

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ “बी”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH ‘B’, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos.653 & 654/Chd/2017

निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

M/s Recorders & Medicare Systems Pvt., 181/5, Industrial Area-1, Chandigarh.	बनाम	The A.C.I.T., Circle 2(1), Chandigarh.
स्थायी लेखा सं./PAN NO: AACCR6241B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Tej Mohan Singh, Adv.

राजस्व की ओर से/ Revenue by: Smt.C.Chanderkanta, CIT DR

Shri Rajesh Dhaneshtha, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 04 .03.2020

उदघोषणा की तारीख/Date of Pronouncement:. 28/05/2020

**आदेश/ORDER**

**Per Annapurna Gupta, Accountant Member:**

Both the above appeals have been preferred by the same assessee against the order of the Commissioner of Income Tax(Appeals)-2, Amritsar [(in short referred to as ‘CIT(A)’] both dated 03.02.2017 relating to assessment years 2011-12 and 2012-13 respectively, passed u/s 250(6) of the Income Tax Act, 1961 (hereinafter referred to as ‘Act’).

2. At the outset itself, the Ld.Counsel for the assessee drew our attention to the fact that a fire had broken out at its

premises at plot No.196, Phase-I, Industrial Area Panchkula on 13.06.2013 in which all stock, machinery, all its equipments, furniture, computers software and all documents relating to sale, purchase, assets and liabilities were destroyed. That during assessment proceedings for the impugned year this fact was brought to the notice of the AO also. He further drew our attention to the copy of the fire report issued by the Fire Station Officer Panchkula on 21.6.2013 confirming the occurrence of fire at the assessee' premises. The Ld. Counsel for the assessee contended that on account of the same it was practically impossible for the assessee to produce evidences before the AO and even the Ld.CIT(A), as a consequence of which various additions had been made by the AO and upheld by the Ld.CIT(A). In assessment year 2011-12, the Ld.Counsel for the assessee contended, that the addition confirmed by the Ld.CIT(A) related to disallowance of prior period expenses, exchange rate fluctuation and depreciation on technical know-how and the grounds raised by the assessee in respect of the same are as under:

**ITA Nos.653/Chd/2017(A.Y. 2011-12):**

*"1) That the Learned Commissioner of Income Tax (Appeals)-II has failed to appreciate the facts and circumstances of the case and has thereby erred in sustaining the following additions:*

*a.) Disallowance of Prior period interest of Rs. 16,63,027/-*

b.) *Disallowance of exchange rate fluctuation of Rs. 90,88,894/-.*

c.) *Disallowance of Rs. 2,67,55,819/- on account of depreciation on technical know-how.”*

3. It was pointed out that in assessment year 2012-13 the disallowance confirmed by the Ld.CIT(A) related to disallowance of earnest money deposit written off and disallowance of depreciation on technical know-how and the grounds raised in this regards read as under:

**ITA Nos.654/Chd/2017(A.Y. 2012-13):**

“1) *That the Learned Commissioner of Income Tax (Appeals)-II has failed to appreciate the facts and circumstances of the case and has thereby erred in sustaining the following additions:*

a.) *Disallowance of earnest money deposit written off of Rs.73,33,358/-.*

b.) *Disallowance of Rs.16935691/- on account of depreciation on technical know-how.”*

4. The Ld.Counsel for the assessee contended that the disallowance of prior period expenses, foreign exchange fluctuation and earnest money deposit had been made and confirmed since the assessee was unable to substantiate its claim with evidence. Referring to the facts of each disallowance he pointed out that in assessment year 2011-12 the AO had noted from the tax audit report furnished by the assessee that the assessee had claimed prior period interest of Rs.16,63,027/- on loan against property in its Profit & Loss Account and had accordingly disallowed the same. The

Ld.Counsel for the assessee contended that the explanation of the assessee all along was that the liability had crystallized during the year and even otherwise since it was interest paid to bank the same was allowable on payment basis as per section 43B of the Act. The Ld.Counsel for the assessee contended that since the assessee was unable to substantiate his explanation that the loan had been taken from any bank or financial institution, so as to be eligible for deduction on payment basis u/s 43B of the Act, the Ld.CIT(A) had upheld the disallowance.

5. Similarly the Ld.Counsel for the assessee pointed out that the disallowance of exchange rate fluctuation of Rs.90,88,894/- had been made by the AO since the assessee was unable to substantiate his claim that the same related to the business of the assessee. The Ld.Counsel for the assessee pointed out that it had been explained to the AO that the fluctuation related to the advance received by the assessee against export order which was returned during the year and the difference in exchange rate was booked as exchange fluctuation. Since the documentary evidence substantiating the aforesaid explanation was not available with the assessee, the AO had made the disallowance which was confirmed by the CIT(A). The Ld.Counsel for the assessee pointed out that similarly in assessment year 2012-13 the AO had disallowed the earnest money deposit written off by the assessee of Rs.73,33,348/- which it had been explained as earnest money deposit made by

the assessee against the tenders applied for and which had become irrecoverable and thus written off, in the absence of any evidence to substantiate the same. The Ld.Counsel for the assessee contended that considering the fact that a major fire had destroyed all documents available with the assessee it was factually impossible for the assessee to substantiate its explanation with evidence. The Ld.Counsel for the assessee contended that the assessee is in the process of obtaining whatever possible evidence it can possibly now in the form of bank statements to substantiate its explanation of interest having been paid to banks and thus being allowable u/s 43B of the Act, of exchange fluctuation loss being on account of difference in exchange rate of return of advance received by it against the export order and to show that the earnest money written off had been deposited in past years by the assessee for various tenders. He pleaded that considering the peculiar situation of the assessee one more opportunity be granted to furnish whatever possible evidence the assessee was able to procure in support of its contention and the matter, therefore, be restored back to the AO for reconsideration. As for the issue of disallowance of depreciation on technical know-how the Ld.Counsel for the assessee contended that it had been explained to the authorities below that being in the business of manufacturing of all kinds of electronic medical diagnostic equipments like ECG, EEG, TMT, etc., it had its own in-house R

& D Department duly recognized by the Ministry of Science & Technology for development of new projects and improvement in existing projects. The Ld.Counsel for the assessee contended that this R & D expenditure had, therefore, been treated as capital expenditure and depreciation claimed on the same. The Ld.Counsel for the assessee contended that it had been pointed out to the authorities below that it had been consistently following this method all along since the creation of its R & D facilities and had been allowed depreciation even in scrutiny assessment in the preceding assessment years i.e. assessment years 2009-10 and 2010-11. Copy of the assessment orders passed u/s 143(3) for the said year was placed before us at page Nos.46 to 56. The Ld.Counsel for the assessee contended that the AO, on the other hand, had rejected the claim of the assessee that its R & D expenditure were capital in nature and had treated the same to be a revenue in nature and accordingly allowed the claim of entire R & D expenses incurred in the year but had disallowed the assessee's claim of depreciation on the written down value of the technical know-how as at the beginning of both the years. The Ld.Counsel for the assessee pointed out that the only reason for doing so was that the Revenue Authorities noted that the assessee did not have any patents, was only in the business of assembling machinery and there was, therefore, no expenditure on any asset in the form of technical know-how being created by the assessee. The

Ld.Counsel for the assessee contended that having not doubted the genuineness of the expenditure, the treatment of the same as revenue expenditure and disallowance of claim of depreciation on the WDV of the technical know-how was an exercise to the detriment of the revenue and was unjustified for the reason that in the earlier years also the assessee ought to have been allowed its entire claim as opposed to allowing only claim of depreciation.

6. The Ld. DR, on the other hand, relied upon the orders of the authorities below.

7. We have heard the assessee on all the grounds raised before us in both the years. Vis-à-vis grounds raised in assessment year 2011-12 relating to disallowance of prior period expenses and foreign exchange fluctuation and in assessment year 2012-13 relating to disallowance of write off of earnest money deposit, we find merit in the claim of the assessee that one more opportunity be granted to the assessee to substantiate its above claim considering the undisputed fact that all the documents were lost by the assessee in a major fire and procuring evidence to substantiate its claim therefore was a very difficult process. In the interest of justice we, therefore, consider it fit to grant one more opportunity to the assessee to procure all possible evidences to substantiate its aforesaid claim of prior period expenses and foreign exchange fluctuation

in assessment year 2011-12 and write off of earnest money deposit in assessment year 2012-13. We, therefore, restore the issue back to the AO to consider the issue afresh after giving due opportunity of hearing to the assessee. Ground of appeal No.1(a) & (b) in ITA No.653/Chd/2017 and ground of appeal No.1(a) in ITA No.654/Chd/2017 are, therefore, allowed for statistical purposes.

8. As for ground of appeal No.1(c) in ITA No.653/Chd/2017 and ground of appeal No.1(b) in ITA No.654/Chd/2017 relating to disallowance of depreciation on technical know-how we are unable to fathom what the Revenue was attempting to do on the issue. Undoubtedly, the Revenue has not disputed the genuineness of the claim of expenses. It is not the Revenue's case that the impugned expenses were bogus. What it has only done is that it has treated the R & D expenditure incurred by the assessee as revenue in nature as opposed to capital treated by the assessee. Accordingly, it has resulted in allowing the entire claim of the expenses incurred in the impugned year and disallowing the claim of depreciation on the opening value of WDV of the same. We do not find any justification in this exercise of the Revenue, Considering the fact that in all the past years the assessee has been consistently following this method of accounting and has also been allowed the same in scrutiny assessment u/s 143(3) of the Act for the preceding two years also. Moreover, the Revenue by this exercise has put the

assessee at a loss when otherwise its claim of earlier years were allowable in entirety as per the Revenue itself in the year of incurring the expenditure only as against the assessee claiming only depreciation on the same. We do not see any justification or merit in this exercise of the Revenue and direct, therefore, that the entire expenses be treated as capital in nature and depreciation be allowed on the same. The addition made, therefore, on account of depreciation in both the years is directed to be deleted. Ground of appeal No.1(c) of ITA No.753/Chd/2017 and ground of appeal No.1(b) of ITA No.754/Chd/2017 are, therefore, allowed.

9. In effect, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on 28/05/2020.

**Sd/-**  
**संजय गर्ग**  
**(SANJAY GARG)**  
**न्यायकि सदस्य/Judicial Member**

**Sd/-**  
**अन्नपूर्णा गुप्ता**  
**(ANNAPURNA GUPTA)**  
**लेखा सदस्य/Accountant Member**

**दिनांक /Dated: 28/05/2020**

**\*रती\***

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar