

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
TAX APPEAL NO.15 OF 2009

Betts India Pvt. Ltd.,
L-78, Verna Electronic City,
Verna, Salcete, Goa 403 722. Appellant.

Versus

The Asstt. Commissioner of
Income Tax, Circle I,
Margao, Goa. Respondent.

Ms. Priyanka Kamat, Advocate for the Appellant.

Ms. Susan Linhares, Standing Counsel for the Respondent.

***Coram : M.S. Sonak &
C.V. Bhadang, JJ.***

Date : 5th November, 2019.

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

Heard Ms. Priyanka Kamat for the Appellant and Ms. Susan Linhares for the Respondent.

2. By our order dated 07/09/2009, this appeal was admitted on the following substantial questions of law :

" 1. Whether the ITAT erred in upholding the validity of the Assessment Order dated 28th February, 2005 passed by the Respondent under Section 143(3) read with Section 147 of the Act ?

2. Whether the ITAT erred in upholding that it was mandatory for depreciation to be granted while determining the Appellant's entitlement to the deduction under Section 80IB of the Act, even though the Appellant had not claimed such depreciation ?"

3. Ms. Kamat, learned Counsel for the Appellant quite correctly presses for adjudication on the second substantial question of law which, in fact, really the only substantial question of law which arises for determination in this matter.

4. Ms. Kamat points out that when this Appeal was admitted on 7/9/2009 and the aforesaid questions of law were formulated, the order made by the Division Bench of this Court dated 19/12/2008 in Income Tax Appeal No.1282/2007 was undertaken to be placed on record. She points out that the impugned Judgment and Order made by the ITAT in the present case, entirely relies upon the decision of yet another Division Bench of this Court in ***Scoop Industries Pvt. Ltd. vs. I.T.O. & Ors.***¹. She further points out that by order dated 19/12/2008 in Income Tax Appeal No.1282/2007, another Division Bench of this Court noticed conflict between the decisions in the case of ***Grasim Industries Limited vs. ACIT***² and ***Scoop Industries Pvt. Ltd. (supra)*** and, therefore, directed that the matters be placed before the Hon'ble the Chief Justice for reference

¹ 289 ITR 195 (Bom.)

² 245 ITR 677 (Bom)

to a Full Bench. Ms. Kamat submits that if the Full Bench were to decide that the law laid down in *Scoop Industries Pvt. Ltd.* (supra) is no longer a good law then, the substantial question of law pressed for by her will have to be decided in favour of the Appellant and against the Revenue. She submitted that she is unaware as to whether the Full Bench has already decided the matter or not and, on this ground, applied for deferment of the proceedings.

5. Since the matter has been adjourned from time to time and on one occasion the same was even dismissed for non-prosecution, we were quite reluctant to defer the hearing in this matter, any further.

6. Ms. Linhares, learned Standing Counsel for the Respondent also stated that she is unaware as to whether the Full Bench has already disposed of the reference made to it.

7. In a matter of this nature which has been pending since 2009 and adjourned on several occasions, least that we expect was that the learned Counsel for the parties at least make efforts to find out whether the reference before the Full Bench has been disposed or or not. At the present stage, this is not at all difficult, because all the Judgments and Orders delivered by the Bombay High Court are invariably uploaded on the dedicated website made for the purpose.

8. Whilst the matter was proceeding, the Court Superintendents themselves accessed the internet and produced

before us the Judgment and Order dated 16.10.2009 delivered by the Full Bench of this Court in Income Tax Appeal No.1282/2007. We note that this was an exercise which could have been easily undertaken by the learned Counsel for the parties, but the same was not undertaken despite several adjournments.

9. From the perusal of the Judgment and Order dated 16.10.2009 in Income Tax Appeal No.1282/2007, it is apparent that the Full Bench has held that there is really no conflict as such in the decisions of this Court in the cases of *Grasim Industries Limited* (supra) and *Indian Rayon Corporation Ltd. vs. CIT*³ which is in fact the decision followed in *Scoop Industries Pvt. Ltd.* (supra). The Full Bench has held that the ratio laid down in both the cases, is in consonance with the ratio laid down by the Hon'ble Apex Court in the case of *Distributors (Baroda) P. Ltd. vs. Union of India*⁴. Upon analysis of the legal position, the Full Bench concluded that for the purposes of deduction under Chapter VIA, the gross total income has to be computed *inter alia* by deducting the deductions allowable under Section 30 to 43D of the Act, including depreciation allowable under Section 32 of the Income Tax Act, even though the Assessee may have computed the total income under Chapter IV by disclaiming the current depreciation. This, according to us, affords a full answer to the substantial question of law, now pressed in this

³ 261 ITR 98 (Bom)

⁴ 155 ITR 120 (SC)

Appeal.

10. Since, the ITAT in the impugned Judgment and Order, has merely followed our decision in *Scoop Industries Pvt. Ltd.* (supra) and, since, the Full Bench has now noted that there is no conflict whatsoever between the decisions in *Scoop Industries Pvt. Ltd.* (supra) and *Grasim Industries Limited* (supra), the substantial question of law, now framed, is required to be answered against the Appellant and in favour of the Revenue.

11. As a result, this Appeal fails and is dismissed. There shall, however, be no order as to costs.

C.V. Bhadang, J.

M.S. Sonak, J.