

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "C": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.6502/Del./2019  
Assessment Year 2016-17

The DCIT, Circle 12(1) Room No.405, 4 <sup>th</sup> Floor, C.R Building, I.P Estate New Delhi 11002	vs.	India Mortgage Guarantee Corporation Pvt. Ltd. A-47, Lower Ground, Hauz Khas, New Delhi 110049 PAN AAACG7758B
(Appellant)		(Respondent)

For Revenue :	Shri Jeetandra Kr. Kale, Sr.DR
For Assessee :	Shri Akshit Gupta, CA

Date of Hearing :	28.11.2022
Date of Pronouncement :	26.12.2022

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This appeal filed by the Revenue is directed against the Order of the Ld. CIT(A)-4, New Delhi, dated 06/05/2019 in Appeal No.289/18-19/CIT(A)-4 relating to the A.Y. 2016-17.

2. The relevant facts as culled from the material on records are as under :

2.1. Assessee is a company which is stated to be engaged in mortgage guarantee business. Assessee filed its return of income for A.Y. 2016-17 on 29.11.2016 declaring loss of Rs. 14,25,40,510/-. The case of the assessee company was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961 vide order dated 20/12/2018 and the total loss was determined at Rs. 12,93,34,020/- .

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 06/05/2019 in Appeal No. 289/18-19/CIT(A)-4 granted substantial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal and has raised the following grounds:-

*“1. Whether, the Ld. CIT(A) has erred on the facts and circumstances of the case by disregarding the facts brought by the AO in its order u/s 143(3) dated 14.12.2018 that "Since, as per Income Tax Act, 1961, the Software falls under the definition of intangible assets and should be*

*categorized under Intangible asset(Software) for depreciation purpose on which depreciation is available @25%.*

*2. The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hearing of appeal.”*

4. During the course of assessment proceedings A.O. noticed that assessee had purchased policy administration software license and on such license assessee had claimed depreciation at the rate of 60%. The A.O. noted that the disallowance on the same issue was made in earlier assessment years. The assessee was asked to show cause and to justify as to why the disallowance of depreciation not be made as made in earlier years. Assessee inter alia submitted that Ld. CIT(A) has decided identical issue in favour of the assessee for A.Y 2014-15 and 2015-16. The submissions made by the assessee was not found acceptable to A.O. The A.O was of the view that software falls under the definition of intangible assets and should be categorized under intangible asset for depreciation purpose on which depreciation is available

25%. He accordingly worked out the excess depreciation that was claimed by assessee at Rs. 1,32,06,490/- and disallowed the same.

5. Aggrieved by the order of the A.O, assessee carried the matter before the Ld. CIT(A), CIT(A) by following his own order in assessee's own case for A.Y 2015-16 held that assessee was eligible for depreciation at 60%. He accordingly allowed the claim of the assessee and deleted the addition.

6. Aggrieved by the order of Ld. CIT(A) Revenue is now before us.

7. Before us, the Ld. D.R. took us through the orders of A.O. and supported his order. The Ld. A.R. on the other hand reiterated the submissions made before the lower authorities and further submitted that Ld. CIT(A) while deciding the issue had noted that the facts of the case in the year under consideration are identical to that of A.Y. 2015-16 and he following his own order for A.Y. 2015-16 decided the issue in favour of the assessee. He further

submitted that aggrieved by the order of Ld. CIT(A) for A.Y. 2015-16, Revenue had carried the matter before the Tribunal and the Tribunal vide order dated 09.11.2011 in ITA No. 5263/DEL/2019 had dismissed the appeal of the Revenue and upheld the order of Ld. CIT(A). He placed on record the copy of the decisions of the Tribunal for A.Y. 2014-15 and 2015-16. He therefore submitted that in view of the aforesaid decisions of the Tribunal in assessee's own case for earlier years, the ground raised by the Revenue has no merits and the same be dismissed.

8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the allowability of depreciation on the software. According to the assessee it is eligible for depreciation at 60% whereas the Revenue's contention is that assessee is eligible for depreciation at 25%.

9. We find that the coordinate bench of the Tribunal while deciding identical issue in assessee's own for A.Y. 2014-15 and 2015-16 had held that the software purchased

by the assessee falls into the head of plant & machinery, plant and is eligible for depreciation at 60%.

10. Before us, no distinguishing facts in the present case and that of earlier years has been pointed out by the Revenue. In such a situation we find no reason to interfere with the order of Ld. CIT(A) and thus the ground of Revenue dismissed.

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

Order pronounced in the open Court on 26.12.2022.

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 26<sup>th</sup> December, 2022

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.