

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
TAX APPEAL NO.28 OF 2014

Commissioner of Income Tax

“Aaykar Bhavan”

Patto, Panaji, Goa.

.....

Appellant.

Versus

Gigabyte Technology (India) Ltd.

L-5, Verna Electronic City,

Goa – 403 722.

.....

Respondent.

Ms. Susan Linhares, Standing Counsel for the Appellant.

Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.

Date : 7th January, 2020.

ORAL JUDGMENT: (Per M.S. SONAK, J.)

Heard Ms. Linhares for the Appellant. The Respondent, though served neither present, nor their Counsel is present.

2. This Appeal was admitted on the following substantial question of law :

“Under the facts and circumstances of the case, whether the ITAT is right in holding that the obsolete stock which is not disposed off or sold is allowable as expenditure ignoring the decision of Bombay High Court in the case of CIT vs. Heredilla Chemicals Ltd.(Bom) 255 ITR 532 ?

3. The circumstances in which the aforesaid substantial

question of law arises for determination, are as follows :

- (A) The Assessee filed e-return of income on 27th October, 2007, declaring a total income of Rs.10,510/-, which was processed and assessment order was made under Section 143(2) of the Income Tax Act, 1961 (IT Act);
- (B) The Assessee had claimed Rs.56,54,837/- as losses towards stock obsolescence. The Assessing Officer, however, issued a show cause notice to the Assessee on the issue of obsolete in respect of Laptops valued at Rs. 34,35,618/- and motherboards valued at Rs.14,01,600/-;
- (C) Upon considering the response of the Assessee, the Assessing Officer held that the laptops and the motherboards which have long shelf life cannot be considered as having become obsolete and, accordingly, disallowed the losses.
- (D) The Assessee appealed to the Commissioner of Income-tax (Appeals) and this appeal was allowed.
- (E) The Department then appealed to the Income Tax Appellate Tribunal (ITAT) which has, by the impugned Judgment and Order dated 27th September, 2013, agreed with the view taken by the CIT (Appeals) and consequently, dismissed the Department's appeal. Hence, the present Appeal on the aforesaid substantial question of law.

4. Ms. Linhares, learned Counsel for the Appellant has relied

upon the decision of this Court in *Commissioner of Income-tax vs. Heredilla Chemicals Ltd.*¹ to submit that mere writing off some machinery by claiming that the same has become obsolete, is not a good ground for claiming any deduction for losses. She submits that for the present, there was no material on record that the laptops and motherboards had actually been sold by the Assessee in order to make any legitimate claim for the losses. She submits that inasmuch as the decision in *Heredilla Chemicals Ltd.* (supra) of the jurisdictional High Court has not been considered by the ITAT, the impugned Judgment and Order warrants interference.

5. We have considered the contentions raised by Ms. Linhares, particularly in the context of the decision in *Heredilla Chemicals Ltd.* (supra). However, according to us, the decision in *Heredilla Chemicals Ltd.* (supra) is distinguishable on facts and, will really not apply to the fact situation in the present case. In the present case, there are concurrent findings of fact recorded by the CIT(Appeals), as well as ITAT that the laptops and motherboards had indeed been rendered obsolete. There are findings of fact regards the Assessee consistently following a particular accounting policy from year to year, which is quite consistent with the provisions of Section 145A of the IT Act. Upon taking cognizance of these distinguishing features, the ITAT following the decisions of various

¹ (1997) 225 ITR 532 (BOM)

High Courts which are referred to in paragraph 6 of the impugned Judgment and Order, has held in favour of the Assessee.

6. There is no case made out that the findings of fact recorded by the CIT (Appeals) and the ITAT concurrently, suffer from any perversity as such. The ruling in *Heredilla Chemicals Ltd.* (supra) turns on its own peculiar facts. In the said case, the issue related to a particular item of machinery i.e. PAN catalyst being rendered obsolete, was claimed merely by attempting to write off losses in its accounts in the previous year and relevant to the assessment year. This Court noted that even at the time of hearing of the Appeal, the machinery had not been sold despite the fact that the Assessee had assured the authorities to bring back the sale proceeds of the same for assessment as and when it was sold. It is in such a situation that this Court held that the Assessee cannot be said to have suffered any loss in the previous year relevant to the assessment year under consideration. Such facts, obviously, are not found in the present case. The ruling in *Heredilla Chemicals Ltd.* (supra) is, therefore, distinguishable and, consequently, inapplicable to the fact situation in the present case.

7. We also found that the tax effect in the present case is Rs.19.00 lakhs or thereabouts. Normally, the Appeal was, therefore, required to be withdrawn by the Appellant, taking into consideration the CBDT Circular No.17/2019. However, it was pointed out that

this was a case in which audit objections had been raised. Without going into the issue of the CBDT Circular No.17/2019, we now find that there is really no case made out to interfere with the impugned Judgment and Order made by the ITAT.

8. We, therefore, answer the substantial question of law as framed, against the Department. This appeal is consequently liable to be dismissed and is, hereby, dismissed. There shall be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.