

Tech Books Electronics Services Vs. Additional Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Feb-17-2006

Reported in : (2006)100ITD125(Delhi)

Judge : P Parashar, R Singh

Appellant : Tech Books Electronics Services

Respondent : Additional Commissioner of

Judgement :

1. These are two appeals by the same assessee arising out of separate orders of the learned CIT(A) for assessment years 2000-01 and 2001-02.

As common grounds are involved in both these appeals and further as the learned CIT(A) has also followed his order for assessment year 2000-01 in the subsequent assessment year i.e., 2001-02, facts and circumstances for both the assessment years in question being also the same, both the appeals were heard together and are being disposed of by a common order for the sake of convenience.

2. Shri C.S. Aggarwal, Sr. Advocate along with Shri Salil Aggarwal and Shri Gautam Jain Advocates appeared for the assessee whereas Shri R.L.

Meena, Sr. DR, represented the Revenue.

3. In this appeal the assessee has taken various grounds to challenge the findings of learned CIT(A) to the effect that the assessee is not entitled for exemption

under Section 10B of the Income-tax Act in respect of profits derived from 100 per cent Export Oriented Undertaking ("EOU" in short). Since the grounds are merely argumentative, we do not consider it proper to reproduce the same here.

4. The facts concerning this matter, as they borne out from the orders of authorities below, are as under: 4.1 There was a company by the name of M/s. Tech Enterprises Inc., USA. This company was incorporated in USA and was engaged in the activity of software development and processing of data etc. This USA company was a family concern and had the following persons as owners: 4.2 Out of the above family members, three persons, namely, Shri Subodh C. Gupta, Smt. Promilla Gupta and Sh. Jay Neil Gupta formed a partnership firm under the name of M/s. Pinnacle Exports. Permission for setting up a 100 per cent Export Oriented Undertaking ("EOU" in short), under Software Technology Park Scheme was granted by Software Technology Park of India (STPI) on 14-12-1992. Later on, the firm was also granted approval by STPI under the provisions of Section 14 of the Industries (Development & Regulation) Act, 1951, to enable it to avail the benefits under Sections 10A and 10B of the Income-tax Act, 1961.

4.3 The EOU owned by M/s. Pinnacle Exports was formed in 1993. It started its activities from the premises located at 38, Anand Lok, New Delhi. Later on the premises were changed.

4.4 From financial year 1993-94 up to 18-9-1997 the firm was exclusively exporting its software to the American Company namely M/s. Tech Enterprises, USA which had indirectly funded all the activities of the firm by providing advance payments.

4.5 In 1997, partners of the firm decided to incorporate the partnership firm into a limited company under Part IX of the Companies Act, 1956 and in order to fulfil the requirements of the provisions of Section 560 of the Companies Act, five more partners were inducted into the partnership with effect from 1-7-1997. The partnership firm was eventually incorporated as a private limited company with effect from 19-9-1997. The company was named as Techbook Electronics Services Pvt. Ltd. All the assets and liabilities of M/s. Pinnacle Exports as they stood in the books as on 18-9-1997 became the property of the company. The

closing balance of all items of assets and liabilities as appearing in the books of M/s. Pinnacle Exports as on 18-9-1997 became the opening balance in the books of Techbooks Electronics Services Pvt. Ltd. as on 19-9-1997. All the partners of M/s. Pinnacle Exports became the shareholders in the company. The capital of the partnership firm as on 18-9-1997 was Rs. 40,000 and the paid-up capital of Techbooks Electronics Services Pvt. Ltd. was also Rs. 40,000.

4.6 After the formation of the company, in December 1997, after approval from Foreign Investment Promotion Board, 3,96,000 equity shares of Rs. 10 each amounting to Rs. 39,60,000 were allotted to Tech Enterprises Inc., USA and the Indian shareholders holding 4,000 equity shares in the assessee-company transferred their holding in favour of Shri Jay Neil Gupta. Subsequently, in 1999 all the shares of Jay Neil Gupta were also transferred to Tech Enterprises Inc., USA and thus after 1999, the USA company became 100 per cent beneficial owner of the assessee-company.

4.7 The firm during its operation from financial year 1993-94 up to financial year 1997-98, did not claim exemption under Section 10B instead of deduction under Section 80HHE was claimed. However, the firm filed option under Section 10B(7) while filing its return for assessment year 1994-95.

4.8 After its incorporation the company also did not claim exemption in financial years 1988-89 and 1999-2000.

4.9 In assessment year 2000-01 the assessee claimed deduction under Section 10B of the Act. This claim was examined by the Assessing Officer who was of the opinion that the assessee-company was not qualified to claim the exemption because it was formed by the reconstruction of a business already in existence. The Assessing Officer, therefore, required the assessee to explain as to why benefit under Section 10B should not be disallowed it. In reply, it was submitted by the company that it was fully qualified to claim eligibility for complete tax holiday for a period of ten years starting from the year in which it started production and as the production was commenced during the financial year 1993-94 relevant to assessment year 1994-95, it would be entitled to avail deduction/exemption in respect of profits derived from export activities until assessment year 2003-04

under Section 10B of the Income-tax Act. It was explained that conversion from firm to company was a mere change in the ownership of an undertaking and change in the ownership cannot be regarded as reconstruction. In this regard detailed written submissions were made by the assessee which have been reproduced in para 7 of the assessment order. The assessee also placed reliance on following authorities: Hindustan Malleables & Forgings Ltd. v. ITO [1978] 112 ITR 389 (Pat.); Kerala State Cashew Development Corporation v. CIT ; CIT v. N. Guru Investment (P.) Ltd. 4.10 The Assessing Officer did not find force in the submissions of the assessee and on examination of the facts he held that the ratio of decision in the case of Gaekwar Foam & Rubber Co. Ltd. (supra) was fully applicable in the case of the assessee. After quoting the relevant observations of the Hon'ble Court in that case and other cases, the Assessing Officer rejected the claim of the assessee.

4.11 In appeal, the learned CIT(A) upheld the view taken by the Assessing Officer. In doing so, he also placed reliance on the ratio of decision of Hon'ble Supreme Court in the case of Textile Machinery Corporation Ltd. v. CIT ; and the ratio of decision of Hon'ble Bombay High Court in the case of Gaekwar Foam & Rubber Co. Ltd. (supra). After analyzing the provisions contained in Section 10B, the learned CIT(A) held as under: In the instant case business of the firm has been taken over lock, stock and barrel by the appellant-company. Since business is being carried on by the same set of persons, New blood has been infused in the management. Therefore the case is covered by the decision of Hon'ble Bombay High Court in the case of CIT v. Gaekwar Foam and Rubber Co. Ltd. 35 ITR 662. It is held that it is a case of reconstruction of business and therefore, the appellant will not be entitled to exemption under Section 10B of the Act.

4.12 In support of the above finding the learned CIT(A) also assigned following reasons: (a) the firm prior to the incorporation of the company did not claim exemption under Section 10B and exercised option under Section 10B(7) to claim the benefit in subsequent years. This option was filed in the form of declaration which was filed along with the return of income whereas the option should have been exercised before the date of filing of return under Section 139 of the Act.

(b) The firm started business activities in assessment year 1994-95.

It did not exercise option in assessment years 1995-96 and 1996-97.

The option should have been exercised by filing declaration before the due date for each assessment year. As the firm did not claim exemption under Section 10B nor exercised option and continued to claim deduction under Section 80HHE, it appears that the firm was never interested to claim benefit of Section 10B. The assessee-company also did not claim exemption in assessment years 1998-99 and 1999-2000 nor exercised option. Thus, it was never the intention of the company to claim exemption under Section 10B. (c) There is no merit in the argument of the assessee that it is entitled for exemption under Section 10B for a period of ten years; and (d) The amendment introduced subsequently, was not to operate retrospectively and the extended period shall not be available to the assessee who has commenced business prior to assessment year 1999-2000.

5. The assessee has challenged the above findings and arguments of the learned CIT(A) in this appeal by taking various grounds.

6. Before us the assessee has filed a detailed written submission dated 9-1-2006. The Department has not filed any counter written submissions.

7. Shri C.S. Aggarwal, Sr. Advocate appearing for the assessee, has vehemently assailed the findings of the Assessing Officer as well as that of the learned CIT(A). His submissions are as under: 7.1. The assessee, which was incorporated on 18-9-1997 by conversion of a firm into a company, took over the ongoing business of the export-oriented undertaking, which was carried on by the firm, namely, M/s. Pinnacle Exports prior to such incorporation. The conversion of the firm into company, could not be regarded as transfer. In support of his submission, he placed reliance on the ratio of decision of Hon'ble High Court in the case of CIT v. Texspin Engg. & Mfg. Works and the decision of ITAT Delhi Bench 'F' dated 20-5-2003, rendered in IT Appeal No. 6461 (Delhi) of 1996 in the case of Dy. CIT v. Krishna Electrical Industries. He also made reference to the orders of the Amritsar Bench of the ITAT in the case of Sachdeva & Sons (EOU) v. Dy. CIT [2004] 82 TTJ (Asr.) 847; and Jodhpur Bench of the ITAT in the case of Chetak Enterprises

(P.) Ltd. v. Asstt. CIT [2005] 95 ITD 1.

According to him, it is only statutory vesting of properties in the company as the firm is also treated as a limited company and on the vesting of all the properties in the company, the cloak given to the firm is replaced by a different cloak and the same firm is now treated as a company after its incorporation.

7.2 It cannot be said that EOU owned by the assessee-company is formed as a result of reconstruction of EOU owned by the firm. When a company is incorporated under Part IX, there is no real transfer but only vesting under the statute. In support of this argument, the learned Counsel placed reliance on the ratio of decision of Hon'ble Delhi High Court in the case of CIT v. Ganga Sugar Corporation Ltd. . He also placed reliance on other authorities approving the aforesaid judgment of Delhi High Court in the case of CIT v. Ganga Sugar Corporation Hindustan Malleables & Forgings Ltd. v. ITO [1978] 112 ITR 389 (Pat.); CIT v. Indian Aluminium Co. Ltd. ; 7.3 The period of exemption has been extended for ten years in place of five years with effect from assessment year 1999-2000. Since the assessee started manufacture/production in assessment year 1994- 95, the exemption is available to it till assessment year 2003-04. In support of this argument, the learned Counsel made reference to the mandate provision of Section 10B as amended by the Finance Act, 1993 with effect from 1-4-1991 and also placed reliance on Circular No. 528, dated 16-12-1988.

7.4 The next argument was that the firm, prior to the incorporation of the company was eligible for exemption for five assessment years within the block of eight assessment years, namely, assessment years 1994-95 to 2001-02. In view of the amended provisions, the exemption shall be available to the company for ten years. In support of this argument the learned Counsel also submitted as under: It is further significant to be noted that in Sub-section (3) the word 'ten' was substituted for 'five', by the Income-tax (Second Amendment) Act, 1998 with effect from 1-4-1999. It is an admitted fact that the assessee owns an EOU and such EOU is an eligible undertaking. At the time when EOU had been established, it could claim tax holiday for a period of five years out of block period of eight years and, neither the period of five years and, nor the period of eight years had expired,

when the amendment had been made extending the period of five years to a period of ten years and, as such it being settled position of law that the amendment made in Sub-section (3) would be applicable, as has been held by the Apex Court in the case of J.P. Jain v. Inder Pal Bhatt reported in 72 ITR 595. The order of the Tribunal in the case of Tata Tea Ltd. has no application as in that case the period of five years got exhausted or the period had expired by 31-3-1998 whereas the amendment in Sub-section (3) was made effective with effect from 1-4-1999. The Hon'ble Supreme Court in the case of J.P. Jain v. Inder Pal Bhatt (supra), laid down the principle to be applied relating to applicability of amending law, when it held that if a right has been lost on the date when the law has been amended, the amending Act could not be applied or enforced but if the right has not been lost the amending Act will provide the right whereby the life of the statutory provision which has been amended will get extended. In fact, the Central Board of Direct Taxes, issued a circular No. 1/2005 cited herein-supra.

