

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND**

SHRI M.L.MEENA, ACCOUNTANT MEMBER

ITA No.4822/Del./2015, A.Y. 2006-07

D.C.I.T Circle -26(1), Room No. 192 C.R.Building New Delhi (APPELLANT)	Vs.	Vayam Technologies Ltd. 124, Thapar House, Janpath New Delhi PAN : AAACI8050R (RESPONDENT)
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ASSESSEE BY : Sh. P.K.Kalyal, CA
REVENUE BY : Shri Rinku Singh, Sr. DR

Date of Hearing : 05.02.2019
Date of Order : 28 .02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Dy. Commissioner of Income Tax, New Delhi (hereinafter referred to as 'the revenue') by filing the aforesaid appeal, sought to set aside the impugned order dated 27/03/2015 passed by Ld. Commissioner of Income Tax(Appeals)-IX, New Delhi qua the Assessment Year 2006-07 on the grounds inter alia that :

“1. The Ld. CIT(A) has erred in ignoring assessee’s stand during the assessment proceedings (taken vide its letter dated 04.11.2010 quoted verbatim in the assessment order) that the expenses as claimed in the appellate proceedings.

2. The Ld. CIT(A) has erred in ignoring the line entry in the P& L A/c of the audited accounts of the assessee company which describes the said expenses as ‘software Development- outsourced’.

3. Not withstanding with the above as the CIT(A) has accepted the said expenses as AMC charges – a contentio which was never advanced at the assessment stage, the assessing officer did not get the opportunity to consider the assessee’s changed stand. As such, Ld. CIT(A) has erred in accepting fresh/additional material/evidence without affording an opportunity to the AO to rebut the same.

4. The appellant craves leave for reserving the right to amend, modify, alter or add any ground(s) of appeal at any time before or during the hearing of this appeal.”

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : Assessing Officer noticed that the assessee has charged software development charges of Rs. 6,02,81,245/- to the P & L Account despite the fact that the assessee has already capitalized software development charges to the tune of Rs. 4,52,98,567/- and thus claimed depreciation on this amount. AO declining the submission raised by the assessee that “expenditure incurred on development of Software for in

house use and business of company is capitalized as it is retained in the company for a period of 3-6 years”. Proceeded to conclude that since the assessee itself has capitalized software development expenses amounting to Rs. 4,52,98,467/-, there cannot be any justification for non capitalization of this amount and thereby disallowed the same being capital in nature and made addition of Rs. 6,02,81,245/- to the total income of the assessee.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has deleted the addition by partly allowing the appeal. Feeling aggrieved the revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. DR for the revenue and gone through the order passed by the lower revenue authority.

5. It is categorical case of the assessee that the assessee was also engaged in providing annual maintenance contract (AMC), manpower and other services to various companies viz., LIC, MTNL, BSNL, GAIL etc. out of which some services it has outsourced to other companies to reduce the cost of providing these services and expenditure on outsourced services had been debited to P & L Account. It is further case of the assessee that it was also developing a new application called WBAMS (Web Based Academic Management System) for academic institutions

and expenditure incurred for development of these new applications software had been capitalized.

6. Bare perusal of the assessment order goes to prove that aforesaid two fold submissions have not been made by the assessee before AO nor it is got verified by the Ld. CIT(A) from the AO during appellate proceedings if capitalized software expenses were different from revenue expenses claimed by the assessee. In other words, if the assessee has developed any new software application called WABMS.

7. When the assessee stated to have filed a chart explaining the correlation between sales of services and software to various parties and the expenses claimed in relation to such services and software, which otherwise does not find any mention in the assessment order, the AO was required to examine the same before reaching the conclusion.

8. Moreover, it is case of the assessee that expenditures has been regularly allowed by the department in earlier years and the assessee has been following same accounting treatment in conformity with standard business practices. In these circumstances, we are of the considered view that AO to allow these expenses after verifying the facts as to what has been made by the assessee for its in house use, if so, the same is to be capitalized and what is made for the customer, then the same is to be treated as revenue expenditure. So, AO to allow the expenses after verifying the fact that if the expenditure incurred by the assessee are qua

development of new application of software namely WABMS made for customers viz. LIC, MTNL, BSNL, GAIL etc. by following the principle of consistency. Consequently, appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in open court on this 28th February, 2019.

Sd/-
(M.L.MEENA)
ACCOUNTANT MEMBER
Dated 28 /02/ 2019
BR

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-XXVI, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	18.02.2019
Date on which the typed draft is placed before the dictating Member	18.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	28.02.2019
Date on which the fair order comes back to the Sr. PS/PS	28.02.2019
Date on which the final order is uploaded on the website of ITAT	28.02.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	