

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

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

**ITA No.7317 /Del./2019  
(ASSESSMENT YEAR : 2016-17)**

CAE Simulation Training Pvt. Ltd., vs. ACIT, Circle 5 (2),  
Central Wing, Ground Floor, New Delhi.  
Thapar House, 124, Janpath,  
New Delhi – 110 001.

**(PAN : AA ECC7113K)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Rohit Jain, Advocate  
Ms. Somya Jain, CA

REVENUE BY : Shri Vipul Kashyap, Sr. DR

Date of Hearing : 18.01.2023

Date of Order : 20.01.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-2, New Delhi dated 18.06.2019 pertaining to the Assessment Year 2016-17.

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

“1. That on the facts and circumstances of the case and in law, the order passed by the Ld. Commissioner of Income Tax – Appeals II [“CIT(A)”] is bad in law having been passed in violation of the principles of natural justice without affording adequate opportunity of being heard to the appellant.

2. Without prejudice, the Ld. CIT (A) has erred on facts and in law by upholding the reduction in depreciation allowance by Rs.32,208/-.”
3. At the outset, Id. Counsel for the assessee submitted that he is not pressing for ground no.1, hence ground no.1 is dismissed as not pressed.
4. The sole issue in the appeal is that the Id. CIT (A) has erred by upholding the reduction in depreciation allowance by Rs.32,208/-.
5. In this case, AO treated the Cisco Phone as part of plant and machinery and did not allow the depreciation rate of 60% claimed by the assessee applicable for computers. AO’s order in this regard reads as under :-

“ The assessee charged depreciation of Rs. 42,943/- at the rate of 30% (half of the rate of 60% as the assets were put to use for less than 180 days) on the book value of Rs.1 43,145/- of Cisco IP Phone in the block of plant and machinery. It may be noted here that the rate of depreciation is 15% on mobile phones in the block of plant and machinery and the assessee should have been applied the rate of 7.5% (half of 15%). The assessee was asked by notice u/s 142(1) dated 05.] 2.20] 8 as to why should the depreciation rate be not applied @ 15% instead of 60% on Cisco Phone and excess of depreciation claim be disallowed and added back to the income. The assessee company submitted vide reply dated 13.12.2018 that a Cisco IP Phone is a device, which accepts in the form of digital data by way of audio/video input with the help of microphone. In the support of its contention, it gave reference to the judgement of Bangalore ITA T in which applicable rate of depreciation on similar equipment was held at 60%. The assessee also referred to the judgement of Delhi IT AT in which it was held that technical devices whose functions are similar to computers are also eligible for depreciation at a higher rate i.e. rate applicable to computers.”

6. Further, AO distinguished the reliance placed by the assessee on the decision of ITAT, Bangalore Bench as well as ITAT, Delhi Bench as above. On assessee’s appeal, Id. CIT (A) upheld the disallowance.

7. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

8. Ld. Counsel for the assessee contended that the identical issue was considered by the ITAT in the case of M/s. Cisco Systems Capital (India) Pvt. Ltd. vs. Addl.CIT in IT (TP)A.No.1558/Bang/2012 for AY 2008-09 order dated 19.09.2014. ITAT on this subject has expounded as under :-

“8.3 In the case before us also, all the components of the equipment are necessary for fulfillment of the objective of the audio-visual conferencing and video streaming. Some of the components may exist independently and may also be functioning independently but in the assessee's business they are only performing the functions as input and output devices. The assessee can also use this equipment independent of the computer system used in the audio visual conferencing and video streaming activity. But did the assessee use them independently is the question. In view of the same, we are of the opinion that the AO, instead of classifying the entire equipment as plant and machinery and not computer, is required to examine each item in detail as regards its functional dependency on the computer and its independent existence. The items which are, functional dependent on computers are definitely part of computer and the items with independent existence may not be computers but wherever it is found that the device is not used independent of the computer system and the purpose of audio visual conferencing and video streaming, the same shall be treated as computers and wherever it is used independently for any other purpose it shall be treated as plant and machinery. The AO, shall, thus allow depreciation at the rate of 60% on the equipment which could be classified as computer and at the rate of 15% on the equipment which could be classified as plant and machinery. This issue is accordingly set aside to the file of the AO for re-adjudication in accordance with law and our observation above.”

9. In this regard, ld. Counsel of the assessee contended that ITAT has dealt with the issue and held that if the items which are functionally dependent on computers are definitely part of computer and the items with independent existence may not be computers but wherever it is found that the device is not used independent of the computer system an d

the purpose of audio visual conferencing and video streaming, the same shall be treated as computers and wherever it is used independently for any other purpose it shall be treated as plant and machinery. Hence, he agreed that the issue can be remitted to the file of AO to examine the issue from the ratio laid down by the ITAT in the aforesaid order.

10. Ld. DR for the Revenue fairly agreed to the above proposition.

11. Accordingly, in the interest of justice, we remit the file to the AO. AO is directed to follow the ratio laid down by the ITAT in the aforesaid order.

12. In the result, the appeal of the assessee stands partly allowed for statistical purposes.

**Order pronounced in the open court on this 20<sup>th</sup> day of January, 2023.**

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

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

**Dated the 19<sup>th</sup> day of January, 2023  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**