

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH 'B', NEW DELHI ]**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
A N D  
SHRI K. N. CHARY, JUDICIAL MEMBER  
(Through Video Conferencing)**

ITA No.1136/Del/2018  
(Assessment Year: 2012-13)

M/s. Falcon Business Resources Pvt. Ltd., D-1588, Okhla Industrial Area, Phase-I, New Delhi-110020. <b>PAN No.AAACF8295M</b>	Vs.	DCIT,  Circle : 9 (1),  New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by :	N O N E;
Department by :	Shri Rupesh Agrawal, Sr. D.R.;

Date of hearing:	30/03/2021
Date of Pronouncement:	30/03/2021

**O R D E R**

**PER PRASHANT MAHARISHI, AM :**

01. This appeal is filed by assessee against the order of the CIT (Appeals)-34, New Delhi, dated 29.12.2017 for assessment year 2012-13.
02. The solitary ground in this appeal is whether the ld. CIT (Appeals) was justified in upholding the action of the ld. Assessing Officer in allowing depreciation on mobile phones @ 15% instead of @ 60% claimed by the assessee following the decision of Hon'ble Kerala High Court.
03. The assessee is a company engaged in the business of purchase and sale of air-time for mobile phones. It filed its return of income on 7.12.2012 at Rs.1,83,73,910/-. The assessment under Section 143(3) of the Income Tax Act, 1961 (the Act) was made by the Dy. Commissioner of Income Tax, Circle 9 (1), New Delhi, on

23.12.2014 determining total income of the assessee at Rs.1,99,90,727/-. The only dispute is with respect to the disallowance of excess claim of depreciation of Rs.16,16,817/-. The assessee challenged the same before the Id. CIT (Appeals), who confirmed the above disallowance of depreciation and, therefore, assessee is in appeal.

04. Despite notice to the assessee, none appeared on the date of hearing. Even on the earlier date of hearing on 28.01.2021 nobody appeared and for today's hearing the Bench issued notice of hearing by RPAD. Even then there is no compliance by the assessee. Therefore, the issue is decided on the merits of the case.
05. The learned DR submitted that issue is squarely covered against the assessee by the solitary decision of the Hon'ble Kerala High Court in the case of Federal Bank Ltd. Vs. ACIT 20 taxmann.com 707 (Ker.) wherein it has been held that depreciation on mobile phones is allowable @ 15% as those are not computers. He, therefore, submitted that this solitary decision has been followed by the CIT (Appeals). So same may be upheld.
06. We have carefully considered the rival contentions and perused the orders of the lower authorities. The lower authorities while deciding the issue whether the depreciation is allowable on mobile phones @ 15% or considering the mobile phones computers @ 60%. This issue has been decided by the solitary decision of Hon'ble Kerala High Court in the case of Federal Bank Ltd. Vs. ACIT (supra) wherein it has been held that mobile phones are not computers and, therefore, depreciation on these mobile phones shall be allowed at the general rate of depreciation on plant and machinery @ 15%. This being the solitary decision on the issue and is binding on us, respectfully following that we uphold that depreciation on mobile phones is allowable @ 15% and not @ 60%. However, we may note that there are smart phones which do function equivalent to the computers or much more than a computer, if the functionality of a mobile phone are shown to be

more than a communication equipment, perhaps, it may qualify as a computer. However, as no such information is available in the present case, we respectfully follow the decision of the Hon'ble Kerala High Court in the case of Federal Bank Ltd. Vs. ACIT (supra) and dismiss the appeal of the assessee.

07. In the result appeal of the assessee is dismissed.

Order pronounced in the open court on : 30.03.2021.

**Sd/-**  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

\*MEHTA\*

Date : 30.03.2021.

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	30.03.2021
Date on which the typed draft is placed before the dictating member	30.03.2021
Date on which the typed draft is placed before the other member	30.03.2021
Date on which the approved draft comes to the Sr. PS/ PS	30.03.2021
Date on which the fair order is placed before the dictating member for pronouncement	30.03.2021
Date on which the fair order comes back to the Sr. PS/ PS	30.03.2021
Date on which the final order is uploaded on the website of ITAT	30.03.2021
date on which the file goes to the Bench Clerk	30.03.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	

