

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "G", MUMBAI**  
 श्री अमित शुक्ला, न्यायिक सदस्य एवं  
 श्री रमित कोचर, लेखा सदस्य के समक्ष ।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No. : 561/Mum/2012**  
 (Assessment year: 2008-09)

Group M Media India P Ltd., Commerz, 8 <sup>th</sup> Floor, International Business Park, Oberoi Garden CityM, Off Western Express High way, Goregaon (East), Mumbai -400 063 स्थयी लेखा सं.:PAN: <b>AACCM 7365 H</b>	<b>Vs</b>	Asst Commissioner of Income Tax Circle 24(1), C-13, R. No. 503, Pratyaksh Kar Bhavan, Bandra (East), Mumbai- 400 001
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Miss Aarti Vissanji & Shri Ajit Shah
Respondent by	:	Shri Vikash Kr. Agarwal

सुनवाई की तारीख /Date of Hearing : 10-08-2015

घोषणा की तारीख /Date of Pronouncement : 06-11-2015

**आदेश**  
**ORDER**

**अमित शुक्ला, न्या. स.:**

**PER AMIT SHUKLA, JM:**

The aforesaid appeals have been filed by the impugned order dated 11.10.2011, passed by CIT(A)-13, Mumbai, for the quantum of assessment passed u/s 143(3) for the assessment years 2008-09. In various grounds of appeal, the assessee has challenged the following additions/ disallowances:-

- (i) *“Disallowance of software expenses claimed as revenue expenditure aggregating to Rs. 11,47,520/- which has been treated as capital in nature.*
- (ii) *Disallowance of Rs. 84,50,557/- on account of provision of expenditure to be reimbursed to the parent/group company in connection with software allocation cost on the ground that deduction of tax at source u/s 195 r.w.s. 194J has not been made and consequently, 40(a)(i) has been made.*

- (iii) *Disallowance of Rs. 5,07,500/- on account of replacement of old monitors of Rs.5,07,520/- and Artificial Carpet Charges of Rs. 1,13,453/- on the ground that the same is not covered by the definition of 'current repairs'.*

2. The brief facts of the case are that, assessee is in the business of media planning, executing and buying in the field of advertising and marketing and other related services. The AO required the assessee to submit the details of the software expenses and show-cause as to why the same should not be treated as the capital expenditure, in response, it assessee submitted that, in the course of the business, various information and knowledge on different subjects relating to clients' business, products, kind of markets in different parts of the country and also the information and knowledge about the different source of media like, newspapers, publications, Magazines, electronic media such as TV, internet etc. are required. This information was available from softwares supplied by different parties who specialize in such jobs and activities. The software has a very limited utility and useful life, due to vast changing of business dynamics and also the advancement of various kinds of requirements. The software generally has a useful life of 12 months to 18 months; therefore such expenditure is to be allowed as revenue expenditure. However, AO rejected the assessee's contention and disallowed the following software expenditures debited to the profit and loss account which according to the AO was in the nature of license fees and research cost :-

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1	Software License Cost of MAC(MS Office)	2,38,386
2	Research Software Cost	3,928
3	Software License Cost	6,93,959
4	Software License Cost (Toad Software Development Tool)	31,120
5	3D Research Cost	1,49,199
6	Research Software Cost (Radio Monitoring Software)	30,928
	<b>Total (Rs.)</b>	<b>11,47,520</b>

3. The Ld. CIT(A), too upheld the action of the AO on the ground that it has an enduring benefit.

4. Before us, the Ld. Counsel submitted that this issue had come up for consideration before the Tribunal in assessee's own case for the assessment year 2006-07.

5. After hearing the parties and on perusal of the impugned order, we find that these software license costs which has been paid by the assessee is for using of software for its day-to-day business requirements, as stated by the assessee before the AO. These softwares keep are ever changing from time to time and did not have a useful life for very long period and at one point of time it becomes obsolete. Thus, it cannot be held that they are capital in nature on account of enduring benefit. Moreover, the Hon'ble Delhi High Court in the case of CIT vs Asahi India Safety Glass Ltd, 346 ITR 329 and Hon'ble Bombay High Court in the case of CIT vs Raychem RPG Ltd, reported in 346 ITR 138 (Bom) have held that, these softwares do not form part of the profit making apparatus and merely facilitate the assessee's trading operation or enabled the management to conduct the assessee's business more efficiently and more profitable. Thus, they have to be treated as revenue expenditure. Moreover, as pointed out by the Ld. Counsel in the earlier years, the Tribunal in ITA No. 1306/Mum/2011 for the assessment year 2006-07 has allowed this issue in favour of the assessee. Accordingly, respectfully following the same, we hold that software expenses aggregating to Rs.11,47,520/- is allowable as revenue expenditure. Accordingly, ground no. 1.1 is allowed.

6. So far as the disallowance of Rs. 84,50,557/- being the provision made for the expenditure to be reimbursed in connection with the software allocation cost by the foreign AE/group company, "Mindshare Asia Pacific", the AO observed that, such a payment on account of reimbursement of software cost amounts to "royalty" within the meaning of Explanation to section 9(1)(vi). Accordingly, he held that TDS should have been deducted by the assessee while making the payment, which has not been done and

therefore, disallowance u/s 40(a)(i) has been made. The Ld. CIT(A) too has confirmed the said addition on the following reasons :-

*“The amount paid towards purchase of Software is Royalty as held in the case of CIT (Int.Tax) vs Samsung Electronics Co. Ltd 320 ITR 209 (Mum).*

*The appellant has produced the bills of Mindshare Asia Pacific have not been produced to prove that what Mindshare Asia Pacific have not been produced to prove that what Mindshare Asia Pacific has changed is merely the reimbursement of actual software cost.*

*Without prejudice the amount has been paid towards purchase of software either directly or through intermediary does not matter. Hence provisions of sec. 194J were clearly applicable”.*

7. Before us, the Ld. Counsel contended that it is merely reimbursement of cost of software expenses incurred by the Group company which has been allotted to the assessee and is not a “Royalty” within the meaning of Explanation 2 to Section 9(1)(vi) of the Act, as it does not fall within any of the parameters like :-

- (i) There is no transfer of all or any rights (including the granting of license) in respect of a patent, invention, model, design, secret formula or process or trademark or similar property;
- (ii) There is no imparting of any information concerning the working of the use of, a patent, invention, model, design, secret formula or process of trade mark or similar property;
- (iii) There is no use of a patent, invention, model, design, secret formula or process of trade mark or similar property;
- (iv) There is no imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

- (v) There is no use or right to use any industrial, commercial or scientific equipment, not including the amounts referred to in section 44BB;
- (vi) There is no transfer of all or any rights (including the granting of a license) in respect of any copyright, literary, artistic or scientific work including film or video tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films; or
- (vii) There is a no rendering of any services in connection with the activities referred to in sub-clauses (i) to (vi);

Thus, there is no requirement of deducting TDS either u/s 195 or u/s 194J. The Ld. Counsel further referred to the details of software cost allocated on cost sharing basis and also the nature of such software as given in the paper book and submitted that these softwares were procured centrally for all the group entities for better and coordinated functioning. She also drew our attention to the details of software expenses allocated by Parent Company along with the internal debit invoices. Thus, she submitted that, it cannot be treated as “royalty”.

8. On the other hand, Ld. DR strongly relied upon the order of the AO as well as CIT(A) and submitted that, the software has been supplied by the Parent Company for the usage and benefit of the assessee, therefore payment made in lieu thereof is to be treated as “Royalty”.

9. After considering the rival contention and on perusal of the relevant finding of the impugned order as well as the material on record, we find that various softwares products have been supplied by the AE/ group company, Mindshare Asia Pacific, the details of which are as under :-

<b>Sr.No.</b>	<b>Particulars</b>	<b>Amount(Rs.)</b>
1	Postini/Symantec Antivirus and IBM Lotus Notes	18,39,000
2	Symantec support & Maintenance	82,583
3	Treesize Professional License	6,706
4	Peersync Workstation Maintenance	6,37,523
5	Checkpoint SecureClient	2,29,442
6	Checkpoint SecureClient Maintenance	97,104
7	MS Office EA	27,16,380
8	Timesheet	2,70,900
9	SA for SQL- METIS	1,35,584
10	Directory Maintenance for SharePoint	27,360
11	Windows Server CAL – Renewal	1,57,376
12	Windows Server Enterprise – Renewal	43,200
13	Windows Server Standard – Renewal	2,33,345
14	Windows Standard Server – True Up	2,09,334
15	WinZip (Existing)	54,720
16	Gupta SQL	3,60,000
17	Adept	13,50,000
	<b>Total</b>	<b>84,50,557</b>

These softwares have not been developed by the Parent Company or any AE, but have been centrally procured so that same can be allotted and given to the various Group entities in order to ensure proper functioning; proper coordination and quality. Whatever cost had been incurred for procuring the software from third parties has been allocated among the group entities on the proportionate basis. Such an allocation has not been disputed except for holding that the reimbursement of cost paid by the assessee to the Parent/AE Company amounts to “Royalty”. Such a reimbursement of cost cannot be held to be for any transfer of any right or giving any right to use within the ambit and scope of any of the definition as given in Explanation 2 to section 9(1)(vi). Once such a payment does not fall within any of the parameters set out in Explanation 2, then it cannot be held that, it is in the nature of “royalty”. ‘Mindshare Asia Pacific’ is procuring the software from somewhere else and loading the cost on proportionate basis to various group entities without any mark-up hence on reimbursement of such a cost, assessee was not liable to deduct TDS on account of “royalty” and therefore, no disallowance u/s 40(a)(i) can be made. As a result, such a disallowance of Rs. 84,50,557/- stands deleted. Accordingly, ground no. 2 is allowed.