

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.2906/Del./2018
(ASSESSMENT YEAR : 2012-13)**

M/s. Hike Pvt. Ltd.,
(formerly known as Mobinteco P.Ltd.)
1-Bharat Crescent, Nelson Mandela Road,
Vasant Kunj, Phase – II,
New Delhi – 110 070.

vs. Pr.CIT-6,
New Delhi.

(PAN : AAHCM5052G)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Anil Bhalla, CA
REVENUE BY : Shri Sanjay Gupta, CIT DR

Date of Hearing : 26.05.2022
Date of Order : 05.07.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.

Pr.CIT-6, Delhi dated 28.03.2018 pertaining to assessment year 2012-13.

2. The grounds of appeal raised by the assessee read as under :-

“1. That having regard to facts & circumstances of the case, Id. Pr. Commissioner of Income-tax has erred both on facts and in law in assuming jurisdiction u/s. 263 and further erred in holding the assessment order u/s. 143(3)/144C(1) dated 22-03-2016 is erroneous insofar as it is prejudicial to the interest of revenue.

1.1. The order passed by the learned Pro Commissioner of Income-tax is bad in law and on the facts and in the circumstances of the appellant's case and is prayed to be quashed.

1.2. That having regard to facts & circumstances of the case, ld. Pr. Commissioner of Income-tax has erred both on facts and in law in holding that the learned Assessing officer has passed the Assessment Order without making proper enquiries and without verifying submissions made by the appellant, although the Learned Assessing officer had made proper enquiries before passing the Assessment order.

1.3. That having regard to facts & circumstances of the case, ld. Pr. Commissioner of Income-tax has erred both on facts and in law in setting aside Assessment Order by ignoring the submissions of the Assessee company that business of Assessee company is duly setup during the year under consideration and that for claiming business expenses under section 28 to 43D earning of revenue is not a pre condition.”

3. In this case, the ld. Pr.CIT gave a notice to the assessee and informed that the order passed by the Assessing Officer (AO) in this case was prima facie erroneous and prejudicial to the interests of the revenue, since the AO while framing the assessment order on 22.03.2016 had allowed an amount of Rs.2,85,00,224/- [which included depreciation of Rs. 2,77,16,925/-], being business expenditure whereas the same was not allowable as the assessee company had not set up/started its business activities during the year under consideration and the intangible asset i.e. software license purchased in the A Y 2012-13 was never put to use by the assessee company during the year under consideration. Further, in the computation of income, the assessee company had set off income from other sources i.e. interest income of Rs.90,24,8311- against the business loss.

4. Ld. Pr.CIT was not satisfied with assessee's response. He noted that company was incorporated on 13.10.2011 to carry out the business of developing, designing, marketing of gaming platform & mobile social games and this was the first return of the assessee. He further noted that assessee has made investment in purchase of intangible asset being technology license on 30.12.2012 worth Rs.22,17,35,396/- and claimed depreciation of Rs.2,77,16,925/- @ 12.5% being half of 25% for the part of the year. Ld. Pr.CIT even thereafter further noted that in subsequent year 2013-14, AO raised a query about admissibility of depreciation expenses. In response thereto, assessee stated that no revenue has been generated. Thereafter ld. Pr.CIT noted on perusal of the details of the assessee for AY 2014-15 that assessee has no revenue out of the utilization of the software under consideration. Ld. Pr.CIT took adverse inference that assessee could not generate any revenue from the date of purchase of licence/software from January 2012 till the end of year 2016. Ld. Pr.CIT held that whether business is set up or is ready to commence, it is a matter of fact which requires to be examined in the light of the facts and circumstances of each case. He noted that in the present case, the assessee, who is stated to have entered into the business of providing software services, had acquired the desired software license and had hired the requisite staff and had claimed to have taken and evaluated necessary

professional advices including the key arrangements with such parties such as taking business premise, opening bank account etc., but it still had not carried out any business. The assessee has failed to produce any documentary evidence relating to commencement of business activity. The assessee has also not generated any revenue out of the business activity claimed to have been commenced by it. It is also noted that no increase in the inventory or start of production/sale have been shown in its balance sheet and so the claim that the assessee had put the assets under consideration to use for business is not correct. Further, even during the course of proceedings u/s 263, the assessee failed to produce any documentary evidence relating to its claim in this regard.

5. Thereafter, Pr.CIT referred to section 263 and Explanation 2 thereto. He further observed that examination of the assessment records of the assessee reveals that the Assessing Officer passed the order under consideration without conducting any enquiry about commencement of business and without verifying the submissions made by the assessee. The Assessing Officer has also not considered the applicability of the judgment of the Hon'ble Apex court in Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT 227 ITR 172, in which it has been held that business had not been commenced, the interest income would be assessable under the head 'Income from other sources'. That the

assessment was completed without looking into the complete facts, resulting in loss to the revenue. That in the case of Malabar Industrial Co. Ltd. v. CIT 243 ITR 83, the Hon'ble Apex Court has held that where the Assessing Officer failed to apply his mind to the case in all perspective and the order passed by him was erroneous, exercise of the jurisdiction by the Commissioner u/s 263(1) was justified. That the ratio of this judgment is squarely applicable to the facts of the present case. Accordingly, he held that the assessment order was erroneous and so far as it is prejudicial to the interest of Revenue. He directed the AO to frame the assessment afresh by conducting proper enquiries about commencement of business activity and allowability of the expenses claimed as per the provisions of the Act.

6. Against this order, assessee has filed appeal before the ITAT. We have heard both the parties and perused the record.

7. Ld. counsel of the assessee stated that the AO has duly enquired about the issue of commencement of business and admissibility of expenditure fully vide show-cause notice dated 18.02.2015. Thereafter, assessee gave comprehensive response vide letter dated March 10, 2015. Thereafter, after being aware of the complete facts, the AO allowed the assessee's claim. Hence ld. counsel submitted that ld. Pr.CIT is totally incorrect that AO has not made proper enquiry on the issue on the basis

of which he has invoked his jurisdiction u/s 263 of the Act. He submitted that Pr.CIT has taken adverse inference only because revenue has not been earned. He submitted that all the necessary steps for the setting up of the business was already in place and Pr.CIT has not found any infirmity in the same. He further submitted that the Explanation 2 to section 263 has been wrongly invoked as none of the conditions provided in the Explanation is applicable in this case. Ld. counsel further referred catena of cases in this regard including decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 and Hon'ble Delhi High Court in the case of CIT vs. Sunbeam Auto Ltd. 332 ITR 167. He further submitted additional case laws in the case of Maruti Insurance Broking Pvt. Ltd. v. Dy. CIT (2021) 435 ITR 34 with regard to allowability of expenses after setting up of business.

8. During the course of hearing, a query was raised to the ld. counsel of the assessee regarding any date of commencement of software platform. In this regard, ld. counsel has submitted as under :-

“1.1 This is not a conventional technology purchase for purposes of manufacturing/ engineering.

1.2 The impugned agreement is for purchase of software in regard to "items of intellectual property" and was received in the form of "open source code" on the cloud on a platform similar to GitLab in the cloud. It was to be used on the cloud with the help of "Cloud Computing Tools".

1.3 GitLab is a web-based Git repository that provides free open and private repositories, issue-following capabilities, and wikis. It is a

complete DevOps platform that enables professionals to perform all the tasks in a project - from project planning and source code management to monitoring and security.

1.4 These items of intellectual property have been described on PB page 84 to 85 - Exhibit" A".

1.4.1 These are of applications and do not need any certificate of being ready.

1.4.2 These are always available on the cloud and are messaging applications.

1.4.3 These are basically reached through open source code as supplied by the transferor and Cloud Computing Tools.

1.4.4 This open source code is deployed on the cloud on a platform such as GitLab, which is similar to "Drop Box".

1.4.5 Lists of intellectual property items are (PB 84,85):

(1) SSO/Connect/Register, (2) Payment, (3) Contact Management, (4) Content Management, (5) Account Management, (6) News Feeds, (7) Sharing, (8) Advertisement, (9) Notification, (10) Anti-spam, (11) VIP System, (12) Gift System, (13) Profile, (14) Status, (15) Social Graph, (16) Apps Management, (17) Developer Portal, (18) User Control, (19) Statistics, (20) Business Intelligence, (21) Customer Service System, (22) Short URL, (23) Badge, (24) Website administration panels, (25) Check-in, (26) Community, (27) Inbox."

