

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1704/Mum/2023
(A.Y. 2018-19)**

ACIT, Circle 4(2)(1) Room No. 640/642, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 40	Vs.	First Advantage Private Limited, First Floor, Interface Building No.7, Link Road, Malad (West) Mumbai - 400064
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACQ0706E		
Appellant	..	Respondent

Appellant by :	Ms. Zeenia Handa
Respondent by :	Nitesh Joshi & Sunil Jhunjhunwala

Date of Hearing	19.07.2023
Date of Pronouncement	24.07.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the revenue is directed against the order passed by the Id. CIT(A) NFAC, dated 14.03.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- "1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) erred in deleting the disallowance made under Section 37(1) of the Act for an amount of Rs.2,01,96,568/- incurred towards software license expenses by considering the same as Revenue expenditure.*
- 2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in considering the expenses incurred by the assessee on software License Fee as revenue expenditure instead of capital expenditure, without appreciating the fact that it is an "Intangible asset. The Income-tax act clearly categorizes the "License" as an intangible assets for claiming depreciation u/s 32 which is based on the ordinary meaning of the same."*

3. *Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in not appreciating the fact that the assessee company has purchased this license for a prolonged use, and has a recurring usage and therefore categorized as an assets, for the purpose of claiming depreciation u/s.32 of the IT Act, 1961."*
4. *The appellant craves leave to add, amend, alter and/or vary any of the grounds of appeal before or at the time of hearing."*

2. There is a delay in filing this appeal for 2 days. The revenue vide submission dated 07.07.2023 requested for condonation of the delay occurred because of Saturday and Sunday falling on 13.05.2023 and 14.05.2023 as the last date for filing the appeal was 13.05.2023. After considering the submission we condone the delay of 2 days in filing impugned appeal.

3. Fact in brief is that return of income declaring total income of Rs.14,16,44,730/- was filed on 30.11.2018. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 23.09.2019. During the course of assessment the assessing officer noticed that assessee claimed software license expenses of Rs.201,96,568/- debited to the profit and loss account for the year under consideration. On query, the assessee has given the detail of software expenditure vide its submission dated 07.01.2021 as reproduced at page 2 to 8 of the assessment order by the assessing officer. The assessee company explained that it had not received any enduring benefit from the use of the software. The assessee also submitted that it was not the owner of the software license and it had no right to sale or transfer or otherwise deal in the software. However, the AO has not agreed with the submission of the assessee and stated that similar addition was made in assessee's own case for assessment year 2016-17 and assessment year 2017-18 by treating the software license expenses of the nature of capital expenditure. Therefore, AO has

disallowed the claim of software expenses and added to the total income of the assessee.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) after following the decision of ITAT in the case of the assessee itself has allowed the claim of the assessee.

5. During the course of appellate proceedings before us, at the outset the ld. Counsel submitted that identical issue on similar fact has been adjudicated by the ITAT, Mumbai in the case of assessee itself vide ITA No. 5990/Mum/2012 dated 07.06.2016 for A.Y. 2009-10 & 2005-06 and vide ITA No. 6659/Mum/2013 dated 30.06.2015 for AY 2010-11.

On the other hand, the ld. D.R relied on the order of lower authorities.

6. Heard both the sides and perused the material on record. During the course of assessment the AO has disallowed the expenses of Rs.202,96,568/- incurred on software license purchased on the ground that expenditure was capital in nature. With the assistance of the ld. Representative we have perused the decision of coordinate benches in the case of the assessee vide ITA No. 6659/Mum/2013 dated 30.06.2015 and ITA No. 5990/Mum/2012 dated 07.06.2016 for A.Y. 2009-10 & 2005-06. Further, we have perused the decision of ITAT vide ITA No. 6408/Mum/2012 for assessment year 2005-06 and relevant part of the decision is reproduced as under:

“8.2 Per contra, the learned D.R. placed reliance on the finding of the learned CIT(A) in the impugned order on this issue.

8.3.1 We have heard the rival contentions of both the parties and and perused and carefully considered the material on record; including the judicial pronouncements cited. The issue for consideration before us is whether the expenditure of `28,62,118/- incurred by the assessee on Windows XP Professional software is revenue in nature as claimed by the assessee or capital expenditure as held by the learned CIT(A) in the impugned order. According to the learned A.R. for the assessee, the expenditure incurred for purchase of Windows XP Professional, is an application software, and therefore this

expenditure would be revenue in nature and cannot be treated as capital in nature. We have perused the decision of the Coordinate Bench in the case of Boots Piramal Healthcare Ltd. (supra) and find that the Coordinate Bench has considered identical issue and held that the expenditure incurred for purchase of Windows, which is an application software, has to be allowed as revenue expenditure. At para 4 of its order the Coordinate Bench held as under: -

“4. We have carefully perused the orders of authorities below. We find that the expenditure are incurred for the purchase of application software and therefore are revenue in nature. Windows being application software cannot be treated as capital assets and therefore any license fee paid for the purchase of windows has to be allowed as revenue expenditure as the software has to be updated every year. We accordingly set aside the findings of the ld. CIT(A) and direct the AO to delete the addition. Ground No. 1 is allowed.”

8.3.2 We have also carefully perused the decision of another Coordinate Bench of ITAT, Mumbai in the case of Pennwalt Ltd. in ITA No. 1752/Mum2009 dated 24.09.2010, wherein after considering identical issue in respect of expenditure incurred for purchase of MS Windows 98, and MS Word 2000 had held that this expenditure is revenue in nature. At paras 15 and 16 of its order, the Coordinate Bench held as under: -

“15. Ground No. 5 pertains to the issue of disallowance of software expenditure. Assessee purchased MS Windows 98 and MS Word 2000 packages for its software purposes and the A.O. disallowed the same holding it as capital expenditure. The CIT(A) agreed with the A.O. that these expenses are incurred to obtain user licence and confirmed the same. It was the contention of the assessee that these software, MS Windows 98 and MS Word 2000 have become obsolete very fast and the expenditure is revenue in nature and this claim is in line with the principle established by the Hon'ble Special Bench of the ITAT Amway India Enterprise vs. CIT 111 ITD 112 (Del) and also of the judgement of the Hon'ble P & H High Court in the case of Varinder Agro 22 DTR 127.

16. We have considered the issue. As seen from the nature of expenditure these were amounts paid for obtaining MS Windows 98 and MS Word 2000 software for its office use and not a new software purchased alongwith computer. Since the nature of expenditure is revenue, in line with the principles established by the above two decisions (supra) the software expenditures are to be held revenue in nature. The A.O. is directed to allow the same and withdraw the depreciation granted, if any. Ground is considered allowed.”

8.3.3 Following the aforesaid decision of the Coordinate Bench of this Tribunal, in the case of Boots Piramal Healthcare Ltd. (supra) and Pennwalt Ltd. (supra) and following the tests laid down by the Special Bench of ITAT Delhi in Amway India Enterprise (supra), we hold that since the expenditure of `28,62,118/- was incurred for purchase of Windows XP Professional, an application software for its office use and becomes obsolete very fast, it cannot be treated as capital asset and therefore the same is to be treated and allowed as revenue expenditure. In this view of the matter, we reverse the finding of the learned

CIT(A) and direct the AO to delete the disallowance of `28,62,118/- . Ground No. 1 of the assessee's appeal is allowed."

Since the issue in hand being squarely covered, therefore, following the principle of consistency we don't find any merit in the ground of appeal of the revenue. Therefore, ground of appeal of the revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24.07.2023

Sd/-

Sd/-

(Amit Shukla)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 24.07.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.