

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **148/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2020-21

Deputy Commissioner of  
Income Tax,  
Central Circle 1(4),  
Chennai – 600 034.

M/s. Financial Software and  
v. Systems Pvt Ltd.,  
No. 42, Ground Floor, Saradha  
Apartments, 3<sup>rd</sup> Main Road,  
Gandhi Nagar, Adyar,  
Chennai – 600 020.

**[PAN: AAACF-2351-C]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT  
: Shri. Vijay Narayanan, CA

सुनवाई की तारीख/Date of Hearing

: 18.07.2023

घोषणा की तारीख/Date of Pronouncement

: 26.07.2023

**आदेश / O R D E R**

**PER MANJUNATHA. G, ACCOUNTANT MEMBER:**

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 22.11.2022 and pertains to assessment year 2020-21.

2. The revenue has raised the following grounds of appeal:

"1. The order of the Id. Commissioner of IT (Appeals) is erroneous on facts of the case and in law.

*2.1. The Ld. CIT(A) erred in allowing depreciation on ATMs at the rate of 40% by treating the ATMS as computers, without appreciating the fact that the ATMS are electronic device and therefore eligible for deprecation as applicable to plant and machinery only.*

*2.2 The Ld. CIT(A) ought to have appreciated the fact that the ATMS are electronic devices guided by external computers and cannot carry out any of the functions of a computer and therefore depreciation as applicable to computers cannot be allowed for ATMs.*

*2.3 The CIT(A) erred in not appreciating the decision of the Hon'ble High Court of Karnataka in the case of M/s. Diebold systems Private Limited Vs. Commissioner of Commercial taxes, wherein it was clearly held that ATM is neither a computer nor a part of a computer but an electronic device only.*

*3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal.”*

3. The brief facts of the case are that, the assessee M/s. Financial Software and Systems Pvt Ltd., is engaged in the business of providing software and related services for banking and financial service sector. The appellant particularly provides services in electronic payment transactions under different modules. The assessee has filed its return of income for the assessment year 2020-21 on 12.02.2021, by admitting total income of Rs. 43,55,26,900/-. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed depreciation on ATM machine @ 40% as against 15% rate

applicable to normal plant and machinery. Therefore, after considering relevant submissions of the assessee, disallowed excess depreciation claimed over and above normal depreciation of 15% on plant and machinery and made addition of Rs. 8,28,55,082/-. The assessee carried the matter in appeal before the first appellate authority and the Id. CIT(A) for the reasons stated in their appellant order and also by following ITAT, Chennai Benches, order in assessee's own case for earlier assessment year, deleted addition made by the Assessing Officer. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

4. The Id. DR, Shri. AR V Sreenivasan, Addl. CIT, supporting the order of the Assessing Officer submits that, although the issue is covered by the decision of the ITAT, Chennai Benches in assessee's own case for earlier years, but fact brought on record by the Assessing Officer clearly shows that ATM machines are not computer and computer software to claim higher depreciation of 40% as against normal depreciation eligible for plant and machinery. But, he fairly agreed that the issue is covered in favour of the assessee by the decision of ITAT, Chennai Benches for earlier years.

5. The Ld. Counsel for the assessee, submits that the issue is covered in favour of the assessee by the decision of the ITAT, Chennai Benches in assessee's own case for assessment year 2017-18 in ITA No. 439/Chny/2022, where the tribunal by following its earlier order for assessment years 2015-16 & 2016-17 held that ATM machines are eligible for higher depreciation as claimed by the assessee.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the tribunal in assessee's own case for assessment year 2017-18 in ITA No. 439/Chny/2022, dated 24.08.2022, where the Tribunal by following its earlier order for assessment years 2015-16 & 2016-17, held that ATM machines are entitled for higher depreciation of 60% as against normal depreciation of 15% allowed by the Assessing Officer. The relevant findings of the tribunal are as follows:

*"7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for the assessment year 2015-16 & 2016-17 in I.T.A. Nos. 2126 & 2127/Chny/2019 dated 17.03.2020, wherein, the Tribunal by following earlier*

decision in assessee's own case for the assessment year 2013-14 and 2014-15 and held that the assessee is entitled for 60% depreciation on ATM machines. The relevant findings are as under:

"9. We heard the rival submissions and perused the material on record. The issue in the present appeal is covered in favour of the assessee in assessee's own case for assessment years 2013-2014 and 2014-2015, wherein it is held as follows.