7.5 The learned Counsel further submitted that the CIT(A) was not justified in holding that the conduct of the firm as well as that of the assessee proved that it never had any intention to claim exemption under Section 10B. According to him, since the firm was entitled for exemption, the company who succeeded it, is also entitled for the same exemption. The benefit to claim exemption is not a heritable right. The argument that the assessee is not entitled to claim exemption because it did not exercise the option before the due date for filing of the return is misconceived. That merely because the assessee had claimed exemption under Section 80HHE or merely because the claim under Section 10B was not made in earlier years, the claim cannot be denied to the assessee. According to him, the assessee is entitled to claim benefit of exemption up to assessment year 2003-04 as per the amended provisions of the Act with effect from 1-4-1999.

8. The learned DR, on the other hand, supported the orders of departmental authorities. According to him, there is a change in the ownership of the business undertaking and not only by virtue of incorporation of the company but also by election of new personnel in the management. Hence, it is a case of reconstruction of business and as the assessee did not fulfil various conditions laid down in Section 10B, it is not entitled to claim exemption. He also pointed out that various

authorities cited on behalf of the assessee are not applicable to the facts of the case.

9. In rejoinder, the learned Counsel submitted that it is not the owner of the undertaking who is made eligible for claiming as exemption but the business undertaking or EOU and if there is no change in the business organization of the undertaking or business activity of the undertaking then the disqualification laid down in Section 10B(3) shall not be attracted.

10. We have carefully considered the entire relevant material and the rival submissions. On going through the relevant provisions of law and the decisions of various courts on which reliance has been placed by the learned Counsel for the assessee, we find force in his submissions and accept the same. Our findings and observations are as under: 10.1 The exemption under Section 10B, as the heading of the section suggests, is in respect of "newly established hundred per cent export oriented undertakings". Section 10 was inserted by the Finance Act, 1988 with effect from 1-4-1989 and later on it was amended from time to time. According to this provision, any profits and gains derived by an assessee from a hundred per cent export-oriented undertaking shall not be included in the total income of the assessee. As provided in Clause (2) of Section 10B, the exemption is available to undertakings which fulfil all the following conditions, namely: (ii) In relation to an undertaking which begins to manufacture or produce any article or thing on or after the 1st day of April, 1994, its exports of such articles and things are not less than seventy five per cent of the total sales thereof during the previous year; (iii) It is not formed by the splitting up, or the reconstruction, of a business already in existence: Provided that this condition shall not apply in respect of any undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in Section 33B in the circumstances and within the period specified in that section; (iv) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

10.2 The objection of the Department is that the assessee-company is formed by the reconstruction of the business already in existence.

Therefore, we are mainly concerned with this condition and qualification in the case of the present assessee.

10.3-1 Formerly, M/s. Pinnacle Exports started functioning in financial year 1993-94. It was hundred per cent export-oriented unit. The firm was carrying on the business of development and export of software and data processing. Permission for setting up hundred per cent EOU was granted to the firm by STPI on 14-12-1992.

The firm was also granted approval to claim exemption under Sections 10A and 10B. The EOU was making exports to the American company, namely, M/s. Tech Enterprises. It was working under the control of USA company, as even funds were provided by this company to the firm. In 1997, the firm was converted into company. At this time all the assets and liabilities of firm became the property of the company and all the partners of the firm became shareholders of the company. The capital of the partnership firm became the paid-up capital of the company. In view of the undisputed facts, it is clear that on conversion from firm to company, there was merely a change in the ownership of undertaking. There was no change in the business of the undertaking which was already in existence. Neither the business activity was rearranged or reorganized nor the same was reconstructed. The business activity carried out by the firm remained the same without any alteration or change. After incorporation the company continued to carry out the same business i.e., software export. In fact on conversion even in the ownership there was little change because even the firm was formed by the shareholders of American Company and in the company incorporated on conversion, the same partners became the shareholders and subsequently all the shares were sold to the American company, which was exercising full control earlier also. However, we are not concerned with the change in the ownership. Rather we are to enquire as to whether there was any change or reconstitution of the building of the undertaking. On close scrutiny and analysis of the terminology adopted in Clause (ii) of Subsection (2) of Section 10B, it becomes clear that the word splitting up and the word 'reconstruction', are attached to business 'already in existence'.

Hence, these words qualify business and not the ownership of the business. Hence, if the business of the undertaking is formed by splitting up or by reconstruction, then the undertaking will not be qualified for claiming exemption. The Assessing Officer as well as the learned CIT(A) have not pointed out as to in what manner there was any change in the business of the undertaking. The business of the undertaking was not formed by splitting up of the old business or by reconstruction of the old business i.e., business already in existence. The departmental authorities have laid much emphasis on the change in the ownership and it appears that they have not properly appreciated the terminology used in the provision referred to above. The intention of the Legislature in using the words is clear and has been expressed in unequivocal terms and nothing can be subtracted or added to the terms or words used in a statutory provision.

10.3-2 As per the doctrine of *Noscitur A Sociis*, the rule of construction is that the words appearing in a statutory provision in close association, take colour from each other. The rule of construction *noscitur a sociis*, as explained by Lord MacMillan means, "The meaning of a word is to be judged by the company it keeps". As stated by the Privy Council, "it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". This rule, according to Maxwell, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in words and phrases. Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *eiusdem generis*. In fact the latter maxim is only an illustration or specific application of the broader maxim *noscitur a sociis*.

10.3-3 In view of the above maxim of Rule of interpretation, the term 'reconstruction, is to be seen and considered in the light of splitting up Otherwise also, as per the dictionary meaning of 'reconstruction', as given in Judicial Dictionary by K.J. Iyer, Eighth Edition 1980, the word 'reconstruction' is expressed

by synonymous 'rebuild'. Thus, if there is change of ownership from one person to another but the business continued to be the same, it cannot be said that the undertaking is formed as a result of reconstruction.

10.3-4 The meaning of the word 'reconstruction' can also be understood in the context in which this word appears. If we consider the scheme of the special provision and go through the provisions of Sections 32, 32A and 33B and examination of the Sub-clauses of Sub-section (2) together then it will be clear that the Legislature intended to disqualify those undertakings which are formed by rearranging the components or equipments of the earlier business and that is the reason that Sub-clause (iii) says in specific terms that the undertaking to be qualified for exemption under Section 10B should not be formed by the transfer to a new business of machinery or plant previously used for any purpose. Thus, the emphasis is on the previous business, business already in existence or old business establishment. However, if the new undertaking has been formed and conditions laid down in various clauses of Sub-section (2) are not applicable, then the exemption cannot be denied to the undertaking merely because at subsequent stage there is change in the ownership of the undertaking. The business structure and continuity of the business activity has to be seen and not the continuity of the same ownership of the undertaking. Thus, there is a difference between the ownership of the undertaking and the business activity of the undertaking and if the latter remains unaffected or unchanged by subsequent change in the ownership then it cannot be said that the business of the undertaking has been reconstructed.

10.3-5 Thus, the undertaking acquired by the assessee-company remained the same and the observation of the Assessing Officer that undertaking acquired by the company is nothing but reconstruction of business already in existence cannot be accepted.

10.4 So far as the conversion of firm into company is concerned, again it cannot be said that there was any transfer. On incorporation of company, consequences as per the provisions of Companies Act and other statutory provisions follow ensue. Thus, there is merely statutory vesting.

10.5 In the case of CIT v. Texspin Engg. & Mfg. Works , it was held by the Hon'ble Bombay High Court that when a firm is treated as a company, all the properties of the firm vest in the limited company but that vesting is not consequent or incidental to a transfer. Chetak Enterprises (P.) Ltd. v. Asstt. CIT [2005] 95 ITD 1, the Jodhpur Bench of the ITAT has also taken a similar view. Thus, it cannot be said that EOU owned by the assessee-company is formed as a result of reconstruction of EOU owned by the firm.

10.7 The learned Counsel for the assessee has successfully assailed the findings of learned CIT(A) and submitted that decision of Hon'ble Bombay High Court in the case of Gaekwar Foam & Rubber Co.

