

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ , ACCOUNTANT MEMBER

ITA Nos. 1115 & 1116/Bang/2014
Assessment years : 2007-08 to 2008-09

The Joint Commissioner of Income Tax (LTU), Bangalore.	Vs.	M/s. State Bank of Mysore, Head Office, Finance & Accounts Department, Bangalore. PAN: AACCS 0155P
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Radha Krishna, CIT-III(DR)
Respondent by	:	Shri K.R. Vasudevan, Advocate

Date of hearing	:	26.05.2015
Date of Pronouncement	:	29.05.2015

ORDER

Per N.V. Vasudevan, Judicial Member

These are appeals by the Revenue against the orders dated 28.5.2014 and 14.7.2014 of the CIT(Appeals), LTU, Bangalore relating to assessment years 2007-08 & 2008-09 respectively.

2. The common issue that arises for consideration in both these appeals is as to, whether the CIT(Appeals) was justified in directing the AO

to allow depreciation at 60% of printers, scanners, equipments and other peripherals, treating them as falling within the description of 'computer' for the purpose of allowing depreciation.

3. The assessee is a banking company. For the A.Y. 2007-08, the AO called for the details of the additions to the fixed assets of computers during the previous year. The additions to the fixed assets under the head 'computer' during the previous year was a sum of Rs.13,17,60,280 out of which the assets added before 30.9.2006 was Rs.8,38,80,498. The assessee could produce copies of bills evidencing addition to fixed assets of computers only to the extent of Rs.6,87,62,263. The assessee had included printers, ATM, UPS, scanners, network equipments and other peripherals as part of the fixed assets 'computer'.

4. According to the AO, depreciation on computer was allowed at 60%, whereas if the aforesaid fixed assets are treated as forming part of the block of assets 'plant & machinery', the allowable depreciation was only 15%. According to the AO, printers, ATM, UPS, scanners, network equipments and other peripherals cannot be regarded as computers and accordingly the AO allowed depreciation as follows:-

Total addition of fixed assets under the head Computer & Software	13,54,65,893
Evidenes produced for	6,87,62,623
Where no evidences submitted	6,67,03,270

Depreciation as claimed originally by the assessee is as under

Description of assets	More than 180 days	Rate	Depreciation allowed	Less than 180 days	Rate	Depreciation allowed	Total Depreciation
Computers	4,78,79,782	60%	2,87,27,869	8,38,80,498	30%	2,51,64,150	5,38,92,019
Software	12,73,723	60%	7,64,234	24,31,890	30%	7,29,567	14,93,801
Total deprn. Claimed			2,94,92,103			2,58,93,717	5,53,85,820

Depreciation on the basis of invoices furnished by the assessee

Description of assets	More than 180 days	Rate	Depreciation allowed	Less than 180 days	Rate	Depreciation allowed	Total Depreciation
Computers	16,98,633	60%	10,19,179	10,52,740	30%	3,15,822	13,35,001
Printers, ATM, UPS and scanner	1,45,02,583	15%	21,75,387	5,15,08,667	7.5%	38,63,150	60,38,537
Total depreciation eligible							73,73,538

Accordingly, the AO disallowed a sum of Rs.4,80,12,282 (5,53,85,820 – 73,73,538) being the excess depreciation claimed by the assessee.

5. For the AY 2008-09, similar claim made by the assessee was disallowed as follows:-

“Recomputation of depreciation

In the AY 2007-08 while passing the OGE to the order of CIT, LTU, the similar exercise has been carried out wherein the closing WDV was determined by restricting the depreciation claim. It is as under:

By treating the same as opening WDV for the AY 2008-09 the depreciation claim for the AY 2008-09 on account of computers and software is reworked as under:

WDV for AY 2008-09 in the case of M/s. SBM

	OB on 01/04/2006	Additions as per order u/s 143(3) rws 263 dated 30/11/2012		Deductions	Depreciation allowed	WDV as on 31/03/2007
		More than 180 days	Less than 180 days			
Computers	338840845	1698633	1052740	55870605	171117146	114604467
Software	86132133	0	0	11944309	44512694	29675130
Computers treated as plant & machinery	0	14502583	51508667	0	6038537	599727713
					221668378	

Amount of depreciation claimed in return 269680657

Excess depreciation claimed to be disallowed 48012282

	OB on 01/04/2006	Additions as per order u/s 143(3) rws 263 dated 30/11/2012		Deductions	Depreciation allowed	WDV as on 31/03/2007
		More than 180 days	Less than 180 days			
Computers	114604467	40735662	42581998	65327578	60394830	72199719
Software	29675130	0	0	12291605	10430115	6953410
Computers treated as plant & machinery	59972733	28796054	37451434	0	16124173	110096028
					86949118	

Depreciation claimed 176802937

Excess claimed 89853819

Conclusion

It is noticed from the detailed discussion that the assessee bank has been claiming excess depreciation in every year. It has been detected during the proceedings initiated u/s 263 of the IT

Act by CIT(LTU) for the AY 2007-08. The assessment for the AY 2008-09 was reopened and the assessee bank was requested to substantiate the claim of depreciation. Even though the assessee bank has objected the reopening they have failed to furnish complete evidences in support of fixed assets added under the head computers and software. In some cases the machineries like ATM, AC, printer etc has been claimed as computer and the excess depreciation has been restricted accordingly. Hence after verifying the evidences the depreciation claim has been restricted as per the detailed discussion made above. The excess claim of depreciation of Rs.8,98,53,819 has been disallowed and added back.”

6. Aggrieved by the aforesaid order of the AO, the assessee preferred appeal before the CIT(Appeals). Insofar as it relates to treating the printers, scanners, network equipments and other peripherals as forming part of the fixed assets ‘computer’, the CIT(Appeals) was of the view that the claim of the assessee was justified, based on the decisions referred to by the assessee. The following were the relevant observations of the CIT(Appeals):-

“5. Relying upon the judicial decisions cited in respect of HDFC Bank and Venture Infotech (supra), the AO has disallowed the claim of depreciation at 60% on the captioned items. Before me the appellant submitted that the printers, scanners, modems etc., are computer peripherals and provide input processing, storage and various output devices and, accordingly, form an essential part of a computer. They cannot work in isolation apart from the computer to which they are attached. Likewise, the network equipment such as routers etc assist in transmitting the data and the data packages to intended locations between computer networks. Reliance was placed by the appellant on the following judicial decisions:-

- DCIT Vs. Datacraft India Limited (40 SOT 295) (Mum ITAT) (SB)
- ITO Vs. Samiran Majumdar (2006) 280 ITR (AT) 74 (Kolkata ITAT)
- Container Corporation of India Ltd. Vs. ACIT (30 SOT 284) (Delhi ITAT)
- DCIT Vs. Microsoft Corpn. India (P) Ltd. (139 TTJ 40) (Delhi ITAT)
- Expeditors International India (P) Ltd. Vs. Addl.CIT (118 TTJ 652) (Delhi ITAT)
- Haworth India (P) Ltd. Vs. DCIT (140 TTJ 446) (Delhi ITAT)
- DCIT and Addl.CIT Vs. Cosmos Films Ltd. (13 ITR (Trib) 340)(Delhi ITAT)

5.1 I have gone examined the appellant's arguments and the cited case laws and find that in respect of printers, scanners, routers and other net work equipments, the judicial decisions are strongly weighed in favour of the appellant primarily on the ground that these hardware items become operational only through 'computer functions' and these computer hardware when used as component of the computer become part and parcel of the computer. In these situations, as held in the Data Craft India decision, 'the hardware in question can be considered as a part of the computer and, hence, a computer.' On these items, therefore, the claim of higher depreciation at 60% is considered appropriate and the AO is directed to allow the same."

7. In AY 2007-08, the CIT(Appeals) followed his own order for AY 2006-07.

8. Aggrieved by the relief allowed by the CIT(Appeals), the Revenue has preferred the present appeals before the Tribunal.

9. As far as the claim of Revenue that printers, scanners, network equipments and other peripherals cannot be regarded as computer, we are unable to accept the stand of the Revenue. The Hon'ble Delhi High Court in the case of *CIT v. Birla Soft Ltd., ITA No.1284/2011, judgment dated 15.12.2011* has held that computer peripherals, CD writer, printer, network cables, switches, isolators, etc. are entitled to depreciation @ 60%. The SLP filed by the Revenue against the judgment of the Delhi High Court has since been dismissed by the Hon'ble Supreme Court by its judgment dated *14.2.2014 in SLP(Civil) Nos.2645/2012*.

10. The Special Bench of the Tribunal in the case of *DCIT v. Datacraft India Ltd. (2010) 40 SOT 295 (MUM) SB* has held that it is not correct to say that it is only a device which could perform logical arithmetic or memory functions by manipulations of electronic impulses is computer. All the input and output devices which support in the receipt of input and outflow of output are also part of computer. Thus, computer has to necessarily include input and output devices within its scope, subject to their exclusive user with the computer.

11. In the light of the aforesaid decisions based on which the CIT(Appeals) allowed relief to the assessee, we are of the view that there is no merit in these appeals by the Revenue.

12. For AY 2007-08, one of the objections raised by the Revenue in the grounds of appeal is that the CIT(Appeals) has admitted additional evidence with regard to additions to the fixed assets under the head 'computer' without affording the AO of looking into the additional evidence filed by the assessee before the CIT(A). On this aspect, we have perused the order of the CIT(Appeals) and we find that the CIT(Appeals) has not admitted any additional evidence. He found that the assessee has entered into MOU with SBI for sharing of costs pertaining to common information technology initiatives. Pursuant to this MOU, the total additions made to computers and softwares by SBI was Rs.27,42,43,752 and 10% of the aforesaid addition has been charged to the assessee bank viz., Rs.2,74,24,375 as IT costs. The assessee also furnished evidence for additions to computer and software amounting to Rs.27,03,494 by collating invoices from its branches. The assessee thus filed evidence to the extent of 73% of the total additions to fixed assets under the head 'computer'. The assessee, in respect of remaining additions to fixed assets under the head 'computer', requested to accept the letter from DGM(F&A) confirming that as per statutory auditors have verified all the underlying invoices and bills for additions to fixed assets under the head 'computers'. The CIT(Appeals) considered the aforesaid submissions on behalf of the assessee and observed as follows:-

“7.4 The appellant's claim and evidences as above have been examined and they are found relevant for deciding the issue at hand. The AO is directed to examine the same and, if found

genuine, to allow the claim to the extent of Rs.2,74,24 375 for the SBI Cost Shared Components and Rs.29,03,494 for the balance assets. The remaining gap in addition to fixed assets which is not supported by evidence, however, cannot be accepted since the onus provided by law on the appellant has not been discharged through production of the primary evidences to support its claim. In fact, in the context of disallowance of penalty expenditure discussed in the next section the appellant has stated that it was not bound by the views of the statutory auditors. This being the case it would be unfair to bind the AO to the certification by the statutory auditors in the matter of invoices for fixed assets. The unevicenced addition to fixed assets, therefore, cannot be admitted for allowing the claim of depreciation. This ground, therefore, partly succeeds.”

13. It can be seen from the aforesaid observations of the CIT(Appeals) that he has only directed the AO to examine whatever evidence has been admitted by the CIT(Appeals). The grievance projected by the Revenue regarding violation of Rule 46A of the I.T. Rules, in our view, therefore is unjustified and not sustainable.

14. In the result, both the appeals are dismissed.

Pronounced in the open court on this 29th day of May, 2015.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 29th May, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar/
Senior Private Secretary
ITAT, Bangalore.