IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF SEPTEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

I.T.A. No.72 OF 2017

BETWEEN

BOSCH LIMITED
P.O BOX NO.3000
HOSUR ROAD, ADUGODI
BANGALORE-560 030
REPRESENTED BY ITS
MANAGING DIRECTOR
MR SOUMITRA BHATTACHARYA

...APPELLANT

(BY MR. PERCY PARDIWALLA, SENIOR ADVOCATE FOR
SMT. TANMAYEE RAJKUMAR, ADVOCATE)

AND

1 . THE DEPUTY COMMISSIONER
INCOME TAX LARGE TAX PAYERS
UNIT(LTU), BANGALORE,
JSS TOWERS
100 FEET RING ROAD
BANASHANKARI 3RD STAGE
BENGALURU-560 085

2 . TEH ASSISTANT COMMISSIONER OF
INCOME TAX
LARGE TAX PAYERS UNIT (LTU)
BANGALORE, JSS TOWERS
100 FEET RING ROAD
BANASHANKARI 3RD STAGE
BENGALURU-560 085

3 . THE COMMISSIONER OF INCOME TAX

LARGE TAX PAYERS
UNIT (LTU), BANGALORE
JSS TOWERS
100 FEET RING ROAD
BANASHANKARI 3RD STAGE
BENGALURU-560 085

….RESPONDENTS

(BY SRI. E.I. SANMATHI, ADVOCATE A/W
SRI. RAVI RAJ Y V, ADVOCATE)

THIS ITA / INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE, ALLOW THE APPEAL AND SET ASIDE THE COMMON ORDER PRONOUNCED ON 08/09/2016 BY THE ITAT, BENGALURU BENCH 'A' , BENGALURU IN ITA NOS. 671/BANG/2011, 672/BANG/2011 AND 1211/BANG/2015 ANNEXURE H), TO THE EXTENT QUESTIONED HEREIN AND ETC.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 19.08.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, ***POONACHA J,*** DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
and
HON'BLE MR JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR JUSTICE C.M. POONACHA)

The present appeal is filed by the assessee under Section 260-A of the Income Tax Act, 1961[1] challenging the common order dated 8.9.2016 passed by the Income Tax Appellate Tribunal, Bangalore Bench "A", Bangalore[2], in ITA Nos.671/Bang/2011, 672/Bang/2011 and 1211/Bang/2015.

[1] Hereinafter referred to as the 'IT Act'
[2] Hereinafter referred to as the 'Tribunal'

2. The Tribunal considered 5 appeals together, 3 of which were filed by the assessee and 2 of which were filed by the Revenue, which were decided by its order dated 8.9.2016. The present appeal pertains to the order passed by the Tribunal in respect of the appeals filed by the assessee pertaining to AYs 2005-06 and 2006-07.

3. Heard the submissions of learned Senior Counsel Sri Percy Pardiwala appearing along with learned counsel Smt Tanmayee Rajkumar, for the appellant – assessee and learned counsel Sri E.I.Sanmathi, appearing for the respondent – Revenue.

4. This Court, vide order dated 14.11.2017 admitted the above appeal to consider the substantial questions of law formulated in the memorandum of appeal except substantial question of law No.7.

5. Learned Senior counsel for the assessee and learned counsel for the Revenue jointly submit that substantial question of law Nos.4, 5 and 6 in the memorandum of appeal would not arise for consideration due to the subsequent events. Hence, the said substantial questions of law are not considered in the present appeal.

6. In view of the aforementioned, the substantial questions of law considered in the present appeal are as under:

"Whether, on the facts and circumstances of the case and on the grounds raised:

i. the Tribunal was right in sustaining the 1st Respondent's action in disallowing the claim for deduction of the cost of trademarks over a three year period when the said trademarks had admittedly been acquired for use for a period of only three years?

ii. the proportionate expenditure on trademarks referable to the first and second assessment after their acquisition years having been allowed by the Revenue in the preceding two assessment years, ie., in AYs 2003-04 and 2004-05, the claim for the subsequent years ought to have been allowed in the absence of any change in law and facts?

iii. the Tribunal was right in sustaining the 1st Respondent's action in disallowing the claim for deduction under Section 80JJAA of the Act in respect of permanent employees solely on the ground that they were employed for less than 300 days during the relevant previous years despite the fact that they had been employed for periods much longer than 300 days?"

Re. substantial questions of law Nos.(i) and (ii):

7. The relevant facts necessary for consideration of the said substantial questions of law are that the assessee is a public limited company engaged in, *inter alia*, the business of manufacture and sale of automobile components, diesel fuel injection equipment, auto electrical items, etc. That vide

Agreement dated 30.12.2002[3], the assessee acquired the business of communication products and close circuit television products from Philips India Ltd. In consideration for acquiring non-exclusive and indivisible rights to use the trademarks of the products so acquired vide the said agreement for 36 months, the assessee paid a sum of ₹75,70,000/-. Since the right to use the trademarks was granted for a limited period of 36 months, the assessee proportionately claimed deduction of the amount over the period of 36 months from January 2003.

8. The assessee's claim for deduction was allowed in the assessment order passed under Section 143(3) of the IT Act for the first two years after acquiring the said rights i.e., for AYs 2003-04 and 2004-05. However, for AY 2005-06 and 2006-07 the proportionate deduction of a sum of ₹25,23,333/- and ₹18,92,500/- was claimed, which was disallowed by the Assessing Officer[4], vide assessment orders dated 24.12.2008 and 22.12.2009 respectively. Being aggrieved, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), Bangalore[5], which were dismissed and the appeals filed by the assessee before the Tribunal were also dismissed. Being aggrieved the present appeal is filed.

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[3] Hereinafter referred to as the 'said agreement'
[4] Hereinafter referred to as the 'AO'
[5] Hereinafter referred to as the 'Commissioner'

9. Learned Senior Counsel for the assessee contends that the deduction by the AO regarding the amount sought to be amortized in respect of the use of trademarks was rejected on the ground that the deduction is covered by Section 32(1) as well as under Section 43(6) of the IT Act. It is further contended that Section 32(1) would require the assessee to "own" the trademark and Section 43(6) would require the assessee to "acquire" the trademark and having regard to the fact that admittedly the assessee had only the right to use the trademark for a period of 36 months, neither Section 32(1) nor Section 43(6) of the Act would stand attracted. It is further contended that the authorities have erred in not considering the contention of the assessee regarding the "rule of consistency", inasmuch as the deduction as claimed by the assessee having been accepted for AYs 2003-04 and 2004-05, the same could not have been rejected for the subsequent years i.e., AYs 2005-06 and 2006-07. Hence, he seeks for answering the substantial question of law Nos.(i) and (ii) in favour of the assessee.

10. Per contra, learned counsel for the Revenue would contend that the assessee has failed to demonstrate that the expenditure was a revenue expenditure having regard to Section 37 of the IT Act and hence, the decision of the

authorities is just and proper. Hence, he seeks for dismissal of the above appeal.

11. The relevant factual matrix is undisputed, inasmuch as by virtue of the said agreement the assessee has acquired the right to use the trademark of Philips India Ltd., for a period of 36 months. Further, it is forthcoming that in respect of the said right to use the trademarks for the period of 36 months, the assessee had sought to claim deduction of a sum of ₹75,70,000/-, which it has amortized over the said period of 36 months. Further, the deduction claimed by the assessee as expenditure for the use of the trademark for AYs 2003-04 and 2004-05 has been accepted. That the deduction has been disallowed only for the period of AYs 2005-06 and 2006-07. It is forthcoming from the assessment order dated 24.12.2008 for the AY 2005-06 that with regard to the amortization of trademarks it was held as follows:

> *" 3. When the return of income was filed, the assessee had also filed a letter dated 27.10.2005 giving clarifications on various issues. Para 2.2 of this letter says that the assessee had acquired a business from Phillips India Ltd. The consideration paid includes an amount of Rs.75.7 lakhs towards 'non-exclusive and indivisible right to apply the trademark to the products and the right to sell the product under the trademark'. It is claimed that the right to use the trade mark is limited to a period of 36 months. Hence this expenditure is amortized over a period of three years. Accordingly, a deduction of Rs. 25,23,333/- (being 1/3 of 75.7 lakhs) is claimed every year for a period of three years.*

3.1 The assessee was asked to justify this claim in the light of the provisions of section 32, which allow depreciation at 25% on trademarks. In reply, the assessee states in its letter dated 14.10.2008 that as the right to use the trademarks is restricted to three years, the deduction is claimed under section 37, for a period of three years. The assessee was informed by this office letter dated 17.11.2008 that section 37 covers such deductions that are not covered by sections 30 to 36. The deduction for acquisition of Trade Mark is covered by section 32. Explanation 3 to section 32(1) says that 'block of assets' shall mean inter alia, intangible assets being trade mark. In other words, the deduction for the acquisition of trade mark should be under section 32. IT rules allow depreciation @ 25% on 'intangible assets'. Therefore deduction can be allowed on trademarks (which is intangible asset according to section 32) only under section 32, i.e., @ 25%. Further, section 43(6) says that WDV of an asset purchased in an earlier year is the cost less depreciation actually allowed. In this case as deduction has already been claimed and allowed, the opening WDV will be the balance remaining to be written off, i.e., Rs.25,23,333/- accordingly, depreciation was to be allowed on this amount @ 25%, or Rs.6,30,834/-

3.2 In its letter dated 12.12.2008, the assessee reiterates its claim and states that as the trademark was granted for a limited period of three years and not perpetually, deduction cannot be allowed under section 32. For the reasons mentioned in the preceding paragraph, the assessee's arguments cannot be accepted. When an asset is acquired, it has to be simply added to the concerned block of assets, without verifying the life of the asset. Income-tax Act (IT Act) does not permit such verification. Moreover, if the IT Act allows a deduction under a particular section, then the claim should be under that section alone and not under any other provision. Accordingly, the deduction, claimed under section 37 towards amortization of trademarks, amounting to Rs.25,23,333/- is disallowed and in its place, depreciation of Rs.6,30,864/- is allowed and difference amount of Rs.18,92,500/- is added back to the income declared."

(emphasis supplied)

12. It is forthcoming that it has been held that the deduction is required to be made under Section 32(1) of the IT Act.

13. Section 32(1) of the IT Act stipulates as follows:

> ***"32. Depreciation.***
>
> *(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, not being goodwill of a business or profession*
>
> *owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed."*
>
> *(emphasis supplied)*

14. It is further forthcoming from the order dated 24.12.2008 that reliance is placed on Section 43(6) of the IT Act as to the written down value. In this context, it is relevant to note Section 43(6) of the IT Act, which reads as follows:

> *"43 (6)"written down value" means-*
>
> *(a)in the case of assets acquired in the previous year, the actual cost to the assessee;*
> *(b)in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886), was in force:*

(c)in the case of any block of assets,-

(i)in respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted,-

(A)by the increase by the actual cost of any asset falling within that block, acquired during the previous year;"

(emphasis supplied)

15. It is clear that in order for Section 32(1) to be attracted, the assessee is required to 'own' the asset and for Section 43(6) to be attracted the assessee ought to have 'acquired' the asset. Hence, reliance placed by the AO on the said sections to deny the deduction is *ex facie* untenable and liable to be rejected.

16. In the appeal filed before the Commissioner, vide order dated 29.3.2011 the Commissioner at para 13 after noticing the grounds urged and at para 13.1 after noticing the grounds on which the AO disallowed the claim of the assessee, has recorded the following findings:

"13.1.1 Vide written submissions filed on 28-3-2011, the appellant merely stated that the AO ought to have accepted its claim and allowed the same as revenue expenditure as was done in AYs 2003-04 & 2004-05 based on the rule of consistency instead of treating the same as capital expenditure in AY 2005-06. Incidentally, a perusal of the earlier year's records clearly indicate that the appellant had claimed deduction of Rs.25,23,333/- as expenditure payable to Philips India Ltd., to use their

trademark to sell their products as well as claimed depreciation of Rs.16,55,938/-. The AO merely concluded that since the appellant cannot claim both the deduction of Rs.25,23,333/- as well as depreciation of Rs. 16,55,938/-, at least one of the claim has to be disallowed. Accordingly, the claim of depreciation was disallowed.

13.1.2 I am inclined to disagree with the appellant's stand reproduced in para 13.1.1 above. Firstly, there is no clear-cut finding given by the AO that the deduction claimed constituted capital or revenue expenditure as he merely disallowed one of the two claims made by the appellant on the ground that only one of the deductions was allowable. Secondly, merely because a mistake was committed in the earlier years does not mean that it should be committed in perpetuity. The AO is well within his rights to go into these issues and allow the correct deduction in the earlier years in accordance with law. For the detailed reasons reproduced in para 13.1 above, I am of the considered view that the AO has rightly disallowed the appellant's claim for amortization of trademarks amounting to Rs. 25,23,333/- and allowed depreciation of Rs.6,30,834/-.The net addition of the difference of Rs. 18,92,500/- is therefore upheld. Grounds 3.1 to 3.3 also fail."

(emphasis supplied)

17. The Tribunal, by its order dated 8.9.2016 while considering the contention regarding the deduction claimed with regard to the expenditure incurred towards trademark has, after noticing paras 13 to 13.1.2 of the order of the Commissioner has confirmed the findings of the Commissioner as well as the AO with regard to the applicability of Section 32(1)(ii) and Explanation 3 to Section 32(1) recorded by the AO. Further, the Tribunal has also examined the contention of the assessee with regard to the 'rule of consistency' and held

that the view taken by the AO in the earlier order is not a possible view as per law and hence, the 'rule of consistency' will not aid the case of the assessee. Further, the Tribunal has distinguished the judgments relied upon by the assessee and rejected the contention put forth by the assessee.

18. It is relevant to note that in the case of ***Devidas Vithaldas & Co v. Commissioner of Income-tax***[6] the Hon'ble Supreme Court while considering the tests required for distinguishing the capital and revenue expenditure, has held as follows:

> *"Acquisition of the goodwill of the business is, without doubt, acquisition of a capital asset, and therefore, its purchase price would be capital expenditure. It would not make any difference whether it is paid in a lump sum at one time or in instalments distributed over a definite period. (See In re Ramjidas Jaini & Co. [1945] 13 ITR 130 (Lah.) and Kuppuswami v. commissioner of Income-tax [1945] 25 ITR 349 (Mad.). Where, however, the transaction is not one for acquisition of the goodwill but, for the right to use it, the expenditure would be a revenue expenditure."*
>
> *(emphasis supplied)*

19. In the present case, it is clear from the factual matrix that the assessee has merely a right to use the trademark for a period of 36 months. Having regard to clear enunciation of law as held by the Hon'ble Supreme Court in the case ***Devidas Vithaldas & Co***[6]***,*** the orders passed by the

[6] (1972)84 ITR 277 (SC)

authorities are unsustainable. Further, as noticed above, reliance placed by the authorities on Sections 32(1) and 43(6) of the IT Act is *ex facie* untenable and liable to be rejected.

20. Learned counsel for the Revenue vehemently contended that it is for the assessee to establish as to whether the expenditure incurred was capital or revenue in terms of Section 37 of the IT Act. In support of his contention, he relies upon the judgment of a coordinate Bench of the Delhi High Court in the case of ***Commissioner of Income Tax v. Jubiliant Foodwork Pvt. Ltd.,***[7]***.***

21. It is relevant to note that in the said case of ***Jubiliant Foodwork Pvt. Ltd.,***[7] a coordinate Bench of the Delhi High Court was considering as to whether franchise fees and expenditure incurred on advertisement was a revenue expenditure or a capital expenditure. While considering the same, it has held as follows:

> *"3…….The Commissioner of Income Tax (Appeals) and the tribunal have rightly come to the conclusion that; (i) no new asset came into existence on account of payment of franchise fee and (ii) the rights under the agreement were only for the tenure of the agreement and no enduring benefit was derived by the assessee. Further, it was not an expenditure incurred for acquisition of source of profit, but enabled the respondent-assessee to run the business profitably. The fixed assets of the assessee remained untouched and no enduring asset came into existence. As already noted*

[7] Order dated 1.8.2014 passed in ITA No.310/2014

> *above, the brand or the trademark in question was not owned by the respondent-assessee.*
>
> *4. We have also examined the order passed by the Assessing Officer. Other than relying upon the decision of the Madras High Court in the case of Southern Switchgear Limited ([1998) 232 ITR 359 (SC)], there is no discussion relating to the factual matrix to justify his conclusion that 25% of the franchise fee should be treated as capital expenditure. No facts were highlighted and stated to justify the conclusion. In view of the aforesaid reasoning, we are not inclined to issue notice on the first question/issue raised by the appellant-Revenue."*
>
> *(emphasis supplied)*

22. It is clear from the aforementioned that the case of ***Jubiliant Foodwork Pvt. Ltd.,***[7] would aid the case of the assessee rather than the Revenue.

23. In view of the discussion made above, substantial question of law Nos.(i) and (ii) are answered in favour of the assessee and against the Revenue.

Re. substantial question of law No.(iii):

24. Learned Senior Counsel for the assessee submits that substantial question of law No.(iii) is covered by a coordinate Bench judgment of this Court in the case of ***Commissioner of Income Tax v. Texas Instruments India (P) Ltd.,***[8]**.**

[8] (2021) 127 taxmann.com 59 (Karnataka)

25. The said submission is not disputed by the learned counsel for the Revenue. Hence, substantial question of law No.(iii) is answered in favour of the assessee and against the Revenue.

26. In view of the discussion made above, substantial question of law Nos.(i) to (iii) are answered in favour of the assessee and against the Revenue.

27. Accordingly, the above appeal is allowed. The order dated 8.9.2016 passed by the Income Tax Appellate Tribunal, Bangalore Bench "A", Bangalore, in ITA Nos.671/Bang/2011, 672/Bang/2011 and 1211/Bang/2015 as also of the authorities insofar as it pertains to the substantial questions of law that have been answered in the present appeal in favour of the assessee shall stand set aside.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(C.M. POONACHA)
JUDGE

nd/-