9. Thereafter, ld. counsel of the assessee referred to Joint Venture Agreement and submitted that the technology in the form of Intellectual Property right was handed over and ready for use and reference has been drawn to the Joint Venture Agreement where the technology has been specified in the Schedule A, a part of the Joint Venture Agreement.

10. Per contra, ld. DR of the Revenue relied upon the orders of the ld. Pr.CIT.

11. Upon careful consideration, we note that in this case, Pr.CIT has directed the AO to make further enquiry on the admissibility of expenditure, major portion of which is depreciation of software obtained by the assessee. The Pr.CIT was of the opinion that since the assessee has not earned any revenue even after few years of above said commencement, AO has not done enquiry for allowing the said expenditure. It is noted that Id. Pr.CIT himself has noted that AO has made enquiry in this regard. We note that in the paper book submitted before us, at pages 1 to 4, the notice of the AO is incorporated. On this issue, AO has made elaborate enquiry which reads as under :-

“2. i. The technology license fees paid on 30-01-2012 amounting to Rs.22,17,35,396/-;

ii) The development fees has been paid 29-02-2012,01-03-2012 and 26-02-2012 Rs.65,14,167 and Rs.1,29,71,850 is provided for in accounts on 31.03.2012;

iii) Recruitment expenses have been incurred only after receipt of share capital in February and March Rs.26,38,125/-.

iv) Revenue from operations is Nil.

v) Accounting policy of-pre-operative expenses reads as follows:

"Expenditure incurred: by the' Company from the date of start of new business, upto the date of commencement of commercial operations, not directly attributable to Fixed asset are charged to Profit and Loss in the year in which such expense is incurred." This means expense related to Fixed asset is to be capitalized in the year of commencement of operations.

v) As per Accounting policy of research and development, "development cost are expensed unless technical and commercial feasibility of the project is demonstrated, future economic benefits are probable, the company has intention and ability to' complete and use/sell the software and cost can be measured reliably". This means

development cost is a capital expense if above mentioned conditions are met.

The Assessee has paid development fees in February and March 2012, therefore you are requested to show cause under what circumstances the development expenses have been expensed off in just one month.

vi) Service revenue is recognized on completion of provision of service, No revenue has been recognized,

viii) No go live certificate for launch of platform has been furnished by the Assessee for the current assessment year

vii) As per data available in public domain the Assessee is operating following Platform:

1. Hike Messenger -Launched-12.12.2012 (AY 2013~14)
(Source: <http://en.wikipedia.org/wiki/HikeMessenger>)
- 2: Moblie Gaming Studio, Tiny Mogul Games- Launched in August 2013:(AY 2014-15)
(Source: <http://trakin/tags/business/2013/09/02/tiny-mogul-games-bharti-softbank-mobile-gaming-studio/>)

Based on above it can be safely concluded that the business of the Assessee is not yet set up in FY 2011-12 relevant to assessment year 2012-13, hence you are required to show cause why all expenses debited to Profit and, Loss account and claimed including depreciation on technology cost should not be disallowed.”

12. Thereafter, AO has made further enquiries which read as under :-

“Also show cause why the interest earned on surplus funds in FDRs should not be treated as Income from other Sources as decided in 251 ITR 32 (SC)/ 248 ITR 110 (SC) 298 ITR 132 (mad)

3. Please furnish complete set of valuation report, incomplete copy has been filed.

4. Show cause why TDS @ 10% is deducted on OAK Pacific Holdings. Furnish copy of all 15CB attained from Chartered Accountant determining tax rate. Also furnish tax residency certificate of OAK Pacific Holding (Japan).

5. What is the nature of interest of Rs.4,82,702 debited to Profit and Loss account. Show cause why the same has not been disallowed in Computation.

6. Furnish nature of foreign exchange fluctuation loss debited to Profit and Loss account.

7. Explain what compels the assessee to obtain tax audit report u/s 44AB from tax auditor when the same is not applicable.

Furnish copy of technology cost agreement and agreement for development of platform entered with OAK Pacific Holdings.”

13. The assessee made comprehensive reply which is submitted vide letter dated 10th March, 2015, which is attached at paper book pages 5 to

99. In the said reply, assessee made following submissions :-

“1. In para 2 of your questionnaire you have referred to certain observations based upon which you have concluded that the business of the assessee is not yet set up for the previous year relevant to Asstt. Year 2012-13 and you have directed to show cause why all expenses debited to Profit & Loss Account and claimed including depreciation on technology cost should not be disallowed.

2. Section 3 of the Income Tax Act states--

"Previous year" defined.

3. For the purposes of this Act, "previous year" means the financial year immediately preceding the assessment year.

Provided that, in the case of a business or profession newly set up, or a source of income newly coming into existence, in the said financial year, the previous year shall be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly comes into existence and ending with the said financial year"

2.1 There is a distinction between setting up of business and commencement of commercial operations. It is not so that the business is said to be set up only when commercial operations start. It is a trite law business is set up when one of the activities in the basket of various activities has commenced. It cannot be said that the business is set up only when all the activities of business have completed. It is an accepted proposition of law that there can be a gap between setting-up of business and starting of commercial operations.

3. You have referred to Accounting policy of pre-operative expenses which reads as follows :-

"Expenditure incurred by the company from the date of start of new business, upto the date of commencement of commercial operations, not directly attributable to Fixed Asset are charged to Profit & Loss in the year in which such expenses is incurred".

- 3.1 You have concluded incorrectly after quoting the Accounting policy as-

"This means expense related to Fixed Asset is to be capitalized in the year of commencement of operations".

- 3.2 Your understanding is not correct. What the accounting policy states that after the business is set up, expenses which do not relate to fixed assets are charged to Profit & Loss Account in the year in which such expenses are incurred.

Therefore whether before or after the business is set up, expenditure relating to fixed assets will be capitalized to fixed assets and expenses of the revenue nature will be charged to Profit & Loss account in the year in which such expense is incurred. It surely does not mean that all expenses will be capitalized in the year of commencement of operations.

4. You have again quoted an Accounting policy of research and development as-

"development cost are expensed unless technical and commercial feasibility of the project is demonstrated, future economic benefits are probable, the company has intention and ability to complete and use/sell the software and cost can be measured reliably."

- 4.1 Your conclusion the above-

"This means development cost is a capital expense if above mentioned conditions are met."

- 4.2 This is incorrect. The accounting policy means that the development cost will be capitalized only if technical. and commercial feasibility of the project demonstrates future economic benefits capable of being measured and utilised. In other words only benefits of enduring nature can be capitalized.

5. Development activity started in December 2011 which was outsourced to Oak Pacific Holdings (Japan). The work was done in China. This work of software development for the mobile platform was supervised by Mr. 'Kavin B Mittal who was director in the company.
 - 5.1 Details of Development expenses are attached.
 - 5.2 As part of the JV Agreement with OPHJ & BSBH Pte Ltd dated .6th January 2012, Mobinteco entered into development agreement with OPHJ to (i) customize the software on the mobile platform for feature phone requirement & product features that Mobinteco desired suitable for Indian market. India was and still is a predominant feature phone market compared to Western, Chinese or South East Asian markets like Japan & Korea. (ii) build games to be hosted on the platform. Games consisting of those from: their own inventory in China localized for India, new games from ground up. The business was set up in December 2011. All expenses incurred thereafter were revenue expenditure.
 - 5.3 As far as the company's operations are concerned the development cost which were incurred and expensed in the Profit & Loss account did not indicate any benefit of enduring nature because it is an ongoing business operation exercise in information technology industry to provide software for mobile platform which can enable the business to be carried out efficiently and effectively. No expenditure of capital nature can be said to have been incurred. It may however be noted that technology license fee amounting to Rs.22,17,35,396/- has been capitalized as intangible asset- and which has been put to use in January 2012.
6. The company was incorporated on 30th day of October 2011 and the first financial year ended on 31st March 2012. The business of the company was set up as soon as steps were taken to open bank accounts. The bank account was opened on 19.12.2011. However resolution for opening of bank account was approved on 17.10.2011. The company entered into a technology license agreement which was approved by the Board on 16.01.2012 and entered on 20.01.2012.
7. Oak Pacific (Japan) Holdings (OPHJ) had a built source codes for platform. List of Intellectual property items in the mobile platform assigned to Mobinteco Ltd is captured in Exhibit A of the Technology Assignment and License Agreement dated 20th January 2012. Copy attached. The technology license fee was capitalized as intangible assets in the fixed assets.
8. Nature of company's business

- 8.1 The company is in the business of developing, designing and marketing software for social network.**
- 8.2 Mobile computing devices have been rapidly adopted' worldwide. Smartphones and tablets are, to many, indispensable tools of modern life. These mobile devices, while physically small, are powerful computers in their own right and are beginning to rival traditional laptops in terms of functionality. They can also be intensely personal in nature. For example, a modern smartphone typically stores and mediates access to its users' address books, physical location, web browsing history, and myriad other data. Many mobile devices now feature a host of advanced sensors, including accelerometers, gyroscopes, and microphones. Taken together, this computing capability and a rich data environment contribute to mobile devices' popularity and utility.**
- 8.2.1 The dramatic adoption of these new consumer electronics has been accompanied by the emergence of a model for software development and distribution referred to broadly as the "apps ecosystem." Apps (a term that is simply short for "applications") are small software programs designed to run on a mobile device. Apps are characterized by convenience (installable with just one touch), low prices (including many free and ad-supported apps), and variety (including games, cookbooks, financial tools, etc.). Apps that run locally on a device take advantage of operating system functionality not available to websites rendered in a browser and often have access to a users' personal data that is stored on the device. Apps have seen significant commercial success. For example, Apple's app store offers around half a million apps, and these have been downloaded 15 billion times. Other app stores are growing rapidly and many private companies are considering their own sales environments.**
- 8.2.2 This app explosion has been facilitated by a powerful intermediary: the mobile platform. "mobile platform" which is based on any cloud-based storage or processing services associated with the operating system and the distribution mechanisms for purchasing and installing apps. These mobile platforms are important and powerful players in the new apps ecosystem. They provide a simple software stack with which applications can interact.**
- 8.3 The company is in the business of preparing software stack to be placed on the mobile platforms. It facilitates the consumers to access this consumer apps and help in generally making the interface between the mobile operating devices and Smartphone to interface with the use of apps. Therefore the**

company set up business and start developing software for the mobile platforms.

- 9. A perusal of the details of expenditure will show that bank transactions commenced from 19th January 2012. It is also reflected that the recruitment expenses were debited on 31st December 2011 thereby approving that recruitment activity commenced as early as December 2011.**
- 10. It may also be noted that the company also appointed manpower relating to accounting work in January 2012 by outsourcing the accounting book writing work to M/s. Blue Consulting.**
- 11. The company had available premises at its registered office which was situated in Bharti Crescent, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi- 110070. The directors of the company were in place after the company was set up and were carrying out operations.**
- 12. It is therefore submitted that the claim of expenditure made by the assessee company as revenue expenditure in the Profit & Loss Account is correct as the business was set up in December 2011 and all expenses thereafter till the year end are allowable as revenue expenditure.”**

14. Thereafter, a catena of case laws were referred. Assessee also attached joint venture agreement. After considering the elaborate submissions, AO has allowed the assessee's claim of expenditure. Hence, at the outset, the observation of Pr.CIT that AO has not made necessary enquiries is not at all sustainable. AO has made out enquiry and assessee has given necessary explanation. It is also not the case that Pr.CIT has made any comment as to which of the assessee's explanation is wrong. He has directed further enquiry but has not specified what further enquiry was required. When business has been established and the assessee has not earned any revenue that ipso facto cannot be a reason

to disallow the expenditure. Ld. Pr.CIT is himself aware of this proposition and hence even after noting that after 4 years of the purchase of software and establishment of business, assessee has not earned any revenue, the ld. Pr.CIT has not directed that expenditure is to be disallowed. Rather he wants the AO to make further fishing & roving enquiry without specifying what enquiries are to be done. As regards invocation of Explanation 2 to section 263 is concerned, the same mandates that the order of AO can be held to be erroneous insofar as it is prejudicial to the interests of Revenue, if in the opinion of Pr.CIT, (a) the order is passed without making inquiries or verification which should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; and (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. We find that none of the above clauses are applicable in this case. The case made out by the Pr.CIT that order is passed without making any enquiry and verification has been found to be totally unsustainable and incorrect by us. The order is also not in accordance with the direction or instruction of the Board. It is also not the case that

order is rendered without considering any decision of Hon'ble jurisdictional High Court on the point involved. The decision of Hon'ble Supreme Court referred by the Pr.CIT in Tuticorin Alkali Chemicals & Fertilizers Ltd. vs. CIT 227 ITR 172 was in a different context. In the said case, it was held that when business has not been commenced the interest income would be assessable under the head 'income from other sources'. We fail to understand how this decision is to be considered for allowability of expenditure or commencement of business which AO should have considered. Even Pr.CIT himself was not convinced that the said decision is applicable in this case as in that case nothing stopped the Pr.CIT to hold that the expenditure is not allowable. Hence, facts of the case clearly indicate that AO made requisite enquiries and assessee had given necessary replies and on being satisfied, the AO gave the necessary deductions.

15. The sole reason for Pr.CIT to ask the AO to make unspecified further enquiry is that assessee has not earned any revenue. In our considered opinion, such an order by the ld. Pr.CIT has no legal sustainability. In this regard, we refer to the following case laws:-

- (i) Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 – which holds that if ITO adopted one of the courses permissible in law and it has resulted in loss of revenue and there are two views possible and ITO has taken one view which CIT does

not agree, such a view cannot give jurisdiction to CIT to exercise jurisdiction u/s 263.

In the present case, AO has taken a plausible view after due enquiry. Hence Id. Pr.CIT is denuded his jurisdiction u/s 263 in the facts of the present case.

(ii) CIT vs. Sunbeam Auto Ltd. 332 ITR 167 (Del) :

“Held, dismissing the appeal, (i) that the Assessing Officer allowed the claim on being satisfied with the explanation of the assessee. Such decision of the Assessing Officer could not be held to be erroneous simply because in his order he did not make an elaborate discussion in that regard. The Assessing Officer had called (or explanation on the vent item from the assessee and the assessee had furnished its explanation. This fact was conceded by the Commissioner himself in his order. This showed that the Assessing Officer had undertaken the exercise of examining as to whether the expenditure incurred by the assessee in the replacement of dies and tools was to be treated as revenue expenditure or not. Therefore, it could not be said that it was a case of lack of inquiry. The accounting practice followed for a number of years had the approval of the income- tax authorities. Even for future assessment years, the very same accounting practice was accepted.”

(iii) Maruti Insurance Broking (P.) Ltd. 435 ITR 34 (Del.)

It was held in this case that business does not conform to ‘cold start’ doctrine and most cases, there was gap between

time a person or entity is ready to do business and when business is conducted and during this period, expenses are incurred towards keeping business primed up and these expenses cannot be capitalized. Hence, it was held that expenditure incurred between setting up and commencement of business could not have been capitalized and was to be allowed as business expenditure.

16. When we examine the facts of the present case on the touchstone of the above case laws, the Pr. CIT's inference that AO should make further unspecified enquiries so that assessee should not be allowed expenditure and the depreciation because the assessee has not earned any revenue is not based upon any material whatsoever. Except for an endeavour to embark upon a fishing & roving enquiry, there is no merit in the order passed by Id. Pr.CIT. In our considered opinion, the basic premise on which Pr.CIT has invoked his jurisdiction u/s 263 is legally not sustainable. Hence we set aside the order of the Id. Pr.CIT and decide the issue in favour of the assessee.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 5th day of July, 2022.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 5th day of July, 2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.Pr.CIT-6, Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.