

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos. 836 & 837/Chny/2020
निर्धारण वर्ष/Assessment Years:2007-08 & 2008-09

M/s. Ipath Technologies Private Ltd,
No. 79, Bazzullah Road, T. Nagar,
Chennai 600 017.

The Income Tax Officer,
Vs. Company Ward II(1)/
Salary Ward I(2),
Chennai.

[PAN:AABCI0908F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri B. Ramanakumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Ms. Helen Ruby Jesindha, JCIT
सुनवाई की तारीख/ Date of hearing : 13.04.2022
घोषणा की तारीख /Date of Pronouncement : 05.05.2022

आदेश /O R D E R

PER V. DURGA RAO., JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 6, Chennai, dated 17.02.2020 and dated 10.02.2020 relevant to the assessment years 2007-08 and 2008-09 respectively.

2. Both the appeals filed by the assessee are delayed by 165 days in filing the appeal before the Tribunal due to outbreak of COVID-19

pandemic and accordingly, the delay is condoned and admitted the appeals for adjudication.

3. The first common ground raised in both the appeals relates to confirmation of disallowance of depreciation on intellectual property rights, being software used in the business of the assessee.

4. Brief facts leading to the ground are that the assessee has claimed depreciation on intellectual property rights. However, the assessee has not proved that the intellectual property right has been purchased from Shri R. Srinivasan, MD, by producing evidence. Since there is no evidence in the agreement between the assessee and M/s. Satyam Computer Services (P) Ltd., to the effect that the software as per IPR is used in the business with M/s. Satyam Computer Services (P) Ltd., the Assessing Officer disallowed the claim of depreciation for both the assessment years 2007-08 & 2008-09. On appeal, the Id. CIT(A) confirmed the disallowance made by the Assessing Officer. Thus, the assessee is in appeal before the Tribunal.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Since there is no evidence in the agreement between the assessee and M/s.

Satyam Computer Services (P) Ltd., to the effect that the software as per IPR is used in the business with M/s. Satyam Computer Services (P) Ltd., the Assessing Officer disallowed the claim of depreciation for both the assessment years 2007-08 & 2008-09.

5.1 Before the Id. CIT(A), the assessee furnished copies of (a) IPR certificate held by Shri R. Srinivasan and agreement with assessee company for exchange of the same for total consideration of ₹.1.50 crore and (b) purchase order issued by M/s. Satyam Computers dated 18.10.2005 which shows that the license was given to use iAllway™ MIFS Server License to M/s. Satyam Computers for 12 months. The same was forwarded to the Assessing Officer for furnishing remand report. In his remand report, the Assessing Officer has also confirmed the above facts. It is clear from the remand report as well as purchase order issued by M/s. Satyam Computers dated 18.10.2005 that iAllway™ MIFS Server License has been acquired and the IPR has been used in the assessee company business for a period of 12 months, which falls under the assessment year of 2007-08. Once the depreciation on IPR is not in dispute, there is clear cut evidence of purchase order is on the record and moreover, the iAllway™ Server

License was used in the assessee company business, we set aside the order of the Id. CIT(A) on this issue and direct the Assessing Officer to allow depreciation as claimed by the assessee for the assessment year 2007-08.

5.2 So far as claim of depreciation on IPR for the assessment year 2008-09 is concerned, in the remand report, the Assessing Officer has stated that the assessee has not contested this issue by way of fresh evidence and therefore, no report on this issue was submitted before the Id. CIT(A). Since the assessee has not furnished renewal of iAllway™ Server License in subsequent period either before the Id. CIT(A) or before the Tribunal, we are not inclined to interfere with the order of the Id. CIT(A) in confirming the disallowance made by the Assessing Officer. Accordingly, the ground raised by the assessee for the assessment year is dismissed.

6. The next ground raised in the appeal for the assessment year 2007-08 relates to confirmation of disallowance of ₹.2,48,000/- towards unsecured loan given by the Director to the company. Since the assessee could not explain the source for the unsecured loan of ₹.20,50,857/-, the Assessing Officer treated the same as income from

other sources and brought to tax. On appeal, after considering the remand report of the Assessing Officer, the Id. CIT(A) restricted the addition to the extent of ₹.2,48,000/-. Against the confirmation of addition of ₹.2,48,000/-, the assessee is in appeal before the Tribunal.

6.1 We have heard the rival contentions. In support of claim of unsecured loans, the assessee has filed ledger account copy before the Id. CIT(A). Accordingly, the Id. CIT(A) has called for remand report from the Assessing Officer. In the remand report, after verification of the bank statement of Shri R. Srinivasan with UTI Bank and ICICI Bank, the Assessing Officer has observed that in respect of loan receipt entry was found in the ledger copy but corresponding entry for an amount of ₹.2,48,000/- was not available in both the above two bank accounts of Shri R. Srinivasan. Since the assessee has not produced proof for the sum of ₹.2,48,000/-, the Id. CIT(A) has restricted the addition to the extent of ₹.2,48,000/- against the total unsecured loan of ₹.20,50,857/-.

6.2 Before us, the Id. Counsel for the assessee has submitted that against the total unsecured loan of ₹.20,50,857/-, the assessee has

furnished nearly 89% of the details and could not furnish the evidence only to the extent of ₹.2,48,000/- for the reason that the assessee has misplaced and unable to trace it out and prayed for deleting the addition. We have considered the submissions of the Id. Counsel. It is not the case of the Department that the assessee has not availed any loan and more so, the assessee has produced all details available to the extent 89% of loan amount, which shows that the assessee has availed unsecured loans and moreover, loan receipt entry is very much available in the ledger accounts of Shri R. Srinivasan. Under the above facts and circumstances, the addition confirmed to the extent of ₹.2,48,000/- by the Id. CIT(A) is deleted. Thus, the ground raised by the assessee is allowed.

7. The next ground raised in the appeal for the assessment year 2008-09 relates to confirmation of disallowance of loan to the extent of ₹.5,00,000/-. During the course of assessment proceedings, on verification of the bank statements, the Assessing Officer found that various amounts credited to the account by cheques, totalling in all ₹.96,54,957/- were not offered for assessment and that only ₹.50,000/- against which TDS was made alone was admitted and therefore, the

Assessing Officer added the balance amount of ₹.96,04,957/- to the total income of the assessee. In reply to the remand report the assessee has submitted before the Assessing Officer that the amount of ₹.5,00,000/- pertains to the loan from M/s. Shreya Investments routed through the account of the Director R. Srinivasan. It was further explained before the Assessing Officer that the repayment along with interest is also routed through this account only which was also reflected in the annexure to the tax audit report. However, the Assessing Officer has not accepted in the remand report and thereby, the Id. CIT(A) has restricted the addition to the extent of ₹.5,00,000/-, against which the assessee is in appeal before the Tribunal.

7.1 We have considered the rival contentions. The Id. Counsel for the assessee has by referring to the appellate order in para 5.5 against the addition on account of cash deposits to the tune of ₹.5,66,000/-, wherein, the Id. CIT(A) has accepted the submissions of the assessee about receipt of loan of ₹.5,00,000/- from M/s. Shreyas Investment through Shri R. Srinivasan and its repayment along with interest through Shri R. Srinivasan was not doubted by the Id. CIT(A) inasmuch as the assessee had shown the ledger account for interest payment.

Therefore, the Id. Counsel for the assessee has prayed that the addition restricted to the extent of ₹.5,00,000/- may be deleted. We find force in the arguments of the Id. Counsel. We have perused the appellate order and find that in para 5.5 under addition on account of cash deposits to the tune of ₹.5,66,000/-, the submissions of the assessee about receipt of loan of ₹.5,00,000/- from M/s. Shreyas Investment through Shri R. Srinivasan and its repayment along with interest through Shri R. Srinivasan was not doubted by the Id. CIT(A) inasmuch as the assessee had shown the ledger account for interest payment and accordingly, directed to delete the addition of ₹.5,00,000/- . The same submissions of the assessee made towards addition of ₹.96,04,957/- [in para 5.2 of the CIT(A)'s order] has been rejected by the Id. CIT(A) and confirmed the addition is not correct. Under the above facts and circumstances, the addition confirmed by the Id. CIT(A) is deleted.

8. The next ground in ground No. 3 that the Id. CIT(A) erred in making an addition of ₹.1,48,764/- pertaining to disallowance u/s. 43B is not pressed during the course of appeal hearing and accordingly, the ground is dismissed as not pressed.

9. In the result, the appeal filed by the assessee for the assessment year 2007-08 is allowed and the appeal for the assessment year 2008-09 is partly allowed.

Order pronounced on the 05th May, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 05.05.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.