

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI R.C. SHARMA (ACCOUNTANT MEMBER) AND
SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)**

**ITA No. 2237/MUM/2013
Assessment Year: 2007-08**

National Collateral Management
Services P. Ltd.
954 Gayatri Towers, Appasaheb
Marathe Marg, Prabhadevi
Mumbai – 400025

Vs. ADDL CIT RG 7(1)
Aayakar Bhavan
Mumbai- 400020

PAN No. AACCN0054C

(Appellant)

(Respondent)

Appellant by : Shri. Bhupendra Kharkharis
Respondent By : Shri. Randhir Gupta (DR)

Date of Hearing : 27/07/2016

Date of pronouncement : 28/09/2016

ORDER

PER SANDEEP GOSAIN, J.M

Present appeal has been filed by the assessee against the order of Ld. CIT(A)-20, Mumbai dt. 07/12/2012, on the ground mentioned herein below :

1. On the facts and in the circumstances of the case and in law, the authorities below erred in restricting the claim of depreciation on computer softwares forming part of the block of assets of computers at the rate of 25% as against the rate of 60% claimed by the appellant and thereby disallowing the claim of depreciation to the extent of Rs. 13,66,773/- and the reasons assigned for doing so are wrong and contrary to the provisions of the Income Tax Act, 1961, and the Rules made there under.

2. The only ground raised by the assessee is against restricting the claim of depreciation on computer softwares forming part of the block of assets.

3. Ld. AR appearing on behalf of the assessee submitted that the assessee company is engaged in collateral management i.e; controlling and mitigating risk for majority of the agro and industrial commodities, procurement of food grains on behalf of FCI. It was submitted by Ld. AR that with effect from 2003-04, computer software has been subsequently included in the table of depreciation rate given in Appendix-2 Income Tax Rule 1962 alongwith computer (at S.No. 5 under the head III Machinery & Plant) with depreciation rate of 60%. And taking into consideration the said fact the assessee during the year under consideration after purchase of computer software had claimed depreciation @ 60%. However the Assessing Officer after seeking reply from the assessee had passed order of assessment thereby restricting the depreciation @ 25% instead of 60% on the ground that in terms of section 32 (1)(ii) as amended from 01/04/1998, depreciation on know-how, patents, copy rights, trade mark, licenses, etc is to be given @ 25% under the category of intangible assets mentioned in part B of the depreciation schedule in the Appendix-1 of the Income Tax Rules.

It was further submitted that the Assessing Officer wrongly held software to be licenses restricted the depreciation @ 25%. It was further argued that Ld. DR , Ld. CIT(A) also dismissed the appeal of the assessee, while upholding the order of Assessing Officer to restrict. In support of his contention Ld. DR relied upon the detailed submission filed before Assessing Officer as well as ground raised before CIT(A) which are subsequently mentioned in para no. 3.2 of the order passed by the Ld. CIT(A).

Ld. AR in order to strengthen his argument relied upon the following decisions:

- i. Amway India Vs. DCIT 114 TIJ 476 (Delhi) (Special Bench)
- ii. DCIT Vs. Datacraft India Ltd. 133 TIJ 377 (Special Bench)
- iii. Container Corporation of India Ltd. Vs. ACIT [2009] 30 SOT 284 [Delhi]

4. On the other hand Ld. DR relied upon the abovementioned order and also relied upon the order passed by lower authorities.

5. We have heard the rival submissions and also perused the material placed on record before us. And after analysing the order passed by the Ld. CIT(A) we are of the considered view that 'Software' consists of the programs and application that run on computers, and computer including computer software on which rate of depreciation has been prescribed as 60%. And the said rates are effective from Assessment Year 2003-04 wherein the "Computer Software" has already been included in the category of "Computer" for the purpose of allowing depreciation at the higher rate of 60%. As per the provisions of Income Tax Act are considering up to Assessment Year 2002-03 "computers" were eligible for depreciation @ 60% from Assessment Year 2003-04, benefit of such enhanced depreciation rate has been extended also to "Computer Software". In this respect our attention was drawn to note no. 7 to Appendix I as applicable from Assessment Year 2003-04 which defines "Computer Software to mean any computer programme recorded on any disc, type, perforated media or other information storage device. Thus for Income Tax purposes "software" has to be shown under the block of assets 'computers including computer software'.

We are also of the view that "Computer Software" cannot work in isolation and also working on computer system, without a software would be futile and even

computer software which is installed on computer system separates the computer hardware and being an integral part is eligible for depreciation.

We found our support from the following decisions:

1) Reliance is also placed on the decision in the case of *Amway India v. DCIT* 114 TIJ 476 (Delhi) (S.B) wherein it has observed that 'computer' and 'computer software' are two different items of assets. With effect from 1st April, 2003, 'computer software' has been classified as a tangible asset under the heading "Plant" in Appendix I to the IT Rules entitled to depreciation at 60% from 1st April 2003.

The Tribunal further observed at paragraph 55 pg. No. 525 as under:

" That Computer Software has not been defined in the Act, but in Note-7 to Appendix-I to the Income-tax Rules, it has been explained to include computer programme recorded on any disc, tape, perforated media or other information storage device. Therefore computer software (whether in canned form or uncanned form) is goods and a tangible asset by itself."

ii) DCIT Vs. Datacraft India Ltd. 133 TIJ 377 (SB) (Mum) wherein the Tribunal observed that the definition of computer should not be restricted to the Central Processing Unit of computer, but should also extend to all the input and output devices which support computer in the receipt of input and outflow of output to and from computer. In view of the broader definition given to computers, routers and switches, which form part and parcel of computer, also qualify for depreciation at 60%. In the said judgment the Hon'ble Special Bench has also observed at pg. 384 and 385 that w.e.f A.Y. 2003-04 computer software will be eligible for enhanced rate of depreciation @ 60%.

iii) Container Corporation of India Ltd. Vs. Assistant Commissioner of Income-tax, Circle 3(1), New Delhi [2009] 30 SOT 284 (Delhi) wherein it was held that the accessories and peripherals of computers provide input processing, storage and various output devices. The output devices such as printer, scanner etc. are computer peripherals and form essential parts of Pc. These output devices cannot work in isolation and also working on computer system without an output

device such as printer would be futile. In view of the above, the claim of depreciation at 60% on printer, scanner and other computer peripherals is completely justified. The claim of depreciation of 60% further gets justified in view of the fact that even computer software which is installed on computer system supports the computer hardware and is eligible for depreciation at 60%. Accordingly we request your goodself to kindly consider the above matter and allow the depreciation @60% on Computer Software and oblige."

Therefore keeping in view our aforementioned finding we allow this ground raised by the assessee, and AO is directed to re-compute assessment by giving depreciation @ 60% to the assessee.

6. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 28th September, 2016.

Sd/-

(R.C. SHARMA.)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai; Dated: 28/09/2016
AG (On Tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai