

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपीलसं./ITA No.1687/Chny/2018  
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. ISS SDB Security Services Pvt. Ltd. Deccan House, No. 4, 7 <sup>th</sup> Avenue, Harrington Road, Chetpet Chennai – 600 031.	<b>बनाम/</b> Vs.	DCIT Corporate Circle 2(2) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AACT-3628-C</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	S/ Shri M.P. Lohia (CA) & Nikil Tiwari (CA) – Ld. ARs
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Shri G. Johnson (Addl. CIT) –Ld. DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	31-03-2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	04-04-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-13, Chennai [CIT(A)] dated 29.01.2018 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31.03.2015. The grounds taken by the assessee read as under: -

1. Disallowance of payment of royalty and management fees of INR5,55,04,454 by treating it as capital expenditure

1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) ('the learned CIT(A)') erred in holding that the payment of recurring annual royalty and management fee towards use of brand name and proprietary trademarks and availing certain managerial and consultancy services in the field of operation management, human resource management, support towards corporate finance, legal affairs, etc., provided by the overseas group company, as a capital expenditure and not a revenue expenditure.

1.2 The learned CIT (A) erred in overlooking and not following the order of his predecessor appellate authority for the earlier year i.e. for AY 2011-12, wherein the Hon'ble CIT (A)- 9 has passed the speaking order on same issue and has held payment towards royalty and management fees as revenue expenditure on the basis of the identical facts, circumstances of the case and judicial precedents.

2 Ground No. 2: Disallowance of excess Claim of depreciation of 30% on Motor Vehicle of INR 89,66,927

2.1 on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the specially designed and equipped motor vehicles, used by the Appellant in the business of carrying valuables and cash, does not fit in the category of Part A- Tangible Assets under 'III. Machinery and Plant' of the Depreciation schedule in which the assets are subject to depreciation at a higher rate of 30%.

2.2 The learned CIT (A) erred overlooking and not following the order of his predecessor appellate authority, Hon'ble CIT (A)-9 for the earlier years i.e. for AYs 2006-07, 2007-08, 2008-09 and 2011-12 wherein the Hon'ble CIT (A)-9 has categorically held, based on the identified facts and circumstances of the case, that depreciation on motor vehicle used by the Appellant for secured transportation is eligible for higher depreciation @ 30%.

2.3 The learned CIT(A) erred in stating that no supporting evidences were produced before the Appellate Authorities whereas the copy of Cash Collection Agreement of Appellant with its client was submitted before the learned CIT(A) and the terms mentioned therein were discussed in support of the Appellant's claim for higher depreciation on motor vehicles.

3 Ground No. 4: Disallowance of miscellaneous expenses of INR 1,22,27,000

3.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in disallowing miscellaneous expenses incurred towards salary and flight expenses of Mr. Alexander John George, who was wholly and exclusively working for the Appellant though on the payroll of other group company, by merely relying on the finding of the Assessing Officer and giving a reason that the expenditure was not related to the business of the Appellant, without considering the additional CIT(A) documents and submissions filed before the learned CIT(A).

4 Ground No. 5: Disallowance under section 43B of the Act of INR 92,49,420 towards Service-tax payable

4.1 on the facts and in the circumstances of the case and in law, the learned CIT (A) erred in approving the disallowance of unpaid service tax liability of INR 92,49,420 without appreciating the fact that the same has neither been routed through Profit & Loss account nor claimed as deduction in the return of income

and also erred in not following the decision of jurisdictional Hon'ble Chennai ITAT identical issue.

As evident, the assessee is aggrieved by confirmation of certain additions in the impugned order.

2. The Ld. AR advanced arguments and placed reliance on the earlier orders of the Tribunal. The Ld. Sr. DR also advanced arguments and supported the assessment framed by Ld. AO.

Having heard rival submissions and after careful consideration of orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

3. The assessee being resident corporate assessee is stated to be engaged in providing security guarding services, cash value services, trading and installation of electronic surveillance systems for various commercial establishments and banks. The returned income of Rs.3299.26 Lacs has been determined at Rs.3682.40 Lacs after certain additions. Few of these adjustments are subject matter of assessee's appeal before us which are adjudicated as under: -

#### **4. Royalty payments treated as capital expenditure**

4.1 The assessee paid royalty of Rs.555.04 Lacs to M/s. ISS A/S Denmark. As per terms of the contract, the assessee was to pay royalty at fixed percentage of net sales. The same were towards receipts of varied services as received by the assessee. However, Ld. AO held that the royalty payments were in lieu of right to use management services. By paying royalty, the assessee enjoys the right to use management services from ISS Denmark. Therefore, the expenditure would be capital on nature for which the assessee would be eligible to claim depreciation at 25% as applicable to intangible assets. Accordingly, an amount of

Rs.416.28 Lacs was added to the income of the assessee, However, the assessee itself had disallowed the same for want of TDS compliance, no adjustment was made to the total income. The Ld. CIT(A) concurred with the stand of Ld. AO against which the assessee is in further appeal before us.

