

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 2030/Mum/2018 (Assessment Year 2014-15)

M/s Cinetech Entertainment India Pvt. Ltd., 27, Cama Industries, Walbhat Road, Goregaon (East), Mumbai-400063. <b>PAN: AA ECC3526G</b>	Vs.	ITO-16(1)(1) Air India Building, Mumbai.
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Appellant

Respondent

Appellant by : Shri Rakesh Joshi (AR)  
Respondent by : Shri Abi Rama Karthikeyan (DR)  
Date of Hearing : 04.09.2019  
Date of Pronouncement : 17.09.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)-4, Mumbai dated 27.02.2018 for Assessment Year 2014-15. The assessee has raised the following ground of appeal:

1. On the facts and circumstances of the case as well as in law, the learned CIT(A) has erred in confirming the action of the Id. Assessing Officer in disallowing the claim of depreciation amounting to Rs. 47,13,344/- on the alleged plea that the Film Projector is to be depreciated @15% instead of @60%, without considering the facts and circumstances of the case.

2. The assessee has also filed the following additional ground of appeal:

1) On the facts and circumstances of the case as well as in Law, the learned Assessing Officer erred in making addition of excess depreciation, which

is beyond his jurisdiction as the said issue was not part of the reasons for limited scrutiny issued u/s 143(2) of the Act.

3. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that ground of appeal raised by assessee is covered against the assessee by the decision of Tribunal for assessee's own case for A.Y. 2013-14. However, the Id. AR submits that the depreciation may be allowed to the assessee as per revised W.D.V. The Id AR for the assessee also furnished a chart showing the depreciation claimed and allowed by AO in the assessment order under section 143(3) in 2013-14 and 2014-15, which is extracted below.

As per return of income

AY	Opening WDV	Addition during the year	total	Depreciation @60%	Closing WDV
2013-14	----	20544188	20544188	12250283	8293905
2014-15	82,93,905	2172800	2172800	10466705	4186682

As per assessment order

AY	Opening WDV	Addition during the year	Total	Depreciation @15	Closing WDV
<b>2013-14</b>	---	<b>20544188</b>	<b>20544188</b>	<b>3062571</b>	<b>17481617</b>
2014-15	17481617	2080800	19562417	2934363	16628055

Particulars	AY 2013-14	AY 2014-15
Depreciation claimed as per ITR	122,50,283	62,80,023
depreciation allowable as per asst. Order	30,62,571	2934,363
Depreciation	91,87,712	3345,661

4. On the other hand, the Id. Departmental Representative (DR) for the revenue submits that the ground of appeal is covered against the assessee by the decision of Tribunal in assessee's own case for AY 2013-14, wherein the Tribunal has passed the following order:

“7. I have heard both the counsel and perused the records. The Id. Counsel of the assessee reiterated the submissions made before the authorities below. He insisted that the project is a computer and it should be granted depreciation is applicable to computers. In this regard, the Id. Counsel of the assessee placed reliance upon the decision of ITAT Mumbai Special Bench in the case of [DCIT vs. Datacraft India Ltd.](#) [2011] 9 ITR(T) 712 (Mum) (SB) and the ITAT Bangalaoe Bench decision in the case of [Dy. CIT vs. UAE Exchange and Financial Services Ltd.](#) [2016] 69 taxmann.com 84 (Bang-Trib).

8. Per Contra, the learned departmental representative relied upon the orders of the authorities below.

9. Upon careful consideration, I note that [section 32](#) of the Act which granted depreciation allowance does not define the word 'computer'. However, the ITAT Special Bench in the case of Datacraft India Ltd. (supra) had the occasion to consider the meaning of word 'computer'. After elaborately considering the Special Bench has expounded as under:

*25. Thus in order to determine whether a particular machine can be classified as a computer or not, the predominant function, usage and common parlance understanding, would have to be taken into account. To analyse further, let us take the case of a Television, the principal task of which is to deliver visuals accompanied with audio. The signals are received through the relevant networks such as Dish TV, Tata Sky etc. But TV does not become computer for the reason that its principal function cannot be done only with the aid of 'computer functions'*

*notwithstanding the fact that in the entire process of networking or receiving the output from different channels and making it available to the viewers, some sort of computer functions are necessarily involved. Similarly take the case of mobile phone. Its principal task is to receive and send calls. It is not a stand-alone apparatus which can operate without the relevant network, such as Airtel, BSNL, Reliance. It, therefore, follows that any machine or equipment cannot be described as computer, if its principal output or function is the result of some sort of 'computer functions' in conjunction with some non-computer functions. In order to be called as computer, it is sine qua non that the principal output/object/function of such machine should be achievable only through 'computer functions'.*

10. From the above exposition it is evident that just because some sort of computer functions are necessarily involved, mechanical system cannot be said to be computer unless its principal function cannot be done without the aid of computer function. In other words, any machine or equipment cannot be described as computer if its principal output or function is the result of some sort of 'computer functions' in conjunction with some non-computer functions. It was held that in order to be called as computer, it is sine qua non that the principal output/object/function of such machine could be achieved only through 'computer functions'.

11. Now we examine the present case on the touch stone of the definition. In the present case, the concerned machine is a film projector. This is an optical instrument for projecting an image upon a surface. It is a device that projects a beam of light on to a screen for viewing a picture already programmed, fed and input. Though some elements of computer function are necessarily involved, the projector cannot be said to be a machine whose principal output/object/function is achieved only through computer function. Hence, I am of the considered opinion that the film projector in this case cannot be said to be computer entitled for higher rate of depreciation of 60% applicable for computation. The decisions referred by

the ld. Counsel of the assessee were with respect to printer, scanner and router which are altogether different items. In fact, the exposition from Special bench, Mumbai decision in the case of Datacraft India Ltd. (supra) had defined the term 'computer' which has clinched the issue in favour of the Revenue. Accordingly, I do not find any infirmity in the order of the authorities below. Hence, I affirm the same.”

5. Considering the decision of Tribunal in assessee’s own case for AY 2013-14, the appeal of the assessee is dismissed. However, the Assessing Officer is directed to examine the working of the depreciation as furnished by the assessee, which we have mentioned in para in 3 above and pass the order in accordance with law.
6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 17/09/2019.

**Sd/-**  
**R.C. SHARMA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 17.09.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR “C” Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**