

* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No. 1291 of 2006**

% Judgment reserved on: 22nd February, 2007

Judgment delivered on: 27th February, 2007

ALLIED ELECTRONICS AND MAGNETICS LTD.

..... Appellant

Through: Ms.Shashi M.Kapila with
Mr.Prakash Yadav, Adv.

Vs.

DEPUTY COMMISSIONER OF INCOME

.....Respondent

Through: Mr.J.R.Goel with
Mr.S.C.Sharma, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

V.B. GUPTA, J.

Appellant has filed the present appeal under Section
260A of Income Tax Act, 1961(hereinafter referred to as
Act) against the impugned order dated 31st January, 2006

passed by Income Tax Appellate Tribunal (hereinafter referred to as Tribunal) in ITA No.4778/Del/03 for the assessment year 2000-01. By the said order the claim made by the Appellant under Section 32(1)(iii) of the Act for write off of discarded/obsolete machinery amounting to Rs.40,83,828/- was disallowed.

2. The brief facts of the case are that Appellant-company is engaged in manufacturing and trading of floppy and other computer consumables. Till the close of the immediately preceding year relevant to assessment year 1999-2000, it had been manufacturing computer floppies. The plant and machinery installed in the financial year 1984-85 and 1994 had been extensively used by it for this purpose. As the technology in the field of computer consumables had advanced manifold since the installation of the plant and machinery, the system of electronic equipment used by the Appellant became obsolete and commercially un-viable and as such the Board of Directors of Appellant-company approved the discarding off of the obsolete plant and machinery and accordingly Appellant claimed deduction for write off of the discarded plant and

machinery during the period under consideration.

3. The Assessing Officer denied the claim of such write off on the grounds that as per the provision of Section 32(1)(iii) of the Act, the machinery should have been used at least for a part of the accounting year to claim depreciation in the year in which the same was sold or otherwise discarded. Since, it was not so used during the period under consideration, he disallowed the Appellant claim of Rs.40,83,828/-

4. Being aggrieved against this order, the Appellant filed an appeal before the Commissioner of Income Tax (Appeals) who concurred with the finding of the Assessing Officer. On further appeal, the Tribunal upheld the finding of the Commissioner of Income Tax(A). Hence the present appeal.

5. It has been argued by learned counsel for the Appellant that sub-clause (iii) of Section 32(1) of the Act does not deal with the allowance of depreciation but deals with deduction for discarding, demolition, destruction or sale of the depreciable assets. All that the Section requires is that the assets should have been used for the purposes of

business in the earlier years on which depreciation should have been allowed and such assets should form part of the Block of Assets on which depreciation was claimed in the earlier years. It does not mandate that such assets should have been used in the year of discarding, demolition and sale. User of machinery in the year of discarding, demolition and sale etc. is not mandatory condition. The interpretation given by the Tribunal that, user of machinery in the year of discarding, demolition or sale etc. is one of the mandatory condition for allowing deduction under Section 32(1)(iii) of the Act, is not correct.

6. On the other hand it has been argued by the learned counsel for the Revenue that no infirmity can be found with the order of the Tribunal and in its support learned counsel cited case reported as **Maharashtra Minerals Corporation Ltd. vs. Commissioner of Income Tax** (1995) 216 ITR 578 and **Commissioner of Income Tax vs. Co-operative Wholesale Society Ltd.** (1992) 195 ITR 361.

7. The relevant provision for disposal of the present appeal is Section 32(1)(iii) of Act, which reads as under:-

“Depreciation

Section 32.(1) In respect of depreciation of-

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998,

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deduction shall be allowed-

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iia) xxx xxx xxx

(iii) in the case of any building, machinery, plant or furniture in respect of which depreciation is claimed and allowed under clause (i) and which is sold, discarded, demolished or destroyed in the previous year (other than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, fall short of the written down value thereof;”

8. A bare reading of this provision will show that one of the conditions for allowing the above deduction is that the machinery must have been used for the purposes of the business during the previous year in which the machinery

is sold, discarded, demolished or destroyed. There is no dispute between the parties on this issue. The only dispute is as to whether the machinery was so, used or not.

9. There is a concurrent finding of three authorities below, i.e. the Assessing Officer, Commissioner of Income Tax (A) and Income Tax Appellate Tribunal to the effect that the machinery was not put to use at all during the relevant previous year.

10. We do not find any reason to differ with the finding of fact recorded by all these authorities and there is nothing on record to show that the machinery in question was put to use during the relevant previous year.

11. In case of **Maharashtra Minerals Corporation Ltd.(supra)** while discussing the provisions of Section 32(1)(iii) of the Act, a Division Bench of Bombay High Court, held that:-

“Now as regards the legal position, we are of the view that the asset, which is sold or discarded or is demolished and the loss on which is claimed under section 32(1)(iii) of the Act, must have been used for the purpose of the business or profession of the assessee in the year of assessment in which it was claimed

and the fact that the asset may have been used for the purpose of the business in the earlier years, will not entitle the assessee to the allowance under section 32(1)(iii), if the same was sold or discarded in a subsequent assessment year.” “

12. In view of the above discussion, we are of the opinion that no substantial question of law arises for our consideration and we do not find any error in the view that has been taken by the Tribunal in this regard.

13. Consequently, the appeal is dismissed.

(V. B. GUPTA)
JUDGE

February 27, 2007
SB

(MADAN B. LOKUR)
JUDGE