

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"A" BENCH, CHENNAI**

**माननीयश्री 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. 1505/Chny/2017**  
(निर्धारणवर्ष / **Assessment Year: 2012-13**)

**&**

आयकरअपीलसं./**ITA No. 1506/Chny/2017**  
(निर्धारणवर्ष / **Assessment Year: 2013-14**)

**&**

आयकरअपीलसं./**ITA No. 1507/Chny/2017**  
(निर्धारणवर्ष / **Assessment Year:2014-15**)

**&**

आयकरअपीलसं./**ITA No. 2735/Chny/2018**  
(निर्धारणवर्ष / **Assessment Year: 2015-16**)

<b>DCIT</b> Large Taxpayer Unit-1 Chennai 101.	<b>बनाम/ Vs.</b>	<b>M/s. Sify Technologies Ltd.,</b> Tidel Park, 2 <sup>nd</sup> Floor,4, Rajiv Gandhi Salai Taramani, Chennai – 600 113.
स्थायीलेखासं./जीआइआरसं./ <b>PAN/GIR No. AAACS-9032-R</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri AR V Sreenivasan (Addl. CIT) –Ld. DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	S/Shri Vikram Vijayaraghavan (Advocate) & Saroj Kumar Parida (Advocate) – Ld. Ars

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	06-09-2022
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	06-09-2022

## आदेश / ORDER

### Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by Revenue for Assessment Years (AYs) 2012-13 to 2015-16 arises out of the separate orders of learned first appellate authority. However, the facts as well as issues are substantially the same in all the years. The Ld. AR, appearing for assessee, at the outset, placed on record issue-wise chart for all the years to submit that all the issues are covered by earlier decisions of the Tribunal in assessee's own case. The Ld. AR submitted that impugned orders have merely followed these orders and therefore, the orders do not call for any interference on our part. This position could not be disturbed by revenue before us.

2. In the above background, we proceed to adjudicate the revenue's appeal for AY 2012-13 which arises out of the order of learned Commissioner of Income Tax (Appeals)-17, Chennai [CIT(A)] dated 28.03.2017 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 31.03.2015. The assessee being resident corporate assessee is stated to be engaged in providing networking services and development of software. The issue wise adjudication is as under: -

### 3. Expenditure on Employee Stock Option Plan

3.1 The assessee claimed expenditure of Rs.2.66 Lacs incurred towards Employees Stock Option (ESOP). The same was disallowed by Ld. AO treating the same as capital expenditure.

3.2 The Ld. CIT(A), relying on Tribunal's order in assessee's own case for AY 2008-09, held the expenditure to be revenue in nature and

directed Ld. AO to allow the expenditure. Aggrieved, the revenue is in further appeal before us.

3.3 It is undisputed position that this issue has been held by Tribunal in assessee's favor in earlier years. Those decisions still prevail and are not reversed by any judicial authority. Therefore, we see no reason to deviate from the earlier decisions. The grounds raised by the revenue stands dismissed.

3.4 This issue arises in revenue's appeals for AYs 2013-14 & 2014-15 also. Facts being pari-materia the same, taking the same view, we dismiss the corresponding grounds raised in these years.

#### **4. Unearned Income**

4.1 The assessee reflected unearned income of Rs.34.01 Crores under 'current liabilities' which was not offered to tax. The Ld. AO, following assessment order for AY 2005-06, added the same to the income of the assessee.

4.2 The Ld. CIT(A), relying on Tribunal's order in assessee's own case for earlier years, deleted the addition so made. Aggrieved, the revenue is in further appeal before us.

4.3 It is undisputed position that this issue has been held by Tribunal in assessee's favor in earlier years. Those decisions still prevail and are not reversed by any judicial authority. Therefore, we see no reason to deviate from the earlier decisions. The grounds raised by the revenue stands dismissed.

4.4 This issue arises in revenue's appeals for AYs 2013-14, 2014-15 & 2015-16 also. Facts being pari-materia the same, taking the same view, we dismiss the corresponding grounds raised in these years.

## **5. Disallowance of Networking Costs**

5.1 The assessee incurred expenditure in foreign currency on account of Overseas Termination and IUC Charges. The assessee availed services of overseas service providers for transmission of voice data and also for providing bandwidth services for transmission. No tax at source (TDS) was deducted on such payment on the ground that all the payee entities earned the income outside India and the services did not accrue in India. However, Ld. AO, invoking Explanation-6 to Sec.9(1)(vi) as inserted by Finance Act 2012, treated the payment as royalty which would require TDS u/s 195. Therefore, the expenditure was disallowed u/s 40(a)(i) for want of TDS u/s 195.

5.2 The Ld. CIT(A), relying on first appellate orders of earlier years as well as Tribunal's order in assessee's own case for earlier years, held that these payments would not constitute royalty. All payees were non-residents having no PE in India and therefore, the payments would not be taxable in India. Accordingly, withholding tax would not be required on such payments. Aggrieved, the revenue is in further appeal before us.

