

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1 OF 2008

Daman Computers Pvt. Ltd.,
a company incorporated under the
Companies Act, 1956 and having
its registered office at E-11,
Sunita Apartment, 62-C, Peddar
Road, Mumbai-400 036

.. Appellant.

V/s.

1 Income Tax Assessing Officer,
City V, Ward 5(1)(3), Ayakar Bhavan,
Maharshi Karve Road, Mumbai 400 020

2 The Commissioner of Income Tax,
City V, Ward 5(1)(3), Ayakar Bhavan,
Maharshi Karve Road, Mumbai 400020.

.. Respondents.

Ms. Sneha Phene with Ms. Priyanka Pol and Mr. Pratik Divkar I/by Little
& Co. for Appellants.

Mr. Abhay Ahuja with Ms. Sangeeta Yadav for Respondents.

**CORAM : M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.**
RESERVED ON : 24TH July, 2018.
PRONOUNCED ON : 10th August, 2018.

JUDGMENT: [Per Sandeep K. Shinde, J.]

This Appeal under Section 260-A of the Income Tax Act, 1961
(‘Act’) is preferred against the order dated 11.7.2007 passed by the

Income Tax Appellate Tribunal ('Tribunal'), Mumbai Bench "D", Mumbai in Income Tax Appeal No.2179/M/07 in relation to the Assessment Year 2004-05.

2 The Appeal was admitted by this Court on 15.7.2008 on the following substantial questions of law:

"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the Appellant is not entitled to the deduction under Section 80 IB of the Act ?

(b) Whether on the facts and in the circumstances of the case and in law the Appellant carries on manufacturing activity of electronics computer products within the meaning of section 80 IB of the Act ?

(c) Whether on the facts and in the circumstances of the case and in law the term manufacturer under Section 80 IB would include manufacturing activity being carried out outsourced to another party ?"

3 That disallowance of the claim of the Appellant of Rs.90,14,908/- being deduction under Section 80 IB of the Act has given rise to this Appeal.

4 The Appellants have claimed to be engaged in manufacturing of electronic computers at Daman and entered into an agreement with M/s. Kobian ECS India Pvt. Ltd. for contract manufacturing of its product. The factory of M/s. Kobian ECS India Pvt. Ltd. is located at Silvassa. That to substantiate that such manufacturing activity was being carried out under its supervision and direct control, the Appellants have relied upon

various clauses of the agreement dated 26.8.2003 entered into with M/s. Kobian ECS India Pvt. Ltd.

5 The Appellants' claim for deduction under Section 80 IB of the Act was rejected throughout having found that the manufacturing activity undertaken by M/s. Kobian ECS India Pvt. Ltd. for and on behalf of the Appellants was not under its direct supervision and control.

6 The Assessing Officer upon appreciating the evidence, recorded the finding which are as under:

“1 The salary register of the appellant shows that during the entire year till December, 2003 there was only one lady accountant on the roles. For the remaining period of the previous year five more employees have joined.

2 In the course of the assessment proceedings, the appellant has not given the designation and qualification of the employees.

3 During the year, the total electricity consumed is only 884 units which is not even enough for running the bare office equipments. Therefore, the assessee is not using electricity in its manufacturing and accordingly is required to have at least 20 workers to qualify itself for deduction u/s.80IB.

4 The A.O. has observed that appellant filed another list of eleven persons employed by them which includes three directors, one accountant and for the remaining no designations were available and accordingly has concluded that at the most only seven employees were utilized. The A.O. has also observed that the assessee did not submit the qualification of these workers despite the proceedings going on for 8 months.

5 The A.O. issued a show cause incorporating therein the intention of the legislature behind Section 80 IB to encourage employment in backward areas, which in the facts of the case was not met with and proposed to disallow deduction on the so

claimed manufacturing activity.”

7 The Appellants being aggrieved by the rejection of claim by the Assessing Officer had preferred an Appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. In Appeal proceedings, the Appellants were asked to submit;

- (i) Minute book of the company authorizing any director or employee to undertake supervision at Silvassa.
- (ii) Evidence of any director or employee going regularly to Silvassa for supervision.

The CIT (A) in its order has recorded finding that the the Appellants had not filed any evidence called for as above and as such, the CIT (A) dismissed the appeal by order dated 18.1.2007 and upheld the order of Assessing Officer.

8 Aggrieved by the order of the CIT(A), the Appellants filed an appeal before the Tribunal being ITA No. 2179/M/07. The Tribunal in terms recorded the following findings of facts:

- (I) The assessee has no immovable asset like factory premises.
- (ii) List of the assets as given in depreciation schedule shows that no asset was available with the assessee which could be used for manufacturing activities.
- (iii) Assessee has a small office at Daman and has taken some galas on rent and obtained excise registration on the

same.

(iv) The Assessing Officer after scrutiny of record recorded the finding that salary register of the assessee shows during the first nine months ending December, 03, there was only one lady accountant on the rolls of the assessee and for the remaining period of three months of the relevant year, five more employees had joined.

(v) The assessee has not given the designation and qualification of its employees in spite of specific query put by the Assessing Officer during the course of the assessment proceedings itself.

(vi) There was no evidence on record to show that director or any employee of the Appellants was going regularly to Silvassa for supervision of manufacturing process.

(vii) That the distance between the assessee's office and Silvassa is about 50 kms. and regular supervision by the director of the assessee-company would entail huge conveyance expenses which is conspicuously missing.

(viii) Assessee could not produce full address, attendance register and qualification of employees deployed at Daman Unit in spite of being asked to do so by the Assessing Officer.

(ix) Even the packaging material was supplied to the contract manufacturer M/s. Kobian ECS India Pvt. Ltd. by the assessee company for finished products at Silvassa and as such, even product was packed by M/s. Kobian ECS India Pvt. Ltd. Only.

and the facts of the case, the Tribunal concluded that claim of the assessee that, the manufacturing at Silvassa in the factory premises of M/s. Kobian ECS India Pvt. Ltd. was being carried out under its direct supervision and control, was not tenable.

11 The learned counsel appearing for the Appellants would contend that authorities below have failed to appreciate the evidence in the right perspective and misconstrued the recitals of the Contract/Agreement entered into with M/s. Kobian ECS India Pvt. Ltd. She would further contend that for claiming deduction under Section 80 IB of the Act, it is not pre-condition that the Assessee must own factory premises or machinery; but only requirement is that manufacturing activity must be undertaken under the supervision and direct control of the assessee. In support of her submission, she has relied on the judgment of this Court in the case of **CIT v. Anglo French Drug Co. (Eastern) Ltd.** **ITR 191 Page 92.**

In **Anglo French Drug Co. (Eastern) Ltd. (Supra)**, the assessee had transferred its machinery to its associate concern, i.e., Roche Products Ltd. another pharmaceutical concern, and started getting its products manufactured from Roche Products retaining its control over the manufacture. In the said judgment, it

is observed that *'it is not absolutely necessary that the assessee must depute the supervisory staff or exercise direct supervision over the manufacturing process of the kind suggested by the learned counsel. It is sufficient if, on an overall view of the matter, it is found that it was the assessee-company which was the real manufacturer and the assessee had merely employed the agency of some one else through whom the goods were caused to be manufactured. It is also not necessary that the assessee must pay the wages of the workers employed in the manufacturing process.'*

Relying on the aforesaid observations the learned counsel for the Appellants would submit that the Assessing Officer disallowed the claim only on the ground that there was no evidence to show that the employees and directors of the Appellants-Company were visiting the manufacturing unit at Silvassa. She would, therefore, submit that upon taking overall view of the matter, the Appellants have established the fact that the manufacturing activity of the computers by M/s. Kobian ECS India Pvt. Ltd. was under direct control and supervision of the Appellants and, therefore, claim ought to have been allowed.

11 Mr. Abhay Ahuja the learned counsel appearing for the Revenue on other hand, would submit that the authorities

below have recorded findings of fact and no interference is called for in these proceedings. He would submit that the appeal does not give rise to question of law. He would, therefore, urge that this Court may not interfere with the finding of the fact recorded by the authorities below and as such, appeal may be dismissed.

12 We have perused the orders passed by the Assessing Officer, CIT(A) as well as the order passed by the Tribunal. The findings recorded by the authorities and by the Tribunal are findings of fact. Neither before the Assessing Officer nor at the appellate stage, Appellants adduced any convincing evidence to hold that it had retained its control over the manufacture of electronic computers at the factory premises of M/s. Kobian ECS India Pvt. Ltd. in Silvassa. In fact, the observations in the findings recorded by the Assessing Officer, CIT(A) show that the assessee could not even produce the primary evidence in the shape of books of accounts, resolutions, even to suggest that it had deployed its manpower at the factory premises of M/s. Kobian ECS India Pvt. Ltd. and had retained the control over the manufacturing activity. The Appellants could not produce particulars like attendance register, qualifications of the employees in spite of being asked to do so by the Assessing

Officer. In fact, it appears even the packaging material was supplied to contract manufacturer by the Appellants-Company for finished products at Silvassa. All these facts cumulatively leads to hold that the Appellants did not retain control over the manufacturing of the electronic computers at the factory premises of M/s. Kobian ECS India Pvt. Ltd. at Silvassa. In the circumstances, we do not find any reason to interfere with the findings recorded by the Assessing Officer, CIT (A) and the Tribunal.

13 That for the reasons aforesaid, we hold that the Appellants were not carrying out manufacturing activity of electronic computer products within the meaning of Section 80 IB of the Act and as such, Questions (a) and (b) are answered in negative, i.e. in favour of the Revenue and the against the Assessee.

14 Having answered Questions (a) and (b) in the negative i.e. in favour of the Revenue and against the Assessee, the question (c) becomes academic and need not be answered.

15 In view of the above, Appeal is dismissed. No order as
to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)