IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.1592/Bang/2016
Assessment year : 2012-13

M/s. Tata HAL Technologies Ltd., Vintage/Venus Building, 1st Floor, 1/1 & 1/2 , Jakkasandra, Kalyanamantap Road, Koramangala 1st Block, Bengaluru – 560 034. **PAN : AABCI 9224 L**	Vs.	Deputy Commissioner of Income Tax, Circle -7(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Srinivas Bharath, CA
Revenue by	:	Shri. Pardeep Kumar, JCIT

Date of hearing	:	21.11.2017
Date of Pronouncement	:	23.11.2017

O R D E R

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of CIT(A), *interalia*, on the following grounds:

1) *That the impugned order is opposed to facts and law and the appellant denies its liability to treat the software purchase as revenue expenditure and its liability to not account for depreciation on the same.*
2) *The Honorable Commissioner of Income Tax (Appeals)-7 has erred in affirming the order passed by the learned Assessing Officer.*
3) *The Honorable Commissioner of Income Tax (Appeals)-7 miss-directed himself in holding that the payment amounts to royalty when no such interpretation was warranted in as much as the transaction was on principal to principal basis.*
4) *The Honorable Corn missioner of Income Tax (Appeals)-7 has miss- directed himself in holding that the depreciation cannot be claimed on the amount in dispute*
5) *That the Honorable Commissioner of Income Tax (Appeals) refused to take cognizance of the constructive amendment of section 201 and as a consequence amendment to section 40(a)(1a) and also failed to*

give apt interpretation to judicial pronouncements.

6) *That the Honorable Commissioner of Income Tax(Appeals) has not considered the judicial precedents pertaining to tax to be deducted on settled liability.*

7) *The appellant prays for leave to add, modify delete or introduce additional grounds of appeal at any time before the appeal is disposed.*

Based on these and such other grounds that may be adduced from time to time, the appellant requests the Honorable Income Tax Appellant Tribunal to consider the petition in the light of principles of justice and cancel the additions made by the Assessing Officer and the appellant order passed by Commissioner of Income Tax (Appeals)"

2. During the course of hearing, the learned counsel for the assessee has invited our attention to the fact that the impugned issue is squarely covered by the order of the Tribunal in the assessee's own case for the immediately preceding year i.e., 2011-12 in which the Tribunal has held that the payment for purchase of software is in the nature of royalty, however no disallowance can be made under section 40a(ia) in respect of claim of depreciation.

The learned DR did not dispute these facts.

3. Having carefully examined the order of the Tribunal vis-à-vis the grounds raised before us and the orders of the authorities below, we find that undisputedly the impugned issues are squarely covered by the aforesaid orders of the Tribunal. Copy of the order of the Tribunal is placed on record. The relevant observation of the Tribunal on the impugned issues is extracted hereunder for the sake of reference:

"3. The only issue in the appeal of assessee is regarding disallowance of depreciation under Section 40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act') in respect of purchase of software capitalized by the assessee. The assessee has purchased software and capitalized the same. The assessee has capitalized the cost of software of Rs.49,45,752 on which the assessee claimed depreciation of Rs.29,67,451. The Assessing Officer held that the payment for purchase of software is in the nature of Royalty in view of the decision of Hon'ble jurisdictional High Court in the case of ***CIT Vs. Samsung Electronics Co. Ltd.*** *345 ITR 494. Since the assessee did not deduct TDS therefore, the Assessing Officer disallowed the claim of*

depreciation of the assessee. The assessee challenged the action of the Assessing Officer before the CIT (Appeals) but could not succeed.

4. We have heard the learned Authorised Representative as well as learned Departmental Representative and considered the relevant material on record. At the outset, we note that an identical issue has been considered and decided by this Tribunal vide order dt.29.11.2016 in the case of ***DCIT Vs. Tally Solutions Pvt.Ltd.*** *in IT(IT)A No.1463/Bang/2013 in paras 18 & 19 as under :*

" 18. We have considered the rival submissions as well as the relevant material on record. As regards the question whether the payment for purchase of IPR in software is in the nature of royalty, we find that this issue is now covered by the decision of Hon'ble jurisdictional High Court in the case of ***CIT Vs. Samsung Electronics Co. Ltd.*** *(supra) wherein the Hon'ble High Court has held in paras 27 to 30 as under :*

" 27. *The question as to whether the payment made for import of software or supply of software by the non-resident companies was royalty or not was not at all in issue in TCS case (supra) and the question was whether canned software sold by the appellants therein amounted to sale of goods under the Andhra Pradesh General Sales-tax Act. Further, the issue of transfer of right to use the goods as per the expanded definition of 'sale' did not come up for consideration in that case. On the other hand, the issue in the present case is as to whether the payment would amount to 'royalty' within the meaning of IT Act and DTAA. In the said TCS case (supra), it has been held that copyright in computer program may remain with the originator of the program, but, the moment copies are made and marketed, it becomes goods, which are susceptible to tax. The contention of the assessee that the consideration received by the non-resident supplier towards the software products would amount to 'royalty' within the meaning of DTAA with respective country was not at all considered in the said case. Therefore, the said decision in TCS case (supra) is not helpful to the respondents in the present cases. It is well settled that the intent of the legislature in imposing sales-tax and income-tax are entirely different as income-tax is a direct tax and sales-tax is an indirect tax and wherefore, mere finding that the computer software would be included within the term 'sales-tax' would not preclude this Court from holding that the said payment made by the respondents to the non-resident company in the present cases would amount to 'royalty' unless the respondents are able to prove that the said payment is for the sale of computer software, wherein the income would be from the business and in the absence of any PE of the non-resident supplier, there is no obligation on the part of the payer to make deduction under s. 195(1) of the Act.*

28. *It is well settled that in the absence of any definition of 'copyright' in the IT Act or DTAA with the respective countries, in view of cl. 3 of the DTAA, reference is to be made to the respective law regarding definition of 'copyright', namely, Copyright Act, 1957, in India, wherein it is clearly stated that "literary work" includes computer programmes, tables and compilations including computer (databases). Sec. 16 of the Copyright Act, 1957 states that no person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of the said Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence. Sec. 14 of the said Act dealing with meaning of 'copyright' reads as follows :*

"14. Meaning of copyright—For the purposes of this Act, 'copyright' means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely :

(a) in the case of a literary, dramatic or musical work, not being a computer programme,—

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;
(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-cls. (i) to (vi);
(b) in the case of a computer programme,—
(i) to do any of the acts specified in cl. (a);
(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme :
Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.
(c) in the case of an artistic work,—
(i) to reproduce the work in any material form including depiction in three dimensions of a two-dimensional work or in two dimensions of a three-dimensional work;
(ii) to communicate the work to the public;
(iii) to issue copies of the work to the public not being copies already in circulation;
(iv) to include the work in any cinematograph film;
(v) to make any adaptation of the work;
(vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-cls. (i) to (iv);
(d) in the case of a cinematograph film,—
(i) to make a copy of the film, including a photograph of any image forming part thereof;
(ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
(iii) to communicate the film to the public;
(e) in the case of a sound recording,—
(i) to make any other sound recording embodying it;
(ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
(iii) to communicate the sound recording to the public.
Explanation—For the purposes of this section, a copy which has been sold once shall be deemed to be a copy already in circulation."
It may also be noted that under s. 51 of the Act dealing with "when copyright infringed" states that copyright in a work shall be deemed to be infringed—when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under the Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under the Act does anything, the exclusive right to do which is by the Act conferred upon the owner of the copyright. Sec. 52 of the Act dealing with certain acts not to be infringement of copyright states that the following acts shall not constitute an infringement of copyright, namely—
"....."
(aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—
(i) in order to utilise the computer programme for the purpose for which it was supplied; or
(ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied."
29. *It is clear from the abovesaid provisions of the Copyright Act that the right to copyright work would also constitute exclusive right of the copyright holder and any violation of the said right would amount to infringement under s. 51 of the Act. However, if such copying of computer program is done by a lawful possessor of a copy of such computer programme, the same would not constitute infringement of copyright and wherefore, but for the licence granted in these cases to the respondent to make copy of the software contained in shrink wrapped/off-the-shelf software into the hard disk of the designated computer and to take a copy for back up purposes, the end-user has no other right and the said taking back up would have constituted an infringement, but, for the licence. Therefore, licence is granted for taking copy of the software and to store it in the hard disk and to take a back up copy and right to make a copy itself is a part of the copyright. Therefore, when licence to make use of the software by making copy of the same and to store it in the hard disk of the designated computer and to take back up copy of the software, it is clear that what is transferred is right to use the software, an exclusive right, which the owner of the copyright i.e., the respondent-supplier owns and what is transferred is only right to use copy of the software for the internal business as per the terms and conditions of the agreement. The*

decision of the Delhi High Court in CIT vs. Dynamic Vertical Software India (P) Ltd. in IT Appeal No. 1692 of 2010 dt. 22nd Feb., 2011 relied upon by Sri Aravind Dattar, learned senior counsel appearing for the respondents in some of the cases in support of his contention that by no stretch of imagination, payment made by the respondents to the non-resident suppliers can be treated as 'royalty' is not helpful to the respondents in the present cases as in the said case, Delhi High Court was considering the provisions of s. 40(a)(i) of the Act and the order of the High Court reads as follows :

"What is found, as a matter of fact, is that the assessee has been purchasing the software from Microsoft and sold it further in Indian market. By no stretch of imagination, it would be termed as royalty."

Therefore, the contention of the learned senior counsel appearing for the respondents that there is no transfer of any part of copyright or copyright under the impugned agreements or licenses cannot be accepted. Accordingly, we hold that right to make a copy of the software and use it for internal business by making copy of the same and storing the same in the hard disk of the designated computer and taking back up copy would itself amount to copyright work under s. 14(1) of the Act and licence is granted to use the software by making copies, which work, but for the licence granted would have constituted infringement of copyright and licencee is in possession of the legal copy of the software under the licence. Therefore, the contention of the learned senior counsel appearing for the respondents that there is no transfer of any part of copyright or copyright and transaction only involves sale of copy of the copyright software cannot be accepted. It is also to be noted that what is supplied is the copy of the software of which the respondent-supplier continues to be the owner of the copyright and what is granted under the licence is only right to copy the software as per the terms of the agreement, which, but for the licence would amount to infringement of copyright and in view of the licence granted, the same would not amount to infringement under s. 52 of the Copyright Act as referred to above. Therefore, the amount paid to the non-resident supplier towards supply of shrink-wrapped software or off-the-shelf software is not the price of the CD alone nor software alone nor the price of licence granted. This is a combination of all and in substance, unless licence is granted permitting the end user to copy and download the software, the dumb CD containing the software would not in any way be helpful to the end user as software would become operative only if it is downloaded to the hardware of the designated computer as per the terms and conditions of the agreement and that makes the difference between the computer software and copyright in respect of books or pre-recorded music software as book and pre-recorded music CD can be used once they are purchased, but so far as software stored in dumb CD is concerned, the transfer of dumb CD by itself would not confer any right upon the end user and the purpose of the CD is only to enable the end user to take a copy of the software and to store it in the hard disk of the designated computer if licence is granted in that behalf and in the absence of licence, the same would amount to infringement of copyright, which is exclusively owned by non-resident suppliers, who would continue to be the proprietor of copyright. Therefore, there is no similarity between the transaction of purchase of the book or pre-recorded music CD or the CD containing software and in view of the same, the legislature in its wisdom, has treated the literary work like books and other articles separately from 'computer software' within the meaning of the 'copyright' as referred to above under s. 14 of the Copyright Act.

30. *It is also clear from the abovesaid analysis of the DTAA, IT Act, Copyright Act that the payment would constitute 'royalty' within the meaning of art. 12(3) of the DTAA and even as per the provisions of s. 9(1)(vi) of the Act as the definition of 'royalty' under s. 9(1)(vi) of the Act is broader than the definition of 'royalty' under the DTAA as the right that is transferred in the present case is the transfer of copyright including the right to make copy of software for internal business, and payment made in that regard would constitute 'royalty' for imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill as per cl. (iv) of Expln. 2 to s. 9(1)(vi) of the Act. In any view of the matter, in view of the provisions of s. 90 of the Act, agreements with foreign countries DTAA would override the provisions of the Act. Once it is held that payment made by the respondents to the non-resident companies would amount to 'royalty' within the meaning of art. 12 of the DTAA with the respective country, it is clear that the payment made by the respondent to the non-resident supplier would amount to royalty. In view of the said finding, it is clear that there is obligation on the part of the respondents to deduct tax at source under s. 195 of the Act and consequences would follow as held by the Hon'ble Supreme Court while remanding these appeals to this Court. Accordingly, we answer the substantial question of law in favour of the Revenue and against the assessee by holding that on facts and circumstances of the case, the Tribunal was not justified in holding that the amount(s) paid by the respondent(s) to the foreign software suppliers was not 'royalty' and that the same did not give rise to*

any 'income' taxable in India and wherefore, the respondent(s) were not liable to deduct any tax at source and pass the following order :
All the appeals are allowed. The order passed by the Tribunal, Bangalore Bench 'A' impugned in these appeals is set aside and the order passed by the CIT(A) confirming the order passed by the AO (TDS)-I is restored."

Following the decision of the jurisdictional High Court in the case of ***CIT Vs. Samsung Electronics Co. Ltd.*** *(supra), we hold that the payment for purchase of IPR in software is in the nature of Royalty.*

19. As regards the applicability of the provisions of Section 40(a)(ia) of the Act for disallowance of claim of depreciation, we find that when the assessee has capitalised this amount and not claimed as a revenue expenditure then the claim of depreciation cannot be disallowed by invoking the provisions of Section 40(a)(ia) of the Act. This issue has been dealt with by the co-ordinate bench of this Tribunal in the case of ***SKOL Beverages Ltd. Vs. ACIT*** *(supra) as well as* ***Kawasaki Micro Electronics, Inc. – India Branch Vs. DCIT*** *(supra). In the case of* ***Kawasaki Micro Electronics, Inc. – India Branch Vs. DCIT*** *(supra), the Tribunal has considered an identical issue in paras 6 to 8 as under :*

" 6. We have heard the rival submissions as well as considered the material on record. The issue before us is limited only with respect to the disallowance of depreciation by invoking the provisions of section 40(a)(i) of the Act. There is no dispute that the assessee has made the payment in question to a non-resident for purchase of software and the said payment has been capitalized by the assessee in the block of computer asset. Once the assessee capitalized the payment and has not claimed the same as an expenditure against the profits of the business of the assessee, then, the question arises whether the depreciation is a statutory deduction as per the section 32 of the Act can be disallowed by invoking the provisions of section 40(a)(i) of the Act. At the outset, it is to mention that on the same set of facts an identical issue has been dealt by the ITAT, Mumbai Bench in the case of SKOL Breweries Ltd. (supra), wherein it was held in paras 16.1 to 16.4 as under :-

*" **16.1** As regards the alternative plea of the ld Sr counsel for the assessee that since the assessee has not claimed the entire amount as revenue expenditure; but has capitalized the same and claimed only depreciation u/s 32(1)(ii); therefore, provisions of sec. 40(a)((i) shall not apply. Section 40(a)(i) contemplates that any interest, royalty, fee for technical services or other sum chargeable under this act, which is payable outside India as it is relevant for the case in hand on which tax is deductible at source under Chapter XVII -B and such tax has not been deducted or, after deduction, has not been paid, the amount of interest, royalty, fee for technical services and other sum shall not be deducted in computing the income chargeable under the head "profits & gains of business or profession". This condition of deductibility has been stipulated u/s 40*

notwithstanding anything to the contrary in section 30 to 38 of the Act. Sec. 40 begins with non-obstante clause; therefore, it is an overriding effect t the provisions of sec. 30 to 38 of the I T Act. The question arises is whether any amount paid outside India or to the Non Resident without deduction of tax at source and the assessee has capitalized the same in the fixed assets and claimed only depreciation is subjected to the provisions of sec. 40(a)(i) or not ?. We quote the provisions of sec. 40(a)(i) as under:

40. Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession",—

(a) in the case of any assessee—

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200 :

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation.—For the purposes of this sub-clause,—

"royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

"fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

***16.2** It is manifest from the plain reading of provisions of sec. 40(a)(i) that an amount payable towards interest, royalty, fee for technical services or other sums chargeable under this Act shall not be deducted while computing the income under the head profit and gain of business or profession on which tax is deductible at source; but such tax has not been deducted. The expression 'amount payable' which is otherwise an allowable deduction refers to the expenditure incurred for the purpose of business of the assessee and therefore, the said expenditure is a deductible claim. Thus, section 40 refers to the outgoing amount chargeable under this Act and subject to TDS under Chapter XVII-B. There is a difference between the expenditure and other kind of deduction. The other kind of deduction which includes any loss incidental to carrying*

on the business, bad debts etc., which are deductible items itself not because an expenditure was laid out and consequentially any sum has gone out; on the contrary the expenditure results a certain sums payable and goes out of the business of the assessee. The sum, as contemplated under sec. 40(a)(i) is the outgoing amount and therefore, necessarily refers to the outgoing expenditure. Depreciation is a statutory deduction and after the insertion of Explanation 5 to sec. 32, it is obligatory on the part of the Assessing Officer to allow the deduction of depreciation on the eligible asset irrespective of any claim made by the assessee. Therefore, depreciation is a mandatory deduction on the asset which is wholly or partly owned by the assessee and used for the purpose of business or profession which means the depreciation is a deduction for an asset owned by the assessee and used for the purpose of business and not for incurring of any expenditure.

16.3 *The deduction u/s 32 is not in respect of the amount paid or payable which is subjected to TDS; but is a statutory deduction on an asset which is otherwise eligible for deduction of deprecation. Depreciation is not an outgoing expenditure and therefore, the provisions of sec. 40(a)(i) of the Act are not attracted on such deduction. This view has been fortified by the decision of the Hon'ble Punjab & Haryana High Court in the case of Mark Auto Industries Ltd. (supra) in pars 5 & 6 as under:*

"5. Adverting to questions (ii) and (iii), the issue which arises for consideration is whether the assessee could be disallowed claim for depreciation under Section 40(a)(i) of the Act on the ground that the payments made for technical know-how which had been capitalized, no tax deduction at source has been made thereon. The Tribunal while accepting the plea of the assessee, in para 3, had noticed as under:

"3. Ground no. 4 is against deletion of an addition of Rs. 6,88,1751- made by the AO on account of deduction of depreciation on technical know-how as the assessee failed to deduct tax in accordance with the provision contained in section 40(a)(i). The finding of the learned CIT(A) was that the assessee had incurred, expenditure by way of technical know-how, which was capitalized amount as made in the return of income. Since the assessee had not claimed deduction for the amount paid, the provisions contained in section 40(a) (i) were not attracted. The learned DR could not find any fault with this direction of the CIT(A) also although she referred to page 4 of the assessment order, where it was mentioned that the tax deducted in respect of the payment was made over to the Government in the subsequent year and, therefore, depreciation could not be deducted on the capital expenditure incurred by the assessee. In reply, the learned counsel pointed out that the expenditure by way of technical know-how was capitalized and it was not claimed as revenue expenditure. Therefore, there was also no reason to disallow depreciation on such capitalized amount as the aforesaid provision does not deal with deduction of depreciation. Having considered arguments from both the sides, we are of the view that there is no error in the order of the learned CIT(A) which requires correction from us. Thus, this ground is also dismissed."

6. Learned counsel for the revenue was unable to substantiate that in the absence of any requirement of law for making deduction of tax out of the expenditure on technical know how which was capitalized and no amount was claimed as revenue expenditure, the deduction could be disallowed under Section 40(a)(i) of the Act. Accordingly, no infirmity could be found in the order passed by the Tribunal which may warrant interference by this Court. Thus, both the questions are answered against the revenue and in favour of the assessee."

16.4 *In view of the above discussion as well as following the decision of the Hon'ble Punjab & Haryana High Court, we decide this issue in favour of the assessee and against the revenue."*

7. As mentioned above, the Tribunal has discussed and analysed the provisions of section 40(a)(i) in detail in the context of disallowance of depreciation. The learned D.R. has submitted that once the assessee has violated the provisions of section 195, then, even the expenditure is capitalized by the assessee, the provisions of section 40(a)(i) for disallowance of depreciation of such capitalized expenditure. We do not agree with the contention of the learned D.R. As a remedy for violation of provisions of section 195 is available with the Assessing Officer under Section 201 & 201A of the Act. The provisions of section 40(a) is only an additional measure to enforce the compliance of Chapter 17 – 17B.

8. By disallowing an expenditure which is otherwise allowable under the provisions of the Act. Therefore, the question of disallowance under Section 40(a) raises only when an expenditure is claimed by the assessee without deducting the tax at source as per the provisions of Chapter 17 - 17B. In the case on hand, when the assessee has not claimed, the said payment as an expenditure then the question of disallowance under Section 40(a)(i) does not arise. The only remedy which may be pressed on by the Assessing Officer is the action under Section 201 and 201A of the Act. A similar view has been taken by the Delhi Bench of the Tribunal in the case of SMS Demang (P) Ltd. (supra) in para 8 as under :-

> *"8. As regards the claim of assessee for depreciation on assets capitalized, depreciation cannot be disallowed on the ground that at the time of remittance, no tax was deducted at source. Provisions of section 40(a)(i) are not applicable for claim for deduction under section 32 of the Act. Accordingly, in our considered opinion, the AO was not justified in disallowing 50 percent of depreciation on the ground that provisions of section 40(a)(i) were applicable. However, the AO will verify the fact whether the assets in respect of which expenditure has been capitalized have been used in business for period more than 180 days. If the assets have been used for more than 180 days, the AO will allow full depreciation, as claimed by the assessee. The AO is directed accordingly".*

Accordingly, by following the earlier decisions of this Tribunal, we decide this issue against the revenue and in favour of the assessee. The order of the CIT (Appeals) for this issue is upheld."

Following the earlier order of this Tribunal, we hold that the payment for purchase of software is in the nature of royalty however no disallowance can be made under Section 40(a)(ia) in respect of the claim of depreciation. Accordingly, we set aside the orders of the authorities below qua the issue of disallowance of depreciation under Section 40(a)(ia) of the Act."

4. Since the Tribunal has taken a particular view in similar set of facts, we find no reason to take a contrary view in this appeal. Accordingly, following the same, we hold that the payment for the purchase of software is in the nature of royalty and no disallowance can be made under section 40a(ia) in respect of claim of depreciation. Accordingly, order of the CIT(A) is set aside and AO is directed to allow the claim of depreciation.

5. In the result, appeal of the assessee is allowed.

Pronounced in the open court on 23rd November, 2017.

Sd/-	Sd/-
(JASON P BOAZ)	**(SUNIL KUMAR YADAV)**
Accountant Member	**Judicial Member**

Place : Bangalore
Dated : 23/11/2017
/NShylu/*

Copy to :

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

By order

Sr. Private Secretary,
ITAT, Bangalore.