

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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(TP)A No.2328/Bang/2019
Assessment year: 2004-05

The Deputy Commissioner of Income Tax, Circle 2(1)(1), Bangalore.	Vs.	24/7 Customer Private Ltd., Embassy Golf Business Park, Challaghatta Village, Off Intermediate Ring Road, Varthur Hobli, Bengaluru – 560 071. PAN: AAACZ 1014A
APPELLANT		RESPONDENT

Appellant by	:	Dr. Manjunath Karkihalli, CIT(DR), ITAT, Bengaluru.
Respondent by	:	Smt. Shashim Kapila, Advocate

Date of hearing	:	17.02.2022
Date of Pronouncement	:	17.02.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the revenue is directed against the order dated 31.7.2019 of the CIT(Appeals)-2, Bengaluru for the assessment year 2004-05 on the following grounds:-

- “a. In the facts and circumstances of the case, the Hon'ble CIT(A) has erred in granting adjustment to the taxpayer on account of accelerated depreciation charged in their books of account.

- b. The Hon'ble CIT(A) has erred in on the ground that AO/TPO has not raised any objection to admission of the additional depreciation as additional evidence.
- c. The Hon'ble CIT(A) has erred in granting adjustment on depreciation when the taxpayer's profit margin even before the depreciation claim is not at arm's length.
- d. The Hon'ble CIT(A) has erred in granting depreciation adjustment without considering three years data of the taxpayer and the comparable companies as the effect of change in the rate of depreciation would be there for more than one year.”

2. After hearing both the parties, we are of the opinion that the issue is covered by the decision of this Tribunal in the case of *Outsource Partners International (P) Ltd.* [2017] 87 taxmann.com 332 (Bang. Trib.) wherein it has been held that the depreciation adjustment is to be granted whereby the rates of depreciation is different vis-à-vis the comparable companies. Further as regards whether adjustment should be made in the hands of the tested party i.e., the assessee or the comparable companies, the Mumbai Tribunal decision in the case of *Pangea3 & Legal Database Systems (P) Ltd. v. ITO*, [2017] 79 taxmann.com 303 (Mum Trib.) held that where rates of depreciation were different in case of assessee and comparable companies, Rule 10B(1) permits an adjustment in the hands of the tested party also and depreciation adjustment has to be allowed.

3. Being so, the CIT(Appeals) followed the ratio laid down by the above decisions of the ITAT and we do not find any infirmity in the order of the CIT(Appeals) on this issue. Accordingly, the grounds raised by the revenue are rejected.

4. In the result, the appeal by the revenue is dismissed.

Pronounced in the open court on this 17th day of February, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 17th February, 2022.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.