

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 793 & 795/Ahd/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Trio Elevators Company (India) Ltd. 404, Shivam Complex, Bhuyangdev Cross Road, Sola Road, Ghatlodiya, Ahmedabad.	बनाम/ Vs.	DCIT Circle – 4(1)(2), Ahmedabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAC CT4 923 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

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स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAC CT4 923 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Bandish Soparkar, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Vinod Tanwani, Sr. DR

सुनवाई की तारीख / Date of Hearing	10/07/2019
घोषणा की तारीख /Date of Pronouncement	29/07/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned cross appeals have been filed by the assessee and Revenue against the order of the CIT(A)-8, Ahmedabad ('CIT(A)' in short), dated 19.01.2017 arising in the assessment order dated 20.01.2016 passed by the Assessing Officer under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2013-14.

2. The substantive grounds of appeal of the assessee reads as under:-

“1. The Ld. Commissioner (Appeal) erred in fact and in law in confirming the disallowance of employees’ contribution of PF and ESI of Rs. 2,93,473/- u/s. 2(24)(x) r.w.s. 36(1)(va) of the Income Tax Act, 1961 on the ground that the payment of the said contribution was made after due date as provided in respective statute.

2. The Ld. Commissioner (Appeal) erred in fact in law by confirming the disallowance of provision for maintenance and free service/warranty of Rs. 8,59,094/- in computation of book profit u/s. 115JB.”

793/Ahd/2017(A.Y. 2013-14)(Assessee’s Appeal):-

3. Ground No. 1 Concerns disallowance of Rs. 2,93,473/- under s. 2(24)(x) r.w.s. 36(1)(va) towards default in payment of employees’ contribution of PF and ESI within due date specified under respective laws. In view of the decision of Hon’ble Gujarat High Court in case of CIT vs. Gujarat State Road Transport Corporation (2014) 366 ITR 170 Gujarat, we do not find any merit in the grievance of the assessee on this score. Ground No. 1 (supra) for the assessee’s appeal is dismissed.

4. Ground No. 2 concerns adjustment towards provision for maintenance and free services/warranty of Rs. 8,59,094/- while determining book profit under s. 115JB.

5. It is contended on behalf of the assessee that such provision towards maintenance/warranty etc. cannot be stated to be an unascertained liability so as to add it back in terms of clause (c) to Explanation 1 to section 115JB. We find ourselves in agreement with the aforesaid contention of the assessee that such liabilities cannot be regarded as contingent liability. What is certain is the incurring of liability notwithstanding estimation thereof with reasonable certainty. Although actual quantification may not be always be possible, the liability is *in praesenti* though it is likely to be discharged at a future date. Similar issue has come up before the Hon'ble Gujarat High Court in the case of DCIT vs. Inox Leisure Ltd. (2013) 351 ITR 314 (Guj.) where it was held that ascertained liabilities cannot be subjected to the adjustment under clause (c) to explanation 1 to section 115JB. Thus, we find merit in the grievance of the assessee on this score. Ground No. 2 of the assessee's appeal as noted above is allowed.

6. In the result, assessee's appeal is partly allowed.

795/Ahd/2017 (A.Y. 2013-14)(Revenue's Appeal):-

7. We shall now turn to Revenue's appeal in 795/Ahd/2017. The substantive grounds in Revenue's appeal reads as under:-

“1) “Whether the Ld. CIT(A) is right in law and on facts in deleting the disallowance of depreciation claimed on trademark of Rs. 65,88,665/-.”

2) “Whether the Ld. CIT(A) is right in law and on facts in allowing the depreciation at the rate of 60% on software being

customized license product under consideration instead at the rate of 25%.””

8. Ground No. 1 concerns disallowance on account of depreciation towards goodwill.

9. On perusal of the assessment order and first appellate order it appears that assessee has claimed depreciation amounting to Rs. 65,88,665/- at the rate of 25% on opening value of goodwill at Rs. 2,63,54,659/-. It is contended by the assessee that the claim towards depreciation on goodwill is consequential to the earlier assessment years where such depreciation has been duly accepted. It was further pointed out that the goodwill arose on account of purchase of business operations of an entity namely Alps Technologies Ltd. on slump sale basis. The valuation and determination of goodwill appears at Para 4.3 of the assessment order.

10. We have carefully considered the rival submissions and the order of the authorities below on this issue. The essential controversy involves maintainability of claim of depreciation on cost of goodwill by the assessee. The assessee has claimed certain costs towards goodwill being extra consideration paid towards acquisition of net value of assets of Alps Technologies Ltd. on slump sale basis with a view to acquire its business operations. There can be no quarrel that extra consideration paid for acquisition of assets and the business of a concern represents cost of goodwill. This being so, the assessee would be entitled in law for claim of depreciation thereon in view of the decision of Hon'ble Gujarat High Court in the case of DCIT vs. TGB Banquets & Hotels Ltd. Tax Appeal No. 470 of 2012 dated 21.06.2016 (Guj.) and also the

decision of Hon'ble Supreme Court in the case of Smiffs Securities Ltd. supra. Therefore, we find no infirmity in the conclusion drawn by the CIT(A) in favour of the assessee. Hence, we decline to interfere.

11. The second issue concerns claim of depreciation at the rate of 60% on software being customized license product. The CIT(A) has dealt with the issue as under:-

"7. Ground No.4 is against the allowance of depreciation @ 25% on computer software instead of prescribed rate of 60% in Appendix to Income Tax Rules 1962.

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 main ground of appeal is against application of Depreciation @ 25% instead of 60% claimed by the appellant on the computer and computer software. The AO applied the rate of 25% by stating that in the instant case it is :the license which has got more value and importance than the software and concluded that the application software being license are intangible assets and they are eligible for depreciation u/s.32 of the Act @25%.

During the appellate proceedings the AR filed a detailed written submission in which stated that the depreciation rate of 60% has been provided for "Computer including computer software" in entry no 5 of part A III of Appendix to Income Tax Rules 1962. He also referred to the decision of ITAT Delhi in the case of Amway India Enterprises (ITAT special bench Delhi)(2008) 111 ITD 0112.

The issue in dispute and submission of the appellant is considered. It is noticed that the Hon'ble ITAT, Ahmedabad also in the case of ACIT V. Voltamp Transformer Ltd (ITANo. 1676/Ahd/2012) confirmed the decision taken by the CIT(A) allowing the depreciation @ 60%. In this case CIT(A) decided 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 a/so been denied in the Appendix-I, 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 junctions 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 detailed finding given by the Hon'ble ITAT Ahmedabad in case of Voltamp Transformer Ltd (supra) and Mumbai special bench in its order of Data Craft India Ltd. and the case law referred by the appellant, the claim of depreciation @ 60% by the appellant is allowable. I do not find any reason to differ with findings of Hon'ble ITAT, Ahmedabad and Mumbai in above mentioned cases. Neither (he 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.”

12. We find that the CIT(A) has concluded the issue in favour of the assessee having regard to the provisions of the Act and the decision of the Coordinate Bench rendered in similar circumstances. The computer and computer software and licenses are not differentiated in the ‘table of depreciation’ as provided under the Income Tax Act. Thus, CIT(A) in our view has rightly recorded the findings in favour of the assessee. We decline to interfere therewith. Ground No. 2 of Revenue’s appeal is dismissed.

13. In the result, Revenue’s appeal is dismissed.

This Order pronounced in Open Court on 29/07/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad: Dated 29/07/2019

TANMAY

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आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।