date." The condition "before the due date" goes to who is eligible to exercise the option, i.e. only those who have filed timely return. It does not say that the choice made in the timely return is permanent and cannot be changed by a valid revised return under Section 139(5) of the Act.

5.4 It is further submitted that the eligibility condition is met at the stage of the original return. The assessee had filed its return on 31.10.2022 within time. This establishes the assessee as an eligible assessee under the second proviso. Section 139(5) of the Act then permits the revision of that return in entirety. The choice of depreciation method is part of the return (reflected in Schedule DOA/DEP). A valid reason of that matter under Section 139(5) of the Act is not cut down by the second proviso because the proviso's eligibility condition is already satisfied.

5.5 Mr.Soparkar, learned advocate, would further submit that the second proviso selects who gets the option, Section 139(5) of the Act governs how that eligible assessee may correct its return, and thus, the two operates in different spheres and do not conflict. It is submitted that finality of choice is qua subsequent assessment years only and not qua the change in the first year itself. Mr.Soparkar, would further submit that method of depreciation in Rule 5(1A) of the Rules is a machinery provision which gives a choice, beneficial to the taxpayer. Benevolent provisions must be interpreted liberally. It is further submitted that if two reasonable constructions of a taxing provision are possible, the construction which favours the assessee must be adopted.

5.6 In support of his submissions, Mr.Soparkar, learned advocate has placed reliance on the following judgements:

(i) *Association of Indian Panelboard Manufacturer vs. Deputy Commissioner of Income-tax [2025] 482 ITR 54 (Gujarat.)*.
(ii) *Director of Income-tax (Exemption) vs. Divyajyot Foundation*, [2010] 321 ITR 53 (Gujarat.)
(iii) *Duraiswamy Kumarswamy vs. Principal Commissioner of Income-tax, [2024] 460 ITR 615 (Madras.)*

5.7 While distinguishing the judgement of the Supreme Court in the case of ***Wipro Ltd. (supra),*** he has placed reliance on paragraph No.11 of the judgement. It is submitted that in case before the Supreme Court, the assessee did not file any declaration under Section 10B(8) of the Act while filing the original return under Section 139(1) of the Act and

he did not file the return under Section 139(3) of the Act. In these facts, it is submitted that the Supreme Court has held that while filing revised return, the assessee cannot take a contrary stand or claim an exemption which was specifically not claimed earlier while filing the original return of income.

5.8 It is submitted that in the present case, the assessee while filing the original return had claimed depreciation within the due date and hence the valid revised return under Section 139(5) of the Act permits the assessee to adopt a different methodology as it will support the original return under Section 139(1) of the Act. Thus, it is urged that the tax appeals may be dismissed.

ANALYSIS AND CONCLUSION:

6. We have heard the learned advocates appearing for the respective parties at length. The case of the respective parties i.e. the revenue and the assessee hinges on the following aspects:

i) The interpretation of the judgement of the Supreme Court in the case of ***Wipro Ltd. (supra);***

ii) The effect of filing the revised return under Section139(5) of the Act and;

iii) The change of methodology i.e. from SLM (Rule 5(1A)-Appendix IA to WDV under Rule 5 and Appendix-I of the Rules while filling the revised return.

ASPECT OF VALIDITY OF REVISED RETURN

6.1 We may not reiterate the facts. The appeals emanate from the judgement of the Tribunal holding against the revenue. We may, first, answer the common question of law formulated by the Coordinate Bench in both the appeals which is as under:

> "Whether the Appellate Tribunal is right in law and on facts in holding that the revised return was a valid return?"

6.2 We may, at this stage, refer to the order dated 20.06.2011, whereby, the Coordinate Bench of this Court has rejected to accept the proposed question of law 'B' as mentioned hereinabove. The relevant observations of the said order are as under:

> *"On this limited question, we are of the opinion that the Tribunal has committed no error. From the record, it emerges that though previously, the return filed by the assessee did not take into account such stand of GEB with respect to the hills raised by the assessee and the assessee had in fact showed such figure as the income for the year in question, subsequently by filing a revised return, such error was corrected and the income was deleted claiming that the GEB did not admit to the bills raised by the assessee. In the subsequent year also, accounts were reconciled by showing the amount as the prior period expenditure. There is nothing to suggest that the assessee disputed the stand of the GEB with respect to this claim or had, at any stage, desired to thresh it out legally. That being the position, in view of the decision of the Apex Court in the case of Godhra Electricity Company Limited [Supra] and the decision cited therein, it cannot be said that the income ever accrued to the assessee. Merely because at one point of time the assessee erroneously claimed it to be accrued income would not permit the Department to levy tax on the same. We are of the opinion that this Question is not required to be considered."*

6.3 Thus, the Coordinate Bench of this Court, after considering the revised return filed by the assessee claiming the sum of Rs.14,10,795/- which was not shown as expenditure, the total amount of Rs.2,99,37,665/- which the Assessing Officer had disallowed such claims, has held that the revised return was filed by the assessee when such error had come to its notice and assessee corrected. The Coordinate Bench of this Court has rejected the question No.'B'. Thus, so far as the revised return filed by the assessee on the ground that GEB had not admitted the bills raised by the assessee for the sale of power to the assessee company has held the same to be valid and it is held to be an error on the part of the assessee which prompted him to file the revised return.

6.4 The assessee had filed its original return under Section 139(1) of the Act on 31.10.2002 by claiming depreciation at SLM method under Rule 5 and Appendix-IA of the Rules. Thereafter, on 31.03.2003, the assessee filed the revised return on three aspects which are recorded and not denied by the revenue. Three claims which were filed in the revised return are as under:

> *"i) Unconfirmed sale of power to be reduced from the receipts of Rs.2,85,37,374/-*
>
> *ii) Claim of additional expenditure in respect of power consumed of Rs.14,00,291/-.*
>
> *iii) Depreciation on the basis of Written Down Value rates at Rs.33,93,64,837/- as against depreciation claimed on Straight Line Method."*

6.5 The Assessing Officer rejected the revised return by holding that the same was not valid as there was no omission or wrong statement found in the original return. The Assessing Officer has mainly discussed the claim relating to depreciation on the basis of WDV method, which the assessee has opted. The CIT (Appeals) accepted the revision of return, but did not accept the change in method of depreciation, reduction of income by Rs.2.99 crores and claim of expenses of Rs.14 lakhs and further also confirmed disallowance of Rs.6 lakhs under Section 14A of the Act. The said order of CIT (Appeals) was challenged by the revenue before the Tribunal by confirming the observations of the CIT (Appeals) relating to the acceptance of the revised return of income.

6.6 Thus, the two authorities below had concurrently accepted the validity of the revised return of income filed by the assessee under Section 139(5) of the Act. It is established thus that the revised return of income did not only confine to the claim of depreciation on the basis of WDV method as against the original claim on SLM. Along with this facet, the revised return was also premised on two other aspects which have been favoured by the Tribunal as well as the CIT (Appeals).

6.7 We may, at this stage, refer to the provisions of Section 139(5) of the Act. The same read as under:

> *"**139. Return of Income**:-*
>
> *(1) to (4)* *** *** ***
>
> *(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1)*

> *of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:*

6.8 The provision of Section 139(5) of the Act allows the assessee to furnish a return upon discovery of any omission or any wrong statement which he had filed in the original return. The revised return filed under Section 139(5) of the Act is a return which stems out of the provision of Section 139 of the Act. It is no more *res integra* that a revised return filed under section 139(5) of the Act if is accepted, the same supplants the return under section 139(1) of the Act. The original return filed under Section 139(1) of the Act can further open an avenue of filing a revised return under Section 139(5) of the Act if an assessee discovers any omission or any wrong statement. Thus, any fact which was omitted or a wrong statement which was made in the original returns, subsequently comes to the knowledge of the assessee, can enable him to file a revised return under Section 139(5) of the Act. Such knowledge or discovery of the omission or a wrong statement cannot be deliberately used. The statute enables the assessee to file the revised return only if he or she discovers the omission or the wrong statement which were missing in the original return by way of any *bona fide* reasons and it should not be deliberate or concocted. The giving provision of Section 139 (5) of the Act will only come to the rescue of an assessee who has acted *bona fidely* and due to such omission or wrong statement in his original return he had failed himself to avail any advantage or claim.

