

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
and Ms. Madhumita Roy, Judicial Member**

**ITA No. 1707/Ahd/2016
Assessment Year 2011-12**

The DCIT, Cir.4(1)(1), Ahmedabad (Appellant)	Vs	M/s. Sterling Adlife India Ltd. Sterling Hospital Building, Off Gurukul Road, Memnagar, Ahmedabad PAN: AADCA0893M (Respondent)
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**Revenue by: Shri Lalit P. Jain, Sr. D.R.
Assessee by: Shri Bhadresh Gandhakwala**

Date of hearing : 08-08-2018
Date of pronouncement : 31-08-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2011-12, arises from order of the CIT(A)-8, Ahmedabad dated 08-04-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

- “1). Whether the CIT(A) has erred in law on the facts in directing the AO to allow depreciation @ 60% instead of @25% made by the AO.
- 2). Whether the Ld. CIT(A) has erred in law on the facts in deleting the disallowance u/s. 14A of the IT Act of Rs. 78,84,222/-.”

3. In this case, return of income declaring loss of Rs. -55,62,77,310/- was filed on 29th Sep, 2011. Subsequently, the case was selected under scrutiny by

issuing of notice u/s. 143(2) of the act on 3rd August, 2012. Further facts of the case are discussed under respective ground of appeal as under

Disallowance of Rs. 78,84,214/- u/s 14A of the act

4. During the course of scrutiny assessment, the assessing officer noticed that assessee has earned exempt income in the form of dividend of Rs. 93,48,642/- and assessee has itself disallowed an amount of Rs. 4,78,458/- u/s. 14A of the act. The assessing officer observed that assessee has not properly worked out the disallowance therefore the assessee was asked to explain why not the disallowance should be worked out as per section 14A of the act. The assessee responded that it has made investment in mutual fund out of its own sources and has not used borrowed fund for making investment. The assessing officer stated that assessee has not submitted day to day fund flow, therefore, in its absence, the claim of the assessee that it has not used interest bearing fund for the investment remain unsubstantiated. Consequently, the assessing officer has applied the formula provided in rule 8D(2)(1) of the act and disallowed an amount of Rs.83,62,672/-. Therefore an addition of Rs. 78,84,214/- was made after reducing an amount of Rs. 4,78,458/- already disallowed by the assessee.

5. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee stating that assessee was having its own fund of Rs. 158.57 crores and the total investment made in the mutual fund as on 31st March, 2011 was only Rs. 5.12 crores. He held that assessing officer has not disproved the claim of the assessee that borrowed funds were not used to make investment in share and securities.

6. During the course of appellate proceedings before us, Id. departmental representative has supported the order of assessing officer. On the other hand, Id. authorized representative has supported the order of Id. CIT(A) and also

submitted that the Co-ordinate Bench of the ITAT in the case of the assessee itself for assessment year 2010-11 vide ITA no. 2021/Ahd/2013 has decided the identical issue in favour of the assessee.

7. We have heard both the sides and perused the material on record carefully. It is noticed that as on 31st March, 2011, the assessee was having its own fund of Rs. 158.57 crores (share capital of Rs. 69.44 crores + reserves of Rs. 89.14 crores). It is explained that borrowed funds were utilized for construction of hospital building and the interest amount was capitalized as evident from rule 19 of annual accounts. We have also noticed that identical issue on similar facts in the case of the assessee, has been decided by the Co-ordinate Bench of the ITAT Vide ITA No.2021/Ahd/2013 for assessment year 2010-11 on 08.08.2017 in favour of the assessee. Relevant part of the decision of the Co-ordinate Bench is reproduced as under:-

30. *“We find that it is an undisputed fact that the own funds of the appellant company are far more in excess of the investments. Therefore, the ratio laid down by the Hon’ble High Court of Bombay in the case of Reliance Utilities and Power Ltd. 113 ITR 340 and Hon’ble Gujarat High Court in the case of Raghuvir Synthetics Ltd. in Tax Appeal No. 829 of 2007 squarely apply on the facts of the case. Therefore, we do not find any error or infirmity in deleting the disallowance of the interest component of Rs. 60,63,668/-.*

31. *Insofar as the disallowance on account of administrative expenses is concerned, the assessee had suo moto disallowed Rs. 4,16,050/- and the A.O. has not pointed out any defect in the suo motu disallowance of the assessee. Therefore, we do not find any merit in the disallowance on account of administrative expenses of Rs. 18,46,195/-. The same is also deleted. Ground no. 3 is accordingly dismissed. “*

8. In the light of the above findings and after respectfully following the decision of the coordinate bench we do not find any merit in the appeal of the revenue. The Ld. DR was fair enough not to controvert these facts and findings. Accordingly, the appeal of the revenue on this issue is dismissed.

Disallowance of Depreciation

9. This ground of appeal of the revenue is against the decision of Id. CIT(A) of allowing depreciation @ 60% instead of depreciation @ 25% allowed by the assessing officer on system software of the computer. The assessing officer observed that application software are not integral part of the computer and held that the application software is intangible assets and they are eligible for depreciation u/s. 32 of the act @ 25%.

10. Aggrieved assessee has filed appeal before the Id. CIT (A). The Id. CIT (A) has allowed the appeal of the assessee after placing reliance on the decision of the Co-ordinate Bench of the ITAT in the case of Voltamp Transformers Ltd. ITA No. 1676/Ahd/2012. The relevant part of the decision of the Id. CI T(A) is reproduced as under:-

"During the appellate proceedings the AR stated that CIT(A) in the appellant's own case for the A.Y.2009-10 & A.Y.2010-11 on the same issue has allowed the appeal. He also quoted that The IT AT Ahmedabad Bench in the case of Voltamp Transformers Ltd. ITA No. 1676/Ahd/2012 for A.Y. 2009-2010 dated 22-03-2013 has dismissed the Revenue Appeal by holding that the assessee is entitled to the depreciation at higher rate.

I have considered the facts of the case as stated by the appellant as well as the AO in his assessment order. I have also considered the submission of the appellant and the case laws referred by the AO as well as the appellant. The appellant has relied on Hon'ble ITAT's order in the case of Voltamp Transformers Ltd. ITA No. 1676/Ahd/2012 where the tribunal confirmed the decision taken by the CIT(A) which is as under:

"After considering the explanation of the appellant, I am inclined to accept the view propounded by the appellant. The Income Tax Act does not make any difference between the system software and the application software. The schedule only provides the depreciation @60% on the computer software and the term 'computer software' has also been denied in the Appendix[^]. The classification made by the Accounting Standards cannot overwrite the definition given in the Income Tax Act. Accordingly, the appellant is entitled to depreciation @60%. The grounds of appeal are accordingly allowed. "

Moreover, Hon'ble Mumbai special bench in its order of Data Craft India Ltd. (supra) highlighted the fact that term 'computer' has not been defined under the IT Act nor in the general clauses Act, 1987, the meaning of the term computer has to be understood by applying the principles of statutory interpretation i.e., one has to give the meaning to the expression 'computer' not merely by going to the dictionary meaning but by applying common parlance or commercial parlance tests as well as by analysing the intendment of legislature in providing higher rate of depreciation.....

The Hon'ble special bench further went on to hold that 'though functions of the computer as one composite unit is for performing logical, arithmetical or memory functions etc., but it is not the only equipment which performs such functions that can be called as 'computer'. All the input and output devices which in fact support in the receipt[^] of input and outflow of the output are also part of the 'computer'. Therefore the ratio which can be culled out for the aforesaid decision for Hon'ble special bench (specifically para 31.4 of the order) , it is to be seen that the Hon'ble special bench has clearly held that when a particular hardware or software is used along with the computers and when their

functions are integrated with a computer or in other words when a device is use as part of a computer or in other words when the device is use as part of the computer in its functions, even though it may be have in user on standalone basis, but still than such hardware or software would be termed as a 'computer'.

In view of the decision of ITAT, Ahmedabad in the case of Voltamp Transformers Ltd. ITA No. 1676/Ahd/2012 and CIT(A)'s order in appellant's own case for A.Y.2009-10 & 2010-11 and detailed finding given by the Hon'ble Mumbai special bench in its order of Data Craft India Ltd., the claim of depreciation @ 60% by the appellant is allowable. I do not find any reason to differ. Neither the Income Tax Act nor the judicial pronouncement differentiate between the computer and computer software and license to use the same. The list of tangible assets in the table of rate of depreciation at serial no.5 name of the asset is 'computers including computer software'. The meaning of computer software is also given in note no.7 given below the table of rate of depreciation. According to this note the 'computer software' means any computer programme recorded on any disk, tap, perforated media or other information storage device. Hence, by any interpretation the computer software cannot be treated outside the purview of the asset eligible for depreciation the rate of 60%. Accordingly, the AO is directed to allow the depreciation @ 60% as prescribed in the Income Tax Act. The appeal on this ground is allowed."

11. We have heard the rival contentions and perused the material on record carefully. It is noticed that section 32(1) of the act allow the deduction in the case of any block of assets, such percentage on the written down value thereof as may be prescribed as per rule 5(1) and appendix 1 of the Income Tax Rule. As per Rule 5(1) of the I.T. Rule depreciation of any block of assets shall be calculated at the percentage specified in second column of the Table in Appendix 1 to this rule. The Appendix-1 as per item number 5 provides depreciation @ 60% on computer including computer software. Further Note No. 7 to the Appendix-1 states that computer software means any computer program recorded on any disc, tape, performated, media or other information storage device. In this connection, we have noticed that Special Bench in the case of Datacraft India Ltd. (2010) 40 SOT 295 (Mum)(SB) held that any device when they are used along with computer and when their functions are integrated with the computer comes within the ambit of the expression computer. We have further noticed that the Co-ordinate Bench of the ITAT in the case of the assessee itself for assessment year 2010-11 on the identical issue and facts had decided the issue in favour of the assessee vide ITA no. 2012/Ahd/2013 on 08/08/2017. The relevant part of this decision is reproduced as under:-

"26. We do not find any merit in this observation of the A.O. the application software is as much an integral part of the computer as the system software for the simple reasons that such software does not have any use without the aid of computer which make them

integral part of the computer. A similar view was taken by the Tribunal in ITA No. 1676/Ahd/2012 vide order dated 22.03.2013. Considering the facts, we decline to interfere. Ground no. 2 is accordingly dismissed.”

Respectfully following the decision of the Co-ordinate Bench of the ITAT as supra, we do not find any error in the decision of the Id. CIT(A). Therefore, the appeal of the revenue on this issue is dismissed.

12. In the result, both the grounds of appeal of the revenue are dismissed.

Order pronounced in the open court on 31-08-2018

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 31/08/2018

आदेश का प्रतिलिपि अप्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद