INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 3811/Del/2014
(Assessment Year: 2009-10)

International Tractors Ltd, Sonalika House, 282, AGCR Enclave, Karkardooma, Delhi-110092	Vs.	DCIT (LTU), NBCC Plaza, Pushp Vihar, Sector-III, New Delhi
(Appellant)		(Respondent)
PAN: AAACI2270H		

ITA No. 3663/Del/2014
(Assessment Year: 2009-10)

DCIT (LTU) New Delhi	International Tractors Ltd, Sonalika House, 282, AGCR Enclave, Karkardooma, Delhi-110092
(Appellant)	(Respondent)
PAN: AAACI2270H	

Assessee by :	Shri Mukesh Bhutani, Adv Ms. Nikky Jhamtani, CA Shri Saurabh Nandi, Adv Shri Siddarth Agarwal, Adv
Revenue by:	Shri Anuj Garg, Sr. DR
Date of Hearing	07/12/2023
Date of pronouncement	05/03/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 3811/Del/2014 filed by the assessee and ITA No. 3663/Del/2014 field by the revenue for AY 2009-10, arises out of the order of the Commissioner of Income Tax (Appeals)-LTU, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 33/11-12/CIT(A)-LTU dated 31.03.2014

against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2011 by the Assessing Officer, ACIT, LTU, New Delhi (hereinafter referred to as 'ld. AO').

2. As these are cross appeals, they are taken up together and disposed of by this common order for the sake of convenience.

3. The assessee has raised the following grounds of appeal in ITA No. 3811/Del/2014:-

> *"1. That the Ld. CIT (A) has erred in not allowing the expenses classified as prior period expenses amounting to Rs. 1,14,07,229/- on account of reversal of overhead expenses which was wrongly capitalized in the previous year without appreciating facts & circumstances of case.*
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> *Alternatively, the Ld. CIT (A) has erred in not allowing the depreciation on these expenses which had been capitalized during the previous year and depreciation was allowed in the previous year as per the provisions of the Income Tax Act.*
>
> *1.1 The Ld CIT (A) has erred in confirming the addition of Rs. 13,26,878/- on account of other expenses disallowed by the Ld AO out of 'Prior Period Expenses without properly appreciating the facts and also against the provisions of the Income Tax Act.*
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> *2. That the Ld. CIT (A) has erred in confirming the action of Ld. AO and not allowing the depreciation @ 80% on the energy saving devices consisting of voltage stabilizers and UPS etc. treating these as normal part of plant & machinery. NP*
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> *3. That CIT (A) has erred in confirming the addition of Rs. 3,71,095/- on account of disallowance under section 14A read with rule 8D without appreciating the facts & circumstances of the case. The Ld. CIT (A) has also failed to consider that appellant has not earned any exempt income during the year which does not form part of total income hence wrongly confirmed the addition under section 14A."*

4. The revenue has raised the following grounds of appeal in ITA No. 3633/Del/2014:-

> *"1. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleing addition of Rs. 26,14,127/- out of total addition of Rs. 1,53,48,234/- made by AO on account of prior period expenses.*

2. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleting the disallowance of Rs. 90, 192/- holding that UPS are entitled for depreciation @ 60%.

3. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleting the addition of Rs. 2,90,00,000/- made by AO on account of disallowance of provision for warranty

4. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleting the addition of Rs. 3,73,37,902/- (Rs. 1,07,33,164/- relating to AY 2007-08, Rs. 1,32,32,426/- relating to AY 2008-09 and Rs. 1,33,72,312/- relating to AY 2009-10) on account of disallowance of claim u/s 80JJAA

5. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in reducing the addition of Rs. 46,65,028/-on account of disallowance of Software Expenses treated by AO as capital expenditure instead of Revenue by holding that out of total expenses of Rs. 1,16,62,572/- of such nature expenses of Rs. 17,67,934/- and Rs. 36,57,028/- are Revenue in nature.

6. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleting the addition of Rs. 17,16,921/- made by AO by denying higher depreciation @50% in respect of high-end vehicles.

7. On the facts and in the circumstances of the case and in law Ld. CIT (A) erred in deleting the addition of Rs. 1,48,94,594/- on account of provision for doubt full debts without appreciating that the same have not claimed by the assessee in its return of income."

5. Ground No. 1 of revenue's appeal and ground Nos. 1 and 1.1 of assessee's appeal are in connection with disallowances of prior period expenses.

6. We have heard the rival submissions and perused the material available on record.

7. The assessee company is engaged in the business of manufacturing and assembling of tractors and tractor parts and components. There has been no change of the business activities of the assessee during the year under consideration when compared to that of earlier years. The return of income for AY 2009-10 was electronically filed by the assessee on 30.09.2009 declaring total taxable income of Rs. 102,16,71,550/-, which was duly processed u/s 143(1) of the Act. Later, the case was selected for scrutiny. During the course of assessment proceedings, the ld AO observed from Schedule 18 of the balance sheet and point No. 22(a) of the Audit Report that the assessee has debited

expenses of Rs. 1,53,48,234/- to Profit and Loss Account which relate to prior period. Accordingly, a show cause notice was issued as to why the said prior period expenses should not be disallowed on the ground that as it is not related to the year under consideration. In response the assessee submitted that accounts have been maintained by the assessee though on mercantile basis but these items which are categorized under the prior period expenses either got crystalised during the year or it was treatment given by the assessee in respect of certain items in earlier years. The assessee furnished the details of prior period expenses as under:-

A. Over head cost for in house dyes capitalized in AY 2008-09 (reversed during the current year and charged off to Profit and Loss Account on net basis i.e. total cost less depreciation already claimed) of Rs. 1,14,07,229/-
B. Claims in respect of earlier years which got crystalised during the current year- Rs. 39,41,005/-
Total Rs. 1,53,48,234/-

8. It is pertinent to note that out of claim that got crystalised during the year amounting to Rs. 39,41,005/-, the ld CIT(A) confirmed the disallowances of Rs. 13,26,878/- for which assessee is in appeal and deleted the sum of Rs. 26,14,127/- for which revenue is in appeal. In respect of disallowance of overhead cost for in house dyes referred to in A above, the said disallowances was confirmed by the ld CIT(A) for which the assessee is in appeal before us.

9. Les us now proceed to adjudicate each of the aforesaid items as under:-

Overhead cost for in house dyes capitalized in AY 2008-09 but charged of to revenue during the year under consideration on net basis.

The assessee incurred expenses on account of overhead cost for in house dyes for AY 2008-09 and the same was duly capitalized in the books. These are accepted by the ld AO and depreciation was granted to the assessee. During the year under consideration the Chartered Accountant of the assessee pointed out

that the cost of dyes originally capitalized in AY 2008-09 was incorrect and that the same would have to be charged of as revenue expenditure as the assessee does not derive any enduring benefit in the capital field with regard to incurrence of the said expenses. Since, the assessee had already claimed depreciation on the cost of dyes from AY 2008-09, the written down value of the cost of dyes (original cost less depreciation) was charged off to revenue expenditure as prior period expenses as per advice of the Chartered Accountant. We find that genuinity of the expenditure incurred for the purpose of business is not doubted by the revenue which is evident from the fact that depreciation on the same had been granted by the revenue for AY 2008-09. Workings in the figure of Rs. 1,14,07,229/- are enclosed in pages 1 to 4 of the Paper Book. We find that as per accounting standard-5 (AS-5) issued by the Institute of Chartered Accountants of India (ICAI) the expression prior period items is defined therein, which says that prior period items are expenses / income which arises in the current period as a result of error or omission in the preparation of the financial statement of one or more prior period.

10. As per AS-5 vide para 17 error and omission referred to thereon have been elaborated by stating error may occur as a result of mathematical mistake, mistake for applying accounting policies, misinterpretation of effective or oversight. The present case of overhead cost of dyes had been wrongly capitalized in the earlier years and the same had been charged off to revenue pursuant to rectification of mistake in applying accounting policies. Hence, this item squarely becomes a prior period item as accounting standard AS-5 issued by ICAI the assessee had claimed the sum of Rs. 1,14,07,229/- as revenue expenditure on net basis i.e. (original cost of asset less depreciation) as expenditure which in our considered opinion would be squarely allowable as deduction during the year.

11. With regard to claim in respect of liabilities that got crystalised during the year, the said expenditure comprises of two items; (1) Rs. 13,26,878/-details of which are enclosed at page 14 of the paper book. We find the said expenses are

duly subjected to deduction of tax at source during the year under consideration and the genuinity of said expenses are not doubted by the revenue. The invoices for the entire expenditure of Rs. 13,26,878/- are enclosed in the paper book, the assessee categorically submitted that tough this invoices are dated in the earlier years but the same were not claimed as deduction on mercantile basis and the said liabilities came to be accounted by the assessee only during the year under consideration. It was also explained that debit notes received from the branch office were not handed over by the assessee to head office books which had apparently contributed to this delay in accounting. So, this squarely falls under the category of oversight as contemplate in para 17 of AS-5 issued by ICAI. We find that genuinity of the said expenditure and the incurrence for business purposes is not doubted by the revenue. Further, the said expenses are duly subjected to deduction of tax at source and TDS thereon had been duly remitted to the account of the Central Govt by the assessee. Either way, there is no change in the tax rates between AY 2008-09 and 2009-10 and hence, the entire exercise is purely revenue neutral. Accordingly, we direct the ld AO to grant deduction of Rs. 13,26,878/- as allowable revenue expenditure.

B. 26,14,127/- Liability Crystalised during the year.

The details of expenditure of Rs. 26,14,127/- are enclosed in pages 89 to 95 of the Paper Book. On perusal of the same we find that all the liabilities had been crystalised during the year under consideration. In fact out of sum of Rs. 26,14,127/- and a sum of Rs. 18,21,645/- has been duly subjected to deduction of tax at source and TDS remitted to the account of the Central Govt accordingly; and for the remaining portion provision of deduction of tax are not applicable. The assessee had filed completed bill-wise break-up of the entire sum which is also duly examined by the ld CIT(A) while granting relief to the assessee. We do not find any infirmity in the said decision of the ld CIT(A). Accordingly, a sum of Rs. 26,14,127/- has been rightly allowed as deduction by the ld CIT(A).

12. In the result, ground No. 1 of the revenue is dismissed and ground No. 1 and 1.1 of assessee's appeal are allowed.

13. Ground No. 2 raised by the assessee was stated to be not pressed by the ld AR. The same is reckoned as a statement made from the bar and accordingly dismissed as not pressed.

14. Ground No. 3 raised by the assessee is challenging the disallowances made u/s 14A of the Act where there is no exempt income derived by the assessee. This issue is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Era Infrastructure India Ltd reported in 141 taxmann.com 289 wherein, the Hon'ble jurisdictional High Court even after considering the amendment brought in by the Finance Act, 2022 in section 14A had categorically held that said amendment would be prospective in nature applicable from 01.04.2022 onwards and that there is no exempt income, the provision of section 14A of the Act cannot be brought into service. Respectfully following the same, the ground No. 3 raised by the assessee are allowed.

15. Ground No. 2 raised by the revenue is challenging the deletion of disallowance of Rs. 90,192/- holding that UPS is entitled for depreciation @60%. This issue is no longer res integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Nestle India ltd reported in 153 taxmann.com 201 wherein, it was held that depreciation on UPS and computer peripherals are allowed @60% as it supports the computer systems. Respectfully following the same we do not find any infirmity in the decision of the ld CIT(A) in granting relief to the assessee. Accordingly, ground No. 2 raised by the revenue is dismissed.

16. Ground No. 3 raised by the revenue is challenging the deletion of disallowances of provision for warranty in the sum of Rs. 2,90,00,000/-.

17. We have heard the rival submissions and perused the material available on record.

18. During the year under consideration the assessee had made provision for warranty of Rs. 2.90 crores and claimed a sum as expenditure. The ld AO show cause the assessee as to why the sum is not disallowed. The assessee submitted that said provision made for warranty is not a contingent liability, but it is liability arising out of past events and provision amount is determined scientifically on the basis of past performance. The assessee also placed reliance on the decision of the Hon'ble Supreme Court in the case of Rotork Controls India Pvt. Ltd Vs. CIT reported in 314 ITR 62. The assessee specifically submitted before the ld AO that it offers standard warranty for the period of 18 months at the time of sale of products. In the event of any part of product is found to be defective within a period of 18 months from the date of sale the assessee company pursuant to the warranty clause would replace the defective part free of charge. The assessee also furnished the details of turnover made in each of the years and the provision for warranty thereon. The ld AO further did not heed to his contention and proceeded to disallow the provision made on the ground that the same is contingent in nature and that the allowability had not crystalised during the year.

19. Before the ld CIT(A) the assessee reiterated its claim and also submitted that provision made for warranty in each year and actual amount of warranty expenditure incurred by it during the year and also in the immediately preceding two assessment years in the following tabular form:

A.Y.	*Provision for Warranty Created*	*Actual Amount of Warranty Expenses*	*Total Sales*
2007-08	*Rs. 2.63 lakhs*	*Rs. 140.63 lakhs*	*Rs. 110.82 crore*
2008-09	*Rs. 79.6 lakhs*	*Rs. 329.8 lakhs*	*Rs. 952.83 crore*
2009-10 (CY)	*Rs. 502.48 lakhs*	*Rs. 402.48 lakhs*	*Rs. 1131.36 crore*

20. The assessee also gave the workings of determination of warranty provision made for the year in the following manner:-

Opening Balance [Pg. 17 of PB (D)] (b/f unutilized 'provision of warranty' as on 31.03.2008)		*Rs. 190 lakhs*
Add: Provision created	*Rs. 502.48 lakhs*	
Less: Actual expenses	*Rs. 402.48 lakhs*	
Total		*Rs. 100 lakhs*
Closing Balance		*Rs. 290 lakhs*

21. The assessee also submitted that out of total provision made of Rs. 2.90 cores the assessee had already disallowed a sum of Rs. 1.90 crores in AY 2008-09 in the computation of income thereby drawing the attention of the ld CIT(A) that there is double addition made by the ld AO to the extent of Rs. 1.90 crores. The assessee also submitted the basis of arriving at the provision on a scientific manner which is inconsonance with the principles and parameters laid down by the Hon'ble Supreme Court in the case of Rotork Controls referred (supra), the ld CIT(A) appreciated the same and granted relief to the assessee. We find that the said provision is made in tune with the matching principle of accountancy wherein, the sales reported by the assessee and the provision for warranty thereon are inter related with each other and that effectively the provisions made for warranty becomes inextricably link with the sales reported by the assessee. In fact considering the nature of industry the assessee is involved and also considering the consistent practice of assessee fasten with liability on account of warranty from the customers in accordance with the warranty clause thereon; and also considering the fact that the provision for warranty thereon being given on scientific basis which is not disputed by the revenue, we hold that the decision of the Hon'ble Supreme Court in the case of Rotork Control (supra) squarely applied to the facts of the assessee. Accordingly, the ground No. 3 raised by the revenue is dismissed.

22. Ground No. 4 raised by the revenue is challenging the deletion of disallowances of claim u/s 80JJAA of the Act.

23. We have heard the rival submissions and perused the material available on record.

24. The ld AO observed that the assessee has claimed deduction of Rs. 3,73,37,902/- u/s 80JJAA of the I.T. Act 1961 in respect of additional wages paid to new regular workmen employed during the previous year's relevant to A.Y. 2007-08, 2008-09 & 2009-10. It may be mentioned that for A.Y. 2007-08 and 2008-09 the assessee's claim had been rejected by the A.O. as the claim had not been in the original returns filed for the respective assessment year but was subsequently during the assessment proceedings. The assessee is in appeal before the CIT(A) for both the above A.Y.s and the appeals are still pending for disposal. In view of this the assessee's claim for additional wages paid in respect of A.Y. 2007-08 amounting to Rs. 107,33,164/- and additional wages paid in respect of A.Y. 2008-09 amounting to Rs. 132,32,426/- cannot be considered till the assessee's pending appeals are disposed off by the CIT(A).

25. In order verify the eligibility of claim of deduction u/ 80JJAA of the Act, the AO directed the assessee to produce the primary records vide order sheet entry dated 22.12.2011 asking for employee list of the years 2005-06 to 2008-09 along with muster roll and attendance sheet; appointment letters of old and new employees along with resignation letters of the employees who left the organization and also to explain why deduction u/s 80JJAA of the Act was not claimed in the return of income for AY 2007-08. The ld AO observed that the ld AR of the assessee expressed his inability to produce the desired records within a short span of time and on the adjourned date of hearing on 28.12.2011 the ld AO observed that the assessee had merely stated and it had complied with all the requirement section 80JJAA of the Act. The ld AO also observed that the assessee furnished a CD containing the details of salary paid to different persons starting from April 2006 to March 2009 but did not give any break-up of casual workers, permanent workers and workers employed through contract labour. The ld AO observed that in the absence of these primary details the claim of deduction u/s 80JJAA of the Act was not allowable to the assessee company and accordingly a

sum of Rs. 3,73,37,902/- was disallowed and added back to the total income. Before the ld CIT(A) the assessee submitted that even monthly pay register were produced before the ld AO on 30.12.2011 which could not be verified by him due to paucity of time. The assessee also furnished the copy of the prescribed certificate in Form 10D containing the relevant details for ascertaining the wages paid to new regular workman for the purpose of claiming deduction u/s 80JJAA of the Act. The ld CIT(A) by placing reliance on the order passed by his predecessor for AY 2007-08 and 2008-09 deleted the disallowances and granted deduction u/s 80JJAA of the Act to the assessee. We find that Hon'ble Jurisdictional High court in assessee's own case in the case of International Tractors Ltd Vs. DCIT reported 435 ITR 85 observed as under:-

> ***"12.*** *A perusal of the aforementioned extract would show that the CIT(A) insofar as the deduction claimed under section 80JJAA was concerned, not only had before him the chartered accountant's report in the prescribed form, i.e., Form 10DA but also examined the details concerning the new regular workmen, numbering 543, produced before him. In this context, the CIT(A) examined the details concerning the dates when the said workmen had joined the services, the period, during which they had worked, relatable to the AY in issue, as also the details concerning the bank accounts in which remuneration was remitted.*
>
> ***13.*** *Based on the aforesaid material, the CIT(A) concluded that the deduction under section 80JJAA was correctly claimed by the assessee.*
>
> ***13.1*** *Likewise, insofar as prior period expenses were concerned, as noticed above, out of a total amount of Rs. 51,21,024/- claimed by the assessee, a sum of Rs. 24,78,391/- was not allowed, for the reason, that withholding tax had not been deducted by the assessee.*
>
> ***13.2*** *It is pertinent to note that the assessee had disclosed the same in its statement/communication dated 14-12-2009 placed before the AO. The other amounts, which did not concern the period in issue, amounting to a cumulative value of Rs. 1,02,328/- was also disallowed.*
>
> ***14.*** *Therefore, to our minds, once the Tribunal accepted the view taken by the CIT(A) that it could entertain fresh claims; a view which the CIT(A) has expressed in paragraph 6.6.2 of its order, all that the Tribunal was required to examine was: as to whether the CIT(A) had, scrupulously, verified the material placed before it before allowing deductions claimed by the assessee. The Tribunal, however, instead of examining this aspect of the matter, observed, and in our view, incorrectly, that because an opportunity was not given to the AO to examine the*

material, therefore, the matter needed to be remanded to the AO for a fresh verification.