6.9 Thus, the provisions of Section 139(5) of the Act cannot be invoked by an assessee if he has deliberately or with a *mala fide* intention has left an omission or made a wrong statement in his original return. In the present case, the facts which are established from the assessment order and also findings from the CIT (Appeals) and the Tribunal, prove that in the original Assessment Order, the assessee had incurred expenses in the course of business, but was unable to claim since despite having consumed the power in the course of carrying on the business from GEB, the expenses were not accounted only for the reason that the bills were not received prior to the completion of financial year. We do not find any oblique motive behind filing the revised return. The revised return was filed for three claims, which we find as *bona fide*. Thus, the findings recorded by the CIT (Appeals) and confirmed by the Tribunal confirming the validity of the revised return under Section 139(5) of the Act, do not require any interference in the present tax appeals.

ACCEPTABILITY OF CHANGE IN SLM TO WDV METHOD IN REVISED RETURN

7. Having held that the revised return filed under Section 139(5) of the Act supersedes the original return under Section 139(1) of the Act, the issue which falls for further deliberation is that whether it is permissible for the assessee to adopt a new methodology other than the one which was adopted in the original return or not.

7.1 At this stage, we may incorporate the provisions of Rule 5 of the Rules:

*"**Depreciation***

(1) Subject to the provisions of sub-rule (2), the allowance under clause(ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business of profession of the assessee at any time during the previous year:

Provided that the allowance under clause (ii) of sub-section (1) of section 32 in respect of depreciation of any block of assets shall not exceed forty percent of the written down value of such block of assets in case of-

(i) a domestic company which has exercised option under sub-section (4) of section 115BAA, or under sub-section (7) of sub-section 115AB; or

(ii) an individual or a Hindu undivided family, which has exercised option under sub-section (5) of section 115BAC; or

(iia) an individual or a Hindu undivided family, or an association of persons (other than a co operative society) or a body of individuals, whether incorporated or not, or an artificial judicial person referred to in sub-clause (vii) of clause (31) of section 2 whose income is chargeable to tax under sub-section (1A) of section 115BAC; or

(iii) a co-operative society resident in India which has exercised option under sub-section (5) of section 115BAD; or

(iv) a co-operative society resident in India which has exercised option under sub-section (5) of section 115BAE:]

Provided further that, for the purposes of section 115BAA, if the following conditions are satisfied, namely:-

(i) option under sub-section (5) thereof is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2020;

(ii) there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year or allowance of unabsorbed depreciation deemed so under section 72A,

which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

(iii) such depreciation or allowance for unabsorbed depreciation is not allowed to be set off under clause (ii) or clause (iii) of sub-section (2) thereof, the written down value of the block of asset as on the 1st day of April, 2019 shall be increased by such depreciation or allowance for unabsorbed depreciation not allowed to be set off:

Provided also that, [for the purposes of section 115BAC [as it stood immediately before its amendment by the Finance Act, 2023] and section 115BAD, if the following conditions are satisfied, namely:-

(i) the option under sub-section (5) of the respective section is exercised for a previous year relevant to the assessment year beginning on the 1st day of April, 2021;

(ii) there is a depreciation allowance, in respect of a block of asset, from any earlier assessment year which is attributable to the provisions in clause (iia) of sub-section (1) of section 32; and

(iii) such depreciation is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC or clause (ii) of sub-section (2) of section 115BAD,

The written down value of the block of asset as on the 1st day of April. 2020 shall be increased by such depreciation not allowed to be set off]

[Provided also that, where income is chargeable to tax under sub-section (1A) of section 115BAC, the written down value of the block of asset as on the 1st day of April, 2023 shall be increased by such depreciation which is attributable to clause (iia) of sub-section (1) of section 32 and which is not allowed to be set off under sub-clause (a) of clause (ii) of sub-section (2) of section 115BAC if both the following conditions are satisfied, namely:-

(i) the assessee has not exercised option under sub-section (5) for any previous year relevant to the assessment year beginning on or before the 1st day of April, 2023; and
(ii) there is a depreciation allowance in respect of a block of assets which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2024, and

is attributable to the provisions of clause (iia) of sub-section (1) of section 32.]

(1A) The allowance under clause (i) of sub-section (1) of section 32 of the Act in respect of depreciation of assets acquired on or after 1st day of April, 1997 shall be calculated at the percentage specified in the second column of the Table in Appendix IA of these rules on the actual cost thereof to the assessee as are used for the purpose of the business of the assessee at any time during the previous year;

Provided that the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the said asset:

Provided further that the undertaking specified in clause (I) of sub-section (1) of section 32 of the Act may, instead of the depreciation specified in Appendix IA, at its option, be allowed depreciation under sub-rule (1) read with Appendix-I, if such option is exercised before the due date for furnishing the return of income under sub-section (1) of section 139 of the Act,
(a) for the assessment year 1998-99, in the case of an undertaking which began to generate power prior to 1st day of April, 1997; and
(b) for the assessment year relevant to the previous year in which it begins to generate power, in case of any other undertaking:

Provided also that any such option once exercised shall be final and shall apply to all the subsequent assessment years."

7.2 Rule 5(1) of the Rules mentions calculation of depreciation at the percentage specified in second column of the Table in Appendix-I of the Rules on the WDV method of block assets. Rule 5(1A) of the Rules refers to calculation of percentage specified in the second column of Table of Appendix 1A of the Rules. The second proviso further provides of exercising an option between Appendix 1A and Appendix I of the Rules. It further specifies that such an option has to be exercised before the due date for furnishing the return of

income under Sub-section (1) of section 139 of the Act. Further Proviso also directs that if any of the option once having exercised, the same shall be final and shall apply to all the subsequent assessment years. In fact the scheme of Rule 5(1A) of the Rules does not *stricto sensu* convey of giving an option, but it gives the right to the assessee to adopt a particular methodology/computation for depreciation. The difference between SLM and WDV method lies in how the depreciation is charged. SLM reduces an asset's value by a fixed amount yearly, while WDV method uses a fixed percentage on the reducing asset's value each year. This method is adopted generally for those assets, whose value quickly reduce.

7.3 Appendix-IA under Rule 5 of the Rules prescribes the rate at which the depreciation is admissible. While filing the original return of income on 31.10.2002, the assessee claimed depreciation on SLM as provided under Appendix- IA to Rule 5(IA) of the Rules. In the revised returns filed on 31.03.2003, the assessee modified the methodology from SLM to WDV method under Appendix-I to Rule 5 of the Rules. The due date as prescribed in the proviso to Rule 5(1A) of the Rules was 31.10.2002 relates to the original return filed under Section 139(1) of the Act. It is not disputed that the assessee opted for SLM under Appendix-IA to Rule 5(1A) of the Rules on the due date i.e. 31.10.2002. The provision of Section 139(5) of the Act authorizes the assessee to file the revised return and accordingly, he filed his revised return on 31.03.2003 changing the methodology to WDV under Rule 5 Appendix-IA

of the Rules. We have upheld the validity of revised return. Thus, if the original return under section 139(1) of the Act gets substituted by the revised return under section 139(5) of the Act, the relevant method of computation filed in the original return seeking depreciation becomes redundant, and cannot be used for any purpose.

7.4 If the case of the revenue is accepted, then the return of income of the assessee would fall under two provisions, i.e under section 139(1) of the Act and revised return under Section 139(5) of the Act. As far as the claim of depreciation is concerned, it is contended before us that the same has to be considered under the provision of Section 139(1) of the Act. Thus, as suggested by the revenue, the part of the return would be under Section 139(1) of the Act so far as claim of depreciation is concerned, whereas for other two claims the same would fall under revised return under Section 139(5) of the Act. This can never be the intention of the statute as, the Act does not permit the existence of two returns i.e. one under Section 139(1) of the Act and the other under Section 139(5) of the Act for varied claims.

DETERMINATION OF DUE DATE

8. Having held as above, we are called upon to answer the status or the fate of new date which finds place in the provision of Rule 5(1A) of the Rules. Rule 5(1A) of the Rules specifically refers to the due date as prescribed under Section 139(1) of the Act, and not under Section 139(5) of the Act.

9. The due date for option as per Section 139(1) was 31.10.2002. In our considered opinion, if the validity of the revised return filed on 31.03.2003 is upheld, then it replaces the original return under Section 139(1) of the Act, however, the "due date" of option as envisaged under Section 139(1) of the Act though cannot be extended further for the purpose of claiming the depreciation by WDV method on the filing of the revised return, however, the computation on WDV method in claiming the depreciation is always permissible, only in the circumstance, if the original option of filing the depreciation by adopting SLM is within the due date of the original return, since, the proviso to Rule 5(1A) permitting option for altering the computation to WDV method can be said to be directory in nature. In this context, we may rely on the decision of Bombay High Court in the case of *Commissioner of Income Tax vs Shivanand Electronics*, (1994) 209 ITR 63(Bom), wherein the law relating to the determining the nature of statue has been culled out. It is held thus:

> " …….*It is well-settled that the question whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The intent of the Legislature also has to be gathered not merely from the words used by the Legislature but from a variety of other circumstances and conditions. One of the tests often adopted is to ascertain whether the object of the Legislature will be defeated or furthered by holding it directory. If the object of the enactment will be defeated by holding it directory, it should be construed as mandatory whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of the enactment, it should be construed as directory. In other words, a balance has to be struck between the inconvenience of rigidly adhering to the requirements and the convenience of sometimes departing from its terms. There are also cases where two or more requirements are lumped together at one place in the same provision. In such a case, it would have to be decided which*

of the conditions is mandatory and which is directory. If one of the two conditions is found to be mandatory and the other directory, strict compliance with the mandatory requirement would amount to compliance with the provision notwithstanding the non-compliance with the directory requirement in the particular manner or form or within the specified time, provided, however, that there is substantial compliance therewith. It is not possible to lay down any rule of universal application to decide such a controversy. It will have to be decided in each case by looking at the subject-matter, the importance of the provision that has not been strictly complied with and the relation of that provision to the general object intended to be secured by the Act."

The aforesaid judgement has been considered by the Supreme Court in case of *Commissioner of Income Tax,Maharashtra vs G.M.Knitting Industries(P) Ltd*, (2016)71 taxmann.com35(SC). Thus, for ascertaining the statute as mandatory or directory, the test often adopted is to ascertain whether the object of the Legislature will be defeated or furthered by holding it directory, and in case the object of the enactment is defeated by holding it directory, it should be construed as mandatory whereas if by holding it mandatory, serious general inconvenience will be created to innocent persons without very much furthering the object of the enactment, it should be construed as directory. It is also held that, a balance has to be struck between the inconvenience of rigidly adhering to the requirements and the convenience of sometimes departing from its terms. In the instant case, the assessee claimed depreciation by adopting the SLM on the due date i.e. 31.10.2002 and not thereafter. It is not the case of the revenue that the claim of depreciation is not valid. The statute provides the assessee to opt for change in computation, and such option is to be exercised before the due date as envisaged under section 139(1). It is true that the Rule 5(1A)

of the Rules does not refer to Section 139(5) of the Act however, the intention of Rule 5(1A) of the Rules cannot be so stringent, which restricts the assessee to change his computation if he carves out a case for filing a valid revised return, and his claim of depreciation is genuine. In case, the revenue does not accept the revised return and finds that it is not premised on any omission or any wrong statement, the question of accepting the change in option does not arise. Hence, while filing the revised return for various claims, the assessee can always change to WDV method. However, the quintessential condition is that the assessee should have claimed the depreciation by exercising the first option as per Appendix IA as required under Rule 5(1A) of the Rules, on or before the due date at the time of filing the original return under Section 139(1) of the Act. The requirement of prescribed calculation for claiming allowance under clause(i) of sub-section (1) of Section 32 of the Act in respect of depreciation of assets is mandatory. Without the requisite computation method as envisaged under the Rule 5(1A) of the Rules, the assessee cannot claim the depreciation. The exercise of opting for a calculation from SLM to WDV method while filing a valid revised return can be said to be substantial compliance of Rule 5(1A) of the Rules, more particularly, when the claim is not doubted. The second proviso to Rule 5(1A) cannot operate in rigidity by restricting to SLM only as per the return of income filed under Section 139(1) of the Act, albeit the revised return under Section 139(5) of the Act is treated as valid return, and it supersedes the original return.

10. The further proviso to Rule 5(1A) of the Rules also takes care of the situation. The last proviso to Rule 5(1A) of the Rules categorically mandates that if any option once exercised, shall be final and shall apply to all the subsequent assessment years. Thus, an option which is exercised by an assessee for a particular assessment year, cannot be altered subsequently in another assessment years, and travel to extended dates on filing of raised return. Hence, once the revised return falls within the assessment year of the original return, the due date cannot be extended to another assessment year as it is impermissible to opt for other option to that which was already exercised while filing the original return under Section 139(1) of the Act. In this regard, we have noticed, and not denied by the revenue is that the Assessing Officer from AY 2009-2010 onwards has granted depreciation as per WDV method, and the assessment orders have become final, hence any change of computation for AY 2002-2003 to AY 2008-09 will lead to incongruous consequences.

DISCUSSION ON THE DECISION OF WIPRO LTD (SUPRA)

11. The case of the revenue entirely hinges on the decision of the Supreme Court rendered in the case of ***Wipro Ltd. (supra).*** The facts as mentioned in the said judgement would indicate that the assessee which was a 100% Export Oriented Unit (EOU) filed its return claiming exemption under Section 10B of the Act and noted “no loss would be carried forward”. However, it later withdrew its claim via declaration on 24.10.2002 i.e. “after the due date” and sought to carry

forward losses in the revised return dated 23.12.2002, wherein, exemption under Section 10B of the Act was withdrawn in terms of Section 10B(8) of the Act. The Assessing Officer rejected the claim on the ground of late submission of declaration in writing after the due date of filing the return on 31.10.2001. The Supreme Court in such facts held that the assessee filed its return under Section 139(5) of the Act on 23.12.2002 with a declaration under Section 10B(8) of the Act after the due date of original return under Section 139(1) i.e. 31.10.2001 which was not valid for claiming carried forward loss or set off and the assessee did not file return under Section 139(3) of the Act, but filed return under Section 139(1) of the Act. The declaration under sub-section(8) of 10(B) of the Act will have an ineradicable affect on the assessment on the return of income, hence the Supreme Court has held the same to be mandatory, which is not the case of claiming deduction such as depreciation under section 32 of the Act.

12. In such circumstances, the Supreme Court has held that for claiming benefit under Section 10B(8) of the Act, the twin conditions requiring submitting written declaration to the Assessing Officer before the due date for filing the original return under Section 139(1) of the Act is mandatory and cannot be considered directly and a revised return under Section 139(5) of the Act cannot convert Section 139(1) of the Act return into a loss return under Section 139(3) of the Act. The Supreme Court has held that filing a revised return under Section 139(5) of the Act and taking a contrary stand and/or

claiming exemption which was specifically not claimed earlier while filing the original return of income is not permissible.

13. In the present case, the assessee has in fact claimed the depreciation in his original return and thereafter in his revised return he has only changed its methodology of claiming the depreciation. Hence, the claim of depreciation is maintained by the assessee in both the returns. Thus, the case of the assessee cannot be compared to the case of the assessee before the Supreme Court in case of **Wipro Ltd (supra).** In the case before the Supreme Court, there was no declaration at the first place as mandated by the provisions of Section 10B(8) of the Act, whereas in the present case, the depreciation is claimed on the due date.

14. In the present case, the assessee has already filed an option of claiming the depreciation at the first instance in the original return, but subsequently, he has only changed the method of computation or methodology to WDV method instead of SLM method. The Supreme Court in paragraph 11, while distinguishing the case of *G.M.Knitting Industries (P) Ltd.,* (supra) has held that the exemption provision under Section 10B(8) of the Act cannot be compared with claiming an additional depreciation under Section 32 (1)(ii-a) of the Act and the assessee claiming the exemption has to strictly and literally comply with the exemption provisions. The relevant paragraphs No.9 and 11 of the said decision read as under:

"9. In such a situation, filing a revised return under section 139(5) of the IT Act claiming carrying forward of losses subsequently would not help the assessee. In the present case, the assessee filed its original return under section 139(1) and not under section 139(3) Therefore, the Revenue is right in submitting that the revised return filed by the assessee under section 139(5) can only substitute its original return under sections 139(1) and cannot transform it into a return under section 139(3) in order to avail the benefit of carrying forward or set off of any loss under section 80 of the IT Act. The assessee can file a revised return in a case where there is an omission or a wrong statement. But a revised return of income, under section 139(5) cannot be filed, to withdraw the claim and subsequently claiming the carried forward or set-off of any loss. Filing a revised return under section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming benefit under section 10B(8) and furnishing the declaration as required under section 10B(8) in the revised return of income which was much after the due date of filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. As observed hereinabove, for claiming the benefit under section 10B(8), both the conditions of furnishing the declaration and to file the same before the due date of filing the original return of income are mandatory in nature.

xxx xxx xxx

11. Now so far as the reliance placed upon the decision of this Court in the case of GM Kung Industries (P) Ltd (supra), relied upon by the learned counsel appearing on behalf of the assessee is concerned, section 10B(8) is an exemption provision which cannot be compared with claiming an additional depreciation under section 32(1) (-a) of the Act. As per the settled position of law an assessee claiming exemption has to strictly and literally comply with the exemption provisions Therefore, the said decision shall not be applicable to the facts of the case on hand, while /considering the exemption provisions. Even otherwise. Chapter III and Chapter VIA of the Act operate in different realms and

principles of Chapter III which deals with "incomes which do not form a part of total income cannot be equated with mechanism provided for deductions in Chapter VIA, which deals with "deductions to be made in computing total income. Therefore none of the decisions which are relied upon on behalf of the assessee on interpretation of Chapter VIA shall be applicable while considering the claim under section 108(8) of the IT Act."

15. It is further held that Chapter III and Chapter VIA of the Act operates in different realm and principles of Chapter III of the Act, which deals with "incomes which do not form a part of total income" cannot be equated with mechanism provided for deductions in Chapter VIA of the Act, which deals with deductions to be made in computing the total income.

16. Thus, on overall appreciation of the facts, the case of the assessee as examined by the Tribunal confirm that the revised return filed by the assessee is valid. Having held the same as valid return, the same gets replaced with that of the original return filed under Section 139(1) of the Act for all purposes of the Act. The claim of depreciation in the original return and the revised return is maintained by the assessee. The depreciation has been claimed by SLM before the due date and in these circumstances, the assessee cannot be restrained from availing the benefit of WDV methodology which is in its favour and the constructions of Rule 5(1A) of the Rules, which is a machinery provision and gives choice to a tax payer, has to be interpreted in a manner which is favourable to the assessee.

17. Thus, the substantial question of law, as formulated in the present tax appeals are answered against the Revenue and in favour of the assessee. The tax appeals stand dismissed accordingly.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(PRANAV TRIVEDI,J)

BIMAL/1