

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI**

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 2592/MUM/2016  
Assessment Year: 2010-11**

Shri Veerbhadram Vislavat, ADIT-15(1)(2), 483-A, 4 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai - 400021	<b>Vs.</b>	M/s Chemtex Global - Engineering Pvt. Ltd., Chemtex House, Main Street, Hiranandani Gardens, Powai, Mumbai - 400076  PAN: AACCC4458P
<b>(Appellant)</b>		<b>(Respondent)</b>

**CO No. 297/MUM/2017  
Assessment Year: 2010-11  
(Arising out of ITA No. 2592/MUM/2016)**

M/s Chemtex Global -Engineering Private Limited., Chemtex House, Main Street, Hiranandani Gardens, Powai, Mumbai - 400076  PAN: AACCC4458P	<b>Vs.</b>	The Deputy Commissioner of Income Tax-Circle-15(1)(2), Room No. 483-A, 4 <sup>th</sup> Floor, Aayakar Bhavan, Maharshi Karve Marg, Mumbai - 400021
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Rajat Mittal (DR)  
Assessee by : Shri Niraj D. Sheth (AR)

Date of Hearing: 07/06/2018  
Date of Pronouncement: 19/06/2018

**ORDER**

**PER RAM LAL NEGI, JM**

These are the appeals and cross objection filed by the revenue and the assessee against the orders dated 27.01.2016 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-24, Mumbai, for the assessment

year 2010-11, whereby the Ld. CIT (A) has partly allowed the appeals filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

**ITA No. 2592/MUM/2016 (Assessment Year: 2010-11)**

2. Brief facts of the case are that the assessee engaged in the business of engineering consultancy, filed its return of income for the assessment year under consideration declaring the total income of Rs. 3,94,63,446/-. Since, the assessee company had entered into the international transaction with its associate enterprises, the matter was referred to the Transfer Pricing Officer (TPO) for determining arm's length price in relation to the international transactions. However, the TPO made nil adjustment. During the course of assessment proceedings, it was noticed that the company had made payment of Rs. 1,36,73,382/- as computer software expenses. Out of the said amount of Rs. 1,00,52,982/- was incurred as expense for renewal of computer software licenses. The AO treated the expenses incurred on software and other related expenses as capital expenditure. Since, the Ld. DRP had confirmed similar disallowance made by the AO in the appellant's own case of the A.Y. 2009-10, the AO made disallowance of Rs. 1,00,52,982/- claimed by the assessee as revenue expenditure and added the same to the income of the assessee.

3. The assessee challenged the assessment order *inter alia* on the ground that the Assessing Officer has erred in holding that the computer software expenses being annual maintenance license fees incurred by the assessee during the year are capital expenditure and wrongly made disallowance of the same. The Ld. CIT (A) after hearing the assessee allowed this ground of appeal and decided the said ground of appeal in favour of the assessee. The revenue is in appeal against the findings of the Ld. CIT (A).

4. The revenue has preferred this appeal before the Tribunal on the following effective grounds-

*“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding that Computer expenses paid to be treated as revenue in nature despite the fact that out of the total computer expenses paid, an amount of Rs. 1,00,52,982/- was incurred as expense for Renewal of Computer Software Licenses. Further, the expenses incurred relating to various software and other computer related expenses acted as a central tool for resource planning for the business and enhanced benefit to the profit earning apparatus of the business.”*

5. At the outset, the Ld. counsel for the assessee submitted that in the assessee's own case for the A.Y. 2009-10, the Ld. DRP had confirmed the similar disallowance made by the AO holding that the expenses are not revenue in nature. However, the Ld. DRP vide direction dated 31.03.2014 rectified the directions u/s 144C (5) of the Act and directed the AO to modify the draft assessment order holding that the software expenses are revenue in nature. Since, the findings of the Ld. CIT (A) are based on the directions of the Ld. DRP. There is no merit in the appeal of the revenue.

6. On the other hand, the Ld. Departmental Representative (DR) did not controvert the facts narrated by the Ld. counsel for the assessee, however, relied on the assessment order.

7. We have heard the rival submissions and also perused the material on record. The only grievance of the revenue is that the Ld. CIT (A) has wrongly treated the expenses of Rs. 1,00,52,982/- incurred for renewal of computer software license as revenue in nature. We notice that in the present case, the Ld. CIT (A) has decided the issue in favour of the assessee on the basis of the

directions dated 31.03.2014 of the Ld. DRP in the assessee's own case for the A.Y. 2009-10 vide which the Ld. DRP has directed the AO to modify the draft assessment order and to treat the expenses in question as revenue in nature. The operative part of the order of the Ld. CIT (A) reads as under:-

*“2.3.2 The first ground of appeal relates to the disallowance of computer software expenses. At the outset, it has been stated by the Ld. AR that the Ld. DRP-III, Mumbai, vide its rectification order dated 31.03.2014 gave direction to the Ld. AO after considering the evidence available on record, which was lost sight of by the earlier DRP, that the payment made by the appellant company of the recharged software did not result in any benefit of an enduring nature to the company's business and hence, the disallowance of software expenses made by the Ld. AO in the draft assessment order for A.Y. 2009-10 was not found to be correct.*

*2.3.3 I find that the ground situation in the current appeal remains the same as Ld. AO in his order has relied on the findings for A.Y. 2009-10 which was initially confirmed by the Ld. DRP, Mumbai. As the Ld. DRP-III, Mumbai has rectified its earlier direction as brought out above, the very foundation for the disallowance does not survive. Accordingly, the ground raised is allowed in favour of the appellant.”*

8. We notice that the Ld. DRP has rectified the earlier findings on the identical issue and the AO has passed the assessment order in terms of direction dated 31.03.2014. In the present case, since the Ld. CIT (A) has decided the issue in favour of the assessee by following the directions of the Ld. DRP issued in the assessee's own appeal for the assessment year 2009-10 discussed above, we do not find any reason to interfere with the findings of the Ld. CIT (A). We accordingly, uphold the findings of the Ld. CIT (A) and dismissed the sole ground of the appeal of the revenue.

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The assessee has preferred the Cross Objection before the Tribunal on the following effective grounds:-

1:0 “Re: Depreciation on computer software expenditure of Rs. 1,00,52,982/- held to be as capital in nature.

1:1 *The assessee submits that in case it be held that the computer software expenditure is capital in nature then the Assessing Officer be directed to grant depreciation to it.”*

2. Since, we have uphold the findings of the Ld. CIT (A) and dismissed the revenue’s appeal, the cross objection raised by the assessee has become infructuous. Hence, we dismiss the cross objection filed by the assessee as infructuous.

In the result, appeals filed by the revenue as well as the Cross Objections filed by the assessee for assessment year 2010-11 are dismissed.

Order pronounced in the open court on 19<sup>th</sup> June, 2018.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 19/06/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

**आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**