IN THE INCOME TAX APPELLATE TRIBUNAL
"B"BENCH: BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.139/Bang/2018
Assessment Year: 2014-15

M/s. I Value Infosolutions Pvt. Ltd. Shree Arcade 1391/16/1 3rd Floor, 19th Main HSR Layout 4th Sector Bangalore 560 102. **PAN NO :AABCI8601B**	**Vs.**	ACIT Circle-3(1)(1) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Sarwana Kumar, A.R.
Respondent by	**:**	Shri Nischal B., D.R.

Date of Hearing	**:**	03.01.2022
Date of Pronouncement	**:**	09.02.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 4.12.2017 passed by Ld. CIT(A)-3, Bengaluru and it relates to the assessment year 2014-15. The assessee is contesting the decision of Ld. CIT(A) rendered on the following three issues:-

a) Disallowance of interest paid on service tax.
b) Disallowance of software subscription charges
c) Disallowance of bad debts claimed.

2. The facts relating to the case are stated in brief. The assessee company is engaged in the business of software development. The

assessment in the hands of the assessee for the year under consideration was completed u/s 143(3) of the Act, wherein the A.O. made above said additions. The appeal filed by the assessee before Ld. CIT(A) was partly allowed. Aggrieved, the assessee has filed this appeal before us.

3. The first issue relates to disallowance of interest paid on late payment of service tax. The assessee had paid a sum of Rs.2,66,211/- as interest on delayed payment of service tax. The A.O. noticed that the assessee did not route the service tax collection and payment through profit and loss account. Since the service tax paid is not claimed as expenditure, the A.O. took the view that the interest paid on service tax is also not an expenditure in connection with the business carried on by the assessee. Accordingly, he disallowed the above said claim of the assessee. The Ld. CIT(A) confirmed the addition following the decision rendered by Hon'ble Supreme Court in the case of Bharat Commerce & Industries Ltd. Vs. CIT (1998) 98 taxman 151, where the interest paid under Income tax Act was held to be not allowable as deduction.

3.1 We heard the parties on this issue and perused the record. There is no doubt that the assessee is collecting service tax and remitting the same to the credit of the Government. The view of the AO is that, such collections/remittances not having routed through the Profit and Loss account, the assessee cannot claim interest paid on belated payment of service tax as deduction. However, it is a settled principle of law that any tax collected along with sales/services is a trading receipt and hence remittance of the same to the credit of the government shall constitute trading expenditure. It is also settled proposition of law that the entries made in the

books of account are not relevant for determining total income of the assessee. Hence, it cannot be said that the service tax collection and remittance is not related to the business carried on by the assessee, merely for the reason that they are not routed through the Profit and loss account.

3.2 Hence, the question that arises now is whether the interest paid on delayed payment of service tax is allowable as deduction or not? The Ld. A.R. relied before us on the decision rendered by the Kolkata Bench of Tribunal in the case of M/s. EMDEE Digitronics Pvt. Ltd. Vs. PCIT (ITA No.361/Kol/2019 dated 28.6.2019) In the above said case, the Kolkata Bench of Tribunal followed the decision rendered by another coordinate bench in the case of M/s. Naaraayani Sons Pvt. Ltd. (ITA No.1796/1798/Kol/2017 dated 21.8.2018), wherein it was held that interest expenditure on late deposit of VAT, service tax, etc. are allowable as deduction u/s 37(1) of the Act. Accordingly, following the above said decision, we hold that the interest paid on delayed payment of service tax is a business expenditure to the assessee and accordingly allowable as deduction. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance.

4. The next issue relates to disallowance of software expenses claimed by the assessee. The A.O. noticed that the assessee has incurred expenses on software purchases and claimed the same as deduction. The nature of software purchase has been explained as under:-

5.3 The details of the software purchased by the appellant and treated as capital expenditure by the AO is as follows:

Sl.No.	*Software Name*	*Amount*	*Utilization*
1	*SAP B1 Payroll addon*	*1,25,000*	*Payroll Customization and implementation charges*

2	*SAP B1 Support charges*	*25,000*	*Support charges incurred for developing additional features in SAP*
3	*SAP B1 Professional user*	*1,83,097*	*SAP License Renewal charges for the period Oct 2013 to September 2014 i.e. SAP B1 Professional User/Limited CRM User/Finance User & Logistics User. Amount pertaining to period April to September 2014 has been considered as pre paid expenses.*

The A.O. treated the above expenditure as capital in nature and accordingly held that it is not allowable as deduction. However, he allowed depreciation @ 25% thereon. Accordingly, he disallowed net balance amount of Rs.2,49,823/-.

4.1. The Ld. CIT(A) noticed that the amount of Rs.1,83,097/- paid by the assessee for the software named as "SAP-B1-Professional user" is a license renewal charge. Accordingly, he held it to be a revenue expenditure. However, the Ld. CIT(A) took the view that the above said payment is liable for deduction of tax at source as per the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Samsung Electronics Company Ltd. (2011) 203 taxman 477 (Karn). Accordingly, he directed the A.O. to examine the details of tax deducted at source and disallow the amount u/s 40(a)(i) of the Act, if the assessee had not deducted tax at source.

4.2 With regard to the remaining amount of Rs.1,50,000/- the Ld. CIT(A) held it to be capital in nature. However, he directed the A.O. to allow depreciation @ 60% following the decision rendered by Delhi special bench of ITAT in the case of Amway India Enterprises Vs. DCIT (2008) 114 TTJ 476.

4.3 With regard to the decision of Ld CIT(A) in directing the AO to examine the TDS deduction on the amount of Rs.1,83,097/-, the Ld A.R relied upon the Notification No.21/2012 dated June 13, 2012 issued by CBDT. The Ld A.R submitted that CBDT has stated in the above said notification that no deduction u/s 194J is required to be made in respect of purchase of software by a person from another resident. With regard to the remaining amount of Rs.1,50,000/-, the Ld A.R submitted that they are in the nature of add on charges and support services. Hence this payment has not resulted in purchase of any new software. Accordingly, the Ld A.R prayed for allowing entire software expenses.

4.4 The Ld D.R, on the contrary, supported the order passed by Ld CIT(A) on this issue.

4.5 We heard the parties on this issue and perused the record. With regard to the question as to whether the payments made by the assessee for upgrading the software would constitute revenue or capital expenditure, we may gainfully refer to the decision of Hon'ble Karnataka High Court rendered in the case of IBM Ltd. (357 ITR 88), wherein the Hon'ble High Court has taken the view that payment of application software though there is an enduring benefit, it does not result into acquisition of any capital asset and merely enhances the productivity or efficiency and hence has to be treated as revenue expenditure. The relevant observations made by Hon'ble jurisdictional High Court are extracted below:-

> *"9. The Tribunal, on consideration of the material on record and the rival contentions held, when the expenditure is made not only once and for all but also with a view to bringing into existence an asset or an advantage for the enduring benefit, the same can be properly classified as capital*

expenditure. At the same time, even though the expenses are once and for all and may give an advantage for enduring benefit but is not with a view to bringing into existence any asset, the same cannot be always classified as capital expenditure. The test to be applied is, is it a part of the companys working expenses or is it expenditure laid out as a part of the process of profit earning. Is it on the capital layout or is it an expenditure necessary for acquisition of property or of rights of a permanent character, possession of which is condition on carrying on trade at all. The assessee in the course of its business acquired certain application software. The amount is paid for application of software and not system software. The application software enables the assessee to carry out his business operation efficiently and smoothly. However, such software itself does not work on stand alone basis. The same has to be fitted to a computer system to work. Such software enhances the efficiency of the operation. It is an aid in manufacturing process rather than the tool itself. Thus, for payment of such application software, though there is an enduring benefit, it does not result into acquisition of any capital asset. The same merely enhances the productivity or efficiency and, hence, to be treated as revenue expenditure. In fact, this court had an occasion to consider whether the software expenses is allowable as revenue expenses or not and held, when the life of a computer or software is less than two years and as such, the right to use it for a limited period, the fee paid for acquisition of the said right is allowable as revenue expenditure and these softwares if they are licensed for a particular period, for utilizing the same for the subsequent years fresh licence fee is to be paid. Therefore, when the software is fitted to a computer system to work, it enhances the efficiency of the operation. It is an aid in manufacturing process rather than the tool itself. Though certain application is an enduring benefit, it does not result into acquisition of any capital asset. It merely enhances the productivity or efficiency and, therefore, it has to be treated as revenue expenditure. In that view of the matter, the finding recorded by the Tribunal is in accordance with law and does not call for any interference. Accordingly, the second substantial question of law is answered in favour of the assessee and against the Revenue."

4.6 Accordingly, since the amount of Rs.1,50,000/- paid by the assessee for upgrading software program increases the productivity or efficiency of the assessee, following the decision rendered by jurisdictional High Court (referred supra), we hold that the same is allowable as deduction. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the above amount as revenue expenditure.

4.7 With regard to the amount of Rs.1,83,097/- relating to SAP license renewal charges, we noticed that the Ld CIT(A) has held it to be revenue expenditure. However, he has directed the AO to examine the applicability of sec.40(a)(ia) of the Act. Before us, the Ld A.R has placed reliance on the notification no.21/2012 dated 13th June, 2020 issued by CBDT in order to contend that the TDS is not required to be deducted when the software license is acquired from a Resident. We have gone through the same and notice that the CBDT has laid down certain conditions. Further, the Hon'ble Supreme Court, in a recent decision rendered in the case of Engineering Analysis Centre for excellence (Civil Appeal 8733-8734 of 2018) has explained the law on deduction of TDS on payments made to non-residents on purchase of software licenses. Hence the above said notification has to be read along with the decision rendered by Hon'ble Supreme Court in the above said case. Accordingly, we modify the order passed by Ld CIT(A) on this issue and direct the AO to examine this issue in the light of discussions made supra.

5. The next issue relates to disallowance of bad debt claimed of Rs.58,35,144/-. The A.O. noticed that the assessee has claimed bad debts against the amount due from a sister concern named M/s. I-Manage Technology Services Pvt. Ltd. The assessee submitted that the amount of Rs.58,35,144/- due from the above said company and it consisted of payment due on account of sales made of Rs.27,12,637/- and payment due on account of advance given of Rs.31,22,507/-. It was submitted that the assessee has written it as bad in the books of accounts. The A.O. noticed that the above said company is sister concern of the assessee in the sense that there are common directors in assessee's company and in that company. Accordingly, he proposed to disallow the claim

since the assessee was aware of the financial capacity of the above said company while making payment. Before A.O., the assessee submitted that the above said company M/s. I-Manage Technology Services Pvt. Ltd. has already declared the above said amount of Rs.58,35,144/- as its income. However, the A.O. observed that the assessee could not substantiate its claim by properly reconciling the income declared by the above said company. Accordingly, he disallowed the claim of bad debts.

5.1 The Ld. CIT(A) called for ledger account copy of the assessee as available in the books of I-Manage Technology Services Pvt. Ltd. He noticed that the above said company has maintained 2 ledger accounts in the name of the assessee company. The first ledger account was related to purchases and sales entered between the assessee company and above said company. The second ledger account was related to money paid and received. The Ld. CIT(A) noticed that there is no outstanding in respect of first ledger and entire amount of Rs.58,35,144/- was outstanding only in the second ledger referred above. The Ld. CIT(A) also noticed that the second ledger account mainly consisted of expenditure incurred by the assessee on behalf of the I-Manage or amount lent to it. Accordingly, the Ld. CIT(A) held that the amount written off by the assessee cannot be allowed as bad debt u/s 36(1)(vii) of the Act, since the amount paid to M/s. I-Manage was not offered as income in any of the year. The assessee had put up an alternative contention that the above said amount should be allowed as business expenditure u/s 37 of the Act or as trading loss u/s 28 of the Act. The Ld. CIT(A) rejected the said contentions also by observing that the transactions entered between the assessee and I-Manage in the second ledger are not in the nature of any trade advance i.e. these transactions do not have anything to do with the

business of the assessee. Accordingly, he confirmed the disallowance made by the A.O.

5.2 The Ld. A.R. submitted that the amount written off by the assessee, viz., Rs.58,35,144/- is related to second ledger. However, a sum of Rs.5,17,380/- has been transferred from first ledger to second ledger on 30.11.2011. Hence, the above said amount of Rs.5,17,380/- should be allowed as deduction as bad debt u/s 36(1)(vii) of the Act as bad debt. `With regard to the remaining amount of Rs.53,17,754/-, the Ld. A.R. reiterated the contentions that it is in the nature of trade advance or a trading loss.

5.3 The Ld. D.R. supported the order passed by Ld. CIT(A). From the perusal of order passed by Ld. CIT(A), we notice that the Ld. CIT(A) has extracted both the ledger accounts maintained by M/s I-Manage Technology Services P Ltd in the name of the assessee. As noticed earlier, the first ledger represents purchase and sales transaction and it does not show any outstanding balance. The second ledger, as observed by Ld. CIT(A), consisted of expenses incurred by the assessee on behalf of the I-Manage or payment made by the assessee to M/s. I-Manage. Hence, the entire amount of bad debts relate to the outstanding balance shown in second ledger.

5.4 Though the Ld. A.R. has claimed that a sum of Rs.5,17,380/- has been transferred from first ledger and second ledger, in our view, what is required to be referred to is outstanding balance of the ledger account, which has been written off as bad. The inter transfer between two account during the course of the year cannot be singled out for the purpose of allowing deduction u/s 36(1)(vii) of

the Act. Admittedly, in the instant case, the balance outstanding in the second ledger has been written off as bad.

5.5 We noticed earlier that the Ld. CIT(A) has given a categorical finding, which is also evident from the ledger account extracted by him in his order, that the transactions recorded in the second ledger are not related to the business carried on by the assessee. The transactions are in the nature of financial accommodation or financial support given by the assessee to its sister concern. Such kind of transactions, in our view, cannot said to relate to the business carried on by the assessee. Hence, the balance written off by the assessee, under these set of facts, cannot be considered as a case of write off of trading advance or a case of trading loss. Accordingly, we confirm the order passed by Ld. CIT(A) on this issue.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 9th Feb, 2022

Sd/-	**Sd/-**
(George George K.)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 9th Feb, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.