



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.4285/Mum/2014
(Assessment Year : 2000-01)

M/s. Kuoni Travel (India) Pvt. Ltd.
(merged with Travel Corporate (India) Ltd.)
8th Floor, Tower A, Urmi Estate
95 Ganpatrao Kadam Marg
Lower Parel(W), Mumbai 400013
PAN AAACS0170L

..... Appellant

v/s

DCIT, Circle - 3(2)
Room no. 609, 6th Floor
Aayakar Bhavan, M.K. Marg
Mumbai 400020

..... Respondent

Appellant by : Shri Jay Bhansali
Respondent by : Shri Rajesh Kumar Yadav

Date of Hearing - 11.10.2017

Date of Order - 03.11.2017

ORDER

PER SAKTIJIT DEY, J.M.

The captioned appeal by the assessee is directed against the order dated 21.04.2014 of learned Commissioner (Appeals)-4, Mumbai, for Assessment Year 2000-01.

2. The solitary issue in dispute in the present appeal is with regard to disallowance of expenditure claimed of ₹44,10,000/- for development of software.

3. Briefly the facts are, the assessee, a company, is engaged in the business as a travel agent and providing related services to resident and foreign tourists. Assessee filed its return of income for assessment year under dispute on 30.11.2000 declaring total income of ₹2,47,56,080/-. Assessment in case of the assessee was originally completed under section 143(3) of the Act vide order dated 27.03.2003 determining total income at ₹3,08,28,382/-. The total income determined by the Assessing Officer, inter alia, included disallowance of ₹44,10,000/- towards payment for development of software. The dispute relating to the aforesaid disallowance travelled up to the Tribunal and the Tribunal vide order dated 18.08.2009 remitted the issue back to the Assessing Officer to examine afresh in the light of the Special Bench decision of the ITAT in the case of M/s. Amway India Enterprises 301 ITR 1(AT). In the fresh proceedings in pursuance of the directions of the Tribunal, the Assessing Officer called upon the assessee to justify the deduction claimed on account of software development. In response, it was submitted by the assessee that he wanted to computerize its package tours accounting with the general operating system to ensure efficiency in business and quicker

response time. To achieve this objective assessee entered into a contract with Chrysalis Information System Ltd. (CISL) for the package tour and accounting software to be specifically customize and developed by CISL as per assessee's requirement and to be delivered within a fixed time schedule. It was submitted, since, CISL failed to develop and deliver the software system within the stipulated time schedule and due to technological changes as a result of substantial time lapse, the assessee decided against acquiring the software system and abandoned the project to avoid further expenditure. As a consequence, the software developed and the advance given to the vendor was written off in the books of the assessee, since, the software was not delivered by CISL. Further, relying upon the decision of the Special Bench in the case of Amway India Enterprises (supra) the assessee submitted that the amount written off has to be allowed as revenue expenditure. The Assessing Officer however did not find merit in the submissions of the assessee. He found that as per assessee's own submission the software developed was specially customized to ensure efficiencies of business and quicker response time. Referring to the decision of the ITAT Delhi Special Bench in the case of Amway India Enterprise (supra) as well as the agreement for development of software, the Assessing Officer found that the software proposed to be developed was for the purpose of putting in place a

completely new system to govern all major operations and working of the assessee. Therefore, the Assessing Officer held that the expenditure incurred by the assessee is of capital nature. While doing so, he also observed that assessee itself has considered the expenditure as part of capital asset and shown it in the schedule of fixed assets. Accordingly, he disallowed the deduction claimed by the assessee.

4. Assessee challenged the disallowance before the Commissioner (Appeals). The learned Commissioner (Appeals) relying upon the Special Bench decision of Amway India Enterprise (supra) upheld the disallowance.

5. The learned A.R. reiterated the submissions made before the departmental authorities. He submitted, the expenditure incurred for development of software was for increasing the efficiency of the already existing business. Therefore, the software developed cannot be considered to be profit making apparatus to treat the expenditure as capital in nature. In support of his contention he relied upon the following decisions: –

- i. CIT v/s. Southern Roadways Ltd. (2008) 304 ITR 84 (Mad)
- ii. CIT v/s. Geoffrey Manners and Co. Ltd. (2014) 49 taxmann.com 320 (Bom)
- iii. CIT v/s. Raychem RPG Ltd. (2012) 346 ITR 138 (Bom)

iv. ACIT v/s. N.K.V. Krishna (2014) 41 taxmann.com 306 (Chennai).

6. Learned Departmental Representative relied upon the observations the Commissioner (Appeals) and Assessing Officer.

7. We have considered the rival submissions and perused the materials on record in the light of the decisions relied upon. Undisputedly, the deduction claimed by the assessee, which is the subject matter of dispute before us, relates to expenditure incurred for development of software. As could be seen from the submissions made by the assessee before the Department authorities, it wanted to computerize its package tour accounting with the general operating system to ensure efficiencies in business and quicker response time. For the aforesaid purpose assessee entered into a contract with CISL for development of package tour and accounting software. After perusing the agreement between the assessee and CISL the Assessing Officer has given a factual finding that the software sought to be developed included a client server either independent or portable to major relational data base management software like IBM, Oracle, etc. The other activities to be performed by the software as per the terms of the agreement speaks of all functions including product set up (supplier maintenance, services maintenance, services on tour, air lines, manufacturing of tour, surface reservation, ferry reservations,

hotel reservation, entrance tickets, tour prices, commission discount, etc.), management set up, CST sales module, accounting module, user management and application security module, MIS module. He also found that as per the agreement, the software to be developed would also be operationalised for all the branches of the assessee. Thus, from the aforesaid factual findings of the Assessing Officer it is evident that the software sought to be developed by the assessee was in the nature of a profit making apparatus for his business. Notably, in case of Amway India Enterprises (supra) Delhi Special Bench of the Tribunal while considering similar expenditure incurred by a travel agent held as under: –

"Similarly, example of a travel agent can be cited here as an illustration wherein the expenditure incurred on acquisition of a software for the purpose of enabling the assessee to make booking of air tickets would be a capital expenditure because such a software certainly forms part of the profit making apparatus of the travel agency business inasmuch as the business of air ticket booking is done with the help of that software."

6. The aforesaid ratio of the Special Bench is squarely applicable to the facts of assessee's case. As far as the decisions cited by the learned Authorised Representative are concerned, none of them are in respect of business of a travel agent. In view of the aforesaid, we uphold the decision of the Commissioner (Appeals) on the issue. Grounds raised are dismissed.

7. In the result, assessee's appeal is dismissed.

Order pronounced in the open Court on 03.11.2017

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 03.11.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

N. Panicker
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai