

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.108/Kol/2017
Assessment Year :2012-13

DCIT, Circle-8(1), Aayakar Bhawan, 5 th Floor, P-7, Chowringhee Sq. Kolkta-69	V/s.	M/s Khadim India Ltd., 6, Kankaria Estate, Little Russel Street, Kolakta-71 [PAN No.AABCK 3341 A]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Arindam Bhattacharjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subash Agarwala, Advocate
सुनवाई की तारीख/Date of Hearing	27-02-2018
घोषणा की तारीख/Date of Pronouncement	04-04-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-3, Kolkata dated 30.11.2016. Assessment was framed by DCIT, Circle-8(1),, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 20.03.2015 for assessment year 2012-13. Grounds of appeal raised by the Revenue read as follows:-

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.34,72,493/- on account of disallowance of expenditure under the head of stamp duty and registration charges.*
- 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.10,94,854/-on account of disallowance of claim of depreciation at the rate of 60% on asset namely scanner and router.*
- 3. That the appellant reserves the right to amend, alter or add to any ground(s) of appeal before or at the time of hearing of the appeal.”*

Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of the Revenue and Shri Subash Agarwal, Ld Advocate appeared on behalf of assessee.

2. First issue raised by Revenue in ground No.1 is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹34,72,493/- on account of stamp duty and registration charges.

3. Briefly stated facts are that assessee is a limited company and engaged in business of export of manufacturing and trading of footwear and leather accessories, life style retailing, trading of gold jewellery etc. During the year, assessee has acquired buildings/ properties on lease and incurred stamp duty and registration charges for acquiring the same. These properties/ buildings were required by assessee for the opening of new branches for its business. However, the AO was of the view that the expenses incurred on stamp duty and registration charges are capital expenditure and these cannot be allowed as deduction as revenue expenditure. Therefore, the AO disallowed the same and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition made by AO by observing as under:-

“... .. Kolkata ITAT Bench order in assessee’s own case for AY 2008-09 in ITA No.953-955/Kol/2012 dated 10.07.2014 and for AY 2009-10 in ITA No.22368/Kol/2013 dt.01.06.2016.

5) I have considered the facts of the case. I find that the issue involved is covered in favour of the appellant by various decisions of the higher courts and in appellant’s own case for the AY 2008-09 and AY 2009-10 by the Hon’ble Kolkata Bench of ITAT. Respectfully following the decision of the higher courses, the disallowance of Rs.34,72,493/- is deleted.”

Being aggrieved by the order of Ld. CIT(A) Revenue is in appeal before us.

5. Before us both parties relied on the order of Authorities Below as favourable to them.

6. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, we observe that exactly on identical issue the Hon'ble Co-ordinate Bench of this Tribunal in assessee’s

own case in ITA No.954/Kol/2012 for AY 2008-09 dated 10.07.2014 decided the issue in favour of assessee and against the Revenue. The operative portion of the order is reproduced below:-

“9. We have heard both the counsel and perused the records. We find that the issue is covered in favour of the assessee by various decisions of the higher courts. In this regard we note the decision of Hon'ble Bombay High Court in the case of CIT vs Bombay Cycle & Motor Agency 118 ITR 42 (Bom) where the matter pertains to treatment of brokerage of stamp duty paid for acquisition of leasehold properties. The Hon'ble High Court held that the period of the lease was one of ten years, it does not constitute startling difference as would appeal to us to apply a different test than the one which we applied in Hoechst Pharmaceuticals Ltd. case 113 877 (Bom). It was held that in their view the expenses were rightly considered by the Tribunal as being of revenue in nature. Similarly the Hon'ble Bombay High Court in the case of CIT v. Cinceita Private Limited 137 ITR 652 considered the issue where the period of lease was 20 years. The Hon'ble Bombay High Court held that it must also be noted that the expenditure was in respect of stamp duty, registration charges and professional fee. There was no element of the premium in the amount claimed as expenditure. Moreover, this expenditure would have been the same even if the lease had been of a shorter duration provided the period of lease was more than one year.”

There is no change in the facts & circumstances in the case on hand and therefore respectfully following the same we uphold the order of Ld. CIT(A). Hence the ground of Revenue's appeal is dismissed.

7. Next issue raised by Revenue in ground No.2 is that Ld. CIT(A) erred in allowing the depreciation on the assets being scanner and router @ 60%.

8. The assessee during the year has claimed depreciation on the assets being scanner and router for ₹14,54,472/- only. The assets being scanner and router were treated at par with computers by the assessee. Accordingly, the depreciation on such asset was claimed @ 60% on the value of impugned assets. However, the AO was of the view that assets being scanner and router are neither computer nor computer software. Therefore these are eligible for depreciation @ 15% amounting to ₹3,63,618/- only. Accordingly, the difference of ₹10,90,854/- (13,54,472 – 3,64,618) was disallowed and added to the total income of assessee.

9. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the assets being router and scanner are integral part of computer system. Therefore, these are included in the block of computer. Thus, these assets are eligible for depreciation @ 60%. Ld. CIT(A) after considering the submissions of assessee deleted the addition made by AO by observing as under:-

"8) I have considered the facts of the case. The issue is covered by the cited case laws. Respectfully following the various case laws relied upon by the appellant wherein the router and the scanner have been held as integral part of the computer system, I hold the same are eligible to depreciation at 60% which is applicable to block of computer. The disallowance of Rs.10,90,854/- is deleted."

Being aggrieved by this order of Ld. CIT(A) Revenue is in appeal before us.

10. Ld. DR for the Revenue before us relied on the order of AO whereas Ld. AR for the assessee relied on the order of Ld. CIT(A).

11. We have heard both the parties and gone through the facts of the case. We find that the Hon'ble Delhi High Court in the case of CIT v. BSES Rajdhani Powers Ltd. in I.T. Appeal no. 1266 (Delhi) of 2010, in their decision dated 31.08.2010 while adjudicating a similar issue, held as under:

"We are in agreement with the view of the Tribunal that computer accessories and peripherals such as, printers, scanners and server etc. form an integral part of the computer system. In fact, the computer accessories and peripherals cannot be used without the computer. Consequently, as they are the part of the computer system, they are entitled to depreciation at the higher rate of 60 per cent. "

11.1 In similar issue the Delhi ITAT in the case of ITO vs. Omni Globe Information Technologies India (P.) Ltd. reported in 131 ITD 280 (Delhi) held that if peripherals such as printers, scanners and servers etc. form integral part of the computer system, UPS will also be an integral part of the computer system, entitled for deduction of depreciation at the-rate of 60 per cent.

Similarly the Kolkata Bench in the case of Income Tax Officer Vs. Samiran Majumdar (2006) 98 ITD 119, held that the printer and scanner are integral part of the computer system and, therefore, entitled to higher rate of depreciation @ 60 per cent.

A similar view was taken by the Delhi Bench in their decision in the case of Container Corporation of India Ltd. vs. ACIT (2009) 30 SOT 284 (Delhi) and Expeditors International India (P) Ltd. vs. Addl, CIT ,118 TTJ(Del.) 652. The Mumbai Special Bench in their decision dated July 9,2010 in DCIT v. Datacraft India Ltd., in **ITA nos. 7462 & 754/Mum/2007**, held that routers and switches are to be included in the block of 'Computer' entitled to depreciation at the rate of 60%. In another decision dated 9.11.2010, Hon'ble Delhi High Court in CIT vs. Citycorp Maruti Finance Ltd. in **ITA nos. 1712 & 1714/2010** followed their own decision in BSES Yamuna Powers Ltd. (supra) and upheld the view of the ITAT, allowing depreciation @60% on computer accessories and peripherals like printers etc. In the light of view taken in the aforesaid decisions, especially when the Revenue have not placed before us any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the Id. CIT(A), allowing depreciation @ 60% on computer peripherals and accessories. Therefore, ground No.2 in the appeal of Revenue is dismissed.

7. Last issue is general in nature and does not require any adjudication.

8. **In the result, Revenue's appeal stands dismissed.**

Order pronounced in the open court _____/04/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)
(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 04/04/2018 कोलकाता ।

आदेश की प्रतिलिपि अद्योषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Circle-8(1),Aayakar Bhawan,5th Fl, P-7,Chowringhee Sq. Kol-69
2. प्रत्यर्थी/Respondent-M/s Khadim India Ltd. 6, Kankaria Estate, little Russel, St. Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण, कोलकाता ।