

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ B ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT (T.P) A No.544/Bang/2016  
(Assessment Year: 2011-12)

M/s.Subex Limited,  
RMZ Ecoworld, ORR,  
Devarabisanahalli,  
Bangalore-560 037  
PAN AABCS 9255R

....Appellant

Vs.

Asst. Commissioner of Income Tax,  
Circle 6(1)(2), Bangalore.

.....Respondent.

IT (T.P) A No.634/Bang/2016  
(Assessment Year: 2011-12)  
(By Revenue)

Assessee By:	Shri Soumitra Kumar Chakraborty, C.A.	
Revenue By:	Ms. Neera Malhotra, CIT (D.R)	
Date of Hearing :	08.11.2019	
Date of Pronouncement :	18.11.2019	

**ORDER**

**PER SHRI B.R. BASKARAN, AM :**

These cross appeals are directed against the Assessment Order passed by the  
Assessing Officer for the Asst. Year 2011-12 under Section 143(3) r.w.s. 144C(13)

of the Income Tax Act, 1961 (in short 'the Act') pursuant to the directions given by learned Dispute Resolution Panel (DRP).

2. These appeals were earlier disposed of by the co-ordinate Bench on 12.4.2017. Subsequently, the order passed in the appeal of the assessee was recalled vide Misc. Petition Order dt.5.7.2017 passed in M.P. No.130/Bang/2017 for limited purpose of adjudicating Ground No.5 urged by the assessee, since the said ground was not disposed of in the original order. However, the Registry has erroneously posted the appeal of the revenue also before the Bench along with the appeal of the assessee. Since the appeal filed by the revenue has already been disposed of, the same does not require adjudication again.

3. The Ground NO.5 agitated by the assessee read as under: -

*“ Disallowance of computer software expenses amounting to INR 624,451.*

*5.1 The A.O. and the DRP have erred in disallowing computer software expenses amounting to INR 624,451 when no adjustment was warranted.”*

4. We heard the parties and perused the record. The assessee had purchased various softwares amounting to Rs.51.50 lakhs and claimed the same as revenue expenditure in the Books of Accounts. However while computing the total income under Income Tax Act, the assessee treated the software purchases as Capital

expenditure and accordingly disallowed above said amount Rs.51.50 lakhs for Income Tax purposes. Accordingly the assessee claimed depreciation on the above said amount. While passing draft assessment order, the Assessing Officer noticed that the assessee has not deducted tax at source from the payments made for purchase of software to the extent of Rs.6,24,451/-. The assessee had claimed depreciation of Rs.3.25 lakhs on the above said amount. The AO, accordingly, disallowed depreciation claim of Rs.3.25 lakhs under Section 40(a)(ia) of the Act, since the assessee had not deducted tax at source from the payments made for purchase of software. The ld. DRP, however, held that the software purchases are revenue in nature. Accordingly, it disallowed software purchases of Rs.6.24 lakhs and deleted the disallowance of depreciation of Rs.3.25 lakhs. The AO passed the final assessment order accordingly.

5. The learned Authorised Representative submitted that the assessee had capitalized entire software purchases of Rs.51.50 lakhs for Income Tax purposes, even though it was treated as revenue expenditure for book purposes. Accordingly while computing the total income the entire amount of Rs.51.50 lakhs was disallowed by the assessee. Out of the above said purchases, the assessee has not deducted tax at source on software purchases amounting to Rs.6.24 lakhs. Since entire software purchases have been capitalized for income tax purposes, the assessee claimed depreciation thereon. Though the Assessing Officer has

disallowed depreciation under Section 40(a)(ia) of the Act, the DRP deleted the disallowance of depreciation and added back the entire purchase cost of Rs.6.24 lakhs. The learned Authorised Representative submitted that the assessee has already disallowed Rs.51.50 lakhs (which included the amount of Rs.6.24 lakhs) while computing the total income and hence the disallowance made by Id. DRP would amount to double disallowance.

6. The learned Authorised Representative further submitted that the question of invoking the provisions of Section 40(a)(ia) of the Act in respect of depreciation does not arise in view of the following decisions rendered by the Tribunal.

- i. IT( (International Taxation) Vs. Kawasaki Micro Electronics Inc. (C.O. No.18/Bang/2015 in IT(IT)A No.1221/Bang/2014 (Bangalore Tribunal)
- ii. SMS Demag (P) Ltd. Vs. DCIT (2010) 132 TTJ 498 (Delhi Tribunal)
- iii. CIT Vs. Mark Auto Industries Limited (ITA No.57 of 2009 – unreported P & H High Court) and
- iv. SKOL Breweries Ltd. Vs. ACIT (2013) 29 taxmann.com 111 (Mumbai Tribunal)

Accordingly, the learned Authorised Representative submitted that the disallowance made by the DRP should be directed to be deleted.

7. We heard the Id. DR and perused the record. During the course of hearing, the Id. AR invited our attention to the statement of total income placed at pages 53

and 73-74 of the Paper Book in order to show that it has disallowed the purchase cost of software of Rs.51.50 lakhs. The assessee has also furnished the break-up details of software purchases, which included following items of software purchases:-

Sales force software	-	3,92,797
Safend Encryptor and Reporter	-	68,750
IBM Software Access	-	41,909
Oracle License	-	1,20,995
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		6,24,451
		=====

Once the assessee has itself disallowed the entire purchase cost of softwares, then making addition of Rs.6.24 lakhs (which is included in the amount already disallowed by the assessee) again to the total income would amount to double disallowance which is not permitted under the Income Tax Act. Accordingly, we find merit in the submissions of learned Authorised Representative.

8. In the cases of Kawasaki Micro Electronics Inc (supra) and other cases referred supra, it has been held that depreciation is not subject to disallowance under Section 40(a)(ia) of the Act. Accordingly, we direct the Assessing Officer to delete the disallowance of Rs.6.24 lakhs.

9. In the result, Ground No.5 of the assessee's appeal is allowed and appeal of revenue does not require adjudication.

Order pronounced in the open court on 18th Nov., 2019.

Sd/-

**(SMT. BEENA PILLAI)**  
**JUDICIAL MEMBER**

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Dated: 18.11.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore