

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ C ” BENCH, AHMEDABAD

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

Sl. Nos.	ITA No(s)	Assessment Year (s)	Appeal(s) by	
			Appellant	Respondent
1.	124/Ahd/2017	2012-13	DCIT Circ-4(1)(2) Ahmedabad (Revenue)	Vodafone Shared Services Ltd. (formerly Known as Vodafone Essar Shared Services Ltd) Bldg-B, Vodafone House Corporate Road Prahlanagar, Ahmedabad PAN:AADCV 1145 K (Assessee)
2.	162/Ahd/16	2010-11	Jt.CIT Range-8, Ahmedabad	do-Assessee
3.	1468/Ahd/16	2011-12	DCIT Circle-4(1)92 Ahmedabad	-do-Assessee
4.	1923/Ahd/16	2011-12	Assessee	DCIT Cir-4(1)(2) Ahmedabad

Revenue by :	Shri O.P. Vaishnav, CIT-DR
Assessee by :	Shri S.N. Soparkar, Sr.Adv. with Shri Bandish Soparkar

सुनवाई की तारीख / Date of Hearing	03/04/2019
घोषणा की तारीख / Date of Pronouncement	28/ 05/2019

आदेश / ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed by the Assessee as well as the Revenue relevant to Assessment Years (AYs) 2010-11, 2011-12 & 2012-13 against the separate orders of the Commissioner of Income Tax(Appeals)-8/9, Ahmedabad [CIT(A) in short] dated 16/11/2015, 15/03/2016 & 22/11/2016 for AYs 2012-13 respectively. Since the captioned appeals pertain to same assessee, these were heard together and are being disposed of by this common order for the sake of convenience.

2. We shall first take up Revenue's appeal in ITA No.1468/Ahd/2016 relevant to AY 2011-12, where the following grounds have been raised by the Revenue:

1) The Ld. CIT(A) erred in law and on facts in deleting the disallowance of Rs.5,44,00,853/- on account of depreciation claimed on special software.

2) On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the disallowance made by the Assessing Officer.

2.1. Briefly stated, the assessee-company is engaged in providing outsourcing services for finance, accounts, human resources and supply chain management and data centre to Vodafone India Limited and its

Indian subsidiaries. In the course of the assessment, the Assessing Officer *inter alia* noticed that the assessee-company (VSSL) has shown a total addition to computers on account of computer softwares amounting to Rs.15,54,31,008/-. The Assessing Officer noticed that the assessee has claimed depreciation @ 60% on such computer softwares. It was observed by the Assessing Officer that the aforesaid purchases were made mainly on SAP product which is a customized product having software just a minor component of it. This product was stated to be delivered to the assessee along with loads of other technical services and know how to operate and utilize such specialized product for enduring benefits to its business. The Assessing Officer thus disputed the eligibility of claim of higher depreciation @ 60% eligible to computer or computer softwares and opined that the aforesaid softwares of Rs.15.54 crores should be dealt with as 'licence' in the nature of intangible assets under the provisions of s.32(1)(ii) of the Act where the depreciation allowance is set out @ 25%. The Assessing Officer accordingly recomputed the depreciation on expenses incurred towards purchase of SAP products amounting to Rs.15,54,31,008/- @ 25% in place of 60% claimed by the assessee applicable to block 'computer and computer softwares'. The assessed income of the assessee was accordingly increased by an amount of Rs.5,44,00,853/- owing to reversal of alleged excess claim of depreciation.

2.2. The CIT(A), however, in first appeal, did not find merit in the action of the Assessing Officer. The CIT(A) followed the decision of the predecessor CIT(A) concerning the AY 2010-11 wherein the depreciation was allowed @ 60% following the decision of the Tribunal in the case of ACIT vs. Voltamp Transformer Ltd. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

“4.2. I have considered the assessment order and the submissions made by the appellant. A perusal of the submission made by the appellant shows that the same issue was before the CIT(A) in the earlier year as well i.e. for the Asst.Year 2010-11 wherein the CIT(A) directed the AO to allow depreciation @ 60% on computer software following the decision of the jurisdictional Tribunal in the case of ACIT Vs. Voltamp Transformer Ltd. – ITA No.1676/Ahd/2012. Accordingly, the addition of Rs.5,44,00,853/- made by the Assessing Officer is deleted. Ground of appeal No.1 is allowed.”

2.3. The CIT(A) accordingly, deleted the disallowance of depreciation in computer softwares. Aggrieved by the relief granted by the Ld.CIT(A), the Revenue has preferred the appeal before the Tribunal. It is the case of the Revenue that the depreciation on computer softwares is allowable @ 25% being intangible assets and not @ 60% applicable to computer softwares as claimed. We straightaway notice that the identical issue has come up before the Tribunal in large number of cases including M/s.Navneet Publications (I) Ltd. vs. Addl. CIT in ITA No.1137/Mum/2010 order dated 17/01/2011 & ACIT vs. Zydus Infrastructure (P.) Ltd. 72 taxmann.com 199 (Ahmedabad – Trib.)

wherein it was held that licenced software is also eligible for depreciation @ 60%. In view of the issue has already been adjudicated in this fashion, we do not see any perceptible reason to interfere with the order of the CIT(A). the appeal of the revenue is thus bereft of any merits.

2.4. In the result, the appeal of the Revenue in ITA No.1468/Ahd/2016 for AY 2011-12 is dismissed.

3. We shall now turn to the cross-appeal of the assessee in ITA No.1923/Ahd/2016 for AY 2011-12.

3.1. As per its appeal, the assessee has impugned the order of the CIT(A) in confirming the action of the Assessing Officer in upholding the disallowance of 'rent equalization reserve' amounting to Rs.41,69,148/- treating the same as mere provision in the books.

3.2. When the matter was called for hearing, the Ld.AR for the assessee submitted that the assessee has made a provision amounting to Rs.41,69,148/- in respect of rent equalization expenses and debited the same to profits & loss account and claimed the same as deduction while computing taxable income. The Assessing Officer however has disallowed the aforesaid expenses on the ground that it is a mere provision and thus cannot be claimed as deduction under the provisions of Act. In this regard, the Ld.AR referred to the decision of the Hon'ble

Supreme Court in CIT vs. Virtual Soft Systems Ltd. (2018) 92 taxmann.com 370 (SC) wherein the method of bifurcation of lease rent based on the Guidance Note 'Accounting for Leases' issued by ICAI was approved by the Hon'ble Supreme Court.

3.3. In view of the judicial fiat available in this regard, the assessee is entitled for bifurcation of lease rentals as per Guidance Note prescribed by ICAI, in the absence of any express bar in the Income Tax Act regarding the application of such Accounting Standards/Guidance Notes. Therefore, we find merit in the action of assessee based on recognized accounting guidance of ICAI. The Income can be deducted by assessee based on such Accounting Standards/Guidance Notes where the statute is silent. The order of the CIT(A) is accordingly set aside and the Assessing Officer is directed to allow the claim of the assessee towards rent equalization reserve amounting to Rs.41,69,148/-.

3.4. In the result, appeal of the assessee in ITA No.1923/Ahd/2016 for AY 2011-12 is allowed.

Revenue's appeal in ITA No.162/Ahd/2016 for AY 2010-11.

4. Revenue has raised the following grounds of appeal:

- 1) Where the CIT(A) erred in law and on facts in allowing depreciation @ 60% on license fee for acquiring the application software against 25% applicable to intangible assets ignoring the findings of the A.O.*
- 2) Whether the CIT(A) erred in law and on facts in deleting the interest expenditure of Rs.28,57,416/- u/s.36(1)(iii) of the I.T.Act by relying on the decision pertaining to A.Y. 1992-93 which is before the insertion of proviso of section 36(1)(iii) of the I.T.Act.*

5. Ground No.1 concerns eligibility of depreciation on licensed software. The issue is identical to the revenue's appeal in ITA No.1468/Ahd/2016 concerning AY 2011-12(supra). In parity with the findings therein, ground No.1 of Revenue's appeal is dismissed.

6. Ground No.2 of the Revenue's appeal concerns allowability of interest expenditure of Rs.28,57,416/- as revenue expenditure under S.36(1)(iii) of the Act.

6.1. At the time of hearing, the Ld.AR for the assessee submitted that identical controversy has come up in group cases; namely, M/s.Vodafone West Ltd. AY 2009-10 wherein reference was made to the decision of the Hon'ble Supreme Court in Core Healthcare Ltd. (2008) 298 ITR 194 (SC) and the issue was adjudicated in favour of the assessee.

6.2. The Ld.DR for the Revenue, on the other hand, relied upon the order of the Assessing Officer.

6.3. While we proceed to deal with the controversy, we take note of the order of CIT(A) in this regard. The CIT(A) has dealt with the issue as under:-

“4.2 I have carefully considered the contentions as well as the case laws relied upon by the appellant and the observation of the A.O. The similar issue was raised before the DRP, Ahmedabad in the case of Vodafone West Ltd.(earlier known as Vodafone Essar Gujarat Ltd.) for A.Y.2009-10. The facts and the issue raised were similar as per grounds of appeal no.2. The finding of the DRP are as follows :-

"15.3 We have carefully considered the facts of the case and contentions of the AO as incorporated in the draft assessment order. We have also gone through the various oral and written submission made by the assessee's representative. The assessee has incurred interest expenditure during the year in respect of various ECB loans obtained for acquisition of capital assets. The assessee has acquired capital assets for its existing business and not for the purpose of extension of the business. Hence, proviso to section 36(1)(iii) of the Act cannot be invoked and deducibility of interest expenditure would be determined by section 36(1)(iii) of the Act.

Further, as mentioned by the assesses, it has incurred interest expenditure on EGBs used for acquisition of capital assets and hence, interest expenditure has also been incurred even after capital assets have been put to use. Thus, provisions of Explanation 8 to section 43(1) are also not applicable to the assessee as per decisions of Hon'ble

Supreme Court in the case of Core Health Care as relied on by the assessee. In the said decision, Hon'ble Supreme Court held that interest expenditure incurred on borrowings used for acquisition of capital assets for the purposes of existing business and not for the purpose of expansion, would be allowable as a deduction under section 36(1)(iii) of the Act. Further, Hon'ble Supreme Court has after considering provisions of Explanation 8 to section 43(1) held that the said explanation is not relevant while determining deduction of interest expenditure under section 36(1)(iii) of the Act. The relevant observations of Hon'ble Supreme Court in case of Core Health Care Ltd., are as under:-

"The determination of actual cost in Section 43(1) has relevancy in relation to Section 32 (depreciation allowance), Section 32A (investment allowance), section 33 (development rebate allowance), and Section 41 (balancing charge). "Actual cost" of an asset has no relevancy in relation Section 36(1)(iii) of the 1961 Act. This reasoning flows from a bare reading of Section 43(1). Section 43 defines certain terms relevant to income from profits and gains of business and, therefore, the said section commences with the words "in Sections 28 to 41 and unless the context otherwise requires" "actual cost" shall mean the actual cost of the assets to the assessee, reducing by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. In other words, Explanation 8 applies only to those /Sections like Sections 32, 32A, 33 and 41 which deal with concepts like Depreciation. The concept of Depreciation is not there in Section 36(1)(iii). That is why the legislature has used the words "unless the context otherwise requires". Hence, explanation 8 has no relevancy to Section 36(1)(iii). It has relevancy to the aforementioned enumerated sections. Therefore, in our view Explanation 8 has no application to the facts of the present case..... Section 36(1)(iii) is attracted when the assessee borrows the capital for the purpose of his business. It does not matter whether the capital is borrowed in order to acquire a revenue asset or &

*ITA Nos.124/Ahd/2017, 162/Ahd/2016
1468/Ahd/2016 & 1923/Ahd/2016
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capital asset, because of that the section requires is that the assessee must borrow the capital for the purpose of his business....."

The above principles were subsequently followed by Hon'ble Supreme Court in the case of United Phosphorous Ltd. (299 ITR 9) and Vardhman Polytex Ltd. V CIT (349 ITR 690).

Hence, respectfully following the above judgments of Hon'ble Supreme Court, we hold that interest expenditure incurred by the assessee on ECB used for acquisition of capital assets is eligible for deduction under section 36(1)(iii) of the Act. Accordingly, we direct the AO to delete the proposed addition of interest expenditure incurred by assessee. Hence, this ground of assessee is allowed."

Agreeing with the findings of the DRP as mentioned above as well as relying on the judgment of Hon'ble Supreme Court in the case of Core Healthcare 298 ITR 194, the A.O is directed to delete the addition made on account of disallowance of interest expenditure u/s.36(1)(iii) of the Act amounting to Rs. 28,57,416/-. Accordingly, ground no.2 is hereby allowed."

The CIT(A) was allowed the claim of assessee in aforesaid terms.

6.4. In view of the decision rendered in similar circumstances in the case of Vodafone West Ltd., we are of the view that the assessee is entitled for claim of interest expenditure in revenue account in terms of section 36(1)(iii) of the Act. Noticeably, the pre-amended proviso to section 36(1)(iii) applicable for the relevant assessment year in question (prior to its amendment by Finance Act, 2015) prohibited claim of interest on

revenue account only where capital was borrowed for acquisition of an asset for 'extension of existing business or profession' and therefore, so long as the capital borrowed resulted in acquisition of asset without resulting in extension of existing business *per se*, the deterrence embodied in proviso was not applicable and consequently the claim was governed by main provision of section 36(1)(iii) of the Act. In view of the aforesaid position of law subsisting for the assessment year 2010-11 in question, we do not see any infirmity in the action of the CIT(A) in upholding the claim of the assessee under s.36(1)(iii) on revenue account.

6.5. An enunciation of law in this regard is available in *Vardhman Polytex Ltd. vs. CIT* (2012) 25 taxamnn.com 281(SC) wherein the Hon'ble Supreme Court also referred to another decision of Hon'ble Supreme Court in the case of *Core Healthcare Ltd.* and answered the issue in favour of assessee. It was held that interest paid in respect of borrowings for acquisition of capital assets is an allowable deduction under s.36(1)(iii) of the Act regardless of the fact that the capital assets acquired were not put to use in the concerned Financial Year in question. In the light of position of law explained by the Hon'ble Supreme Court, we decline to interfere with the order of the CIT(A). Ground raised by the Revenue is dismissed.

6.6 In the result, Revenue's appeal in ITA No.162/Ahd/2016 for AY 2010-11 is dismissed.

7. Lastly, we take up the Revenue's appeal in ITA No.124/Ahd/2017 for AY 2012-13, wherein the following ground has been raised by the Revenue:

“Whether the Ld.CIT(A) is right in law and on facts in allowing the depreciation of 60% on software under consideration instead of 25%.”

7.1. The identical issue has been dealt with in AY 2011-12 in Revenue's appeal in ITA No.1468/Ahd/2016(supra).

7.2. In parity, we do not see any substance in the objection raised by the Revenue as per its grounds of appeal. The order of the CIT(A) is accordingly upheld.

7.3. In the result, appeal of the Revenue in ITA No.124/Ahd/17 for AY 2012-13 is dismissed.

ITA Nos.124/Ahd/2017, 162/Ahd/2016
1468/Ahd/2016 & 1923/Ahd/2016
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8. In the combined result, Assessee's appeal is allowed, whereas all the three appeals of the Revenue are dismissed.

This Order pronounced in Open Court on 28/ 05/2019

Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/ 05 /2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-8/9, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad