

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A K GARODIA, ACCOUNTANT MEMBER

ITA No. 921/BANG/2018
Assessment year : 2013-14

M/s AXA Business Services Pvt. Ltd., 1 st & 2 nd Floor, MFAR, Manyata Tech park, Phase IV, Rachenahalli Village, Nagawara PAN: AACCA 5310J	Vs.	The Deputy Commissioner of Income-tax, Circle 1(1)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri T. Suryanarayana, Advocate
Respondent by	:	Dr. Nischal, JCIT (DR), ITAT, Bengaluru.

Date of hearing	:	26.10.2020
Date of Pronouncement	:	28.10.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the assessee is against the order dated 17.11.2017 of the CIT(Appeals)-1, Bengaluru relating to assessment year 2013-14.

2. The only issue that arises for consideration in this appeal is as to, whether the CIT(Appeals) was justified in sustaining disallowance of Rs.7,21,181 for software expenses claimed as revenue expenditure and deductible while computing business income of the assessee.

3. The assessee is a company engaged in the business of providing ITeS, BPO services, trading etc. In the course of assessment proceedings, the AO noticed that the assessee had debited a sum of Rs.2,18,19,129

towards software expenses. The AO called upon the assessee to show cause as to why the aforesaid expenses should not be treated as capital expenditure and disallowed and added to the total income of assessee. The assessee claimed that the expenses were revenue in nature and also gave a break-up of the software expenses which were claimed as deduction:-

Particulars	Amount (in Rs.)
AXA GS Service Charges	1,06,59,750
Software expenses	1,11,59,379
Total	2,18,19,129

4. The AO took the view that since software expenses were classified as a block of asset under the head 'Computer including computer software', expenditure on computer software had to be treated as a capital expenditure. The AO, however, allowed depreciation @ 60% on the computer software expenses and thereby disallowed 40% of the expenses claimed by the assessee, which resulted in an addition of Rs.1,52,73,390 to the total income of assessee.

5. Before the CIT(Appeals), the assessee gave a break-up of the expenses and details of software purchased which were as follows:-

Particulars	Amount (in Rs.)
Service charges paid to AXA Group Solutions Private Limited	1,06,59,750
Software expenses	1,11,59,379
Total	2,18,19,129

The Assessee submitted that it had entered into agreement with AXA Group Solutions Private Limited ("AXA Group Solutions") for rendition of services in the nature of SAP maintenance charges, annual maintenance charges,

application maintenance charges, support charges, IT advisory charges and SAP hosting charges etc. The nature of expenses was service charges for usage of software applications. The software expenses incurred does not relate to charges towards purchase of software. The Assessee submitted that the expenditure incurred towards SAP maintenance charges, annual maintenance charges, application maintenance charges, support charges, IT advisory charges and SAP hosting charges are revenue in nature as the same only facilitates day-to-day operations. The above expenditure does not result in enduring benefit to the Company, the same is bound to become technically obsolete very fast and would need to be upgraded/replaced frequently and hence, should be treated as revenue in nature. The Assessee highlighted that SAP Advance Business Application Programming (ABAP) Developments are related to up-gradation of SAP software for improving the SAP CRP package for day to day use, which provides an advantage merely in facilitating the Company's trading operations or enabling management and conduct of Company's business to be carried on more efficiently or more profitably. Thus, this expenditure does not provide enduring benefit to the Company. The up-gradations of SAP software may include better interfaces between different modules, developing new or improving the reports generated by SAP. The sample of the invoices raised by AXA Group Solutions and sample invoices relating to software expenses were also filed before CIT(A). The chart filed in this regard before the CIT(A) gives a summarised form of nature of the expenses in question and is as follows:

Services provided by AXA Technologies or AXA Group Solutions	Annexure No.	Explanation
Payment to AXA Group Solutions Towards Software Maintenance and Support (part of Service charges paid to AXA Group Solutions)	Invoice enclosed as Annexure 1	From the invoice, it is evident that the payment is towards software maintenance and support services and not towards purchase of software. The support services provided by AXA Group Solutions does not provide enduring benefit to the Company.
Payment to AXA Technology Services India Private Limited towards Winrar software license (part of software expenses)	Invoice enclosed as Annexure 2	From the invoice, it is clear that the payment made is towards license fee in respect to Winrar software. The license needs to be renewed year on year. Hence, the license fee is not providing enduring benefit to the Company.
Payment to AXA Technologies towards Microsoft EAS license renewal (part of software expenses)	Invoice enclosed as Annexure 3	From the invoice, it is clear that the payment made is towards license renewal fee in respect to Microsoft Office and Microsoft CoreCAL. The license renewal fee is not providing enduring benefit to the company.

6. The assessee relied on certain judicial pronouncements for the proposition that SAP maintenance charges, annual maintenance charges, application maintenance charges, support charges, IT advisory charges

and SAP hosting services should be treated as revenue in nature given that the expenditure had been incurred on the maintenance of ERP package. The CIT(A) held that Charges for application support and maintenance of application such as workflow applications and intranet applications and charges for advisory services related to IT should be allowed as revenue expenditure. The CIT(Appeals) took the view that expenditure to the extent of Rs.81,52,209 which was incurred towards Microsoft EAS licence renewal and AXABS for the period from 1.6.2012 to 30.11.2012 was paid towards licence renewal and therefore the said expenditure which was only for part of the relevant financial year would not cause any enduring benefit to the assessee and therefore to this extent has to be regarded as revenue expenditure. This item of expenditure is listed as item No.3 in the chart given above. With regard to the remaining expenditure, the CIT(Appeals) held that they have to be regarded as expenses incurred towards software acquisition with perpetual licence and therefore those expenses have to be capitalized and assessee can claim only depreciation. The CIT(Appeals) thus allowed the claim of assessee in part.

7. Aggrieved by the action of the CIT(Appeals) in not allowing the entire expenditure as deduction as revenue expenditure, the assessee is in appeal before the Tribunal.

8. The Id. counsel for the assessee firstly submitted that the assessee had given complete details of the software expenses and in this regard drew our attention to pages 96-97 of assessee's PB, which is given as Annexure-I to this order. He drew our attention to the Invoice in support of the details of software expenses wherein the description of the nature of expenses have been given. His first submission was that going by the description, the expenditure incurred was in the nature of licence which only helped and facilitated the assessee in carrying out the business

operations and does not provide any enduring benefit. It was submitted that the expenses were maintenance & support charges and cannot by any stretch of imagination be treated as capital expenditure.

9. The Id. DR relied on the order of CIT(Appeals).

10. We have considered the rival submissions. We find that despite all the details having been filed by the assessee before the CIT(Appeals), the CIT(Appeals) has not considered those submissions with regard to the sum disallowed by the AO, except the sum of Rs.81,52,209 which was incurred towards Microsoft EAS licence renewal of AXABS software. The claim made by the assessee in respect of remaining items of expenditure was that they were of similar nature in the form of licence and support services. This submission has not been dealt with by the CIT(Appeals). In these circumstances, we deem it fit and appropriate to set aside the order of CIT(Appeals) on this issue and remand the same to the Id. CIT(Appeals) for passing a speaking order on the claim of assessee for deduction in the light of evidence filed by assessee. The CIT(Appeals) will afford opportunity of being heard to the assessee.

11. The appeal of assessee is accordingly treated as allowed for statistical purposes.

Pronounced in the open court on this 28th day of October, 2020.

Sd/-
(A K GARODIA)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 28th October, 2020.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

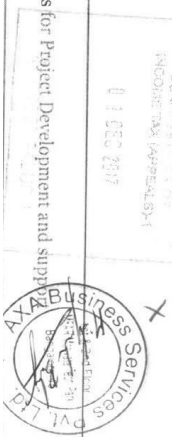
By order

Assistant Registrar
ITAT, Bangalore.

ANNEXURE-I

Details of software expenses

S.No.	Invoice NO	Amount	Product/Service	Description/Usage
1	ATSIN00000914	82,577	Minitab 16 for Windows Single user Perpetual License for ABS.	Minitab, originally intended as a tool for teaching statistics, is a general-purpose statistical software package designed for easy interactive use. Minitab is well suited for instructional applications, but is also powerful enough to be used as a primary tool for analyzing research data. Exchange ActiveSync (commonly known as EAS) is a proprietary protocol designed for the synchronization of email, contacts, calendar, tasks, and notes from a messaging server to a smartphone or other mobile devices. The protocol also provides mobile device management and policy controls
2	ATSIN000001891	7,30,798	Microsoft EAS License renewal for AXA BS - period from 01-06-12 to 30-11-12.	
3	ATSIN000001893	81,52,209	Microsoft EAS License renewal for AXA BS - period from 01-06-12 to 30-11-12.	
4	ATSIN000001894	2,216	Winrar Software License	WinRAR is a trailware file archiver utility for Windows, developed by Eugene Roshal of win rar GmbH. It can create and view archives in RAR or ZIP file formats, [4] and unpack numerous archive file formats. To enable the user to test the integrity of archives, WinRAR embeds CRC32 or BLAKE2 checksums for each file in each archive. WinRAR supports creating encrypted, multi-part and self-extracting archives.
5	ATSIN000002208	2,020	Winrar Software License	
6	ATSIN000002679	2,056	Winrar Software License	
7	ATSIN000002327	8,507	WinZip 16 Standard License ML (2-9)	WinZip is a shareware file archiver and compressor for Windows, macOS, iOS and Android developed by WinZip Computing (formerly Nico Mak Computing). It can create archives in Zip file format, and unpack some other archive file formats.
8	ATSIN000002492	2,71,534	Secure jet software (only for Momo & MFD) - Safecom Pull Printing Software / Tracking Software / Advance Server / Implementation and tracking	Reinforce security, restore control, reduce costs, and conserve resources. Access Control Secure Pull Printing helps protect sensitive documents and secure printing environments—all while increasing convenience for local, mobile, and remote users.
9	ATSIN000002493	9,05,108	Secure jet software (only for Momo & MFD) - Safecom Pull Printing Software / Tracking Software / Advance Server / Implementation and tracking	Reduce the amount of unclaimed print jobs and control access to networked devices. Give users the ability to retrieve jobs when and where they need to by simply accessing a solution-enabled networked device.
10	ATSIN000002494	4,28,963	Secure jet software (only for Momo & MFD) - Safecom Pull Printing Software / Tracking Software / Advance Server / Implementation and tracking	
11	ATSIN000002495	2,57,378	Secure jet software (only for Momo & MFD) - Safecom Pull Printing Software / Tracking Software / Advance Server / Implementation and tracking	
12	ATSIN000002490	90,290	Project Development Charges - Jan 13	
13	ATSIN000002648	90,290	Project Development Charges - Feb 13	
14	ATSIN000002794	1,35,433	Project Development Charges - Mar 13	



15	430000037	28,000,000	AKA GS Project Cost for the month of Apr & May 12
16	430000038	12,112,286	AKA GS Project Cost for the month of Apr & May 12
17	430000043	14,000,000	AKA GS KAU Support Cost for the month of Jul 12
18	430000045	14,000,000	AKA GS KAU Support Cost for the month of Aug 12
19	430000044	1,800,780	AKA GS Project Cost for the month of Jul 12
20	430000041	8,135,510	AKA GS Project Cost for the month of Jan 12
21	430000040	14,000,000	AKA GS KAU Support Cost for the month of Jan 12
22	430000046	14,000,000	AKA GS BAV Support & Project Cost - Sep 12
23	430000046	64,234	AKA GS BAV Support & Project Cost - Sep 12
TOTAL		2,18,19,199	

Monthly charges billed on Software maintenance and support services