IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 2256/H/2018 Assessment Year: 2013-14		
Cybermate Infotek Ltd., Hyderabad. PAN – AABCC 4776F	Vs.	Income-tax Officer, Ward – 1(4), Hyderabad.
(Appellant)		(Respondent)

Assessee by:	Shri P. Murali Mohan Rao
Revenue by:	Shri Y.V.S.T. Sai
Date of hearing:	24/08/2021
Date of pronouncement:	21/09/2021

O R D E R

PER L.P. SAHU, A.M.:

This appeal filed by the Assessee is directed against CIT(A) - 1, Hyderabad's order dated 04/09/2018 for AY 2013-14 involving proceedings u/s 143(3) of the Income-Tax Act, 1961; in short "the Act".

2. Briefly, the facts of the case are that the assessee filed its return of income for the AY 2013-14 electronically on 26/09/2013 declaring a total income of Rs. 3,60,240/-.

Subsequently, the case was selected for scrutiny under CASS and statutory notices were issued accordingly. In response, the assessee' AR filed required information.

2.1 The AO completed the assessment assessed the total income of the assessee at Rs. 8,72,37,838/- as against the returned income of the assessee of Rs. 3,60,241/- by making various disallowances at Rs. 8,65,17,356/-.

3. Aggrieved, the assessee preferred an appeal before the CIT(A) and the CIT(A) confirmed the assessment order.

4. Still aggrieved, the assessee is in appeal before the ITAT.

5. The assessee has raised the 54 grounds of appeal, which are disposed of as under:

6. Ground Nos. 3 to 8 are relating to the disallowance of Rs. 3,09,306/- towards prior period expenditure u/s 37 of the Act.

6.1 The facts relating to this ground are that the during the assessment proceedings, the AO noticed that the assessee had debited an amount of Rs. 3,09,306/- towards prior period expenses to the P&L Account. According to the AO, since the assessee is following mercantile system of

accounting, prior period expenses cannot be allowed and, hence, he disallowed the same.

6.2 The CIT(A) upheld the action of the AO by holding that the assessee had not submitted any clarification on this issue or submitted any evidence to prove that this expenditure should have been allowed.

6.3 Before us, the ld. AR submitted that the amounts pertain to income and expenditure or prior period arising out of compliance with statutory provisions, i.e. accounting standards and also requirement of statute are allowable u/s 37 of the Act. The ld. AR of the assessee relied on the following cases:

1. Ocimum Bio Solutions India Ltd., ITA No. 2090/Hyd/2018.
2. SA Builders, 158 Taxmann 74 (SC)
3. West Bengal State Electricity Board, ITA no. 2126/Kol/2017.
4. Mahanagar Gas Ltd., 42 Taxmann.com 40
5. Fact Securities, 61 Taxmann.com 192
6. Pharmacia Health Care Ltd., ITA no 2585/Mum/2010
7. CIT Vs. Jagatjit Industries Ltd., ITA No. 848/2010 (HC Delhi)
8. Saurashtra Cement & Chemical Industries Ltd., Vs. CIT, 80 Taxmann 61)HC Gujarat)

6.4 On the other hand, the ld. DR relied on the orders of revenue authorities and submitted that the assessee failed to substantiate its claim before the authorities below by

way of documentary evidence, therefore, the revenue authorities have rightly made the disallowance.

6.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. In the case of Ocimum Bio Solutions India ltd (supra), on which reliance placed by the ld. AR assessee, the coordinate bench has held as under:

> *"3. Learned departmental representative's vehement contention during the course of hearing is that both the lower authorities have rightly disallowed the assessee's impugned prior period expenditure claim for the precise reason that the same ought to have been claimed in the relevant previous year in which the same was incurred. The assessee's case on the other hand is that it claimed the instant head of expenditure only in the year of crystalisation i.e. AY.2014-15 than the earlier corresponding assessment year(s). It is an admitted fact that the Assessing Officer's as well as the CIT(A)'s detailed discussions have been fair enough in not disputing this clinching crystalisation aspect. Coupled with this, the assessee has been assessed at the same rate all along. The hon'ble Gujarat high court's decision in PCIT Vs. Adani Enterprises Ltd., (Tax Appeal No.566 of 2016) holds that the impugned prior period expenditure disallowance in such a case ought not to be made as it is a revenue neutral instance only. We adopt the same reasoning herein as well and direct the Assessing Officer to delete the impugned disallowance. The assessee's former substantive ground is accepted therefore."*

6.6 Since the impugned issue is similar to the above decision, respectfully following the said decision, we direct

the AO to delete the addition made on this count. Accordingly, ground Nos. 3 to 8 are allowed.

7. Ground Nos. 9 to 10 are relating to the disallowance of Rs. 16,16,269/- towards disallowance u/s 43B of the Act.

7.1 The facts relating to the said issue are that during the assessment proceedings, the AO noticed that the assessee has the following payment of statutory liabilities:

i. PF	Rs. 4,82,199/-
ii. Professional tax	Rs. 1,04,600/-
iii. Service Tax	Rs. 10,10,654/-
iv) Educational Cess	Rs. 12,544/-
v) SH Educational cess	Rs. 6,272/-
Total	Rs. 16,16,269/-

As the assessee did not produce evidence for payment of statutory liabilities as per balance sheet before the due date of filing the return of income, the AO disallowed the said amount of Rs. 16,16,269/- u/s 43B of the Act.

7.2 The CIT(A) confirmed the disallowance on the ground that even before him the assessee failed to produce the evidence for statutory of liabilities cited supra.

7.3 Before us, the ld. AR of the assessee submitted that the statutory liabilities were paid before the due date of filing of return income u/s 139(1) of the Act, hence, disallowance is not warranted. He relied on the following cases:

1. Usha Ltd. Vs. CIT, 184 Taxmann 83 (HC – Delhi)
2. Vinay Cement Ltd. Vs. CIT, 213 CTR 268 (SC)
3. CIT Vs. Lakhani Rubber Udyog Ltd. 184 Taxmann 236 (HC P&H).

7.4 The ld. DR, on the other hand relied on the orders of revenue authorities.

7.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The law is settled on this issue if the assessee has paid the statutory liabilities before the due date of filing of return income u/s 139(1) of the Act, no disallowance is warranted. Therefore, we remit this issue to the file of the AO with a direction to examine whether the assessee has paid the aforementioned statutory liabilities within due date for filling return of income U/s 139(1) , if it is found in order , allow the claim of the assessee. The assessee is directed to substantiate its claim by way of documentary evidence that the same are paid before the due date of filing of return of income. Accordingly, grounds raised on this issue, i.e. 9 to 12 are treated as allowed for statistical purposes.

8. Ground Nos. 13 to 19 are relating to the addition of Rs. 56,55,787/- towards miscellaneous expenses.

8.1 The facts relating to the said issue are that during the assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of Rs.56,55,787/- towards miscellaneous expenses to the P&L Account. The Assessing Officer asked the assessee to submit the details for the same. In response, the assessee submitted that Miscellaneous Expenses constitutes Amortisation of Intangible Assets, i.e., Software Products which were incurred in the earlier years". The assessee has neither given any details nor furnished any evidence for the same. Since the assessee is following mercantile system of accounting, prior period expenditure cannot be allowed. Hence the Assessing Officer disallowed Rs.56,55,787/- towards miscellaneous expenses.

8.2 Before the CIT(A), the appellant submitted that the preliminary expenses as incurred by the company during the process of business in order to enhance business can be included under the head 'miscellaneous expenses' and the same can be written off over a period of 10 years from the year in which' such kind of expenditure was incurred. The appellant further submitted that Section 35D of the Act allow the appellant to get written off of miscellaneous expense amounting to one tenth of the qualifying expenditure over a period of ten years from the year of business commencement.

8.3 The CIT(A) confirmed the addition observing that appellant has not submitted any details or furnished any evidence for the same neither before me nor before the Assessing Officer.

8.4 Before us, the ld. AR of the assessee submitted before the Assessing Officer that the amount of Rs.56,55,787/- relates to amortisation of intangible assets which were incurred in earlier years.

8.5 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The issue is covered U/s 35D under the head miscellaneous expenditure which is allowable in ten equal instalments . On observation of the financial statements Note No. 13 under the account head "OTHER NON CURRENT ASSETS" there is a balance as on 31.03.12 is 28,278,933/- and balance as on 31.03.2013 is 22,623,146/-, it shows that it relates to the earlier years. The AR submitted that it was a product development expenditure incurred earlier and allowable as per section 35D of the Income Tax Act. 1961 is accepted. We find that nowhere from the orders of revenue authorities that the earlier year expenditure has been disallowed. Once the deduction claimed by the assessee is accepted, in subsequent year it cannot be denied. This view is supported by the decision of ITAT CHENNAI BENCH 'B' in the case of Handy Waterbase India (P.) Ltd. Vs. Deputy Commissioner

of Income-tax, Company Circle II(2), Chennai , [2021] 127 taxmann.com 634 (Chennai - Trib.) Though the judgment is related to the deduction u/s 10B, but, in the said case are that assessee had set up a new 100 per cent EOU in year 2004 on legitimate expectation that it will get deduction towards profit derived from such unit for 10 consecutive years as per provisions of section 10B and the fact that there was no change in facts prevailing at time when deduction was allowed to assessee in assessment year 2004-05. Therefore, following the conclusions drawn therein, we direct the AO to delete the addition made on this count. Accordingly, ground Nos. 13 to 19 are allowed.

9. Ground Nos. 20 to 25 relating to the addition of Rs. 19,07,500/- u/s 40(a)(ia) of the Act, Ground Nos. 26 to 31 relating to the addition of Rs. 10,58,300/- u/s 40(a)(ia) of the Act and ground Nos. 36 to 42 relating to the addition of Rs. 39,16,445/- u/s 40(a)(ia) of the Act.

9.1 In all the above additions, the ground for making the addition by the AO is that the assessee failed to submit the proof of deduction of TDS. The CIT(A) confirmed the action of the AO.

9.2 Before us, the ld. AR of the assessee submitted that the AO has not considered the fact that the provisions of section 40(a)(ia) are applicable only to the expenditure which was found payable as on 31st March of every year

and not for the amounts which are already paid during the previous year. Thus, as the expenditure was not shown payable in the books of account by the Balance sheet date, the disallowance ujs.40(a)(ia) of the Act cannot be made applicable. The appellant further submitted that as per the provisions of Section 40(a)(ia), if an assessee fails to deduct or pay tax then he should be assessed u/s.201(1) of the I.T. Act in terms of Chapter-XVII-B of the Act. Whereas in present case, the Assessing Officer has not treated the assessee as assessee in default u/s.201(1) and no proceedings were initiated accordingly. He, therefore, submitted that the additions made u/s 40(a)(ia) are not warranted. He relied on the following case law:

1. Ramesh Gelli Vs. ACIT, ITA No. 1637/Hyd/2018
2. M/s Visu International Ltd., Hyd Vs. DCIT, ITA No. 488/Hyd/2013.
3. CIT Vs. Ansal Landmark Township (P) Ltd., 61 taxmann.com 45 (HC Delhi)
4. Country Club Hospitality & Holidays Vs. Addl. CIT, Hyd., ITA No. 1504/Hyd/2012.

9.3 On the other hand, ld. DR relied on the orders of revenue authorities and submitted that in the absence of proof of deducting TDS before filing of the return of income, the AO made the additions accordingly u/s 40(a)(ia) of the Act.

9.4 We have considered the rival submissions and perused the material on record as well as gone through the

orders of revenue authorities. In the case of Ramesh Gelli Vs. ACIT in ITA No. 1637/Hyd/2018 for AY 2009-10 vice order dated 03/04/2019, on which reliance placed by the ld. AR of the assessee, on similar set of facts, the coordinate bench of this Tribunal has held as under:

> *"6. Having regard to the rival contentions and the material available on record, I find that undisputedly, the assessee has not made TDS from the payment made towards legal and professional fee. The Hon'ble Delhi High Court in the case of CIT vs. Ansal Land Mark Township (P.) Ltd [2015] 61 taxmann.com 45 (Delhi), has considered the applicability of second proviso to section 40(a)(ia) of the Act and held that the second proviso to section 40(a)(ia) is declaratory and curative and it has retrospective effect from 01/04/2005. Relevant portion of the Hon'ble High Court order is reproduced hereunder for the sake of convenience and ready reference:*
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> *"9. It is seen that the second proviso to Section 40(a)(ia) was inserted by the Finance Act, 2012 with effect from 1st April 2013. The effect of the said proviso is to introduce a legal fiction where an Assessee fails to deduct tax in accordance with the provisions of Chapter XVII B. Where such Assessee is deemed not to be an assessee in default in terms of the first proviso to sub-section (1) of Section 201 of the Act, then, in such event, "it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso".*
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> *10. It is pointed out by learned counsel for the Revenue that the first proviso to Section 201(1) of the Act was inserted with effect from 1st July 2012. The said proviso reads as under: "Provided that any person, including the principal officer of a company, who fails to deduct*

the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident— (i) has furnished his return of income under section 139; (ii) has taken into account such sum for computing income in such return of income; and (iii) has paid the tax due on the income declared by him in such return of income; And the person furnishes a certificate to this effect from an accountant in such form as may be prescribed."

11. The first proviso to Section 201(1) of the Act has been inserted to benefit the Assessee. It also states that where a person fails to deduct tax at source on the sum paid to a resident or on the sum credited to the account of a resident such person shall not be deemed to be an assessee in default in respect of such tax if such resident has furnished his return of income under Section 139 of the Act. No doubt, there is a mandatory requirement under Section 201 to deduct tax at source under certain contingencies, but the intention of the legislature is not to treat the Assessee as a person in default subject to the fulfilment of the conditions as stipulated in the first proviso to Section 201(1). The insertion of the second proviso to Section 40(a)(ia) also requires to be viewed in the same manner. This again is a proviso intended to benefit the Assessee. The effect of the legal fiction created thereby is to treat the Assessee as a person not in default of deducting tax at source under certain contingencies.

12. Relevant to the case in hand, what is common to both the provisos to Section 40(a)(ia) and Section 201(1) of the Act is that as long as the payee/resident (which in this case is ALIP) has filed its return of income disclosing the payment received by and in which the income earned by it is embedded and has also paid tax on such income, the Assessee would not be treated as a person in default. As far as the present case is concerned, it is not disputed by the Revenue that the

payee has filed returns and offered the sum received to tax.

13. Turning to the decision of the Agra Bench of ITAT in Rajiv Kumar Agarwals case (supra), the Court finds that it has undertaken a thorough analysis of the second proviso to Section 40(a)(ia) of the Act and also sought to explain the rationale behind its insertion. In particular, the Court would like to refer to para 9 of the said order which reads as under: On a conceptual note, primary justification for such a disallowance is that such a denial of deduction is to compensate for the loss of revenue by corresponding income not being taken into account in computation of taxable income in the hands of the recipients of the payments. Such a policy motivated deduction restrictions should, therefore, not come into play when an assessee is able to establish that there is no actual loss of revenue. This disallowance does deincentivize not deducting tax at source when such tax deductions are due, but, so far as the legal framework is concerned, this provision is not for the purpose of penalizing for the tax deduction at source lapses. There are separate penal provisions to that effect. Deincentivizing a lapse and punishing a lapse are two different things and have distinctly different, and sometimes mutually exclusive, connotations. When we appreciate the object of scheme of section 40(a)(ia), as on the statute, and to examine whether or not, on a "fair, just and equitable" interpretation of law— as is the guidance from Honble Delhi High Court on interpretation of this legal provision, in our humble understanding, it could not be an "intended consequence" to disallow the expenditure, due to non- deduction of tax at source, even in a situation in which corresponding income is brought to tax in the hands of the recipient. The scheme of Section 40(a)(ia), as we see it, is aimed at ensuring that an expenditure should not be allowed as deduction in the hands of an assessee in a situation in which income embedded in such expenditure has remained untaxed

due to tax withholding lapses by the assessee. It is not, in our considered view, a penalty for tax withholding lapse but it is a sort of compensatory deduction restriction for an income going untaxed due to tax withholding lapse. The penalty for tax withholding lapse per se is separately provided for in Section 271C, and, section 40(a)(ia) does not add to the same. The provisions of Section 40(a)(ia), as they existed prior to insertion of second proviso thereto, went much beyond the obvious intentions of the lawmakers and created undue hardships even in cases in which the assessees tax withholding lapses did not result in any loss to the exchequer. Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non-deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.

14. The Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to Section 40(a)(ia) of the Act and its conclusion that the said proviso is

declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance."

7. Since the facts before me are similar, respectfully following the decision of the Hon'ble Delhi High Court in the case of Ansal Land Mark Township (P.) Ltd (supra), I hold that without treating the assessee as 'an assessee in default' the disallowance u/s 40(a)(ia) should not be made. The assessee's appeal is accordingly allowed.

9.5 Respectfully following the above decision, we hold that without treating the assessee as 'an assessee in default' the disallowance u/s 40(a)(ia) should not be made. Therefore, we set aside the order of the CIT(A) and direct the AO to delete the additions made u/s 40(a)(ia) of the Act. Thus, the grounds raised on this issue are allowed.

10. Ground Nos. 32 to 35 are relating to addition of Rs. 36,720/- u/s 36(i)(va) of the Act.

10.1 During the course of assessment proceedings, the AO noticed that the assessee had not paid the employee contribution to PF amounting to Rs. 36,720/- before the due date of the relevant Act. Hence, the AO disallowed Rs. 36,720/- u/s 36(1)(va) of the Act.

10.2 On appeal, the CIT(A) upheld the action of the AO observing that in absence of proof, the disallowance made by the AO is upheld.

10.2 After hearing both parties and perusing the material on record as well as the orders of authorities below, we are

of the view that it is a settled position of law that if the contributions are paid before the due date of filing return u/s 139(1) of the Act, no disallowance is warranted. The authorities below made the addition in the absence of proof of making payment by the assessee before the due date of filing of return. The Hon'ble Delhi High Court in *CIT VS. Aimil Ltd. & Ors. [(2010) 321 ITR 508 (Del)]* has held that if the employees' share of contribution is paid before the due date of filing the return u/s 139(1) of the Income-tax Act, 1961 (hereinafter called the Act), then no disallowance can be made. In view of the foregoing facts it is clear that the assessee deserves and is hereby allowed relief on this issue in the light of the above precedents. Therefore, we direct the assessee to furnish the proof of payment before the AO and the AO is directed to examine whether the assessee has paid before the due date of filing of return, If so, allow the assessee's claim. The grounds raised on this issue are treated as allowed for statistical purposes.

11. Ground Nos. 43 to 47 are relating to the addition of Rs. 5,22,05,305/- towards investment written off debited to P&L Account.

11.1 During the assessment proceedings, the Assessing Officer noticed that the assessee had debited an amount of Rs. 5,22,05,305/- to the P&L account towards "Investment written off". The Assessing Officer asked the assessee to submit details. In response, the assessee submitted that

though the nomenclature was used as investment written off, fact remains that the amount represents bad debts written off as it was offered as income in the earlier years and is allowable u/s. 36(i)(vii) of the Act. The assessee has not furnished any evidence to substantiate its claim that the above Income was offered in earlier years. In absence of details, the Assessing Officer, disallowed 5,22,05,305/- and added to the total income.

11.2 The CIT(A) confirmed the action of the AO observing that in the absence of proper explanation and documentary evidence, the addition made by the AO is upheld.

11.3 Before us, the ld. AR submitted that the amount of Rs. 5,22,05,305/- towards "Investment Written Off" represents bad debts written off and it is offered to tax in the earlier years and hence it is allowable u/s.36(i)(vii) of the Act as it is wholly and exclusively for the purpose of business.

11.4 The ld. DR, on the other hand, relied on the orders of revenue authorities and submitted that the assessee failed to substantiate its claim by way of documentary evidence before the authorities below, hence, the addition is made is proper.

11.5 We have considered the rival submissions and perused the material on record as well as the orders of revenue authorities. On perusal of the financial statement as per Note No. 12 under the account head “non-current

investments, there is a closing balance as on 31/03/2012 is Rs. 26,11,26,524/- and as on 31/03/2013 the closing balance is Rs. 20,89,21,219/-, the net difference is Rs. 5,22,05,305/-, which has been written off during the year and it is an investment in subsidiary. In assessee's own case for AY 2009-10 in ITA No. 474/Hyd/2014, vide order dated 17/04/2015, on which reliance placed by the AR of the assessee, the coordinate bench of this Tribunal has held as under:

> *"II. Investment written-off Rs.4,09,46,675/-:*
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> *5. In the P&L A/c assessee has claimed the above amount as a write- off. AO noted that investment written-off cannot be treated as an allowable deduction as it is not a revenue expenditure. Before the CIT(A), assessee submitted that this amount was originally shown as income in the Books of Accounts and is receivable from wholly owned subsidiary in USA. Since the amount was not received from the third party to the subsidiary, under the FEMA regulations permission of the RBI was obtained to convert the outstanding amount into equity. Later on in view of the RBI's circular No.69 dt. 25-07-2011, 22.5% of the amount invested was written-off during the year. Since the amount was originally offered as income, non-receipt of the same was eligible as deduction u/s.37(1). After obtaining the Remand Report from the AO and also noted down the amounts remitted and capitalization of receivables, Ld. CIT(A) concluded that the write-off does not satisfy the conditions prescribed. Before us, Ld. AR filed various annual reports in support that the amount was originally offered as income and receivable from subsidiary was converted to equity, in view of the FEMA provisions, and then by virtue of RBI circular written-off the amount. Since the amount was*

originally offered as income, subsequent write-off is allowable as revenue expenditure, it was contended.

5.1. Without going into the merits of the claim, we are of the opinion that this claim also requires re-examination. Assessee's claim that amounts are originally offered as income, subsequently converted to equity of the subsidiary and written-off on the basis of the circulars of RBI requires examination by AO, as none of the figures are comparable on the basis of the annual reports filed before us. In order to examine the issue and to give one more opportunity to assessee to substantiate the claim, matter is restored to the file of AO with a direction to examine the factual aspect of the contentions of assessee and then decide whether the amount can be allowed as revenue expenditure or not as per the provisions of Act. For this purpose, this issue is also restored to the file of AO and Ground No.4 is accordingly considered allowed for statistical purposes."

11.6 Respectfully following the above decision, in order to examine the issue and to give one more opportunity to assessee to substantiate the claim, matter is restored to the file of AO with a direction to examine the factual aspect of the contentions of assessee and then decide whether the amount can be allowed as revenue expenditure or not as per the provisions of Act. For this purpose, this issue is also restored to the file of AO and Grounds raised on this issue are accordingly considered allowed for statistical purposes

12. Ground Nos. 48 to 50 are relating to the addition of Rs. 2,01,71,965/- towards capital work in progress written off.

12.1 During the assessment proceedings, the Assessing Officer noticed that the assessee has claimed an amount of Rs.2,01,71,965/- towards capital work in progress in the computation of the income. The assessee submitted that it represents written off of advances paid to overseas vendors for acquisition of software licence for the elapsed period. The assessee has not furnished any evidence to substantiate the claim. In absence of proof, the Assessing Officer disallowed Rs.2,01,71,965/-.

12.2 The CIT(A) confirmed the addition observing that the assessee failed to substantiate its claim by way of documentary evidence.

12.3 Before us, the ld. AR of the appellant submitted that the Capital Work in Progress pertains to capital advance paid toward acquisition of Software License which was to be configured and resold. The License was not capitalized as it was not transferred to the company. The appellant submitted that it is on account of the expired portion which relates to current accounting period 2012-13 for which the usage was charged off.

12.4 The ld. DR, on the other hand, relied on the orders of revenue authorities and submitted that the assessee failed to substantiate its claim by way of documentary evidence before the authorities below, hence, the addition is made is proper.

12.5 We have considered the rival submissions and perused the material on record as well as the orders of revenue authorities. In assssee's own case for AY 2009-10 (supra), the coordinate bench has held as under:

> *"4.3 ……..The issue whether capital work in progress can be reduced or not was not an issue before the AO and this aspect was not examined at all. Since the AO put it to CIT(A), with reference to claim of Rs.1,96,28,459/- and capital work in progress reduced in the computation, which the Ld. CIT(A) directed to be enhanced by an amount of Rs.6,75,96,165/- , that too without giving opportunity to assessee as contended, we are of the opinion that this capital work in progress issue also requires re-examination. AO is directed to take the revised computation filed by the assessee and determine the exact amount claimed by assessee and why this claim was made and whether the claim can be allowed as per the provisions of the Act. For this purpose, this issue of claim of capital work in progress is also restored to the file of AO. Accordingly, Ground No. 2, 3, 8 and 9 of assessee's appeal are considered allowed for statistical purposes."*

12.6 Respectfully, following the above decision, we remit the issue to the file of the AO with a direction to decide the issue in line of the above decision of the coordinate bench in assessee's own case. Therefore, the ground raised on this issue are treated as allowed for statistical purposes.

14. In the result, appeal of the assessee allowed for statistical purposes in above terms.

Pronounced in the open court on 21st September, 2021.

Sd/-	**Sd/-**
(S.S. GODARA)	**(L. P. SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Hyderabad, Dated: 21st September, 2021.

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