5.3 It is undisputed position that this issue has been held by Tribunal in assessee's favor in earlier years. The latest order has been passed by Tribunal in ITA Nos.1650/Chny/2017 & ors. order dated 18.12.2018 for AYs 2009-10 to 2011-12. These decisions still prevail and are not reversed by any judicial authority. Therefore, we see no reason to deviate from the earlier decisions. The grounds raised by the revenue stands dismissed.

5.4 This issue arises in revenue's appeals for AYs 2013-14, 2014-15 & 2015-16 also. Facts being pari-materia the same, taking the same view, we dismiss the corresponding grounds raised in these years.

## **6. Disallowance of Legal and Professional Charges**

6.1 The assessee paid legal & professional charges for Rs.185.92 Lacs to entities situated outside India. The same were disallowed u/s 40(a)(i) for want of TDS u/s 195. These payments have been tabulated in para-8 of assessment order. The assessee submitted that these services were rendered outside India and therefore, the question of taxability of the same would not arise at all. However, the plea was rejected by Ld. AO.

6.2 The Ld. CIT(A), relying on first appellate orders of earlier years, held that these payments were not chargeable to tax and therefore, not liable for withholding tax u/s 195. Aggrieved, the revenue is in further appeal before us.

6.3 This issue is covered by the latest order of Tribunal in ITA Nos.1650/Chny/2017 & ors. order dated 18.12.2018 for AYs 2009-10 to 2011-12. These decisions still prevail and are not reversed by any judicial authority. Therefore, we see no reason to deviate from the earlier decisions. The grounds raised by the revenue stands dismissed.

6.4 This issue arises in revenue's appeals for AYs 2014-15 & 2015-16 also. Facts being pari-materia the same, taking the same view, we dismiss the corresponding grounds raised in these years.

7. The revenue's appeal for AY 2012-13 stand dismissed.

## **8. Lease Rental Payments**

8.1 This issue arises in AYs 2013-14, 2014-15 & 2015-16. The assessee made lease payments for assets taken on finance lease. The same has been accounted for by the assessee as per Accounting Standard-19 issued by ICAI. Accordingly, the assets have been capitalized in books of accounts. However, for Income tax purposes, the assessee did not capitalize the assets. Accordingly, it claimed principal

amount paid towards finance lease in computation of income. The Ld. AO, treating the same as capital expenditure, disallowed the same.

8.2 The Ld. CIT(A), relying upon the decision of Hon'ble Supreme Court in the case of **ICDS Ltd. (350 ITR 527)** as well as CBDT Circular No. 20 of 2001 dated 19.02.2001, held the payment to be revenue in nature. Aggrieved, the revenue is in further appeal before us.

8.3 We find that this issue is covered in assessee's favor by our own decision in **M/s Sundaram Infotech Solutions Ltd. (ITA Nos.2515 to 2517/Chny/2019 order dated 06.07.20022)**. Therefore, we confirm the stand of Ld. CIT(A) for all these years. The grounds thus raised by the revenue stand dismissed in all the three years.

9. The appeal for AY 2015-16 stand dismissed.

#### **10. Disallowance of Depreciation on Software**

10.1 This issue arises in AYs 2013-14 & 2014-15. The assessee claimed depreciation of 60% on software treating the same to be part of computer hardware. However, Ld. AO, treating the same to be an intangible asset, restricted depreciation to 25%. The Ld. CIT(A) deleted the same on the ground that computer software was explicitly included in the block of computers as per new appendix-1 prescribing rates of depreciation. Aggrieved, the revenue is in further appeal before us.

10.2 We find that New Appendix-1 as effective from AY 2006-07 prescribe higher rate of depreciation for computer software Therefore, no fault could be found in the impugned order on this issue. The grounds thus raised by the revenue for AYs 2013-14 & 2014-15 stand dismissed.

11. The appeal for AY 2013-14 stand dismissed.

## **12. Carry forward of Unabsorbed Depreciation**

12.1 This issue arises in AY 2014-15 only. The assessee had carried forward unabsorbed depreciation for AY 2001-02 for Rs.30.68 Crores. The Ld. AO held that depreciation of AYs 1997-98 to 2001-02 could not be carried forward beyond 8 years as stipulated u/s 32(2) before amendment. Therefore, the claim was denied. The Ld. CIT(A), relying on CBDT Circular No.14 of 2011 coupled with the decision of Chennai Tribunal in M/s Best & Crompton Engineering Ltd. V/s ACIT (ITA No.457/Mds/2012), held that such depreciation could be carried forward for any number of years without any restriction. Aggrieved, the revenue is in further appeal before us.

12.2 We find that this issue is covered by the decision of this Tribunal in assessee's own case for AY 2010-11, ITA No.1650/Chny/2017 & ors. order dated 18.12.2018. The bench, relying upon the decision of Hon'ble Delhi High Court in **PCIT V/s British Motor Car Co. (400 ITR 569)**, decided this issue in assessee's favor. Respectfully following the same, we dismiss the ground raised by the revenue.

13. The appeal for AY 2014-15 stand dismissed.

## **Conclusion**

14. All the appeals stand dismissed.

Order pronounced on 06<sup>th</sup> September, 2022

Sd/-

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 06-09-2022

*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