

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI  
BEFORE SHRI S. V. MEHROTRA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
ITA NO. 2930/DEL/2010  
(Assessment Year (2003-04))**

ITO Ward 3(4) New Delhi <b>(APPELLANT)</b>	vs	Creatnet Services Ltd. 215, Southex Plaza-1, South Extension-II, New Delhi AABCC6813B  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Anil Kumar Sharma, SR. DR</b>
<b>Respondent by</b>	<b>Sh. Ravi Joshi, CA</b>

<b>Date of Hearing</b>	<b>14.09.2016</b>
<b>Date of Pronouncement</b>	<b>09.11.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 31/3/2010 passed by the CIT (A)-V, New Delhi for Assessment Year 2003-04.

2. The grounds of appeal are as follows:-

“1. *The Ld.CIT(A) erred on facts and in law in deleting the addition of Rs.71,91,409/- disallowed by the A.O ignoring the fact that the said expenses did not pertain to the relevant previous year 2002-03. Moreover, the said expenses claimed under the head “Software Development”*”

*also were not proved to be incurred wholly & exclusively for the purpose of assessee's business nor were the same allowable under the provisions of Sections 35D or 43B of the I.T. Act, 1961."*

3. The assessee had filed a return for Assessment Year 2003-04 declaring loss of Rs.1,46,04,165/- on 2/12/2003. The A.O observed that the assessee was not doing the business of software development because the assessee was carrying on the business of manufacturing, trading and export of readymade garments. The Assessing Officer has made disallowance of Software Development Cost in two Assessment Years which was amounting to Rs.71,91,409/-.

4. Aggrieved by this, the assessee filed appeal before the CIT(A). The CIT(A) observed as follows:-

*"6. I have discussed the matter with the AR of the assessee, perused the Assessment order, grounds of appeal, written submissions and paper book very carefully. The assessee company was going to develop software for supply chain management and outsourcing for apparel industry in India or retail export markets/stores in other developed countries. Therefore, the company had spent Rs.71,91,409/- in Assessment Year 2002-03 and 2003-04. However, the software at the testing state developed technical snag and the assessee had to abandon the project forever. Therefore, the deferred revenue expenditure made by the assessee company of Rs.71,91,409/- had been written off by the company in its books of account. There is no hanky panky*

*on claim of the assessee of written off of such development expenses. The AR produced books of accounts which are maintained in computer and I verified the same. Thus I am satisfied that the written off of expenditure on development of software expenses of Rs.71,97,409/- is genuine and correct claim, hence the addition made by A.O of Rs.71,97,409/- is hereby deleted.”*

5. The Ld. DR submitted that the Assessing Officer has rightly disallowed the said software expenses. The Ld. DR relied on the observations of the Assessing Officer which are as under:

*“10. Moreover, the burdens on the assessee to furnish all relevant supporting material that establish its claim. In the absence of supporting documents the assessee is not entitled to claim the expenses. In this case the assessee stated that so much amount was incurred on development of software program but in support failed to furnished detail to whom the same was developed, agreement with the concerned party, etc. The assessee also failed to state what was happened to the software in question whose developing charge was about 1 crore. Once any software is developed the same cannot be destroyed its own unless and until it is destroyed. As per provision of the Income Tax Act only those expenses which are incurred in order to earn income is allowable. There are two types of expenses one is Revenue and other is Capital expenses. Revenue expenses is allowable during the year in which it is incurred and other expenses which are not revenue*

*must be capitalized and depreciation on the same is allowed. In the instant case the assessee neither claimed these expenses as revenue nor capitalized. These expenses pertain to earlier years cannot be allowed in the year under consideration. Only those expenses which are covered under section 43B of the Act pertain to earlier year is allowable on payment basis or the expenses which comes under the purview of Section 35D is allowed in subsequent years. These expenses neither come under the ambit of Section 43B nor u/s 35D. Moreover these are not come under any of the Section 28 to 41 of the I.T. Act. There should a nexus between the expenses incurred and the business. Section 37(1) provides expenses must be incurred during the year and must be of revenue nature, should have been incurred during the Previous Year & should have been incurred wholly & exclusively for the purpose of business or profession. Keeping in mind all the aforesaid facts. I, disallowed the expenses claimed by the assessee amounting to Rs.71,91,409/-.”*

6. Thus, the Ld. DR submitted that the Assessing Officer has rightly rejected the same after verifying relevant documents. The CIT(A) failed to look into these aspects. Thus, the order of CIT(A) has to be quashed.

7. The Ld. AR relied upon the order of the CIT(A) and submitted that the Assessing Officer has not taken the cognizance of the relevant material while making additions. The Ld. AR further

submitted that the Assessing Officer failed to understand the business of the assessee because the Assessing Officer had neither gone to the assessee's business premises nor discussed the business with top executives at the factory premises by discussing the matter with them in person nor tried to understand the business model. The assessee was a sole facilitator to material movements in garments industries from India to developed countries. The garments manufacture in India by many other companies is delivered to retail stores in developed countries like Europe and USA. This is called supply chain management, managed by the assessee. The assessee company had to collect information's from different retail stores of renowned brands and collecting the information from different companies manufacturing garments inn India and make a link between them.

8. We have heard both the parties and perused all the records. It is pertinent to note that all the relevant material was before the Assessing Officer. The Assessing Officer has not looked into the actual business activity of the Assessee company during the Assessment Year 2002-03 and 2003-04. The assessee company was going to develop software for supply chain management and outsourcing for apparel industry in India or retail export markets/stores in other developed countries. Therefore, the company had spent Rs.71,91,409/- in Assessment Year 2002-03 and 2003-04. However, the software at the testing state developed technical snag and the assessee had to abandon the project forever.

Therefore, the deferred revenue expenditure made by the assessee company of Rs.71,91,409/- had been written off by the company in its books of account. There is no suspicion on claim of the assessee of written off of such development expenses. The AR produced books of accounts which are maintained in computer and the same was verified by the CIT(A). Thus the written off of expenditure on development of software expenses of Rs.71,97,409/- is genuine claim made by the Assessee. Hence the addition made by Assessing Officer of Rs.71,97,409/- was rightly deleted by the CIT(A).

9. In result, appeal of the Revenue is dismissed.

Order pronounced in Open Court on 09/11/2016.

**Sd/-**  
**(S.V. MEHROTRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 09/11/2016

*\*R. Naheed\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date	
1.	Draft dictated on	21.10.2016	PS
2.	Draft placed before author	24.10.2016	PS
3.	Draft proposed & placed before the second member	.10.2016	JM/AM
4.	Draft discussed/approved by Second Member.	.10.2016	JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.10.2016	PS/PS
6.	Kept for pronouncement on	.10.2016	PS
7.	File sent to the Bench Clerk	11.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

