

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "C": NEW DELHI]**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No.5109/Del/2018
(Assessment Year: 2015-16)

DCIT, Circle-12 (1), New Delhi.	Vs.	M/s. Indian Mortgage Guarantee Corpn. Pvt. Ltd., A-47, Lower Ground Floor, Hauz Khas, New Delhi-110 049 PAN: AACCG6775G
(Appellant)		(Respondent)

Assessee by :	None;
Department by :	Ms. Anima Barnwal, Sr. D. R.;
Date of Hearing	14/09/2021
Date of pronouncement	14/09/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the ld. Dy. Commissioner of Income Tax, Circle 12 (1), New Delhi, against the order passed by the ld. Commissioner of Income Tax (Appeals)-4, New Delhi, dated 16.05.2018 for assessment year 2015-16 wherein the disallowance made by the ld. Assessing Officer of depreciation @ 60% on computer soft-ware and allowed only @ 25% in favour of the assessee. Thus, the ld. CIT (Appeals) allowed depreciation on soft-ware @ 60% and hence the Assessing Officer is aggrieved.
2. The brief facts of the case shows that assessee is a company engaged in mortgage guarantee business, filed return of income on 27.11.2015 at a loss of Rs. 10,55,93,023/-. During the course of assessment proceedings, the Assessing Officer noted that assessee has purchased policy administrative soft-ware license and claimed depreciation thereon @ 60%. The Assessing Officer held that soft-ware falls under the definition of intangible assets and, therefore, only 25% depreciation is allowable. Against this the contention of

the assessee was that computer and soft-ware are eligible for 60% depreciation. Accordingly, depreciation of Rs. 83,05,599/- was disallowed and total asset loss of the assessee was determined at Rs. 9,72,87,424/- as per order under Section 143(3) of the Act dated 24.11.2012. Assessee preferred appeal before the Id. CIT (Appeals), who held that computers including computer soft-wares are eligible for depreciation @ 60%. He referred to new Appendix I under Rule 5 of Income Tax Rules, 1962 where at serial No. 5 under the head "Plant & Machinery" computer including computer soft-ware are entitled to 60% depreciation. Therefore, he deleted the disallowance and hence the Assessing Officer is aggrieved.

3. The Id. DR vehemently supported the order of the Id. Assessing Officer.
4. Despite notice, None remained present on behalf of the assessee.
5. We have carefully considered contentions of the learned departmental representative and perused the orders of the lower authorities. The Id. CIT (Appeals) has dealt with the whole issue at para No. 5 of his order as under:-

"5. Examination of the issue and decision

5.1 I have perused the assessment order and detailed submission made by the appellant which includes a number of judicial decisions on which reliance has been placed in support of its claim of depreciation on 'Policy Administration Software' (PAS) @ 60%.

5.2 It is noticed that the appellant company acquired the right to use PAS software for its mortgage business in India and further incurred expenditure on its customization to meet its requirement of business. The AO was of the view that instead of depreciation claimed @ 60%, the assessee was eligible for depreciation @ 25% only as software falls under the definition of intangible assets. Before me, it was submitted that in view of New Appendix 1 of I.T. Rules, u.e.f. A.Y. 2003-04, computer software has been classified under sub-block 'Computers including computer software' wherein, specifically, rate of depreciation has been provided at 60%.

5.3 I have examined the issue. The software acquired by the appellant is an integral part of the computer operation through which the appellant company is running its mortgage business. From the assessment year 2003-04, the intention of the legislation has been made very clear by clubbing computer software with computers for the purpose of allowability of depreciation. As per Part A, 'Tangible Assets', of New Appendix I under Rule 5 of I.T. Rules, 1962, at Sr. No. 5 under the head Machinery and Plant, 'Computers including Computer Software' has been assigned admissible rate of depreciation at 60%.

5.4 In the present case, in which appellant's business is being run through computers with only such softwares installed and therefore such software

cannot be viewed in isolation and detached from computers which are tangible asset and include computer software in clear terms of Income Tax Rules, 1962. By virtue of being integral part of computer system, software application, thus, becomes eligible for depreciation @ 60%. There is a number of judicial decisions on this issue which favours the case of the appellant, a few of which has been rightly pointed out by the appellant in its written submission before me as reproduced above.

5.5 In view of the above discussion, disallowance of Rs.83,05,599/- made by AO on account of depreciation on software is held to be unjustified and accordingly, AO is directed to allow the same. Addition of Rs.83,05,599/- is, thus, deleted. The ground of appeal is allowed. “

6. On careful consideration of the order of the Id. CIT (Appeals) we find that the soft-ware purchased by the assessee is specifically falling into the head of machinery and plant where computer including computer soft-ware are eligible for depreciation @ 60%. This is a specific head / category under which depreciation is allowable on the soft-ware. The Id. Assessing Officer has incorrectly classified the soft-ware as an intangible asset. In view of this, we confirm the order of the Id. CIT (Appeals) and appeal of the Id. Assessing Officer is dismissed.

Order pronounced in the open court on : 14/09/2021.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

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

Dated : 14/09/2021

MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	14.09.2021
Date on which the typed draft is placed before the dictating member	14.09.2021
Date on which the typed draft is placed before the other member	14.09.2021
Date on which the approved draft comes to the Sr. PS/ PS	14.09.2021
Date on which the fair order is placed before the dictating member for pronouncement	14.09.2021
Date on which the fair order comes back to the Sr. PS/ PS	14.09.2021
Date on which the final order is uploaded on the website of ITAT	14.09.2021
date on which the file goes to the Bench Clerk	14.09.2021
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	