

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI G BENCH, MUMBAI**

**[Before Shri D Manomhan, Vice President,
and Shri Pramod Kumar Accountant Member]**

ITA No.: 2680/Mum/09
Assessment year: 2009-10

Koch Chemical Technology Group India Pvt Ltd ***Appellant***
(formerly Koch Glitsch India Pvt Ltd)
10th floor, Corporate Park II
Sion Trombay Road
Chembur, Mumbai 400 071

Vs.

Deputy Commissioner of Income Tax ***Respondent***
Circle 10(2), Mumbai

Appearances:

Milin K Mehta, *for the appellant*
S B Singh, *for the respondent*

ORDER

Per Pramod Kumar, AM

1. By way of this appeal, the assessee appellant has called into question correctness of Commissioner's order dated 26th March 2009, passed under section 263 of the Income Tax Act, 1961, invoking revision powers in respect of assessment under section 143(3) for the assessment year 2004-05.

2. Grievances raised by the assessee are as follows:

"1. The ld CIT -10 erred in fact and in law in revising the assessment by invoking powers u/s.263 of the Income tax Act, 1961 which was completed by way of assessment made u/s.143(3) of the Act by the AO despite the fact that the conditions stipulated for invoking such extraordinary jurisdiction were not satisfied.

2. The learned CIT erred in fact and in law in setting aside the assessment

framed by the AO despite the fact that the AO has considered each and every aspect of the case and has framed the assessment only after making proper inquiries and after considering the submissions made by the appellant.

3. The Id CIT erred in fact and in law in directing the AO to disallow depreciation of Rs 1,27,53,830 on goodwill being bought goodwill on the ground that the said item is not covered under the head "Intangible Assets" and, therefore, not eligible for depreciation."

3. The material facts of the case, so far as relevant to the issue in appeal before us, are as follows. In this case, the assessment under section 143 (3) was completed on 28th December, 2006. However, when Commissioner perused the assessment record, he noted that the assessee has been granted depreciation of Rs 127.54 lakhs in respect of goodwill, but as "judicially held" by Ahmedabad and Delhi benches of the Tribunal, "depreciation on goodwill is not allowable as it is not covered under the items specified for the purpose of allowance of depreciation". Accordingly, learned Commissioner required the assessee to show cause as to why the assessment framed under section 143(3) not be subjected to revision proceedings on the ground that the depreciation has been wrongly allowed. It was submitted by the assessee that the Assessing Officer had examined the matter on merits and then come to the conclusion that the depreciation is admissible, and that the powers under section 263 cannot be invoked to substitute one possible view by the view as held by the Commissioner. Elaborate arguments were submitted in support of the factual and legal elements embedded in the said proposition. It was pointed out that there was no change in the written down value(WDV) in the current year and the same was merely carried forward from the earlier periods. It was also pointed out that the depreciation on goodwill was allowed alongwith earlier years as well. The assessee further invited the attention of the Commissioner to the fact that a specific query was raised in the assessment year 2003-04 regarding admissibility of depreciation on goodwill. The assessee had pointed out that the goodwill on this depreciation claimed is purchased and is not self generated assets. It was upon being so satisfied that the claim of the assessee that the depreciation on goodwill was allowed for the assessment year 2003-04, and by allowing depreciation in the present year, the AO has merely repeated his conscious decision of the immediately preceding year.

Reference was also made to Hon'ble Supreme Court's judgment in the case of CIT v. Max India Ltd.,(295 ITR 282) and Malbar Industries Co.(243 ITR 83). The assessee also referred to the Hon'ble Jurisdictional High Court's judgment in the case of CIT v. Gabriel India (203 ITR 108) in support of the proposition that the Commissioner cannot revise assessment order because he disagrees the decision of the Assessing Officer. On merits, it was submitted that the assessee had acquired the running business of Savli Unit from Topack Industries on 24th October, 1999, and out of total consideration, an amount of Rs 13,30,31,000 was attributable towards the goodwill acquired. It was in connection with the goodwill so acquired that the assessee had claimed depreciation in the present year. The assessee thereafter submitted that the depreciation of goodwill was admissible as it was included in the block of intangible assets allowable for depreciation @ 25% and since there is no dispute that the amount of depreciation claimed constitutes the written down value of the relevant block of assets. Elaborate submission was made on the merits on admissibility of claim of deduction. A reference was also made to the decision of the Tribunal in the case of Skyline Caterers Pvt Ltd v ITO, 306 ITR (AT) 369, which points out that the nomenclature given to the entries in books of account is not relevant for ascertaining the real nature of the transactions as was held by Hon'ble Supreme Court in the case of Kedarnath Jute mfg. Co. Ltd. v CIT (82 ITR363). It was submitted that in the said case, the Tribunal had come to the conclusion intangible assets specified in section 32 are tools of the trade which facilitate the assessee's carrying on the business. None of these submissions impressed the Commissioner. It was observed by the Commissioner that the AO had not raised any specific query with regard to the admissibility of depreciation of goodwill so far as the assessment year 2004-05 was concerned and a query to that effect having not been made in the assessment year 2003-04 is not relevant for the purpose of revision proceedings in the present assessment year. The Commissioner also noted that there is no evidence to show that the AO had made any enquiry on this issue in the assessment year 2004-05. On the question of jurisdiction, the Commissioner was of the view that the amount of Rs 13.30 crores are allocated. On the question of jurisdiction, the Commissioner was of the view that the amount of Rs.13.30 crores are allocated to goodwill, items for purchase of units from Topack Industries and that there was no

specification of assets, such as know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, which is representing by the said goodwill. The Commissioner was also of the view that a mistake in fact or legal interpretation which is followed from year to year does not prohibit the income tax department from correcting it when it is detected. A lot of emphasis was placed on the fact that the agreement for takeover did not specify any specific item of intangible which was allowable for depreciation. The decision of the Tribunal in the case of Skyline Caterers (P)Ltd. V ITO(306 ITR (AT) 369 and Gurujji Entertainment Network Ltd v ACIT, 108 TTJ (Del)180 were distinguished on the ground that in those decisions, the specific assets which were in the nature of intangible asset was pointed out whereas on the facts of the present case, no such specific knowhow or asset is identified. In view of these discussions, the Commissioner was of the view that the AO has erred in granting depreciation of Rs.1.28 crores on goodwill and therefore, the order of the AO was set aside with the direction to reframe the assessment taking into account the observations and findings given above after giving an opportunity of hearing to the assessee. The assessee is aggrieved and is in appeal before us.

4. We have heard the rival contentions, perused the material on record and duly considered factual matrix of the case as also the applicable legal position

5. We find that the above issue is covered by the Hon'ble Delhi High Court's judgment in the case of CIT Vs Hindustan Coca Cola Beverages Pvt Ltd 2011-TIOL-33-HC-DEL-IT. In this case, Hon'ble High Court first discussed the scope of revision powers at length and, guided by Hon'ble Supreme Court's judgment in the case of Malabar Industrial Co Ltd Vs CIT (supra) and CIT Vs Max India Ltd (supra), concluded that the scheme of Section 263 does not permit substitution of views of the Assessing Officer by another possible view of the Commissioner. Thereafter, on the question whether depreciation being granted on goodwill constitutes a possible view of the matter, Their Lordships observed as under :

17. The present factual matrix is to be tested on the anvil of the aforesaid enunciation of law. As is discernible, during the relevant assessment year, the respondent – assessee claimed Rs.70,63,93,292/- as depreciation on goodwill treating the same as an

intangible asset and, hence, depreciable under Section 32(1)(ii) of the Act. The assessee had proffered complete justification for the claim of depreciation at the time of filing of return. In the notes to the income-tax return, it has been mentioned as follows:

“Goodwill of the company comprises of (a) payment made to bottlers at the time of acquisition of their business and (b) the difference between the consideration paid for business and the value of tangible assets determined by a reputed valuer.

The specific payment for goodwill referred to in (a) above represents the consideration for the marketing and trading reputation, trading style and name, marketing and distribution territorial know how and information of the territory. And the amount referred to in (b) above has been paid for certain contracts, rights etc. owned by the seller. In the valuation report these contracts, rights etc. have not been assigned any value. Therefore, the difference between the total consideration and the value of as the tangible assets has been accounted for as goodwill.

Goodwill in the assessee's case is in substance similar to the tangible assets. It includes industrial information relating to the acquired business like data base of the territory relating to consumer preferences of different flavours, season curves, distribution network, population related statistics etc. These information assist in the manufacture of the product of the assessee in the sense that based on this only the assessee plans its manufacturing schedules. Hence, it is in effect know-how.

Further, the payment on account of goodwill is similar to assets like patents, copyrights, trademarks; licences referred to in the definition of the block of assets in the sense that the function of all these assets is to restrict their misuse and to earn maximum profits in the business. The function of goodwill acquired by the assessee also is same in view of the fact that it maximizes the profits of the company. Since, the function of intangibles defined in the act and the intangible acquired by the assessee is same, the assets are similar.

Therefore, the assessee's goodwill being a valuable commercial asset similar to other intangibles specified in the definition of block assets, is eligible to depreciation.”

18. A Schedule annexed to the balance sheet as on 31.3.2002 depicting the breakdown of the claim of depreciation was also filed. Annexure IV to the Tax Audit Report in Form 3CA was filed alongwith the return of income quantifying the amount of depreciation admissible under the provisions of the Act. The assessing officer during the assessment proceedings under Section 143(3) of the Act vide communication dated 15.9.2003 had raised specific queries regarding the admissibility of the claim of depreciation on goodwill. The assessee by letter dated 8.1.2004 had offered justification for depreciation on goodwill which is as follows:

“Goodwill is the consideration paid to various bottlers for marketing and trading reputation, trading style and name, marketing and distribution territorial know-how and information of territory. It includes know-how related to acquired business, customer data base, distribution net work, contract and other commercial rights. Intangible assets like know-how, patent, copyrights, trademark, licenses, franchisee or any other business or commercial rights of similar nature acquired after 1.4.1998 are eligible for depreciation.”

19. The assessing officer, after examination of the annual accounts, audit report in Form 3CA, notes to the return and reply dated 8.1.2004, took the view that the assessee's claim for depreciation on goodwill was allowable more so considering that similar claim of depreciation had been allowed for the assessment years 1999-2000 and 2000-2001. The Commissioner, while exercising the power under Section 263 of the Act, has held that the assessment order framed under Section 143(3) of the Act was erroneous as the assessing officer had allowed depreciation though the same had been wrongly claimed and allowed inasmuch as Explanation 3 to Section 32 of the Act never regards goodwill as an intangible asset. The tribunal in its order referred to the audit report wherein the assessee had made the disclosure about the computation of depreciation on goodwill and addressed itself whether or not a claim of depreciation on goodwill in the books of account is final or it is otherwise admissible. In that backdrop, the tribunal referred to the concept of any other business or commercial rights of similar nature, i.e., know-how, patent, copyrights, trademarks, licences, franchises and referred to its decision rendered in Skyline Caterers Pvt. Ltd. (supra) wherein it had held that nomenclature given to the entries in the books of accounts is not relevant for ascertaining the real nature of the transaction. To arrive at the said conclusion in the earlier case, the tribunal had placed reliance on the decision rendered in Kedarnath Jute Mfg. Co. Ltd. (supra). After so stating, the tribunal opined that it was difficult to accept the view of the Commissioner that once an amount is described as goodwill in the books of accounts, depreciation thereon as an intangible asset cannot be admissible on the same.

20. In this regard, we may refer with profit to the relevant part of Section 32 of the Act which reads as follows:

"Section 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, owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed]

[[i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed;]

(ii) [in the case of any block of assets, such percentage on the written down value thereof as may be prescribed:]

*[***]*

Provided that no deduction shall be allowed under this clause in respect of –

(a) any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975 [but before the 1st day of April, 2001], unless it is used–

(i) in a business of running it on hire for tourists; or

(ii) outside India in his business or profession in another country; and

(b) any machinery or plant if the actual cost thereof is allowed as a deduction in one or more years under an agreement entered into by the Central Government under section 42:]

[Provided further that where an asset referred to in clause (i) [or clause (ii) or clause (iia)], as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage prescribed for an asset under clause (i) [or clause (ii) or clause (iia)], as the case may be:]

[Provided also that where an asset being commercial vehicle is acquired by the assessee on or after the 1st day of October, 1998, but before the 1st day of April, 1999, and is put to use before the 1st day of April, 1999, for the purposes of business or profession, the deduction in respect of such asset shall be allowed on such percentage on the written down value thereof as may be prescribed:

Explanation: For the purposes of this proviso, –

(a) the expression “commercial vehicle” means “heavy goods vehicle”, “heavy passenger motor vehicle”, “light motor vehicle”, “medium goods vehicle” and “medium passenger motor vehicle” but does not include “maxi-cab”, “motor-cab”, “tractor” and “road-roller”;

(b) the expressions “heavy goods vehicle”, “heavy passenger motor vehicle”, “light motor vehicle”, “medium goods vehicle”, “medium passenger motor vehicle”, “maxi-cab”, “motor-cab”, “tractor” and “road-roller” shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988):]

[Provided also that in respect of the previous year relevant to the assessment year commencing on the 1st day of April, 1991, the deduction in relation to any block of assets under this clause shall, in the case of a company, be restricted to seventy-five per cent of the amount calculated at the percentage, on the written down value of such assets, prescribed under this Act immediately before the commencement of the Taxation Laws (Amendment) Act, 1991:]

[Provided also that the aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession referred to in [clause (xiii), clause (xiiib) and clause (xiv)] of section 47 or section 170 or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place, and such deduction shall be apportioned between the predecessor and the successor, or the amalgamating

company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them:]

[Explanation 1. Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work, in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure of work is a building owned by the assessee.]

[Explanation 2 .- [For the purposes of this sub-section] "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43:]*

[Explanation 3.- For the purposes of this sub-section, [the expressions "assets"] shall mean -

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

(b) intangible assets, being know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature.]

[Explanation 4.- For the purposes of this sub-section, the expression "know-how" means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto);]

[Explanation 5: For the removal of doubts, it is hereby declared that the provisions of this sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income;]"

21. It is worth noting, the scope of Section 32 has been widened by the Finance (No.2) Act, 1998 whereby depreciation is now allowed on intangible assets acquired on or after 1st April, 1998. As per Section 32(1)(ii), depreciation is allowable in respect of know-how, patent, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature being intangible assets. Scanning the anatomy of the section, it can safely be stated that the provision allows depreciation on both tangible and intangible assets and clause (ii), as has been indicated hereinbefore, enumerates the intangible assets on which depreciation is allowable. The assets which are included in the definition of 'intangible assets' includes, along with other things, any other business or commercial rights of similar nature. The term 'similar' has been dealt with by the Apex Court in Nat Steel Equipment Pvt. Ltd. v. Collector of Central Excise, AIR 1988 SC 631 wherein the Apex Court has opined that the term 'similar' means corresponding to or resembling to in many aspects. In this regard, it would not be out of place to refer to the decision in Commissioner of Income Tax v. B.C. Srinivasa Setty, [1981] 128 ITR 294 (SC) wherein the concept of goodwill has been understood in the following terms:

“Goodwill denotes the benefit arising from connection and reputation. The original definition by Lord Eldon in Cruttwell v. Lye 1810 17 Ves 335 that goodwill was nothing more than “the probability that the old customers would resort to the old places” was expanded by Wood V.C. in Churton v. Douglas 1859 John 174 to encompass every positive advantage “that has been acquired by the old firm in carrying on its business, whether connected with the premises in which the business was previously carried on or with the name of the old firm, or with any other matter carrying with it the benefit of the business”. In Trego v. Hunt 1896 A.C. 7 (HL) Lord Herschell described goodwill as a connection which tended to become permanent because of habit or otherwise. The benefit to the business varies with the nature of the business and also from one business to another. No business commenced for the first time possesses goodwill from the start. It is generated as the business is carried on and may be augmented with the passage of time. Lawson in his Introduction to the Law of Property describes it as property of a highly peculiar kind. In CIT v. Chunilal Prabhudas & Co. [1970] 76 ITR 566 the Calcutta High Court reviewed the different approaches to the concept (pp.577, 578):

“It has been horticulturally and botanically viewed as ‘a seed sprouting’ or an ‘acorn growing into the mighty oak of goodwill’. It has been geographically described by locality. It has been historically described by locality. It has been historically explained as growing and crystallizing traditions in the business. It has been described in terms of a magnet as the ‘attracting force’. In terms of comparative dynamics, goodwill has been described as the ‘differential return of profit’.

Philosophically it has been held to be intangible. Though immaterial, it is materially valued. Physically and psychologically, it is a ‘habit’ and sociologically it is a ‘custom’. Biologically, it has been described by Lord Macnaghten in Trego v. Hunt [1896] AC 7(HL) as the ‘sap and life’ of the business. Architecturally, it has been described as the ‘cement’ binding together the business and its assets as a whole and a going and developing concern.”

A variety of elements goes into its making, and its composition varies in different trades and in different businesses in the same trade, and while one element may preponderate in one business, another may dominate in another business. And yet, because of its intangible nature, it remains insubstantial in form and nebulous in character. Those features prompted Lord Macnaghten to remark in IRC v. Muller & Co.'s Margarine Limited [1901] A.C. 217(HL) that although goodwill was easy to describe, it was nonetheless difficult to define. In a progressing business goodwill tends to show progressive increase. And in a failing business it may begin to wane. Its value may fluctuate from one moment to another depending on changes in the reputation of the business. It is affected by everything relating to the business, the personality and business rectitude of the owners, the nature and character of the business, its name and reputation, its location, its impact on the contemporary market, the prevailing socio-economic ecology, introduction to old customers and agreed absence of competition. There can be no account in value of the factors producing it. It is also impossible to predicate the moment of its birth. It comes silently into the world, unheralded and unproclaimed and its impact may not be visibly felt for an undefined period. Imperceptible at birth it exists enwrapped in a concept, growing or fluctuating with the numerous imponderables pouring into, and affecting, the business.”

22. Regard being had to the concept of ‘goodwill’ and the statutory scheme, the claim of the assessee and the delineation thereon by the tribunal are to be scanned and

appreciated. The claim of the assessee-respondent, as is discernible, is that the assessing officer had treated the transactions keeping in view the concept of business or commercial rights of similar nature and put it in the compartment of intangible assets. To effectively understand what would constitute an intangible asset, certain aspects, like the nature of goodwill involved, how the goodwill has been generated, how it has been valued, agreement under which it has been acquired, what intangible asset it represents, namely, trademark, right, patent, etc. and further whether it would come within the clause, namely, 'any other business or commercial rights which are of similar nature' are to be borne in mind.

23. On a scrutiny of the order passed by the tribunal, it is clear as crystal that the depreciation was claimed on goodwill by the assessee on account of payment made for the marketing and trading reputation, trade style and name, marketing and distribution, territorial know-how, including information or consumption patterns and habits of consumers in the territory and the difference between the consideration paid for business and value of tangible assets. The tribunal has treated the same to be valuable commercial asset similar to other intangibles mentioned in the definition of the block of assets and, hence, eligible to depreciation. It has also been noted by the tribunal that the said facts were stated by the assessee in the audit report and the assessing officer had examined the audit report and also made queries and accepted the explanation preferred by the assessee. The acceptance of the claim of the assessee by the assessing officer would come in the compartment of taking a plausible view inasmuch as basically intangible assets are identifiable non-monetary assets that cannot be seen or touched or physical measures which are created through time and / or effort and that are identifiable as a separate asset. They can be in the form of copyrights, patents, trademarks, goodwill, trade secrets, customer lists, marketing rights, franchises, etc. which either arise on acquisition or are internally generated.

24. It is worth noting that the meaning of business or commercial rights of similar nature has to be understood in the backdrop of Section 32(1)(ii) of the Act. Commercial rights are such rights which are obtained for effectively carrying on the business and commerce, and commerce, as is understood, is a wider term which encompasses in its fold many a facet. Studied in this background, any right which is obtained for carrying on the business with effectiveness is likely to fall or come within the sweep of meaning of intangible asset. The dictionary clause clearly stipulates that business or commercial rights should be of similar nature as know-how, patents, copyrights, trademarks, licences, franchises, etc. and all these assets which are not manufactured or produced overnight but are brought into existence by experience and reputation. They gain significance in the commercial world as they represent a particular benefit or advantage or reputation built over a certain span of time and the customers associate with such assets. Goodwill, when appositely understood, does convey a positive reputation built by a person / company / business concern over a period of time. Regard being had to the wider expansion of the definition after the amendment of Section 32 by the Finance Act (2) 1998 and the auditor's report and the explanation offered before the assessing officer, we are of the considered opinion that the tribunal is justified in holding that if two views were possible and when the assessing officer had accepted one view which is a plausible one, it was not appropriate on the part of the Commissioner to exercise his power under Section 263 solely on the ground that in the books of accounts it was mentioned as 'goodwill' and nothing else. As has been held by the Apex Court in Malabar Industrial Co. Ltd. (supra), Max India Ltd. (supra) and Commissioner of Income-Tax v. Vimgi Investment P. Ltd.

[2007] 290 ITR 505 (Delhi) once a plausible view is taken, it is not open to the Commissioner to exercise the power under Section 263 of the Act.

25. In view of the aforesaid analysis, we are of the considered opinion that the order passed by the tribunal is justified in the facts and circumstances of the case and the questions which have been raised by the revenue as substantial questions of law really do not arise. Resultantly, the appeals have to pave the path of dismissal which we direct. There shall be no order as to costs."

6. No contrary decision by the Hon'ble Jurisdictional High Court or for that purpose by any other Hon'ble High Courts has been cited before us. To the best of our understanding, that is the only High Court decision on the issue. The only point of difference in the case before us vis-à-vis the Hindustan Coca Cola's case (supra) is that whereas no specific questions were asked in the course of the assessment proceedings in this case, in Coca Cola's case the Assessing Officer did ask the specific questions in the assessment proceedings. That, however, does not make any material difference for the reason that in the present case, goodwill was merely an opening balance, there were no additions to the goodwill in the current year, and the Assessing Officer had asked specific questions in the earlier years and was satisfied by the replied filed by the assessee. On these facts, the Assessing Officer's conduct cannot be faulted – particularly as entire assessment record, including asking of question in the preceding year which were satisfactorily replied by the assessee, was before him. Respectfully following the esteemed view of the Hon'ble Delhi High Court in the case of Hindustan Coca Cola Beverages Pvt Ltd (supra), by which the matter is squarely covered, we uphold the plea of the assessee and set aside the revision order.

7. In the result, appeal is allowed.

Pronounced in the open court on 28th January, 2011.

Sd/-
(D Manmohan)
Vice President

sd/-
(Pramod Kumar)
Accountant Member

Mumbai; 28th _day of January, 2011.

Copy forwarded to :

1. *The appellant*
2. *The respondent*
3. *Commissioner -10 , Mumbai*
4. *Commissioner (Appeals) , Mumbai*
5. *Departmental Representative, G bench, Mumbai*
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