Ltd. (supra), has not been properly appreciated by the learned first appellate authority. His contention that it cannot be said that the company was formed as a result of reconstruction of business already in existence deserves to be accepted. The learned CIT(A) has also held that the assessee is not entitled to the claim of exemption in view of the amended provisions of Section 10B. This finding of learned CIT(A) is not based on construction of relevant statutory provisions. The CBDT vide Circular No. 1 of 2005 has clarified the position and, therefore, in view of the provisions of Section 10B as amended with effect from 1-4-1999 the assessee shall be entitled to claim exemption in respect of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things. Therefore, the EOU which existed before financial year 1998-99 and which was otherwise eligible for tax holiday of five assessment years out of block of eight assessment years, would be eligible for tax holiday for a block period of ten assessment years.

However, the period of ten years shall commence from the financial year relevant to the assessment year in which the undertaking begins to manufacture or produce articles or things. In the instant case, since the firm started manufacturing or producing articles or things in assessment year 1994-95, from that assessment year the firm shall be eligible for exemption for ten consecutive assessment years and the deduction shall be available for the unexpired period of ten years.

10.8 In the case of the assessee, neither the period of five years nor the block period of eight years expired when the amendment replacing the word 'ten' for 'five' was introduced by Income-tax (Second Amendment) Act, 1998 with effect from 1-4-1999. Since the assessee was entitled to exemption in the year in which amendment became effective and operative, the assessee will be entitled to the extended period of exemption because the period of five years had not exhausted up to assessment year 1999-2000. Since the right of the assessee was continuing in the year of amendment and was not lost on the date when the amendment came into existence, the view taken by the learned CIT(A) cannot be upheld. 10.9 So far as the objections of the learned CIT(A) regarding conduct of the assessee-firm in not claiming the exemption in earlier year is concerned, the approach of the learned CIT(A) raising this objection, cannot be legally justified because if the assessee is entitled to any benefit under any statutory provision then the past conduct cannot be relevant particularly when reference to such conduct is not made in the Act. The eligibility of the assessee has to be seen in the year in which the claim is preferred and if in earlier years the assessee waived his right then he cannot be stopped in claiming the benefit in the subsequent years.

10.10 The learned CIT(A) has also observed that the assessee did not file declaration exercising option prior to the due date for filing of return but filed it along with the return and, therefore, the assessee is disqualified from claiming exemption on this ground also. We do not find any force in such objection because this objection is merely of super-technical nature. In view of the above, we are unable to concur with the finding of learned CIT(A) and set aside the same. Consequently, we allow the ground of appeal taken by the assessee and direct that the assessee shall be entitled to claim exemption under Section 10B in the assessment year under consideration.

12. Ground Nos. 1 to 1.5 raised in this appeal challenge the findings of learned CIT(A) to the effect that the assessee was not entitled for exemption under Section 10B of the Income-tax Act in respect of profits derived from 100 per cent export-oriented undertaking. This very ground has been adjudicated by us while deciding assessee's appeal for assessment year 2000-01, as above. Facts and circumstances of the case for the assessment year in question remaining the

same, for the very same reasons as given in ITA No. 282/Delhi/04 for assessment year 2000-01, we allow the claim of assessee for exemption under Section 10B of the Income-tax Act. Grounds stand allowed accordingly.

That the Commissioner of Income-tax (Appeals) erred on facts and law in reducing the interest income of Rs. 955 received on account of deposits with bank for the purposes of computation of deduction under Section 80HHE of the Act.

14. The learned CIT(A) has considered the issue in paras 3, 3.1 and 3.2 of his order. He has recorded his findings in para 3.2 which are as under: I have considered the facts of the case carefully. There is no dispute that assessee has employed surplus funds to earn interest.

The interest income therefore, has not generated from business activities and therefore, interest income earned from surplus funds is assessable to tax under the head 'Income from other sources'. The appellant in assessment year 2000-01 on similar issue did not press the ground of appeal which was dismissed as not pressed. Since the facts are identical and the income has been generated from surplus funds, the same is assessable as income under the head 'Other sources'. The stand taken by the Assessing Officer is therefore, upheld.¹⁵ On going through the material on record it is found that the interest earning cannot be directly correlated with the business activity of the assessee and it cannot be said that the surplus funds were utilized in connection with the activity of business. Therefore, we uphold the view taken by the Assessing Officer. Ground fails.

16. In the result, ITA No. 282/Delhi/04 is allowed whereas ITA No.3987/Delhi/04 is partly allowed.

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