

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ‘ ‘ Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri K. Narasimha Chary, Judicial Member**

ITA No.182/Hyd/2022		
Assessment Year: 2011-12		
ORCHASP LIMITED Hyderabad PAN:AABCC4776F (Appellant)	Vs.	Dy. CIT Circle 1(2) Hyderabad (Respondent)
Assessee by:	Shri P. Murali Mohan Rao, CA	
Revenue by:	Shri B. Yadagiri, DR	
Date of hearing:	13/04/2023	
Date of pronouncement:	20/04/2023	

**ORDER**

**Per R.K. Panda, A.M**

This appeal filed by the assessee is directed against the order dated 23/03/2022 of the learned CIT (A)- NFAC, relating to A.Y. 2011-12.

2. The grounds raised by the assessee are as under:

*“1. On the facts and in the circumstances of the case the appellate order passed by the CIT(A) is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.*

*2. The CIT(A) ought to have appreciated the fact that the amount of investment made is completely in wholly owned subsidiary company which is revenue in nature and not a capital expenditure.*

*3. The Ld. CIT(A) ought to have accepted the Investments written off of Rs.3,60,72,141/- since the said amount was not received from the third party to the subsidiary, and thus, the same amount was written off by the virtue of the Circular No. 69 dt. 27-07-2011 issued by RBI.*

4. *The Ld. CIT(A) ought to have appreciated the fact that the appellant had, as per the FEMA regulations, obtained the permission from RBI to convert the outstanding amount into equity and thereafter, the Investments were written off by virtue of the Circular No. 69 dt. 27-07 2011 of the RBI.*

5. *The Ld. CIT(A) ought to have accepted the claim of deduction of Investments written off of Rs.3,60,72,141/- since the amount was originally offered as income, and non-receipt of the same is eligible deduction u/s 37(1) of the I.T. Act, 1961 for assessment year 2011-12.*

6. *The Ld. CIT(A) ought to have appreciated RBI circular No.69 dated 27th May 2011 which says: "the Reserve Bank of India has allowed wholly owned subsidiaries to write off the investments made in their overseas subsidiaries. "*

7. *The Ld. Assessing Officer ought to have accepted the "Investments written off of Rs.3,60,72,141/- as allowable deduction u/s 37 of the Act for this year under consideration keeping in view the decision of Hon'ble ITAT, 'C Bench, Mumbai in the case of DCIT, Range - Palmolive 10(3), Mumbai vs. Colgate India Ltd., Mumbai in ITA No.5485/Mum/2009 dated 25-10-2011 for the assessment year 2003-04 following the decision of the Hon'ble Supreme Court of India in the case of Patnaik & Co. Ltd vs. CIT (161 ITR 365).*

8. *The Ld. CIT(A) has erred in making the disallowance towards Purchase of software amounting to Rs. 9,02,037/- without considering the explanations as submitted by the appellant.*

9. *The Ld. CIT(A) ought to have appreciated the fact that the expenditure incurred towards purchases of software comprises of licence is revenue in nature and thus is allowable as an expenditure u/s 37 of the I.T. Act.*

10. *The Ld. CIT(A) erred in not considering the bills/ invoices which were duly submitted by the assessee during the course of appellate proceedings for the expenditure incurred during the year under consideration.*

11. *The Ld. CIT(A) erred in initiating penalty proceedings u/s. 271(1)(c) of the Income Tax Act since the appellant has neither concealed any income nor furnished any inaccurate particulars of income.*

12. *The assessee may add, alter or modify any other points to the grounds of appeal at any time before or at the time of hearing of the appeal."*

3. Grounds of appeal No.1 & 12 being general in nature are dismissed.

4. Grounds 2 to 7 relates to the order of the CIT (A) NFAC in disallowing an amount of Rs.3,60,72,141/- made by the Assessing Officer which was claimed by the assessee as deduction on investment written off.

5. Facts of the case, in brief, are that the assessee company is engaged in the business of I.T. enabled services and BPO service providers has filed its return of income on 29.09.2011 declaring total income of Rs.53,000/- under the normal provisions of the Act and book profit as Rs.3,79,589/-. The case was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued to the assessee to which the AR of the assessee appeared before the Assessing Officer from time to time and furnished the requisite details. The Assessing Officer noted that the assessee company has debited an amount of Rs.3,60,72,141/- towards "investment written off". From the details furnished by the assessee, the Assessing Officer noted that the said investment is in wholly owned subsidiary company and accordingly, the assessee has requested to treat the same as business expenditure and not capital expenditure. However, the Assessing Officer rejected the explanation given by the assessee on the ground that the investment is made with an intention of getting enduring benefit therefore, it is a capital investment. Therefore, the investment written off has to be treated as capital loss which is not an allowable expenditure. He accordingly disallowed an amount of Rs.3,60,72,141/- u/s 37 of the I.T. Act.

6. In appeal, the learned CIT (A) upheld the action of the Assessing Officer by observing as under:

*"5.2.1 As observed earlier, during the course of assessment proceedings, the Assessing Officer observed that an amount of Rs.3,60,72,141/- was debited to the P&L A/c as "Investments written off". In respect of this*

*write-off, the assessee submitted that the said investments were in its wholly owned subsidiary companies and therefore is an allowable business expenditure. The AO held that the said investments were made with an intention of getting an enduring benefit and therefore, is capital in nature. Accordingly, AO treated the said write-off as a capital loss and disallowed the same.*

*5.2.2 From the assessment order, it is apparent that the appellant did not make much effort to explain to the AO its claim of being allowed the said write off's of investment as a revenue expenditure. In course of the appellate proceedings, the appellant submitted that subsidiary companies at USA and UAE were set up to market its services in the USA after seeking due approval of the RBI. The subsidiary companies used to enter into contracts with the clients abroad and thereafter the work was outsourced to the appellant for which invoices were raised by the subsidiary companies on the appellant. Due to adverse market conditions, the said subsidiary companies could not realize the amounts receivable from their clients and in turn the appellant also did not realize the amounts receivable by it from the subsidiary companies. As per the directions of RBI, the said receivables were capitalized as investments in the said subsidiary companies. It was further submitted that the said receivables from the subsidiary companies were already offered as income by the appellant and its claim for write off of investments is actually the claim for Bad Debts written off which are allowable u/s 36(1)(vii). Moreover, the appellant submitted that the said issue has been decided in its favour for AY 2009-10 by the Hon'ble ITAT Hyderabad. To support its contentions the appellant submitted year-wise details of the receivables by the appellant from the said 2 subsidiary companies, the capitalization of the receivables etc.,*

*5.2.3 The contentions of the appellant have been duly considered. It is noted that this issue had also come up with First Appellate Authority (FAA) for AY 2009-10 and after seeking remand report from the AO, it was held that stipulated conditions for write-off are not being satisfied and the disallowance of write off of investments, was upheld. The appellant claims that this same issue has been decided in its favour for AY 2009-10 by the Hon'ble ITAT, however it is noted that the matter has been restored to the file of the AO to examine the facts and the claims made by the appellant and thereafter decide as to whether the write off is allowable as a revenue expenditure. Moreover, it is observed that in course of the appellate proceedings, the appellant apparently has submitted details/documents which were never produced before the AO to support its claim that the said amounts were offered as income in the respective years by the appellant. However there has been no request made by the appellant in course of the appellate proceedings for admission of such details/documents as additional evidence.*

*5.2.4 Since the issue involved is identical which has been decided by the CIT(A) for AY 2009-10, therefore following the same, for the year under consideration, the action of the AO of not allowing the appellant's claim of write off of investment of Rs. 3,60,72,141/- in respect of two of the subsidiaries, M/s Cybermate Infotek Ltd. Inc, USA and M/s Cybermate*

*Infotek Ltd. FZE, UAE, is upheld. Accordingly, the said Grounds of appeal raised by the appellant, are dismissed”.*

7. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal.

8. The learned Counsel for the assessee strongly objected to the order of the learned CIT (A)-NFAC in confirming the disallowance of Rs. 3,60,72,141/- made by the Assessing Officer treating the investment written off as capital loss as against revenue loss treated by the assessee. Referring to page 50 to 59 of the paper book, he drew the attention of the Bench to the copy of RBI approval for opening foreign subsidiary. Referring to page 60 of the paper book, he drew the attention of the Bench to the certificate of authority issued by State of New Jersey on 10.05.1999. Referring to page 61 of the Paper Book, he drew the attention of the Bench to the copy of share certificate towards investment. Referring to page 62 of the Paper Book, he drew the attention of the Bench to the copy of letter of the RBI directing for closure of the WOS. Referring to page 63 to 66 of the paper book, he drew the attention of the Bench to the copy of Circular No.69 issued by the RBI. Referring to page 67 of the paper book, he drew the attention of the Bench to the winding up petition dated 4.5.2010. Referring to page 68 to 73 of the Paper Book, he drew the attention of the Bench to the High Court order dated 15.4.2010 for winding up. Referring to page 74 of the Paper Book, he drew the attention of the Bench to the statement showing the receivables from wholly owned subsidiary, amount capitalized and investments written off in each year from financial year 1990-2000 to 2013-14.

9. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Colgate Palmolive (India) Ltd reported in 370 ITR 728 (Bom.), he submitted that the Hon'ble High Court observed that where the assessee company made investment in its 100 per cent subsidiary for business purpose, loss on sale of investment was to be treated as business loss of assessee.

10. Referring to the decision of the Hon'ble Karnataka High Court in the case of ACE Designers Ltd vs. Addl. CIT in ITA No.184 of 2013 order dated 9.9.2020, he submitted that the Hon'ble Karnataka High Court, following the decision of the Hon'ble Bombay High Court in the case of CIT vs. Colgate Palmolive (India) Ltd (Supra) held that when the assessee makes investment in its 100% subsidiary for business purpose, loss on sale of investment has to be treated as business loss of the assessee.

11. Referring to the decision of the Hon'ble Supreme Court in the case of Patnaik & Co. Ltd vs. CIT (161 ITR 365 (S.C)), he submitted that the Hon'ble Supreme Court in its decision has held that the loss suffered by the assessee on the sale of the investment must be regarded as a revenue loss.

12. Referring to the decision of the Hon'ble Bombay High Court in the case of CIT vs. Investa Industrial Corporation Ltd (119 ITR 380 (Bom)), he submitted that the Hon'ble High Court in the said decision has held that finances made by the assessee company to managed company were part of or incidental to carrying on of business by assessee company as managing agents and, if as result of managed company having gone into

liquidation, advances became irrecoverable, loss would have to be regarded as trading loss.

13. Referring to the order of the Tribunal for the A.Y 2009-10 vide ITA No.474/Hyd/2014 & ITA 631/Hyd/2014 dated 17.4.2015, he submitted that identical issue had come up before the Tribunal in assessee's own case and the Tribunal had restored the issue to the file of the Assessing Officer. However, the Assessing Officer has not yet passed the order. He submitted that for the impugned A.Y details were given and available. Therefore, in view of the decision of the Hon'ble Bombay High Court and the Hon'ble Supreme Court the investment written off amounting to Rs. 3,60,72,141/- has to be allowed as a revenue expenditure.

14. The learned DR, on the other hand, strongly supported the order of the learned CIT (A). He submitted that before the learned CIT (A), the assessee has submitted certain details which were never produced before the Assessing Officer to support its claim that the said amount were offered as income in respective year by the assessee. The assessee has also not made any request for admission of additional evidences during the course of appellate proceedings before the CIT (A). Further, the assessee has not disclosed how the amount has become bad and whether any steps have taken by the assessee or not. He accordingly submitted the order of the CIT (A) being in conformity with law has to be upheld. In his alternative contention, he submitted that he has no objection if the matter is restored to the file of the Assessing Officer with similar direction given by the Tribunal in assessee's own case for the A.Y 2009-10.

15. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case disallowed an amount of Rs. 3,60,72,141/- debited by the assessee in the P&L A/c towards investment written off on the ground that such investment was made with an intention of getting enduring benefit thereof and therefore, has to be treated as a capital loss. We find the learned CIT (A) upheld the action of the Assessing Officer the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that all the details of investment in the subsidiary company and how it was written off has already been produced before the lower authorities, therefore, in view of the binding decision of the Hon'ble Supreme Court and various High Courts, the written off investment has to be allowed as a revenue expenditure.

15.1 We find identical issue had come up before the Tribunal in assessee's own case for the A.Y 2009-10 and the Tribunal in ITA No.474/Hyd/2010 order dated 17.4.2015 has restored the issue to the file of the Assessing Officer by observing as under:

*"5. In the P&L A/c assessee has claimed the above amount as a write-off. AO noted that investment written-off cannot be treated as an allowable deduction as it is not a revenue expenditure. Before the CIT(A), assessee submitted that this amount was originally shown as income in the Books of Accounts and is receivable from wholly owned subsidiary in USA. Since the amount was not received from the third party to the subsidiary, under the FEMA regulations permission of the RBI was obtained to convert the outstanding amount into equity. Later on in view of the RBI's circular No.69 dt. 25-07-2011, 22.5% of the amount invested was written-off during the year. Since the amount was originally offered as income, non-receipt of the same was eligible as deduction u/s.37(1). After obtaining the Remand Report from the AO and also noted*

*down the amounts remitted and capitalization of receivables, Ld. CIT(A) concluded that the write-off does not satisfy the conditions prescribed. Before us, Ld. AR filed various annual reports in support that the amount was originally offered as income and receivable from subsidiary was converted to equity, in view of the FEMA provisions, and then by virtue of RBI circular written-off the amount. Since the amount was originally offered as income, subsequent write-off is allowable as revenue expenditure, it was contended.*

*5.1. Without going into the merits of the claim, we are of the opinion that this claim also requires re-examination. Assessee's claim that amounts are originally offered as income, subsequently converted to equity of the subsidiary and written-off on the basis of the circulars of RBI requires examination by AO, as none of the figures are comparable on the basis of the annual reports filed before us. In order to examine the issue and to give one more opportunity to assessee to substantiate the claim, matter is restored to the file of AO with a direction to examine the factual aspect of the contentions of assessee and then decide whether the amount can be allowed as revenue expenditure or not as per the provisions of Act. For this purpose, this issue is also restored to the file of AO and Ground No.4 is accordingly considered allowed for statistical purposes."*

16. Even though the Assessing Officer, as mentioned by the learned Counsel for the assessee, has not passed any order till date, however, following the judicial precedents, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to decide the issue for the present year in the light of the direction of the Tribunal for A.Y 2009-10 at the earliest. While doing so, the Assessing Officer shall keep in mind the various decisions relied on by the learned Counsel for the assessee including that of the Hon'ble Supreme Court in the case of Patnaik & Co. vs. CIT (Supra). The Assessing Officer shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. We hold and direct accordingly. The first issue raised by the assessee in the ground of appeal is treated as allowed for statistical purposes.

17. The second issue as per ground of appeal Nos. 8 to 10 relate to the disallowance of purchase of software amounting to

Rs.9,02,037/- by the Assessing Officer and upheld by the learned CIT (A) NFAC.

18. Facts of the case, in brief, are that the Assessing Officer during the course of assessment proceedings noted that the assessee has debited an expenditure of Rs. 9,02,037/- under the head software purchase in the P&L A/c. On being asked by the Assessing Officer, the assessee submitted that the software purchases debited to P&L A/c pertain to license fee for the year only and hence cannot be disallowed treating it as a capital expenditure. However, the Assessing Officer did not accept the contention of the assessee on the ground that the assessee had not produced the bills/invoices for the items it pertains. He therefore, disallowed the claim of expenditure made by the assessee amounting to Rs.9,02,037/-.

19. In appeal, the learned CIT (A) NFAC upheld the action of the Assessing Officer by observing as under:

*“5.3.1 As mentioned earlier, in the course of the assessment proceedings, the AO observed that the assessee has claimed expenditure of Rs.9,02,037/- on account of Software Purchases'. The assessee contended that the software purchases are in respect of annual software subscription and therefore is allowable as a revenue expenditure. However, the assessee failed to produce the bills/invoices etc in respect of these software purchases. In absence of bills / invoices etc, the assessee could not establish that the said expenditure incurred on software purchases of Rs.9,02,037/-, is revenue in nature. Therefore, the AO proceeded to disallow the same and add it to the total income of the assessee.*

*5.3.1 In course of the appellate proceedings, the appellant claimed that the supporting bills/vouchers in respect of the said software purchases were submitted to the AO in the course of the assessment proceedings. However, the AO has categorically mentioned in the assessment order that these supporting evidences were not produced. Further, despite specific letter for submission of evidence of said software purchases, the appellant has not provided them during the appellant proceedings. Moreover, the assessee has neither provided any proof to show that the*

*AO is incorrect in his reporting of the fact that the supporting evidences in respect of said software purchases were not produced.*

*5.3.2 In view of the aforesaid discussion, no infirmity is found in the action of the AO of disallowance of Rs.9,02,037/- related to the purchase of software for non-submission of the supporting evidence in the form of bills/vouchers. Accordingly, Grounds of Appeal Nos.7 to 9, are also dismissed.”*

20. Aggrieved with such order of the learned CIT (A) NFAC, the assessee is in appeal before the Tribunal.

21. The learned Counsel for the assessee referring to page 84 to 93 of the paper book drew the attention of the Bench to the copy of the letter addressed to the Assessing Officer wherein the details of the software purchases amounting to Rs.9,02,037/- were enclosed. He submitted that the remarks given by the Assessing Officer is contrary to the facts since the assessee has produced all the details and therefore, the Assessing Officer is not justified in stating that the assessee did not produce the relevant bills and vouchers and the learned CIT (A) is not justified in upholding the wrong order of the Assessing Officer.

22. Referring to the decision of the Hon'ble Delhi High Court in the case of New Delhi Television Ltd vs. ACIT reported in (2020) 117 Taxmann.com 212, he submitted that in the said decision, the Hon'ble Delhi High Court has held that the expenditure on software such as software upgradation licence and under the head “other software” are revenue in nature. Relying on various other decisions, he submitted that the order of the learned CIT (A) NFAC on this issue be set aside and the ground raised by the assessee should be allowed.

23. The learned Dr, on the other hand, heavily relied on the order of the learned CIT (A) NFAC.

24. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case disallowed an amount of Rs.9,02,037/- debited by the assessee in the P&L A/c under the head software purchase on the ground that the assessee did not file the relevant bills/invoices of the items for which it pertains. He, therefore, treated the purchase of software as capital expenditure and disallowed the same u/s 37 of the I.T. Act. We find the learned CIT (A) sustained the disallowance made by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraphs. From the paper book filed by the assessee, we find the assessee, vide letter dated 23.11.2013, had filed the details of software purchases of Rs.9,02,037/-, the details of which are as under:



submitted on 23.11.13 84  
23.11.13  
24

The Asst Commissioner of Income Tax  
Circle 1 (2)  
Aayakar Bhavan  
HYDERABAD.

23rd November 2013

Madam,

Sub : Submission of Information

Ref : Notice u/s 142 (1) - PAN AABCC4776F ~~19~~ 2011 - 2012

With reference to the above, we are herewith furnishing information as follows

(1) Software Purchases Rs.9,02,037/-

S.No	Particulars	Figures in Rupees		Remarks
		Amount		
1	Softcell- Symantec end point Antivirus	153,100.00		Invoices Enclosed
2	Softcell- Symantec end point Antivirus	5,515.00		Invoices Enclosed
3	PRO-Support Services	4,572.00		Invoices Enclosed
4	Softcell- Symantec end point Antivirus	108,728.00		Invoices Enclosed
5	Softcell- Sonic Wall	49,624.00		Invoices Enclosed
6	Focus Ver 6.01 LAN	20,592.00		Invoices Enclosed
7	Focus Customisation & Implementation	2,427.00		Invoices Enclosed
8	Alliance Prosys-V Studio	338,052.00		Invoices Enclosed
9	Alliance Prosys-Desktop OVL-Professional	219,419.00		Invoices Enclosed
		<u>902,029.00</u>		



25. When the learned DR was asked to verify from the assessment record as to whether the above letter was available in the assessment record along with invoices, the learned DR after verification of the assessment record which was available at the time of hearing before us, fairly conceded that such bills are available in the assessment record. He however, submitted that due to work pressure, the Assessing Officer might have missed out on this while drafting the order. This type of conduct by the Assessing Officer has to be deprecated since the assessee has filed relevant details along with documentary evidences and the Assessing Officer writes in the order that no such bills/invoices were filed. The Hon'ble High Courts and Coordinate Benches of the Tribunal are consistently holding that the expenditure on software such as software upgradation license and right to use software and accounting and other softwares are revenue in nature. We find the Hon'ble Madras High Court in the case of CIT vs. Danfos Industries (P) Ltd report in (2021) 133 Taxmann.com 266 (Mad.), while adjudicating an identical issue has observed as under:

*“11. With regard to the license fee, which was for acquiring a software license of shelf life of less than two years was held to be as allowable as revenue expenditure in CIT V. Toyota Kirloskar Motors (P) Ltd. (2013] 30 taxmann.com 294/213 Taxman 49 (Mag.M[2012] 349 ITR 65 (Kar) In CIT V, Robert Bosch India Ltd. 2014] 50 taxmann.com 275 (Kar.) the amount paid by the assessee for purchase of software was held to be revenue expenditure even when the same was used in course of business of assessee not only during the assessment year under Consideration, but also during the subsequent year. In Oriental Bank of Commerce v. Addl. CIT (2018] 93 taxmann.com 432 (Delhi) the expenditure incurred by the assessee on acquiring license to use software which did not confer any enduring benefit on assessee was allowed as a deduction under section 37(1) of the Act, wherein the decision of the Hon'ble Supreme Court in Alembic Chemical Works Co. Ltd. v. CIT [1989] 43 Taxman 312/177 ITR 377 was followed. In CIT v. Lakshmi Vilas bank Ltd. [2018] 97 taxmann.com 105/258 Taxman 193 (Mad.) expenditure incurred by the assessee towards software expenses was treated as revenue expenditure as advantage, though endured for an indefinite period, it merely facilitated assessee's trading operation, enabling it to carry on business more efficiently. In the said case, the contentions of the assessee that*

*the software was a pre-designed software and not customized to suit the assessee's particular requirement was taken note of. We pointed out this fact, because the Tribunal has rendered a factual finding that the software was to operate the Windows platform, which will go to show that it has not been customized for a particular requirement. Similar decision taken in KGISL Technologies & Infrastructures (P) Ltd. v. Asstt/Dy. CIT [TCA Nos. 73 & 74 of 2011, dated 27-II-2018] wherein the Court, apart from taking note of decision in Alembic Chemicals Works Co. Ltd. case (supra) noted the decision in CIT v. Southern Roadways Ltd. 2007] 158 Taxman 1(Mad.) and decided the substantial questions of law in favour of the assessee by treating the expenses incurred in developing/upgrading the software to be revenue expenditure.*

*12, In the light of the above discussions, we hold that the Tribunal was right in dismissing these appeals filed by the revenue. In the result, the Tax Case Appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs. Consequently, connected Miscellaneous Petitions are closed”.*

26. The various other decisions relied on by the learned Counsel for the assessee also support his case to the proposition that the expenditure towards software license is revenue expenditure in nature. Since the assessee in the instant case has filed all the relevant details along with supporting bills/invoices, during the assessment proceedings itself, therefore, respectfully following the decision of the Hon'ble Madras High Court in the case of CIT vs. Danfos Industries (P) Ltd (Supra), we hold that the learned CIT (A) NFAC is not justified in confirming the disallowance of Rs.9,02,037/- disallowed by the Assessing Officer treating the software expenditure as capital in nature. Accordingly, the order of the learned CIT (A) NFAC is set aside and the Assessing Officer is directed to allow the expenditure of Rs.9,02,037/- debited in the P&L A/c under the head software purchases. The 2<sup>nd</sup> issue raised by the assessee in the grounds of appeal is allowed.

27. The third issue relates to the initiation of penalty proceedings u/s. 271(1)(c) of the Income Tax Act which is

premature at this juncture. We, therefore, dismiss the ground on this issue.

28. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 20<sup>th</sup> April, 2023.

<b>Sd/-</b> <b>(K. NARASIMHA CHARY)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(R.K. PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 20<sup>th</sup> April, 2023

**Vinodan/sps**

Copy to:

S.No	Addresses
1	Orchasp Ltd C/o P Murali & Co. C.As,6-3-655/2/3 Somajiguda, Hyderabad 500082
2	Dy.CIT, Circle 1(2) Hyderabad
3	NFAC Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*