आयकर अपीलीय अधिकरण,'बी'न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर.रघुनाथा, लेखा सदस्यके समक्ष

BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./**ITA No.: 45/Chny/2023**

निर्धारणवर्ष / Assessment Year: 2017-18

M/s. Cognizant Technology Solutions India Private Ltd., 5/535, OkkiamThoraipakkam, Old Mahabalipuram Road, Chennai – 600 096. **[PAN: AAACD-3312-M]**	v.	Assistant Commissioner of Income Tax, Central Circle -1(1), Chennai.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./**ITA No.: 150/Chny/2023**

निर्धारणवर्ष / Assessment Year: 2017-18

Assistant Commissioner of Income Tax, Central Circle -1(1), Chennai.	v.	M/s. Cognizant Technology Solutions India Private Ltd., 5/535, OkkiamThoraipakkam, Old Mahabalipuram Road, Chennai – 600 096. **[PAN: AAACD-3312-M]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. N. V. Lakshmi, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri. V. Nandakumar, CIT

सुनवाई की तारीख/Date of Hearing : 17.04.2024

घोषणा की तारीख/Date of Pronouncement : 08.05.2024

आदेश /O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

These cross appeals filed by the Assessee and the Revenue are arising out of order of Commissioner of Income Tax (Appeals)-18, Chennai, dated 30.11.2022 and pertains to

assessment year 2017-18. Since, facts are identical and issues are common, for the sake of convenience, the appeal filed by the revenue and assessee are being heard together and disposed off, by this consolidated order.

Assessee's Appeal in ITA No. 45/Chny/2023:

2. The following issues are being raised by the assessee in the above appeal before us:

> *1. Treatment of computer software as 'Intangible asset' and restriction of depreciation thereon to 25 percent*
>
> *2. Non-grant of claim of deduction under section 35DD of the Income-tax Act, 1961 ('the Act') amounting to INR 2,03,364 in respect of amortization of expenditure incurred towards amalgamation*
>
> *3. Short-grant of deduction under section 10AA of the Act in the assessment order passed for the subject year*
>
> *4. Short-grant of Advance Tax and Tax deducted at Source in the assessment order passed for the subject year*

The assessee filed the above grounds of appeal, which are argumentative and need not be reproduced.

3. The brief facts are that, the assessee company is engaged in the business of software development and filed its return of income for the assessment year 2017-18 on 29.11.2017, declaring Total income of Rs.4970,80,66,420/- under normal provisions and deemed total income u/s. 115JB

of the Income-tax Act, 1961 (hereinafter referred to as "the Act") of Rs.8794,76,03,220/-.

4. Ground No. 1 to 4: Allowability of depreciation on computer software at 60%:-

4.1 The first issue in this appeal of assessee is as regards to the order of CIT(A) in allowing depreciation on computer software at 25% holding that they are Intangible assets against the assessees claim of depreciation at 60% on computer software.

4.2 We have heard the rival contentions, and gone through the facts and circumstances of the case. We have observed that the A.O on perusal of depreciation schedule noted that the assessee-company claimed depreciation at 60% on computers and software purchases made, claiming the same as akin to software licenses. The A.O disallowed the depreciation claimed by the assessee at 60% and restricted the same at 25% by treating the same as depreciation on software and thereby, disallowed the excess claim of depreciation. Aggrieved, the assessee preferred an appeal before CIT(A).

4.3 The CIT(A) also confirmed the action of the A.O. Now, the assessee is in appeal before the Tribunal.

4.4. Before us, the Ld. counsel for the assessee submitted that these software applications and licenses are in the category of intangible assets, but these are held to be computer as held by Hon'ble Madras High Court in the case of *CIT vs. Computer Age Management Services [2019] 109 taxmann.com 134 (Mad.).* We noted that this issue is squarely covered by decision of Hon'ble Madras High Court in the case of *CIT vs. Computer Age Management Services, supra,* and the assessee even now on computer software licenses is eligible for claim of depreciation at 60%. The Hon'ble Madras High Court held as under:

> *"7. As noticed above, the assessee is in the business of registrar and transfer agent as licensed by the SEBI handling large volume of market sensitive data and information, which is available only through general customized application software. The assessee acquired software licenses capitalized during the relevant years in the books of accounts and claimed depreciation at 60%. In paragraph 20 of the order passed by the Tribunal, the nature of items, on which, the assessee claimed depreciation at 60%, has been listed out and they are 17 in number, from which, we find that substantial amount of server licences, which have been obtained by the assessee are customized and some of which are single user licenses.*
>
> ***8.*** *The question would be as to whether the software application, which was acquired by the assessee would fall*

under Entry 5 of Part A of New Appendix I, which states that computers including computer software are entitled to depreciation at 60%. Note 7 of the Appendix defines the expression 'computer software' to mean any programs recorded on CD or disc, tape, perforated media or other information storage devices.

9. The case of the Revenue is that software are licences and that they are intangible assets and would fall under Part B of New Appendix I, which deals with knowhow, patents, copyrights, trademarks, licenses, francises or any other business or commercial rights of similar nature.

***10.** We find that Part B of New Appendix I is a general entry whereas Entry 5 of Part A of New Appendix I is a specific entry read with Note 7. In the instant case, the Tribunal, in our considered view, rightly held that the assessee is eligible to claim depreciation at 60%."*

4.5 The ld. CIT, DR vehemently argued that the assessee company in their books of accounts and financial statements has classified the software as "intangible assets" and hence in accordance with the Entry under Part B of the New Appendix-I, the computer software are required to be considered as Intangible assets and depreciation on assets shall be restricted to 25% only as held by the ld. CIT(A).

4.6 We have heard the rival contentions and our findings are that, the assessee company has claimed the Depreciation on the Computer software @ 60% along with Computers during the year as per "Entry 5 of Part A of New Appendix-I, which is a specific entry read with Note 7" ("Computer software" means

any computer program recorded on any disk, tape, perforated media or other information storage device). The contention of the Ld CIT-DR cannot be considered as he is referring to the Part B of New Appendix-I, which is a general entry, does not cover the Computer Software in Intangible Assets.

4.7 Therefore, respectfully following the decision of Hon'ble Madras High Court in the above case and ITAT Chennai Benches in assessee's own case in ITA No. 160/Chny/2022, dated 29.12.2023, the ground raised by the assessee on this issue stands allowed.

5. Ground no. 5 to 7: Fresh claim of deduction of amortization expenditure towards amalgamation u/s.35DD of the Act:

5.1 The assessee made submission before the Assessing Officer to consider its claim of deduction u/s. 35DD of the Act of Rs.2,03,364/- relating to amortization of expenditure incurred towards amalgamation which was inadvertently not claimed in its return of income. The assessee also submits that it has incurred expenditure for the purpose of amalgamation and debited to profit and loss account to the

tune of Rs.10,16,820/- during the assessment year 2018-19 and added back to the income in the statement of computation of total income. In this regard, the assessee is in plea with the Assessing Officer to allow the claim of Rs.2,03,634/- (1/5th of Rs. 10,16,820/-) as deduction, under the provisions of section 35DD of the Act. The Assessing Officer has not considered the fresh claim of the assessee in his Assessment order passed u/s. 143(3), dated 30.09.2021.

5.2 Aggrieved, the assessee is in appeal before the ld. CIT(A). The ld. CIT(A), opined that the assessee did not give valid reason as to why it has not claimed by filing revised return and further noted that it is an auditable case u/s. 44AB of the Act and the Statutory Tax Auditor has given a tax audit report in Form 3CD, where Column 19 has no certification from the Auditor that the assessee is eligible for any such amount u/s. 35DD of the Act. Thus, the ld. CIT(A) after considering the submissions made by the assessee held that the ground raised by the assessee is not entertainable and liable for dismissal as incompetent and invalid. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before the Tribunal.

5.3 Before us, the ld. Counsel for the assessee argued that there is no bar the powers of the Revenue authority or Appellate authority to admit any claim or ground not made by the taxpayer in the return of Income and cited the Circular No.14 (XL-35) dated 11.04.1955 of CBDT and several judicial pronouncements in this regard for granting the fresh claim. The assessee relied on the following judgments:

(i) National Thermal Power Co. Ltd vs CIT, 229 ITR 383

(ii) CIT vs Jai Parabolic Springs Ltd. 306 ITR 42

(iii) CIT vs Sam Global Securities Ltd, 360 ITR 682

5.4 The ld. CIT DR, reiterated the contentions of the CIT(A) findings and urged to uphold the decision of the CIT(A) of not considering the fresh claim of Deductions of Rs.2,03,634/- u/s.35DD of the Act. Further, the revenue relied on following judgments:

(i) Goetza (India) Ltd vs CIT, [2006] 157 Taxman 1 (SC)

(ii) CIT vs Perlo Telecommunication and Electronic Components India (P) Ltd [2022] 141 Taxmann.com 388 (SC)

5.5 We have heard the rival contentions, and gone through the facts and circumstances of the case. It is noted that, the

assessee has incurred an expenditure of Rs.10,16,820/- towards amalgamation expenses during the assessment year 2018-19 and debited to the P&L account, which has been subsequently added back to the total income in the computation of income and tax thereon. The above expenditure is eligible for deduction u/s. 35DD of the Act in five equal installments i.e., Rs.2,03,364/- from the assessment year 2017-18. Therefore, we remit back this issue to the Assessing Officer to adjudicate and allow the expenditure as per law.

6. Ground no. 8 to 10: Short grant of deduction u/s. 10AA of the Act:

6.1 The assessee has claimed deduction u/s. 10AA of the Act of Rs.3899,08,28,940/- in the return of income filed on 29.11.2017. After the scrutiny assessment proceedings, the Assessing Officer has passed an order without discussing anything about the deductions u/s. 10AA of the Act claimed by the assessee in the return of income. However, in the computation sheet of income and taxes thereon, the claim of the assessee u/s. 10AA of the Act of Rs. 3899,08,28,940/- has been reduced to Rs.3519,33,24,641/- and the difference of

Rs.379,75,04,299/- has been added to the total income for arriving the tax liability.

6.2 Aggrieved by the order of the AO, the assessee is in appeal before the ld. CIT(A). The ld. CIT(A), found that nothing has been discussed about the restriction of deduction u/s. 10AA of the Act to Rs.3519,33,24,641/-, by the AO and hence, not adjudicated on this issue. Further, the CIT(A) has directed to re-compute the deduction u/s. 10AA of the Act and allow such deduction as per law. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

6.3 We have heard the rival contentions, and gone through the facts and circumstances of the case. From the submissions of Ld. AO, it is quite clear that this deduction is fully allowable to the assessee as the AO has not controverted this issue in his order and it is only an error of short deduction while arriving the total income. The assessee also took us through the order of coordinate bench of ITAT, Chennai in assessee's own case in ITA No. 363/Chny/2023, dated 26.07.2023, where the similar error had occurred and was allowed. The ld. DR also has not controverted the issue and agreed for remanding

back the issue to the AO for re-computation to allow the deductions u/s. 10AA of the Act, as claimed in the return of income by the assessee.

6.4 We have perused the matter and found that the error is apparent on records and also by respectfully following the order of the coordinate bench of ITAT, Chennai, in assessee's own case (supra), we modify the impugned order and hold that full deduction would be allowable to the assessee. The Ld. AO is directed to re-compute the income of the assessee.

7. Ground no. 11 to 12: Short grant of Advance tax and TDS belonging to amalgamated entities:

7.1 In this regard, Ld. CIT(A), in its order in para 8.5, directed Ld. AO to verify the advance tax and TDS belonging to amalgamating companies to the assessee and allow the credit as per law after due verification.

7.2 It is the submissions of Ld. AR that few of the entities got amalgamated with the assessee. The income of those entities was offered to tax by the assessee. Therefore, the credit of advance tax and TDS credit belonging to those entities would

be allowable to the assessee and those entities have not claimed the credit thereof. The Ld. AR further submitted that the details of the same would not be reflected in Form 26AS of the assessee.

7.3 Considering the plea of Ld. AR, and respectfully following the order of the coordinate bench of ITAT, Chennai, in assessee's own case in ITA No. 363/Chny/2023, dated 26.07.2023, we direct Ld. AO to verify assessee's claim as per the submissions made by Ld. AR and allow the credit thereof as per law. The corresponding grounds stand allowed for statistical purposes.

Revenue's Appeal in ITA No: 150/Chny/2023:

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

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

2.1. The Ld. CIT(A) erred in deleting the provision for lease equalization charges amounting to Rs. 22,35,95,423/-, added with the books profit without appreciating that the lease equalization charges is a provision only and not an ascertained liability.

2.2 The Ld. CIT(A) erred in deleting addition made towards provision for lease equalization charges in the computation of book profits u/s. 115JB of the Act, without appreciating that the amount debited in the P & L account as lease equalization charges is merely a provision for unascertained liability and

warrants adjustments u/s. 115JB as per clause (c) to Explanation 1 of section 115JB(2) of the IT Act.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of Id. CIT(A) may be set aside and that of the Assessing Officer be restored."

9. The only issue raised in this appeal of Revenue is as regards to allowability of lease equalization charges under the provisions of Section 115JB of the Act. We noted that the A.O while computing book profit has added back of the lease equalization charges to the book profit treating the same as an ascertained liability of the current year/notional provision created for future lease rental liabilities. According to A.O, the assessee's claim that it is an unascertained liability of the present year is incorrect. But, actually it is an ascertained and contingent liability of future year subject to continuation of lease agreement by both the parties and hence, for the current year this obligation arises from past event. Hence, the A.O held the same as unascertained liability, but according to CIT(A), the provision of lease equalization charges is ascertained liability and covered by the decisions of Hon'ble Madras High Court and Hon'ble Supreme Court in the case of *CIT vs. Yokogawa India Ltd. [2017] 77 taxmann.com 41 (SC)*.

Once, the Hon'ble Supreme Court in the case of *CIT vs. Virtual Soft Systems Ltd. [2018] 92 taxmann.com 370 (SC)* held as under:

> **"13.** *The method of accounting followed, as derived from the ICAI's Guidance Note, is a valid method of capturing real income based on the substance of finance lease transaction. The rule of substance over form is a fundamental principle of accounting, and is in fact, incorporated in the ICAI's Accounting Standards on Disclosure of Accounting Policies being accounting standards which is a kind of guidelines for accounting periods starting from 01.04.1991. It is a cardinal principle of law that the difference between capital recovery and interest or finance income is essential for accounting for such a transaction with reference to its substance. If the same was not carried out, the Respondent would be assessed for income tax not merely on revenue receipts but also on non-revenue items which is completely contrary to the principles of the IT Act and to its Scheme and spirit.*
>
> **14.** *The bifurcation of the lease rental is, by no stretch of imagination, an artificial calculation and, therefore, lease equalization is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of income tax. Moreover, we do not find any express bar in the IT Act which bars the bifurcation of the lease rental. This bifurcation is analogous to the manner in which a bank would treat an EMI payment made by the debtor on a loan advanced by the bank. The repayment of principal would be a balance sheet item and not a revenue item. Only the interest earned would be a revenue receipt chargeable to income tax. Hence, we do not find any force in the contentions of the Revenue that whole revenue from lease shall be subjected to tax under the IT Act."*

9.1 Hence, the CIT(A) has rightly deleted the addition and held that it is an ascertained liability and cannot be added back

in book profit u/s. 115JB of the Act. We uphold the order of the CIT(A) and this issue of Revenue's appeal is dismissed. Consequently, the appeal of the Revenue is dismissed.

10. In the result, appeal filed by the assessee in ITA No. 45/Chny/2023 is partly allowed and appeal filed by the revenue in ITA No. 150/Chny/2023 is dismissed.

Order pronounced in the open court on 08th May, 2024 at Chennai.

Sd/-	**Sd/-**
(महावीरसिंह)	**(**एस**.**आर**.**रघुनाथा**)**
(MAHAVIR SINGH)	**(S. R. RAGHUNATHA)**
उपाध्यक्ष**/Vice President**	लेखासदस्य**/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated, the 08th May, 2024
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