15. *In our view, unless the Tribunal would have reached to a conclusion and expressed its clear view, in that respect, as to what was wrong or missing in the examination made by the CIT(A), a remand was not called for. We agree with Mr. Seth's contention that the CIT(A) in the exercise of its powers under section 250(4) of the Act was entitled to seek production of documents and/or material to satisfy himself as to whether or not the deductions claimed were sustainable/viable in law. This was, however, a case where the details were placed before the AO, who declined to entertain the claims only on the ground that they did not form part of assessee's original return and that the assessee had not made a course correction by filing a revised return.*

15.1 *This view was based, as noticed above, on the judgment of the Supreme Court rendered in Goetze (India) Ltd. (supra). The CIT(A), squarely, dealt with this and concluded, that a fresh claim could be entertained. Therefore, the Tribunal, as noticed above, has accepted this view of the CIT(A) and the revenue has not come up in appeal before us assailing this conclusion of the Tribunal.*

16. *In any event, we are of the view that, if a claim is otherwise sustainable in law, then the appellate authorities are empowered to entertain the same. This view finds reflection in a judgment of the coordinate bench of this Court in titled CIT v. Aspentech India (P.) Ltd. [IT Appeal No. 1233 of 2011, dated 28-11-2011]. The relevant observations made by the coordinate bench of this court, which are apposite, are extracted hereafter:*

> *"5. The ITAT has agreed the reasoning given by the CIT (Appeals) and has relied upon the decision of this Court in CIT v. Jai Parabolic Springs Ltd. (2008) 306 ITR 42 (Del.). In the said case Delhi High Court has referred to the powers of the appellate forum and the decisions of the Supreme Court in National Thermal Power Co. Ltd. v. Commissioner of Income-tax (1998) 229 ITR 383 (SC), Gedore Tools Pvt. Ltd. v. Commissioner of Income-tax (1999) 238 ITR 268, Jute Corporation of India Ltd. v. Commissioner of Income-tax (1991) 187 ITR 688 (SC) and held that the appellate forum could have entertained and decided the said aspect. The decision in the case of Goetze (India) Ltd. (supra) is distinguishable. In the said case the assessee had filed the return of income for the Assessment Year 1995-96 on 30-11-1995. Thereafter, on 12-1-1998, the assessee wrote a letter to the Assessing Officer and made a new claim for a deduction, which was rejected by the Assessing Officer as there is no provision to amend the return. The Supreme Court further clarified that the issue raised in Goetze (India) Ltd. (supra) was limited to the power of assessing authority and did not impinge on the power of the tribunal as was in the case of National Thermal Power Ltd. (supra). In the present case also the appellate forum had entertained the claim made by the respondent-assessee and allowed the same. There is no dispute that the claim/deduction towards the expense is otherwise correct and allowable."*

> *Conclusion:*
>
> ***17.** Therefore, in our view, the judgment of the Tribunal deserves to be set aside. The fresh claims made by the assessee, as allowed by the CIT(A), will have to be sustained. It is ordered accordingly.*
>
> ***18.** The questions of law are answered in the favour of the assessee and against the revenue."*

26. Similar view was taken for AY 2008-09 by the Hon'ble Delhi High Court. As far as for AY 2009-10 that is the year under consideration is concerned the fresh claim is only in respect of Rs. 1,33,72,312/- for which the details were indeed filed before the ld AO in the audit report in Form 10DA was duly filed which is also enclosed in pages 179 to 184 of the Paper Book. The details of employees recorded during the year are enclosed in pages 168 to 178 of the Paper Book. All these details were already filed before the lower authorities. The ld CIT(A) had examined the said details and accordingly granted relief to the assessee. Hence, on merits as well as the eligibility of the assessee to claim u/s 80JJAA of the which is covered by the decision of the Hon'ble Jurisdictional High Court in assessee's own case, we do not find any infirmity in the order of the ld CIT(A) in granting relief to the assessee. Accordingly, ground No. 4 raised by the revenue is dismissed.

27. Ground No. 5 raised by the revenue is challenging the deletion of disallowances of software expenditure treated by the ld AO as capital expenditure instead of revenue.

28. We have heard the rival submissions and perused the material available on record.

29. The ld AO observed that the expenditure were incurred on acquiring of license of software which is asset and that the software once purchased is used for a long time, the same gives an enduring benefit to the assessee in the capital field. Accordingly, the cost of such software had to be capitalized and ld AO consequently granted depreciation @60%. Though, the entire software expenditure of Rs. 1,11,98,112/- comprises of 4 items, only two items are in

dispute before us i.e. Rs. 17,67,934/- incurred towards annual maintenance charges (AMC) of software and Rs. 36,57,028/- towards Microsoft Office license fees being payment made to Wipro Ltd are challenged before us. With regard to AMC of software, these charges are incurred for maintenance of capital asset acquired in the earlier years and accordingly the same would be revenue expenditure. Hence, we do not find any infirmity in the order of the ld CIT(A) in granting relief to this extent.

30. With regard to MS Office license fees only payment made to Wipro Ltd for the sum of Rs. 36,57,028/-, we find that the said license fees is paid for use of software and not for transfer of ownership. Accordingly, the same would be eligible as revenue expenditure. The entire invoices of software expenditure pertaining to aforesaid two items are enclosed in pages 189 to 204 of the Paper Book. Further, we find that Hon'ble Jurisdictional High court in the case of Oriental Bank of Commerce Vs. ACIT reported in 93 taxmann.com 432 (Del) held that expenditure incurred by the assessee are incurring for license to use software did not confer any enduring benefit on the assessee and accordingly, the same would be allowed as revenue expenditure u/s 37(1) of the Act. In view of the aforesaid observation, respectfully following the judicial precedents relied upon herein above we do not find any infirmity in the order of the ld CIT(A) in granting relief to the assessee. Accordingly, the ground No. 5 raised by the revenue is dismissed.

31. Ground No. 6 raised by the revenue is challenging the deletion of disallowance of higher depreciation @50% in respect of high end vehicles.

32. We have heard the rival submissions and perused the material available on record.

33. The ld AO observed that the assessee had purchased a BMW and had claimed higher depreciation @50% thereon in the return of income which was restricted to 15% by the ld AO. The case of the ld AO is that BMW falls under the category of light motor vehicle (LMV) as per definition of Commercial Vehicle in

new appendix added in Income Tax Rules. It was submitted that exclusion from eligible commercial vehicles was only with respect of maxi-cab, motor-cab, tractor and road-roller. The assessee's vehicle does not fit into these categories. Further, observation made by the ld AO that assessee company is engaged in the business of manufacturing and not in the business of transport was rejected by the ld CIT(A) as the income tax depreciation chart provides for separate rate of depreciation in respect of master bus, motor lawry and motor taxis used in the business to run them on hire. We find that the term motor can is defined u/s 2(25) under the motor Vehicle, 1988. Further, commercial vehicle is defined in the income tax depreciation schedule is under:-

> *"Commercial vehicle means "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle" and "medium passenger motor vehicle" but does not include "maxi- cab", "motor-cab", "tractor" and "road-roller". The expressions "heavy goods vehicle", "heavy passenger motor vehicle", "light motor vehicle", "medium goods vehicle", "medium passenger motor vehicle". "maxi-cab", "motor-cab", "tractor" and "road-roller" shall have the meanings respectively as assigned to them in section 2 of the Motor Vehicles Act, 1988 (59 of 1988)."*

34. Further, the rate of depreciation provided in the Income Tax Depreciation Chart in case of commercial vehicle acquired between 01.01.2009 and 01.10.2009 was 50% in the case of the vehicle were acquired between 01.01.2009 to 01.10.2009 and hence, the assessee would be entitled for enhanced depreciation rate of 50%. Further, the expression light motor vehicle is defined u/s 2(21) of the Motor Vehicle Act, 1988 which reads as under:-

> *"S. 2.(21) light motor vehicle" means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms:"*

35. All vehicle fall under the definition of light motor vehicle as described above as they are motor cars having unladen weight of less than 7500 kgs. The assessee furnished the list of vehicle together with their weight in kgs as under:-

S. No	Asset No.	Name of the Assets	Weight of the Vehicle (Kerb weight[1])	Category under MV Act, 1988.
1.	95295	BMW530D All Features	1715 kgs	Light motor vehicle
2.	95296	Mercedes Series S320CDI	1925 kgs	Light motor vehicle
3.	95323	Maruti A Star VXI	860 kgs	Light motor vehicle
4.	95321	Tata Indica Vista	1040 kgs	Light motor vehicle
5.	95306	Rhino RX	1738 kgs	Light motor vehicle
6.	95299	Chevrolet Uva Base Model	1075 kgs	Light motor vehicle
7.	95305	Rhino RX (5+1)	1603 kgs	Light motor vehicle
8.	95315	Maruti Alto Lx	850 kgs	Light motor vehicle
9.	95317	Rhino RX Delux A/C	1633 kgs	Light motor vehicle
10.	95318	Mahindra XYLO E-4	1700 kgs	Light motor vehicle
11.	95312	Vehicle Rhino	1603 kgs	Light motor vehicle
12.	95311	Vehicle Rhino	1603 kgs	Light motor vehicle
13.	95310	Vehicle Rhino	1603 kgs	Light motor vehicle
14.	95313	Vehicle Rhino	1603 kgs	Light motor vehicle
15.	95304	Maruti Alto LX	850 kgs	Light motor vehicle
16.	95308	BMW M-3 Saloon	1580 kgs	Light motor vehicle

36. In view of the aforesaid observation considering the chart given above, considering the definition of light motor vehicle under the Motor Vehicle Act and considering the definition of Commercial Vehicle under the Income Tax Depreciation Schedule, we hold that vehicles bought by assessee between 01.01.2009 to 01.10.2009 being eligible for depreciation @50%. Accordingly, ground No. 6 raised by the revenue is dismissed.

37. Ground No. 7 raised by the revenue is challenging the deletion of disallowance of bad and doubtful debts.

38. We have heard the rival submissions and perused the material available on record.

39. During the course of assessment proceedings on 22.12.2011, the assessee through its authorized representative submitted a statement of revised taxable income wherein, a sum of Rs. 1,48,94,594/- was claimed as bad debt written off. The ld AO disallowed this claim of the assessee as it was not made by way of followed rate and applying the proposition laid down by the Hon'ble Supreme Court in the case of Goetze (India) Ltd reported in 284 ITR 323. The ld CIT(A)

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observed that in respect of these bad debts written off the assessee had duly offered the income in the earlier years and it was written off as bad debts in its books as it is irrecoverable. Accordingly same would be eligible deduction u/s 37(1)(vii) of the Act.

40. Before us the ld DR vehemently relied upon the order of the ld AO.

41. We find that any valid claim can be made even before the appellate authority and decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd (supra) relied upon by the ld AO does not apply to the follows which fact is very clear from the last paragraph of the said decision. Either way the genuineness of the claim made by the assessee is not in dispute. The ld CIT(A) had categorically given a finding that income in respect of the subject mentioned bad debts written off had been duly offered to tax in the earlier years. Hence, the conditions prescribed u/s 36(2) of the Act is duly fulfilled by the assessee. Further, the said irrecoverable debts had been duly written off by the assessee in its books and thereby would be eligible for deduction u/s 37(1)(vii) of the Act. Accordingly, ground No. 7 raised by the revenue is dismissed.

42. To sum up, the appeal of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 05/03/2024.

-Sd/-	-Sd/-
(SAKTIJIT DEY)	**(M. BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 05/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi