

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 284/Hyd/2016
(निर्धारण वर्ष / Assessment Year: 2004-05)

Assistant Commissioner
of Income Tax,
Circle-16(2),
Hyderabad

M/s. Owens Corning's Industries
Vs. (India) Private Limited,
(Formerly known as M/s. Siant
Gobain Vetrotex India Ltd.,)
Hyderabad
[PAN No. AAACV9858N]

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Smt. S. Sandhya, AR
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 27/07/2023
घोषणा की तारीख/Pronouncement on: 03/08/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 21/12/2015 passed by the learned Commissioner of Income Tax (Appeals)-4, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Saint Gobain Vetrotex India Limited ("the assessee") for the assessment year 2004-05, Revenue preferred this appeal.

2. Two issues involved in this appeal. One is in respect of disallowance under section 40(a)(ia) of the Income Tax Act, 1961 (for short "the Act") to the tune of Rs. 1,13,28,493/- and the other is the addition of

Rs. 1,99,76,907/- towards disallowance of depreciation on printers, UPS, Cable Works and Computer Tables.

3. Insofar as the first issue is concerned, at the outset, both the counsel submitted that this issue has been decided by the Co-ordinate Bench of the Tribunal in assessee's own case in ITA Nos. 254 & 255/Hyd/2016 (assessment years 2002-03 and 2003-04) dated 15/12/2021 and by quoting and following the same, for the assessment year 2004-05 in ITA No. 256/Hyd/2016 by order dated 22/02/2022, the Tribunal upheld it in favour of the assessee. It is also submitted by them that no appeal has been preferred against the order dated 22/02/2022 in ITA No. 256/Hyd/2016 and it has become final.

4. We have gone through the orders dated 15/12/2021 and 22/02/2022 (supra) and found that precisely this issue has been decided by the Bench in favour of assessee. In these circumstances, respectfully following the decisions of the Co-ordinate Bench of the Tribunal, hold the issue in favour of the assessee, we dismiss the ground raised by Revenue.

5. Coming to the second issue, assessee claimed depreciation @60% on computer and software. Learned Assessing Officer was of the opinion that all the assets included under computers are not eligible for depreciation @60% and computer peripherals are eligible for depreciation only @25%.

6. Learned CIT(A) directed the learned Assessing Officer to take note of the decision of the Tribunal in assessee's own case for the assessment years 2000-01 to 2007-08 and 2009-10 to re-compute the depreciation on intangible assets, except goodwill.

7. Learned AR submitted that computers as well as the computer peripherals are eligible for depreciation @60% and for this purpose, he placed reliance on 1. CIT vs. Sony India P. Ltd., (2012) 210 Taxman 149 (Del.) (HC); 2. CIT vs. Orient Ceramics & Industries Ltd., (2011) 11

taxmann.com 417 (Del.) (HC); 3. Tetra Soft (India) (P.) Ltd., vs. ACIT, Hyderabad (2015) 40 ITR (Trib) 479 (Hyderabad); 4. Smt. Nandury Sobha Rani, Shri Nandury Tejaswy vs. Addl. CIT, Hyderabad [ITA.No.332 & 333/Hyd/2011 dated 02.07.2012]; 5. ACIT vs. Ushodaya Enterprises Ltd., Hyderabad (2012) 19 ITR 199; 6. Ushodaya Enterprises Ltd., vs. DCIT, Hyderabad (2015) 155 ITD 701 (Hyd.); 7. M/s. Performica Software P. Ltd., vs., DCIT, Hyderabad [ITA.Nos.1015 & 1128/Hyd/2012 dated 13.09.2013]; 8. Expeditors International (India) (P) Ltd., vs. Addl. CIT, Delhi ITAT (2010) 2 ITR 153, and 9. DCIT vs. Datacraft India Ltd., (2011) 9 ITR 712 (Mum.) (SB).

8. He further submitted that following this settled principle in these decisions in the case of D.E. Shaw India Pvt. Ltd., vs. DCIT, in ITA No. 1180/Hyd/2016, (assessment year 2009-10), dated 11/01/2017, Co-ordinate Bench of this Tribunal held the issue in favour of the assessee.

9. Per contra, learned DR vehemently contended that certain items like printers, USB etc., do not fall in the category of computers, to be eligible for depreciation @60% and the learned Assessing Officer was right in disallowing the excess depreciation.

10. On careful perusal of the decisions cited at Bar, we are of the considered opinion that this issue is no longer res integra. Computers as well as the computer peripherals are eligible for depreciation @60%. Hence, the disallowance is directed to be deleted. Ground is accordingly dismissed.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 3rd day of August, 2023.

Sd/-

(RAMA KANTA PANDA)

VICE PRESIDENT

Hyderabad, Dated: 03/08/2023

TNMM

Sd/-

(K. NARASIMHA CHARY)

JUDICIAL MEMBER

Copy forwarded to:

1. Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad.
2. M/s. Owens Corning's Industries (India) Private Limited,
(Formerly known as M/s. Saint Gobain Vetrotex India Ltd.,)
Kothur Mandal, Thimmapur, Mahabubnagar.
3. Pr.CIT-4, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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ASSISTANT REGISTRAR
ITAT, HYDERABAD