"6. We have heard the rival submissions. The primary facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. The short point that arises for our consideration is as to whether the ATMs are eligible for depreciation at the rate of 60% treating it at par with the computer and computer peripherals. The ld DR vehemently argued that the ATM is not a computer and it is merely a cash dispensing machine. From the paper book submitted by the assessee, more particularly in pages 1 to 4, it is evident from the pictorial representation thereon, that the ATM has got a card reader, biometric reader, cash camera, consumer awareness mirrors, has got highly reliable note validation technology, having deposit capacity of 10000 bank notes minimum in secure deposit box, minimized jam rate with self diagnosis and failure recovery capability, etc. He also argued that ATM is built to consume upto 40% less energy than the previous generation of cash dispensers currently available in the Indian market and it delivers incremental power savings and sustainable deployment throughout the year.

6.1. We find that the issue under dispute is directly addressed by the co-ordinate bench of Kolkata Tribunal in the case of Royal Bank of Scotland N.V. vs DDIT (International Taxation) reported in (2017) 88 taxmann.com 330 (Kolkata – Trib.) dated 13.4.2016 (wherein one of us was the author) had held that :-

8.2 We have heard the rival submissions. We find that the ATM machines are nothing but computers as they deal with the functions of decoding the information, processing the same and giving the output. The Learned AR submitted that ATM is a computer terminal activated by a magnetically encoded debit card that allows a person to make deposits to and withdrawals from his account pay bills, transfers money between his account at any time. The inbuilt computer software therein allows the person to make financial transactions and check the account balances. It was the submission of the Learned AR that inside every ATM there is a computer which is not very different from any other personal computer but the basic function of connecting a person to the bank ATM network and accessing his account information are done by the ATM and the software used in the ATM is also the same software which is used in the computer. We also find that similar issue has been addressed by the Special Bench of Mumbai Tribunal in the case of Dy. CIT v. Datacraft

*India Ltd. [2010] 40 SOT 295 wherein the definition of 'computer' given by the Information Technology Act, 2000 has been discussed and it has been held that the computer is to perform logical, arithmetical and memory functions on data etc and it is not only the equipment which perform such functions that could be called as computer but includes all input and output devices which are connected to or related to it. The Special Bench accordingly held that routers and switches are also to be included in the block of computers entitled to depreciation at the rate of 60%. We find that the ATM machine is doing the logical, arithmetic and memory functions by manipulations of electronic magnetic or optical impulses giving debit or credit cash and thereafter dispenses the case and gives a printed receipt and hence it could be safely concluded that computer is an integral part of ATM machine and on the basis of the information processed by the computer in the ATM machine only, the mechanical functions of the dispensation of cash or deposit of cash is done.*

*8.2.1. We find that the issue is dealt with by the co-ordinate bench of Delhi Tribunal in the case of Global Trust Bank Ltd. (supra), wherein it was held that :—*

*7. ATM is the computerized telecommunication device that allows bank's customers to access the bank at places other than the normal bank without having to take the trouble to go to the bank in person and collect the cash as is done under the conventional method of withdrawing money from the bank. The ATM machines are computerized machines which not only allow the customers to withdraw money but they can check the account balance, pay bills, purchase goods and services, and therefore, unless it is computerized and linked with the main server, it is not possible to operate the ATM.*

*10. In this connection, a reference is also invited to the Information Technology Act, 2000 wherein section 2(i) defines the term "computers" which also includes "computer network". The term "computer network" means the interconnection of one or more computers through the use of satellite, microwave, terrestrial line or other communication media and terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained. From this angle also, Local Area Network (LAN), Wide Area Network (WAN) and ATM would undoubtedly form a part of computer. 11. In the light of the view we have taken above, we direct the AO to allow depreciation at the rate of 60% on LAN, WAN and ATM equipments. We order accordingly.*

*8.2.2 .....*

*8.2.3 In respect of the case relied on by the Learned DR on the decision rendered by this tribunal in assessee's own case for Asst Year*

2004-05, we find that this decision was rendered on 30.6.2010 and thereafter much water has flown on the impugned issue by the decisions of Delhi and Mumbai Tribunal and the decision of Bombay High Court. Respectfully following the aforesaid judicial precedents, we have no hesitation in directing the Learned AO to allow depreciation at the rate of 60% on ATMs. Accordingly, the ground no. 5 raised by the assessee for the Asst Years 2005-06 and 2006-07 are allowed.

6.2. We also find that the decision relied upon by the ld DR on Hon'ble Karnataka High Court supra was rendered in the context of Karnataka Sales Tax Act and not under Income Tax Act. In this regard, we find that the Hon'ble Supreme Court in the case of Jagatram Ahuja vs CIT reported in 246 ITR 609 (SC) had observed as under:-

23. We find that Kantilal Trikamlal's case (supra) supports the view taken in N.S. Getti Chettiar's case (supra). Added to this, section 2(15) of the Estate Duty Act, defining 'property' carne up for consideration in Kantilal Trikamlal's case (supra). We may state here itself that the word sand expressions defined in one statute as judicially interpreted do not afford a guide to construction of the same words or expressions in another statute unless both the statutes are paramateria legislations or it is specifically so provided in one statute to give the same meaning to the words as defined in other statute. The aim and object of the two legislations, namely, the Gift-tax Act and the Estate Duty Act are not similar.

It is obvious that the purpose behind introduction of Karnataka VAT Act and Income Tax Act 1961 are totally different and moreover one is a state legislation and another is a central legislation. Hence the words and expressions in one statute cannot be imported into another statute unless both the statutes are pari materia legislations or one statute provides for the meaning to be imported specifically from another statute in respect of certain words and expressions. In the instant case, none is present and hence the reliance placed on the decision of Hon'ble Karnataka High Court rendered in the context of Sales Tax Act supra does not advance the case of the revenue.

6.3. In any case, we find that the decision of Hon'ble Bombay High Court on the very same issue is in favour of the assessee in the case of CIT vs Saraswat Infotech Ltd in Income Tax Appeal (L) No. 1243 of 2012 dated 15.1.2013. The question raised before the Hon'ble Bombay High Court was as under:- b) Whether on the facts and circumstances of the case the ITAT was right in holding that depreciation on ATM is allowable @ 60% ignoring the fact that ATM is a cash dispensing machine with a projector and therefore is in nature of plant and machinery and therefore depreciation should be provided @ 15% ?

The Hon'ble Bombay High Court observed as under:-

3) *The Assessing Officer was of the view that the UPS and ATMs would not fall under the category of computers and being part of plant and machinery / office equipment would be eligible for depreciation only at 15%. Similarly, he disallowed the claim for depreciation on software licence on the ground that the same was not put to use in the previous year to the assessment year 2008-09. Consequently the excess claim of depreciation made by the respondent assessee was disallowed.*

4) *In appeal the CIT(Appeals) upheld the findings of the Assessing Officer.*

5) *In second appeal, the Tribunal by its order dated 14/3/2012 held that UPS is an integral part of the computer system and regulate the flow of the power to avoid any kind of damage to the computer network due to fluctuation in power supply which could lead to loss of valuable data. The Tribunal relied upon the decision of the Delhi High Court dated 20/1/2011 in the matter of CIT v. Orient Ceramics and Industries Ltd in which UPS was held to be the part of the computer system and depreciation at 60% was allowed. Similarly, so far as ATMs are concerned, the Tribunal on finding of fact concluded that ATM cannot function without the help of computer and would be a part of the computer used in the banking industry. Reliance was placed by the Tribunal upon the decision of the Delhi Bench of Tribunal in the matter of DCIT v. Global Trust Bank (ITA No. 474/D/09) wherein it has been held that ATM was a computer equipment and depreciation @ 60% was allowed. So far as the use of software is concerned, the Tribunal records a fact that the evidence of the use of the software on 31/3/2008 was produced before the Tribunal. Thus, the Tribunal held that depreciation @ 30% on software was rightly claimed.*