4.2 We find that similar issue stood covered in assessee's favor by the decision of this Tribunal in assessee's own case for AYs 2011-12 & 2014-15 in revenue's appeal ITA No.2707/Chny/2017 & ITA No. 3536/Chny/2018 order dated 21-02-2022 wherein it was held as under: -

During appellate proceedings, the assessee submitted that as per the agreement, ISS A/S Denmark agreed to grant the right to the assessee to use 'ISS' name and ISS proprietary trademark etc. The payment of royalty was based on percentage of net annual sales turnover and it was payable annually. However, the licensor shall continue to have the ownership of the trademark, trade-names, patents etc. The assessee had only a limited right to use the same in India. Upon termination of the royalty agreement, all rights & benefits granted under the license shall lapse and assessee was to return all manuals, reports etc. without making any copies. Similarly, as per the management service agreement, ISS A/S Denmark provided various support services in the field of operation management, human resource management, support towards corporate finance, legal affairs etc. which were to be remunerated on Annual basis as fixed percentage of net sales turnover. Upon termination of the managerial service agreement, all rights & benefits shall lapse. Therefore, the payments were merely for right to use and not towards acquisition of any property, rights or otherwise. The royalty was not a lump sum payment to purchase or acquire any IPR, technical know-how, license etc. Therefore, the expenditure could not be regarded as capital expenditure by any stretch of imagination. The Ld. CIT(A), upon perusal of factual matrix, concurred with assessee's submissions and observed that the payment was as license fees only and not price for acquisition of any capital assets. The ratio of decision of Hon'ble Apex Court in **Alembic Chemicals Works Co. Ltd. (177 ITR 377)** was noted wherein similar expenditure were held to be allowable deduction. Similar was the decision of Hon'ble Delhi High Court in **Jubilant Foodwork Pvt. Ltd. (52 Taxmann.com 215)** wherein it was held that the franchise fees paid annually at fixed percentage of sales turnover for using trademark would be revenue expenditure. Similar was the decision in **Hero Honda Motors Ltd. (372 ITR 481)** wherein it was held that ownership and intellectual

property rights in the know-how or technical information were never transferred or became an asset of the assessee. Therefore, the payment would be revenue in nature. This case law has distinguished the case law of **Southern Switchgear V/s CIT (supra)** as relied upon by Ld. AO. The Ld. CIT(A) also relied on the decision of Hon'ble High Court of Madras in the case of **CIT V/s Hitech Arai Ltd. (368 ITR 577)** wherein similar expenditure was held to be revenue expenditure. Similar was the ratio of decision in **CIT V/s Panasonic Carbon India Co. Ltd. (TCA Nos.552 of 2010 &ors. Dated 12.07.2010)**. On the basis of all these decisions, it was held by Ld. CIT(A) that there was no transfer of any rights or assets. The assessee merely uses the benefits / licenses / services of ISS A/S Denmark. The termination clause provides for return of such benefits or licenses or services. The royalty as well as management service fees was paid in proportion to sales turnover. Therefore, the disallowance as made by Ld. AO was to be deleted. Aggrieved, the revenue is in further appeal before us.

After due consideration of factual matrix as enumerated in preceding paragraphs, the undisputed position that emerges is that the assessee is using the trade name as well as management services under contractual terms. The payment was to be made on annual basis and the same was based on fixed percentage of net sales turnover. Upon termination of the agreement, the benefits / licenses / services were to lapse and the assessee was to return the manuals, reports etc. No new asset was acquired by the assessee. The assessee merely acted as user. Therefore, it could not be said that the rights acquired by the assessee were enduring in nature. The Ld. CIT(A), in our considered opinion, has clinched the issue in the correct perspective and therefore, the same would not require any interference on our part. The grounds raised by the revenue, in this regard, stand dismissed.

Facts being pari-materia the same in this year, we would hold that the royalty payment was to be treated as revenue expenditure. The grounds thus raised stands allowed.

## **5. Disallowance of excess depreciation:**

5.1 The assessee claimed depreciation on vehicles @30% as follows: -

Description	Opening WDV on 01.04.2011	Addition more than 180 days	Addition less than 180 days	Deletions	Depreciation claimed @ 30%
Plant & Machinery	6,01,21,517/-	NIL	6,40,000/-	6,62,000/-	1,79,33,855/-

The same was on the reasoning that the assessee was engaged in the business of security services for the purpose of secured transportation for ATM services. For the same, it was using motor lorries customized as armored/ security vans. The vehicles deployed were customized motor Lorries which were used in the business of running them on hire for transportation of valuables. The vehicles were entirely different from the regular vehicles with varied distinct features. Therefore, these vehicles were in the nature of commercial vehicles with higher usage, wear and tear. However, the Ld. AO opined that as per Depreciation Schedule, the assessee would be allowable for depreciation @15% and therefore, excess depreciation of Rs.89.66 Lacs was added to the income of the assessee. The Ld. CIT(A) noted that higher depreciation would be available for vehicles used in a business and running them on hire. The vehicles of the assessee would not enter in the above category. Therefore, the action of Ld. AO was upheld against which the assessee is in further appeal before us.

5.2 Upon perusal of depreciation chart as extracted above, it could be seen that majority of the depreciation as claimed by the assessee is on opening written down value (WDV) of the block. The vehicles under consideration form part of 30% Block of Assets. In other words, the depreciation on vehicles have been allowed at higher rates in earlier years. The Ld. AR submitted that similar disallowance as made in earlier years was deleted by learned first appellate authority for which revenue did not prefer any further appeal and thus, the issue has attained finality in earlier years. Keeping in view these facts, we direct Ld. AO to allow depreciation at higher rates as claimed by the assessee. The grounds thus raised stands allowed.

**6. Disallowance of Miscellaneous expenditure:**

6.1 The assessee claimed amount of Rs.122.27 Lacs as miscellaneous expenditure which was stated to be salary and flight charges payment to one Shri Alexander John George. However, upon perusal of Form 16, it was noted by Ld. AO that Form 16 was issued by ISS Integrated Facilities Services Private Limited (IIFS) and there was no benefit to the assessee. Accordingly, the amount was disallowed u/s. 37(1) of the Act. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

6.2 We find that M/s SDB Cisco (India) Ltd. (an entity which has been acquired by the assessee) has entered into inter-company agreement with ISS integrated facility services Pvt. Ltd. (IIFS) on 01.09.2010. As per the terms, Shri Alexander John George (employee of M/s IIFS) is having more than 30 years of experience in the field of security services, facility management and other related services. Keeping in view the same, M/s SDB CIDCO Pvt. Ltd. has expressed desire to obtain and utilize the professional, technical and other specialized skills of Shri Alexander John George for the business integration, operation, due diligence and managing business. The SDB CIDCO Pvt. Ltd. was to be charged for the costs incurred including reimbursement of out-of-pocket third-party costs and expenses. Accordingly, IIFS has raised periodic debit note on the assessee, the copies of which are on record. The copy of the employment contract between IIFS and Shri Alexander John George is also on record. Thus, it could be seen that this employee was in employment of IIFS but it was seconded to the assessee under a contract. The assessee reimbursed IIFS as per the contract and the deduction of the expenditure has been claimed by the assessee. Since

the person is an employee of IIFS, Form No.16 would be issued by ISS only. On the basis of all these facts and documentary evidences, there is no reason to deny the deduction of the expenditure to the assessee. We direct Ld. AO to delete this addition.

## **7. Disallowance u/s. 43B**

7.1 Upon perusal, it transpired that the service tax liability was outstanding as on 31.03.2012 for Rs.443.01 Lacs out of which an amount of Rs.350.52 Lacs was paid by the assessee before due date of filing the return of income. Accordingly, the differential of Rs.92.49 Lacs was added to the income u/s 43B.

7.2 During appellate proceedings, the assessee submitted that the assessee was following mercantile system of accounting whereby service tax collection and service tax payment was not routed through Profit & Loss Account but was being directly reflected in Balance Sheet. In other words, the assessee did not claim service tax amount in the return of income. The provisions of Sec.43B would apply only where the assessee had claimed the deduction of the expenditure. Since the assessee did not route the service tax through Profit & Loss Account, no deduction of Service Tax has been claimed and therefore, the provisions of Sec.43B would not be attracted. To support the same, reliance was placed on the decision of Hon'ble Delhi High Court in **Noble & Hewitt (I) (P) Ltd (2008; 166 taxman 48)**. However, Ld. CIT(A) confirmed the disallowance against which the assessee is in further appeal before us.

7.3 We find that Ld. CIT(A), disregarding the assessee's explanation, confirmed the stand of Ld. AO. It was the submissions of the assessee that Service Tax was not routed through Profit & Loss Account and the deduction of the expenditure was not claimed by the assessee. This

being so, the provisions of Sec.43B could not be applied to this expenditure as held by Hon'ble Delhi High Court in **Noble & Hewitt (I) (P) Ltd (2008; 166 taxman 48)**. We concur with the decisions provided it could be shown that the liability to pay Service Tax as per relevant Service Tax Rules did not arise before due date of filing return of income. Therefore, we direct Ld. AO to verify this fact and delete the disallowance if the liability to pay Service Tax did not arise as per relevant Service Tax Rules before due date of filing of return of income. The assessee to provide requisite information and substantiate its stand. This ground stand allowed for statistical purposes.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 04<sup>th</sup> April, 2022

Sd/-  
(MAHAVIR SINGH)  
उपाध्यक्ष /VICE PRESIDENT

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 04-04-2022  
*JPV*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF