

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "FRIDAY BENCH": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2974/Del/2018, 2492, 2493/Del/2019  
(Assessment Year: 2012-13 to 2014-15)

Swarovski India Pvt. Ltd, DLF Building No 10, Tower-C, 1 <sup>st</sup> Floor, DLF Cyber City, Phase-2, Gurgaon PAN: AAGCS4052D (Appellant)	Vs.	Addl. CIT, Special Range-8, New Delhi (Respondent)
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Assessee by :	Shri Nitesh Gupta, CA Ms. Chetna Thapar, CA
Revenue by:	Ms. Ashima Neb, Sr. DR
Date of Hearing	20/09/2019
Date of pronouncement	16/10/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the 3 appeals filed by the assessee on the common issue whether the expenditure incurred on software and Electronic data Processing charges [EDP] services are capital expenditure or revenue expenditure for assessment year 2012 - 13 to assessment year 2014 - 15. The assessee has filed an application on 19/08/2019 stating that all these 3 appeals are having only common, interrelated and covered issue by the appellant in its own case and therefore they should be consolidated and fixed for hearing at an early date.
2. During the course of hearing of the petition of the assessee for early hearing the learned counsel for the assessee submitted that identical issue is covered in favour of the assessee by the order of the coordinate bench for assessment year 2011 - 12, 2007 - 08 to 2009 - 10 dated 25/7/2019 wherein the issue is allowed holding that such expenditure of software and EDP services are revenue in nature. Therefore, these impugned appeal is may be consolidated and heard at an early date.

3. With the consent of the parties, as no other issue is involved in these appeals, at the time of hearing the application of the assessee for consolidation and early fixation itself, all these appeals were taken for hearing itself.
4. For assessment year 2012 – 13 assessee filed its return of income on 30/11/2012 declaring income of INR 7 462300/-. Assessment u/s 143 (3) of the act was passed on 14/3/2016 at INR 85762426/-. The assessee claimed an expenditure of INR 15931717/- on account of software and EDP charges as revenue expenditure which was held by the learned assessing officer as capital expenditure. He allowed depreciation at the rate of 60% thereon and made the net addition of INR 6 372687/-. On appeal before the learned CIT – A action of the learned assessing officer was confirmed on account of the order of the learned CIT – A in assessee's own case in earlier years confirming action of the learned assessing officer. Thus the assessee is in appeal.
5. For assessment year 2013 – 14 the assessee filed its return of income on 29/11/2013 declaring a loss of Rs. 2828080/-. The assessment u/s 143 (3) of the income tax act was passed on 18/3/2016 wherein software and EDP charges of INR 18471175 were claimed as revenue expenditure by the assessee but the assessing officer considered same as capital expenditure and allowed 60% depreciation thereon. After allowing depreciation Rs. 7388470/- were added to the total income of the assessee. On appeal before the learned CIT – A following the order of the learned CIT – A in assessee's own case for assessment year 2007 – 08, 2008 – 09 and 2009 – 10 held that same are capital in nature. Thus the assessee is in appeal.
6. For assessment year 2014 – 15 assessee filed its return of income on 29/11/2014 declaring an income of INR 6 9705090/-. Assessment u/s 143 (3) of the act was passed wherein the total income of the assessee was determined at INR 7 9438111/-. During the year the assessee has incurred an expenditure of Rs. 24332553/- on account of EDP charges which was claimed by the assessee as revenue expenditure but the learned assessing officer held it to be capital expenditure, allowed

depreciation at the rate of 60% and made the net addition of INR 9 733021/-. On appeal before the learned CIT – A following the order of the learned CIT – A in assessee’s own case for earlier years confirmed the action of the learned assessing officer. Thus the assessee is in appeal.

7. Heard the rival parties and perused the orders of the lower authorities. The issue of allowability of software and electronic data processing charges has been considered by the coordinate bench in assessee’s own case in ITA number 1055/Del/2016 and ITA number 3417 – 3419/Del/2017 for assessment year 2007 – 08 to 2009 – 10 and 2011 – 12 wherein as per Para number 26 of the above order, the coordinate bench following the decision of the honourable Delhi High Court in case of CIT vs Ashai India safety Glass Ltd (2011) 246 ITR 329 (Delhi) and the guidelines laid down in the case of CIT vs JK synthetics 309 ITR 371 held that software and electronic data processing charges incurred by the assessee are revenue in nature and the assessee is entitled to claim the same as allowable deduction. The issue in these appeals is identical to the issue decided by the coordinate bench in assessee’s own case in earlier years. The learned CIT – A has also confirmed the decision of the assessing officer for all these years for the reason that issue in earlier years is identical to the issue in impugned assessment years. No distinguishing feature in the facts was pointed out by either of the parties. In view of this, respectfully following the decision of the coordinate bench in assessee’s own case in earlier years we also hold that software and electronic data processing charges incurred by the assessee are revenue expenditure. Accordingly, all the grounds raised in these 3 appeals relating to allowability of the software and electronic data processing charges as revenue expenditure are allowed.
8. Accordingly all these 3 appeals of the assessee are allowed.  
Order pronounced in the open court on 16/10/2019.

-Sd/-  
(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:16/10/2019  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi