

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 747 of 2015**

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PR.COMMISSIONER OF INCOME TAX-VADODARA-1....Appellant(s)

Versus

L.K.INDIA PVT.LTD.....Opponent(s)

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Appearance:

MR KM PARIKH, ADVOCATE for the Appellant(s) No. 1

MR TUSHAR P HEMANI, ADVOCATE for the Opponent(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 21/06/2016

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. In this tax appeal filed by the Revenue, following substantial question of law has been framed :

“Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing depreciation on moulds @ 30% as against 15% allowable on the moulds used for manufacturing electric and electronic goods by treating the manufacturing facility of the assessee as rubber and plastic goods factory in terms of Appendix-I to rule 5 of the Income Tax Rules, 1962 ?”

2. The question arises in the following background.
Respondent assessee is engaged in manufacturing plastic

switches and sockets which are used as electrical appliances. For the assessment year 2006-2007, the assessee had filed return of income in which the assessee claimed depreciation of Rs.1.57 crores on the dyes and moulds used for manufacturing such switches and sockets at the rate of 30%. The Assessing Officer during the assessment proceedings questioned the assessee's claim of higher rate of depreciation. The assessee justified the claim by pointing out that the assessee uses granules as raw material for manufacturing these goods, the granules are converted into liquid form and are given definite shapes by using moulds and dyes. The plastic components are then assembled together to make switches and sockets. These switches and sockets are therefore, by very nature plastic products. Since some moulds are used in factory manufacturing plastic goods, higher rate of depreciation of 30% prescribed under sub-clause(vii) of clause (3) of Entry III in Part-A in the New Appendix I, effective from assessment year 2006-2007 would apply.

3. The Assessing Officer was however, not convinced. He disallowed higher rate of depreciation and reduced the depreciation at the rate of 15% making the following observations :

“I have considered the submissions of the assessee. However, for the same reasons as recorded in the assessment order for A.Y. 2004-05 & 2005-06, the same are not acceptable. It is further stated that the final products of the company are electrical products being switches and sockets. Part of these switches and sockets would be plastic and part would be laced with electrical circuits made up of copper and alluminium for uses in

electrical installations. The benefit of 30% depreciation allowance is extended to only those industries which are manufacturing exclusive plastic products as could be made out from the definition of plastic goods industries specified in the relevant appendix reflecting depreciation rates. In view of this position of fact, the claim of the assessee for considering depreciation allowance @ 30% on moulds and dies fail because it does not answer the description of a plastic goods industry. Therefore, the assessment orders for A.Y. 2004-05 & 2005-06 are relied upon to state the case of revenue for restricting the depreciation on Dies & Moulds at 15% instead of 30% claimed by the assessee.”

4. The assessee carried the matter in appeal. CIT(Appeals) allowed the assessee's appeal relying on the decision of Tribunal of Bangalore Bench, upon which, the Revenue approached the Tribunal. The Tribunal dismissed the Revenue's appeal. Hence this tax appeal.
5. Learned counsel Shri Parikh for the Revenue submitted that the moulds were not used in rubber and plastic goods factory, only upon which higher rate of depreciation was available. The assessee cannot be stated to be running a factory of plastic goods. The Assessing Officer therefore, correctly decided the question of depreciation. CIT(Appeals) and the Tribunal therefore, committed an error.
6. On the other hand, learned counsel Shri Tushar Hemani for the assessee submitted that the assessee admittedly manufactured electric switches and sockets made exclusively from plastic. Moulds are therefore, used for manufacturing of plastic goods. He submitted that merely because later on electric circuits and wires are inserted in these appliances, would not take away its basic character.

7. Having heard learned counsel for the parties and having perused the documents on record, we notice that sub-clause(vii) of clause(3) of Entry III in Part-A in the New Appendix I, reads as under:

“(vii) Moulds used in rubber and plastic goods factories”

8. Thus for mould used in rubber and plastic factories, higher rate of depreciation of 30% is prescribed. Rate of depreciation of 15% applies to residual items. Thus if an item falls under said sub-clause (viii) rate of depreciation would be 30%. In the present case, admittedly, moulds were used for manufacturing of plastic goods. These goods were in the nature of electric switches and sockets. Merely because after the manufacture, the consumer may be having plastic wires and circuits installed in such plastic switches and sockets, so as to make them functional, would not take away the basic character of the appliances being plastic goods. The assessee was exclusively involved in manufacturing such goods. Factory of the assessee was therefore, plastic goods factory. The moulds used for manufacturing such goods, therefore, qualify for higher rate of depreciation under sub-clause(vii) of clause(3) of Entry III in Part-A in the New Appendix I.

9. We do not find any error in view of the Tribunal. Question is therefore, answered against the Revenue and in favour of the assessee.

10. Tax appeal is disposed of.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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