

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI [Dr.] B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 5914/Del/2019  
निर्धारणवर्ष/Assessment Year: 2016-17

DCIT, Circle : 27 (1), New Delhi.	<u>बनाम</u> Vs.	M/s. Usha International Limited, 1005, Surya Kiran Building, 19-Kasturba Gandhi Marg New Delhi - 110 001.
		PAN No. AACT0066A
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितीकीओरसे / Assessee by :	Shri V. P. Gupta, Advocate; & Shri Anunav Kumar, Adv.;
राजस्वकीओरसे / Department by :	Shri M. Baranwal, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	05.09.2022
उद्घोषणाकीतारीख/Pronouncement on :	05.09.2022

आदेश / ORDER

PER C. N. PRASAD, J.M.

1, This appeal is filed by the Revenue against the order of the  
Ld. Commissioner of Income Tax (Appeals)-9, New Delhi [hereinafter

referred to CIT (Appeals)] dated 05.04.2019 for the Assessment Year 2016-17.

2. The Revenue in its appeal has raised the following substantive grounds of appeal:-

*“1. Whether on facts and in the circumstances of the case the Ld. CIT (A) has erred in law in deleting the disallowance of Rs.8,486/- made u/s 36(1)(va) of the I. T. Act, 1961, by the AO.*

*2. Whether on facts and in the circumstances of the case the Ld. CIT (A) has erred in law in deleting the disallowance of Rs.7,60,286/- made on account of club services and facilities.*

*3. Whether on facts and in the circumstances of the case the Ld. CIT (A) has erred in law in deleting the disallowance of depreciation of Rs.2,38,54,173/- claimed @ 25% on opening WDV of intellectual property rights.”*

3, At the outset, the ld. Counsel for the assessee submits that all the issues in the appeal filed by the Revenue are decided by the Tribunal in its favour in ITA. No. 7184/Del/2018 for the assessment year 2015-16 by order dated 25.10.2021. Copy of the order is placed on record.

4. The ld. DR fairly submits that all the issues in the appeal are decided by the Tribunal in assessee’s favour.

5. Heard rival submissions perused the orders of the authorities below and the order of the Tribunal for the assessment year 2015-16 in assessee’s own case. Ground No.1 of grounds of appeal of the Revenue i.e. against deleting the disallowance made under section 36(1)(va) of the Income Tax Act, 1961 (the Act) we find that the issue

has been considered by the Tribunal in its order for assessment year 2015-16 by following the order of the Tribunal, observing as under:-

*“9. Ground No.2 relates to the deletion of the disallowance u/s.36 (1) (Va). This issue was considered by the Tribunal (supra) at para-11 of this order the relevant findings read as under :-*

*11. Lastly, on account of disallowance of Rs. 16,717/- on account of late payment of ESI and PF, we find that this issue is also covered in favour of the assessee company by the order of the Tribunal in the appeal for the assessment year 2011-12 vide para 13 employees contribution towards provident fund has been paid by the company during the year and Ld. CIT(A) has given following findings in this regard :-*

*“5.5. The appellant submits that the aforesaid amount represents employees contribution to provident fund. Same has been paid by the company during the year. He has also pointed out that Assessing Officer while giving details of amount in the assessment order has wrongly mentioned year 2016 against 2 items instead of the year 2013. In this connection, he has referred to details given in Tax Audit Report on page 73 of the Paper Book.*

*5.6 I have perused the Tax Audit Report for the AY 2014-15 and find that the payments have been made on or before the due date of filing of return applicable in the case of the appellant. Therefore, the impugned addition made in the ground of appeal (Rs. 16717/-) deserves to be deleted in view of various decisions of the Delhi High Court including the decision in the case of CIT v. AIMIL Ltd. (2010) 311 ITR 508 (Del). Accordingly, disallowance made by the Assessing Officer of Rs.16,717/- is directed to be deleted. ”*

*12. Once the payments have been made on or due date of return of income then we do not find any infirmity in the aforesaid finding of/the Ld.CIT(A). Accordingly this ground of the revenue is dismissed.*

*10. Respectfully following the aforementioned findings, the findings of the CIT(A) are upheld.”*

6. The issue being identical, respectfully following the order of the Tribunal in assessee's own case for assessment year 2015-16, we dismiss ground No. 1 raised by the Revenue.

7. In respect of Ground No. 2 of grounds of appeal of the Revenue in deleting the disallowance made towards club services and facilities the Tribunal decided the issue as under:-

*“11. Ground No.3 relates to the deletion of the disallowance made on account of club services and facilities. This issue was considered by the Tribunal (supra) at para-10 of its order. The relevant finding read as under :-*

*“10. As regards disallowance of Rs. 6,94,236/- on account of club expenditure, we find that AO has disallowed the club services and these expenses holding that it is not related to the business activities of the assessee. Ld. CIT (A) relied upon the judgment of Hon'ble Supreme Court in the case of CIT vs. United Glass Mfg. Co. Ltd. and the earlier year Ld. CIT(A) order has deleted the said disallowance. We find that this issue is decided in favour of the assessee company by the order of the Tribunal in the appeal for the assessment year 2011-12. Accordingly this ground raised by the revenue is dismissed.”*

*12. Respectfully following the findings of the Tribunal ground No.3 is dismissed.”*

8. The issue being identical, respectfully following the order of the Tribunal in assessee's own case for assessment year 2015-16, we dismiss ground No. 2 raised by the Revenue.

9. Coming to Ground No.3 i.e. in respect of deleting the disallowance of depreciation claimed at 25% on opening WDV of intellectual property rights the Tribunal decided the issue as under:-

“13. Ground No.4 relates to the deletion of disallowance of depreciation claimed @ 25% on opening WDV of intellectual property rights.

14. This issue was considered by the Tribunal (*supra*) at para-4 of its order. The relevant findings read as under :-

“4. After considering the aforesaid submissions and on perusal of the findings of the impugned order as well as Tribunal’s orders for the earlier years we find that in so far as ground No. 1 is concerned, i.e., disallowance of depreciation, we find that AO has noted that assessee in AY 2012-13 had capitalised an amount of Rs.103,63,25,665/- towards acquisition of the intellectual property asset and claimed depreciation @ 25% treating it as intangible capital asset. AO had observed that during the assessment for AY 2012-13, it was found that the assessee has made payments to the trusts MF is more than 42% of what was paid to CT, it was determined that the payment of Rs.30,87,17,650/- made by the assessee to the Mansarover Trusb(MT)cannot be termed as wholly and exclusively incurred for business purposes. The depreciation claimed by the assessee @ 25% on the total amount spent on the MT (i.e 7,71,79,413/-) was disallowed and added to the returned income of the assessee.

5. Assessing Officer noted that during the assessment proceedings for AY 2013-14 also, the assessee has claimed depreciation on the intellectual property asset and accordingly disallowance of Rs.5,78,84,559/- was made. Considering the facts and circumstances and following the assessment order for AY 2013-14, a 25% depreciation on Rs. 17,36,35,678/- (i.e difference of Rs.23,15,38,237/- (-) Rs.5,78,84,559/-) is disallowed. Hence, the disallowance of Rs.4,34,13,420/- has been made and returned income of the assessee.

6. In the first appeal, Ld. CIT(A) had followed the order for assessment year 2012-13, wherein this issue was examined in detail which is as under :-

*'After carefully considering all the above facts and circumstances, it is held that the disallowance of depreciation on acquiring proprietary commercial information from MT, while allowing the claim of depreciation on accruing the trade marks in question from CIT, is without logic. The said intangible assets were acquired by the appellant from MT under a tripartite comprise agreement. The consideration of Rs. 17.32 crores was paid to MT as part of the overall settlement consideration of Rs. 103.63 crores. There is no basis for holding that the payment was not incurred wholly and exclusively for the purpose of business of the appellant, as it acquired the rights which enabled it to effectively carry on its business, and in fact without this payment, the appellant would not have been able to carry on the business of manufacture and sale of home appliances under the Usha brand name. Accordingly the AO is directed to delete the disallowance of depreciation of Rs.7,71,79,413/-.'*

7. *It has been informed that the revenue did not file any appeal against the order of Ld. CIT (A) in the first year i.e., in AY 2012-13. However, looking to the fact that since in this year the assessee is allowed for depreciation on WDV brought over, then an earlier position has been accepted and attained finality, then depreciation cannot be disallowed in the subsequent year. Once the depreciation has been allowed in the first year of capitalisation of expenditure, thereafter there is no basis for disallowing the consequential benefit on/WDV. Accordingly, this ground raised by the revenue is dismissed."*

15. *Respectfully following the decision of this Tribunal in A.y.2014-15 (supra) ground No. 4 is dismissed."*

10. The issue being identical, respectfully following the order of the Tribunal in assessee's own case for assessment year 2015-16, we dismiss ground No. 3 raised by the Revenue.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 05/09/2022

Sd/-  
( B. R. R. KUMAR )  
ACCOUNTANT MEMBER

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 05/09/2022

\*MEHTA\*

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	05.09.2022
Date on which the typed draft is placed before the dictating member	05.09.2022
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	05.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	05.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	05.09.2022
Date on which the final order is uploaded on the website of ITAT	05.09.2022
Date on which the file goes to the Bench Clerk	05.09.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	