IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.9 OF 2007
WITH
TAX APPEAL NO.10 OF 2007
WITH
TAX APPEAL NO.22 OF 2010

TAX APPEAL NO.9 OF 2007

The Commissioner of Income Tax
Having office at Aayakar Bhavan,
Patto-Plaza, Panaji-Goa. …... Appellant

Versus

M/s. Titan Time Products Ltd.,
L-15, Verna Electronic City,
Verna, Salcette, Goa. ….... Respondent

TAX APPEAL NO.10 OF 2007

The Commissioner of Income Tax
Having office at Aayakar Bhavan,
Patto-Plaza, Panaji-Goa. …... Appellant

Versus

M/s. Titan Time Products Ltd.,
L-15, Verna Electronic City,
Verna, Salcette, Goa. ….... Respondent

TAX APPEAL NO.22 OF 2010

The Commissioner of Income Tax
Having office at Aayakar Bhavan,
Patto-Plaza, Panaji-Goa. …... Appellant

Versus

M/s. Titan Time Products Ltd.,
L-15, Verna Industrial Estate,
Verna, Salcette, Goa. ….... Respondent

Ms. Asha Dessai, Advocate for the Appellants.

Mr. Sudin Usgaonkar with Ms. Vinita Palyekar, Advocates for the Respondents.

CORAM: R. M. BORDE &
F. M. REIS, JJ.
DATE: 20TH NOVEMBER, 2014.

JUDGMENT (PER R. M. BORDE, J):

The substantial question of law that arises for consideration in all these appeals is as to whether on the facts and in the circumstances of the case the ITAT was correct in law in holding that the assessee company is a semi- conductor industry and allowing depreciation at a higher rate of 40%.

2. The assessee company is a company engaged in business of manufacturing of Electronic Circuit Boards (ECB). On presentation of the return of income, the assessee was permitted to avail depreciation at the rate of 25% and the claim for allowing depreciation at higher rate i.e 40% was rejected by the assessing officer. An appeal was carried by the assessee company to CIT (Appeals) and on consideration of the contentions raised by the assessee the appeal came to be allowed. The appellate authority held that the product manufactured by the assessee i.e Electronic Circuit Board (ECB) is a semi-conductor device and as such, the assessee is entitled to depreciation at the rate of 40%. An appeal preferred by the Revenue to the ITAT came to be dismissed confirming the order passed by the CIT (Appeals).

3. It is the contention of the Revenue that the assessee in fact purchases by way of import semi-conductor devices such as “Integrated Circuits (IC) and Mounted Piezo-Electronic Crystals, which amount to 90% of the total value of the final product i.e Electronic Circuit Board (ECB), which are fixed on the Board and they are interconnected to produce the end products i. e. Electronic

circuit Board (ECB), which are used in watches. It is contended that even as per the assessee's version the semi -conductor devices used by them are not manufactured in India, which constitute 90% of the total value of the final product. Thus what the assessee is doing is merely to assemble all the devices on ECBs. It is the contention of the Revenue that the assessee company is not a semi-conductor industry as it does not manufacture any semi-conductor devices and thus the higher rate of depreciation claimed by the assessee has been rightly rejected by the assessing officer restricting the claim to normal depreciation at 25% only.

4. The respondent/assessee has controverted the contentions raised by the appellant and submitted that Commissioner (Appeals) as well as the Tribunal has correctly appreciated the issue involved in the matter and held the assessee entitle to claim higher rate of depreciation at 40%.

5. The Commissioner of Income Tax (Appeals) in its Judgment has referred to the letter dated 3/2/2004 written by Senior Director, Department of Information Technology, Ministry of Communications and Information Technology, Government of India

addressed to the assessee wherein it has been clarified that the activity undertaken by the assessee of mounting silicon chips on printed IC, ECB circuit boards is similar to manufacturing of IC i.e. ECB which are undoubtedly the semi conductor device. It is also observed by the Commissioner (Appeals) that special equipment is required in mounting of silicon chips on PCB which are the same as required in any IC manufacturing industry and as such, the chip bonding operation in ECB assembly is 1st part of the manufacturing process.

6. The question as to whether the activity amounts to manufacture is primarily a question of fact. It is also worth noting that during the previous 7 assessment years including those completed under section 143 (3) of the Act, the assessee has been allowed higher rate of depreciation and there was no reason quoted as to why the assessing officer was persuaded to take a different view. The findings recorded by the Commissioner of Appeals on the question of facts have been confirmed by the ITAT while turning down the appeal presented by the Revenue.

7. Learned counsel appearing for the Revenue has placed reliance on the judgment in the matter of "*Commissioner of Income*

Tax Vs. Fashion Prints Limited" reported in (1996) 217 ITR 0456 (BOM): (1995) 123 CTR 0272 (BOM).

8. In the reported matter the assessee carried out the process of dyeing and printing and processing of grey cloth manufactured by a different industry. The assessee claimed depreciation under section 32(1) (vi) of the Act contending that the processing of textiles is covered under the said item no.21 of the List mentioned in Ninth Schedule to the Act. The learned Single Judge of this Court while dealing with the matter has held that the process of dying and printing on grey cloth admittedly manufactured by others cannot be held to be business eligible for claiming benefits under section 32(1) (vi) of the Act. An identical view is taken in the matter of "*Commissioner of Income Tax Vs. V. Jaypee Dyeing House" reported in (1999) 239 ITR 0418 (BOM).*

9. In order to substantiate the contentions and lend support to the view taken by the CIT (Appeals) and the Appellate Tribunal, the respondent/assessee has placed reliance on the Judgment in the matter of "*Commissioner of Income Tax-V, New Delhi Vs. Oracle Software India Limited", reported in (2010) 2 Supreme Court Cases*

677. The assessee Oracle Corporation imports master media software from Oracle Corporation USA, which is duplicated on blank discs, packed and sold in market with relevant brochures. According to assessee, it uses machinery to convert blank CDs into recorded CDs, which along with other processes become a software kit. The making of a copy which constitutes manufacture or processing goods in terms of section 80-IA and consequentially the assessee is entitled to deduction under that section. The department, however contended that there is no element of manufacture or processing of goods in the process of copyright. The Hon'ble Supreme Court while considering the issue has recorded a finding that the marketed copies are goods and if they are goods then the process by which they become goods would certainly fall within the the ambit of section 80-A (12) (b) r/w section 33-B because an industrial undertaking has been defined in section 33-B to cover manufacture or processing of goods. A reference is made to the decision in the matter of "*Tata Constancy Services V. State of A.P." reported in (2005) 1 SCC 308*. The issue was as to whether the software programme put in media for transferring or marketing is "goods" under section 2(h) of the Andhra Pradesh General Sales Tax Act, 1957. It was held that a software programme may consist of commands which enable the computer to perform a designated task. The copyright in the programme may remain with the originator of the programme. But, the moment copies are made and marketed, they become goods. It was held that even an intellectual property, once put on to a media, whether it will be in the form of computer discs or cassettes and marketed, it becomes goods.

10. In the matter of "*Commissioner of Income Tax Mumbai Vs. Emptee Poly-Yarn Private Limited*" reported in (2010) 2 SCC 720, the issue raised was as to whether twisting and texturizing of partially oriented yarn (POY) amounts to manufacture in terms of Section 80-IA of the Income Tax 1961. The Supreme Court referring to the earlier judgment in the matter of "*Oracle Software*" held in the affirmative. It was observed in the aforesaid judgment that POY is a semi-finished product. It is a raw material/input. The raw material or input gets converted into a texturized yarn by reason of the thermo-mechanical process. POY is unfit for the manufacture of fabric. POY, as stated above, means partially oriented yarn whereas a cellulosic filament yarn is a final product in the sense after processing can be used directly for the manufacture of fabric. Thus, considering the ratio of the judgment cited above in the matter of "*Oracle Software*

India Ltd.", we are of the considered view that the reasons recorded by the Commissioner of Income Tax (Appeals) as well as by the Tribunal are reasonable and proper and do not call for any interference. It is also worth noting that the technical expert from the Ministry of Communications and Information Technology has opined that for the purpose of mounting of silicon chips on PCB special equipments like chip bonding/wire bonding etc. are required which are the same required in any IC manufacturing industry and chip bonding operation in ECB assembly is 1st part of the manufacturing process. There is nothing contrary placed on record to controvert the expert opinion given by the technical person from the department of Information Technology. Even otherwise, it would be quite reasonable to assume that since the assessee is applying the use of machinery and plant used in the semi-conductor industry (the opinion of the expert lends support to this conclusion), the assessee company is entitled to claim depreciation at 40% in accordance with Entry no. XI part "A" (ii) of Old Appendix I under Rule 5.

11. For the reasons recorded above, the appeal presented by the Revenue does not deserve favourable consideration and as such, the appeal stands dismissed. In the facts and circumstances of the

case there shall be no order as to costs.

F. M. REIS, J.   R. M. BORDE, J.

AP/-