6) *We note that the Tribunal has arrived at a finding of fact on all the three questions. The revenue has not been able to show that the above finding of fact is perverse. Thus, we do not see any reason to entertain question (i) , (ii) and (iii) above.*

7) *Accordingly, the appeal is dismissed with no order as to costs.*

6.4. *We find that the Hon'ble Apex Court in the case of CIT vs Vegetable Products Ltd reported in 88 ITR 192 (SC) had held that when there are two conflicting decisions of two different high courts (non-jurisdictional) , then the construction that is favourable to the assessee is to be adopted.*

6.5. *Hence in the instant case, the decision of Hon'ble Bombay High Court supra which was rendered in the context of Income Tax Act and duly addressing the arguments of the ld DR before us also, would rule the fort and accordingly we direct the ld AO to grant depreciation at the*

rate of 60% on ATMs for the Asst Year 2013-14 and the grounds raised by the assessee in this regard are allowed. This decision would apply with equal force for Asst Year 2014-15 also''.

The submission of the ld. CIT-Departmental Representative that higher rate of depreciation cannot be allowed on ATM machines as applicable to the computers cannot be accepted in view of the fact the Hon'ble Karnataka High Court in the case of Diebold Systems (P.) Ltd. (supra) wherein while interpreting an entry in the schedule in Karnataka Sales Tax Act, 1957 on the basis of commercial parlance meaning, over technical meaning, holding thereunder that ATM is not a computer by itself but are electronic goods would not govern the interpretation to be assigned on the same issue arising under the Income-tax Act, 1961 in view of the settled principle of judicial interpretation, namely, that the words and expressions defined in one statute as judicially interpreted do not afford a guide to the construction of the same words or expression in another statute, unless both the statutes are *pari materia* legislations or it is specifically provided in one statute to give the same meaning to the words as defined in another statute [Jagatram Ahuja v. CGT (2000) 246 ITR 609/113i Taxman 459 (SC)]. The Hon'ble Supreme Court of India in the case of Jagatram Ahuja (supra) while laying down the said principle clarified that aims and object of the two legislations, namely, the Gift Tax Act and the Estate Duty Act, are not similar. The Karnataka Sales Tax Act and the Income-tax Act, 1961 are not similar, i.e., *pari materia* legislations. In the matter of interpretation of an entry under the sales tax laws 'Trade Test' or 'Common Parlance Test' is applied while considering whether a particular item/goods fall in an entry or not, whereas under the Income-tax Act, 1961, particularly when considering whether an item is to be considered as 'plant and machinery' and/or 'building' or any of the items specified in the Appendix to the Income-tax Rules, 1962, functional test is the decisive test, as ruled by the Hon'ble Supreme Court of India in numerous cases, one such being CIT vs. Anand Theatres (2000) 244 ITR 192/110 Taxman 338. In other words, the test would be: Does an ATM fulfil the functions of a Computer in the business activity of an assessee? Is it a tool of his trade with which it carries on his business? If the answer is in affirmative, it would be a computer and moreover the issue was already decided in favour of the assessee in assessee's own case by the Co-ordinate Bench of the Tribunal and hence, we do not find any reason to depart from the findings of the Co-ordinate Bench of the Tribunal. Accordingly, we direct the Assessing Officer to allow depreciation @60% as claimed by the assessee. Thus, the appeal filed by the assessee in ITA No.2126/CHNY/2019 for assessment year 2015-2016 stands allowed."

8. In this view of the matter and following the decisions of the Coordinate Benches of the Tribunal in assessee's own case for earlier assessment years, we direct the Assessing Officer to allow depreciation at 60% on ATM machines as claimed by the assessee.

7. In this view of the matter and consistent with view taken by the coordinate bench in assessee's own case for earlier assessment year, we direct the Assessing Officer to allow higher depreciation of 40% as claimed by the assessee on ATM machine.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the court on 26<sup>th</sup> July, 2023 at Chennai.

**Sd/-**

(वी दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(मंजुनाथ. जी)

**(MANJUNATHA. G)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 26<sup>th</sup> July, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF