

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. Nos.966 & 967/Bang/2016
(Assessment Year : 2006-07 & 2007-08)

M/s. Cisco Systems Capital (India) Pvt. Ltd.,
Brigade South Parade, NO.10,
M.G.Road, Bangalore-560 025.

... Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 2(1)(1), Bangalore.

..... Respondent.

Appellant By : Shri Rajan Vora, C.A.

Respondent By : Shri C.H. Sundar Rao, CIT (D.R)

Date of Hearing : 11.09.2018.

Date of Pronouncement : 28.09.2018.

O R D E R

Per Shri Jason P Boaz, A.M. :

These appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-2, Bangalore dt.3.3.2016 for both Assessment Years 2006-07 & 2007-08. The issues / grounds raised in these appeals being inter connected, they were heard together and are being disposed off by way of this common order for the sake of convenience.

2. Briefly stated, the facts of the case are as under :-

2.1 The assessee, is a company engaged in the business of providing end-to-end financial solutions to customers and registered as a Non-Banking Financial Company (NBFC) with the Reserve Bank of India (RBI).

For Assessment Year 2006-07, the assessee filed its return of income declaring loss of (-) Rs.7,59,508. This return was processed under Section 143(1) of the Income Tax Act, 1961 (in short 'the Act').

For Assessment Year 2007-08, the assessee filed its return of income on 30.10.2007 declaring loss of (-) Rs.19,70,27,630 and the return was also processed under Section 143(1) of the Act.

2.2 Subsequently, the Assessing Officer initiated proceedings under Section 147 of the Act for both assessment years 2006-07 & 2007-08 as he had reason to believe that income of the assessee liable to tax had escaped assessment, by virtue of the assessee claiming depreciation on audio and video net working equipment @ 60%, by treating them as computers, as against depreciation of 15% allowable under the Act; which resulted in under assessment of income. After obtaining prior approval of the Addl.CIT, Range II, Bangalore, the Assessing Officer issued notices under Section 148 of the Act on 16.01.2013 for both these assessment years. In response thereto, the assessee submitted that the original returns of income for Assessment Years 2006-07 & 2007-08 be treated as filed in response to the notices issued under Section 148 of the Act. The assessee also sought for being provided with reasons recorded for initiation of re-assessment proceedings, challenged the

grounds on which the assessments were reopened, as well as the validity of assumption of jurisdiction by the Assessing Officer. The reassessments for both assessment years was completed under Section 143(3) r.w.s. 147 of the Act vide separate orders dt.28.02.2014, wherein the Assessing Officer withdrew depreciation amounting to Rs.2,28,59,671 and Rs.10,24,11,301. Subsequently, the Assessing Officer, on noticing that the excess that the excess depreciation to be disallowed for Assessment Year 2007-08 was Rs.9,89,82,351 and not Rs.10,24,11,301 rectified the mistake vide order dt.18.3.2014.

2.3 Aggrieved by the orders of assessment dt.28.2.2014 for Assessment Years 2006-07 and 2007-08, the assessee preferred appeals before the CIT (Appeals) – 2, Bangalore challenging both (1) the validity of action under Section 147 of the Act and (2) the restriction of Depreciation on audio / video recording equipment to 15% as against the assessee's claim of 60%. The learned CIT (Appeals) dismissed the assessee's appeals for Assessment Years 2006-07 and 2007-08 vide separate orders dt.3.3.2016.

3. Aggrieved by the orders of CIT (Appeals) – 2, Bangalore dt.3.3.2016 for Assessment Years 2006-07 and 2007-08, the assessee has preferred appeals for these two years, wherein it has raised identical / similar grounds. We, therefore, extract hereunder only the grounds raised for Assessment Year 2006-07 as under :-

1. The learned CIT (A) has erred in law and in fact by upholding the order issued by the Deputy Commissioner of Income Tax, Circle 11(2) – Bangalore (learned Assessing Officer) and not considering the plea of the Appellant that the order is bad in law and needs to be quashed.
2. The learned CIT (A) has erred in law and in fact by upholding the order of the AO, not considering the plea of the Appellant that the income escaping assessment proceedings initiated under section 147 of the Act is bad in law given that no fresh material has come on record for the subject AY to establish that income has escaped assessment. Hence it amounts to mere change of opinion which is bad in law and needs to be dropped.
3. The learned CIT(A) has erred in law and in fact by upholding the order of the AO, not considering the plea of the Appellant by classifying the audio and video conferencing equipments under the block 'Plant and Machinery' instead of 'Computers' and thereby restricting the claim of Depreciation to 15% as against the claim of 60% claimed by the Appellant in its return of income.

4. **Ground No.3 – Restriction of Depreciation to 15%.**

4.1 In this ground (supra), the assessee contends that the learned CIT (Appeals) has erred both in law and on facts in upholding the Assessing Officer's view by classifying the audio and video conferencing equipments under the Block 'Plant and Machinery' instead of 'computers' and thereby restricted depreciation to 15% as against the assessee's claim of 60% made in the returns of income for Assessment Years 2006-07 and 2007-08. The learned Authorised Representative of the assessee submitted that this issue is covered by the decision of the co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2008-09 vide order in IT(TP)A No.1558/Bang/2012 dt.19.9.2014.

4.2 The learned Departmental Representative for Revenue supported the orders of the authorities below. According to the learned

Departmental Representative, in the aforesaid order of the co-ordinate bench of this Tribunal, (supra), this issue of whether depreciation was to be restricted to 15% in respect of the audio and video conferencing equipment or be allowed @ 60%, as claimed by the assessee, was considered at length by the Tribunal and set aside the matter to the file of the Assessing Officer for re-adjudication. It is prayed that the aforesaid decision of the Tribunal may be followed and the matter remanded to the file of the Assessing Officer.

4.3.1 We have heard the rival contentions, perused and carefully considered the material on record; including the judicial pronouncement cited. The issue for consideration before us is whether or not depreciation on audio / video conferencing and video streaming equipment, is to be considered part of 'Plant and Machinery' and restricted to 15% as held by the authorities below OR be allowed depreciation @ 60% as claimed by the assessee. We find that a co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2008-09 has considered the identical issue and at para 8.3 of its order in IT(TP)A 1558/Bang/2012 dt.19.09.2014 remanded the issue to the file of the Assessing Officer for re-adjudication holding as under :

" 8.3 In the case before us also, all the components of the equipment are necessary for fulfillment of the objective of the audio-visual conferencing and video streaming. Some of the components may exist independently and may also be functioning independently but in the assessee's business they are only performing the functions as input and output devices. The assessee can also use this equipment independent of the computer system used in the audio visual conferencing and video streaming activity. But did the assessee use them independently is the question. In view of the same, we are of the opinion that

the AO, instead of classifying the entire equipment as plant and machinery and not computer, is required to examine each item in detail as regards its functional dependency on the computer and its independent existence. The items which are functionally dependent on computers are definitely part of computer and the items with independent existence may not be computers but wherever it is found that the device is not used independent of the computer system and the purpose of audio visual conferencing and video streaming, the same shall be treated as computers and wherever it is used independently for any other purpose it shall be treated as plant and machinery. The AO, shall, thus allow depreciation at the rate of 60% on the equipment which could be classified as computer and at the rate of 15% on the equipment which could be classified as plant and machinery. This issue is accordingly set aside to the file of the AO for re-adjudication in accordance with law and our observation above.”

4.3.2 Respectfully following the decision of the co-ordinate bench of this Tribunal in the assessee's own case for Assessment Year 2008-09 (supra), we set aside the issue; of whether the said audio conferencing and video streaming equipment is to be held to be 'Computer' and allowed depreciation @ 60% as claimed by the assessee or depreciation be restricted to 15% thereon treating the same as 'Plant Machinery' as held by the authorities below; to the file of the Assessing Officer for fresh examination and adjudication thereof in line with the observations / directions issued in the order of the co-ordinate bench of this Tribunal for Assessment Year 2008-09 (supra). Needless to add the assessee shall be afforded adequate opportunity of being heard and to file details / submissions required, which shall be considered by the Assessing Officer before deciding this issue for both Assessment Years 2006-07 and 2007-08. Consequently, Ground No.3 of assessee's appeal for Assessment Years 2006-07 and 2007-08 are allowed for statistical purposes.

5. **Grounds 1 & 2 (supra)**

5.1 In view of our aforesaid decision in respect of Ground No.3 with regard to re-adjudication on the issue of Depreciation at paras 4.3.1 and 4.3.2 of this order, (supra), these grounds raised on technical issues are rendered academic in nature and therefore not adjudicated by us.

6. In the result, the assessee's appeals for Assessment Years 2006-07 and 2007-08 are partly allowed for statistical purposes.

Order pronounced in the open court on 28.09.2018.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore,
Dt. 28.09.2018.

*Reddy gp

Copy to :

1	Appellant	4	CIT(A)
2	Respondent	5	DR. ITAT, Bangalore
3	CIT	6	Guard File

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.