

आयकर अपीलीय अधिकरण “G” न्यायपीठ मुंबई मे ।

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM**

आयकर अपील सं./ ITA No. 3754/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

Global E Services Pvt. Ltd C/o, D.C. Bothra & Co. (CA) 297, Tardeo Road, 1 st Floor willie Mansion, Opp. Bank of India, Nana Chowk, Mumbai- 400 007	Vs.	The Asst. Commissioner of Income Tax, Circle 12(2)(2), Room No. 145, 1 st Floor, Aayakar Bhavan M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAAC5168P		

Assessee by : Ronak Jain, AR

Revenue by : V. Vidhyadhar, DR

Date of hearing: 09-05-2018 **Date of pronouncement :** 25-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-20, Mumbai [in short CIT(A)], in appeal No. CIT(A)-20/ACIT.12(2)(2)/IT-173/2014-15 dated 29.03.2016. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 12(2)(2), Mumbai (in short 'DCIT') for the A.Y. 2012-13 vide order



dated 30.12.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the depreciation on IT Park and Call Centre building. For this assessee has raised two following two grounds -

"1. That on facts and in the circumstances of the case and in law, the Id. CIT (Appeals) has erred in upholding the action of Id. Assessing Officer by not allowing the legitimate claim of depreciation of Rs. 70,79,918/- on I.T. Park & Call Centre buildings which undisputedly are wholly owned & being used for the business purposes, despite furnishing the claim of depreciation in assessment proceeding & income derived from which buildings have been offered & also assessed under business income head.

2. That without prejudice to appeal ground no. 1, the Id. C.I.T. (Appeals) has erred in not following the judgement of Hon'ble I.T.A.T., Mumbai rendered in the case of assessee for the earlier assessment year in respect of the request made that appeal of assessee may be dismissed with a direction to Id. A.O. to follow the judgement of Hon'ble High Court of Bombay on the identical question of law pending for adjudication in respect of earlier assessment years by exempting the assessee appellant from filing of further appeal in Hon'ble I.T.A.T. Mumbai despite application in specified form for the same was filed before him.."



3. We find that exactly identical facts and on the similar issue in A.Y. 2005-06, the question of law is admitted and is pending before the Hon'ble Bombay High Court on an appeal filed by assessee u/s 260 A of the Act and also for earlier and subsequent assessment years. The relevant substantial question of law admitted by the Hon'ble Bombay High Court reads as under: -

"Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in upholding the order of the CIT(A) and the AO is not allowing the appellant's claim of depreciation of Rs.9,12,064/- on buildings owned by the appellant and used for the purpose of the business of running of I.T. park and an international call Centre only because the said buildings were shown as shown as stock-in-trade in the books of accounts?"

4. In similar circumstances, according to the learned Counsel the Tribunal in ITA NO. 5022/Mum/2015 for the A.Y. 2002-2003 has decided the issue against the assessee but directed the AO that as and when the Hon'ble Bombay High Court decide the question of law pending before it, the same shall be applied in this year also, notwithstanding, that the assessee does not prefer an appeal on the said question of law before the Hon'ble Bombay High Court for this year because the assessee has filed declaration u/s 158A(1) before the Bench which is placed on record. In term of the above, he requested that in this year also the appeal be dismissed subject to the decision of the Hon'ble Bombay High Court in term of Section 158A (1) of the Act. The Ld. Sr. DR has not objected to the same

5. After hearing both the parties and going through the facts and circumstances of the case, we dismiss the appeal of the assessee but



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subject to the decision of the Hon'ble Bombay High Court, AO is directed to apply the decision of Hon'ble Bombay High Court in this year also, notwithstanding the fact that the assessee does not prefer the appeal on the said question of law before the Hon'ble Bombay High Court in this year. The appeal of the assessee is dismissed subject to the direction in terms of Section 158A (1) of the Act. Similar are the directions in Tribunal's order for AY 2011-12 in ITA No. 2212/Mum/2016 order dated 02.01.2017. Respectfully following and consistently taking a view, we dismiss the appeal of the assessee.

6. In the result, the appeal assessee is dismissed.

Order pronounced in the open court on 25-05-2018.

आदेश की घोषणा खुले में दिनांक 25-05.2018 को की गई ।

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 25-05-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI