

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2915/Chny/2016

निर्धारण वर्ष / Assessment Year: 2009-10

Deputy Commissioner of
Income-tax,
Corporate Circle -4(1),
Chennai.

M/s. Malar Publications Limited,
v. No. 86, Periyar EVR High Road,
Vepery, Chennai – 600 007.
[PAN: AAACM-2573-P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Hema Bhupal, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 07.05.2024

घोषणा की तारीख/Date of Pronouncement

: 31.05.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the revenue is filed against the order of the Commissioner of Income Tax (Appeals)-8, Chennai, for the assessment year 2009-10, vide order dated 10.08.2016.

2. The sole ground is that the Id.CIT(A) erred in deleting the disallowance of software development expenditure of Rs.1,17,54,611/- made by the Assessing Officer.

3. The brief facts are that, the assessee is a company with a business of newspaper publication, FM radio, Cable, Printing and Advertising business and having its registered office at Chennai. During the assessment year 2009-10, filed its return of income on 29.09.2009 by claiming a current loss of Rs.2,82,65,277/-.

4. The case was selected for scrutiny and assessment order concluded by the Assessing Officer u/s. 143(3) r.w.s. 263 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 26.03.2015, by disallowing the expenditure claimed by the assessee for Rs.1,17,54,611/- towards software development expenditure. With regard to the software expenditure it was explained that the expenditure was incurred during the previous year 2007-08 towards development of software to be utilized in-house. The same was classified under assets as 'work-in-progress' as on 31.03.2008. As the same could not be developed to the level of utility, this expenditure was written off by debiting to profit and loss account for the financial year 2008-09 relevant to assessment year 2009-10. It is observed that the expenditure was towards the development of software which was intended for linking all the divisions of the business

operations and various functional arms such as accounts, procurement, fixed assets and human resources. The developed assets could have been intangible fixed assets which could have given enduring benefit to the assessee company. Therefore, the said asset is capital in nature. As the software was not fully developed, obviously the same could not be put to use. As the expenditure in question is capital in nature the same should have not been debited to the profit and loss account. Even considering hypothetically being entitled to be charged to the profit and loss account, the same should have been charged to the profit and loss account of 2007-08 but not 2008-09. Charging the same to the profit and loss account of financial year 2008-09 is not correct in accordance with the accounting principles. Therefore, the expenditure of Rs.1,17,54,611/- incurred towards development of software debited to the profit and loss account is disallowed being capital in nature and also for the reason of not pertaining to relevant previous year. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

5. During the appellate proceedings, after hearing the contentions of the assessee, the Id. CIT(A) decided the issue in

favour of the assessee by deleting the disallowance of software development expenditure with the following findings:

"4.1. I have considered the observations of the Assessing Officer and the submissions made by the appellant. The first issue in dispute is the disallowance of the expenditure of Rs.1,17,54,611/- claimed by the appellant towards development of software. The Assessing Officer disallowed the same observing that it was capital in nature and that the expenditure claimed does not pertain to the assessment year under consideration. In contrast, the appellant submitted as under:

1. The assessee has incurred the software expenditure of Rs. 1,17,54,611/- during the previous year 2007-08(Assessment Year 2008-09) towards development of software to be utilized in - house. The same was classified as assets: work in progress as on 31/3/2008 (audited financials). The expenditure was towards the development of software which was intended for linking all the five divisions of the business operations (Maalai Malar,' Hello FM, AMN TV, Sovereign Media Marketing & Rani Printers) and various functional arms such as accounts procurement, fixed assets and human resources. The estimated cost of software development was around Rs. 6 crores. The developed assets would have given the enduring benefit to the company and hence would have capital in nature if the software development had completed in full. However, after about a year of development, when the front window (graphical user interface)' was developed and a test run was conducted online with important centres, the software could not meet the required functionalities. Several re-testing and modifications were carried out. But these could not meet the required basis functionalities as was required to be met by the software. Hence, as soon the assessee, realized that the overall objective could not be attained, the process of the development of the software for the balance areas was abandoned and charged to profit and loss account in the financial year 2008-09. The software, at the time of its abandonment as in an incomplete state and was no way near to its completion or being put to use.

2. The Assessee has charged the expenditure to the profit and loss account as soon as it realized that the asset is of no use and will not be able to attain its ultimate objective of the company. Hence, in the financial year 2007-08 the company parked the expenditure into work-in-progress, but as the company

determined that the same could not be developed to the level of utility, the expenditure was written off in the financial year 2008-09 i.e. in the assessment year'2009-10. Thus, the entire expenditure of Rs.1,17,54,611/- was written off in the financial year 2008-09.

The only issue to be resolved is whether the work-in-progress abandoned, consequent to incurring expenditure on the same, is allowable as a deduction to the appellant. The appellant furnished the depreciation statement as on 31.03.2009 from which it is seen that no depreciation was claimed whatsoever on the capital expenditure incurred in developing the software either in the preceding assessment year or in the assessment year under consideration. The Assessing Officer accepts the fact that even if the amount is considered to be allowable, it could be allowed only in the financial year 2007-08 i.e. in the preceding assessment year. Whereas, since the appellant decided to abandon the work-in-progress only in the previous year relevant to the assessment year under consideration, such a stand of the Assessing Officer would be asking the appellant to perform an impossibility.

It is pertinent to refer to the decision of the Hon'ble High Court of Calcutta in the case of Binani Cement Ltd. v. CIT (380 ITR 116J(Cal.) wherein in a similar case it was declared as under:

Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Expenditure on construction of new facility written off) - Assessment year 2002-03 Assessee company, in earlier year, incurred certain expenditure for construction/acquisition of new facility - However, said construction/acquisition was abandoned at work-in-progress stage only - Whether since decision to abandon project was taken in relevant year for purpose of business, it could be concluded that writiii'g1 off ' of said expenditure by assesses arose in relevant year only and, hence, would be an allowable expenditure - Held, yes

Respectfully following the view endorsed by the Hon'ble High Court of Calcutta in the case of Binani Cement Ltd (supra), it is held that the expenses incurred on work-in-progress abandoned by the appellant can be written off and claimed as a deduction by the appellant. The appellant succeeds on this ground."

Aggrieved by the impugned order of the Id. CIT(A), the revenue is in appeal before us.

6. The Id.DR, vehemently argued that the Id.CIT(A) has erred in deleting the disallowance of software development expenditure spent by the assessee as revenue expenditure in the present assessment year. The Id. DR has relied on the following judicial decisions.

- (i) Hon'ble Apex Court's decision in the case of Swadeshi Cotton Mills Co. Ltd vs CIT [1967] 63 ITR 65
- (ii) Hon'ble Madras High Court's decision in the case of EID Parry (India) Ltd 279 ITR 253
- (iii) Hon'ble Chennai Tribunal's decision in the case of Superfil Products Ltd vs ACIT in ITA No. 2053/Mds/2011

However, the Id.CIT(A) has not followed the verdict in the right spirit and hence the impugned order of the Id. CIT(A) in allowing the deduction should be quashed.

7. Per contra, the Ld. Counsel for the assessee took us through the decisions referred by the Id.DR and stated that these decisions are not applicable to the facts of this case. On the contrary, the following judgments supports the case of the assessee:

- (a) Hon'ble Supreme Court in the case of Alembic Chemical Co. [1989] 177 ITR 377 (SC)
- (b) CIT vs J.K. Synthetics [2009] 309 ITR 371 (Del)
- (c) CIT vs Southern Roadways Ltd. [2008] 24(I) ITCL 118 (Mad-HC)

The Ld. Counsel for the assessee, prayed for upholding the order of the Id. CIT(A).

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is admitted fact that company has spent an expenditure for development of software to the tune of Rs.1,17,54,611/- during the assessment years 2008-09 & 2009-10 to be utilized in-house for linking all the divisions of the business operations and various functional arms such as accounts, procurement, fixed assets and human resources. However, after about a year of development a test run was conducted online with important centers, the software could not meet the required functionalities, even after carrying out certain modifications. During the assessment year 2008-09, the company parked the expenditure under asset as work-in progress, but as the company determined the same could not be developed to the level of utility, the same has been claimed

as expenditure during the assessment year 2009-10 as software development expenses.

9. The Id.DCIT, has disallowed the said expenditure incurred towards development of software as being capital in nature by following the judgments referred in Para 5 of this order (Supra).

10. We have gone through the cases referred by both the parties. We are of the considered opinion that the cases referred by the revenue are not applicable in the facts of the present case for the following reasons. The said decisions are in relation to the expenditure made in the nature of capital expenditure and towards setting up of new project or something which is not in the normal course of business.

11. We have also gone through the following judgments relied by the assessee.

"a. CIT vs J.K. Synthetics [2009] 309 ITR 371 (Del), wherein the court has held that (i) the expenditure incurred towards initial outlay of business would be in the nature of capital expenditure, however, if the expenditure is incurred while the business is ongoing, it would have to be ascertained if the expenditure is made for acquiring or bringing into existence an asset or an advantage of an enduring benefit for the business, if that be so, it will be in the nature of capital expenditure. If the expenditure, on

the other hand is for running the business or working it, with a view to produce profits, it would be in the nature of revenue expenditure; (ii) it is the aim and object of expenditure which would, determine its character and not the source and manner of its payments.

*b. In **CIT V. Southern Roadways Ltd. (2008) 24(1) ITCL 118 (Mad-HC): (2008) 304 ITR 84 (Mad) : (2009) 183 Taxman 234 (Mad)** the Assessee claimed the expenditure incurred on software packaged as revenue expenditure, but the same was disallowed by the revenue. It was held that the concept of enduring benefit must respond to the changing economic realities of the business. The expenses incurred by installation of software packages in the present computer world, which revolves on the modem communication technology, enables the Assessee to carry on its business operations effectively, efficiently, smoothly and profitably. However, such software itself does not work on a standalone basis. It has to be fitted to a computer system to work. Such software enhances the efficiency of the operation. It is an aid in the manufacturing process rather than tool itself. **Therefore, the payment for such application does not result in acquisition of any capital asset and it merely enhances the productivity or efficiency and hence, has to be treated as revenue expenditure.** In view of the above, the tribunal had rightly held that the expenditure incurred on software packages as a revenue expenditure.*

*c. The **Hon'ble Supreme Court, in the case of Alembic Chemical Co. (1989) 177 ITR 377 (SC)**, held that the concept of payment made 'once and for all' and of 'enduring benefit' must respond to the changing economic realities of the business. It was also observed that "once for all" payment test is also inconclusive.*

d. In **CIT v. Sundaram Clayton Ltd.** (2008) 23 (I) ITCL 314 (Mad- HC) : (2008) 10 DTR (Mad) 134, it was again held that expenditure on purchase of software is revenue expenditure and not capital in Nature.

e. In **CIT v. Asahi India Safety Glass Ltd.** (2011) 42 (I) ITCL: 178 (Del-HC) : (2011) 245 CTR (Del) 529, the Assessee had installed a software in the financial year 1996-97, relevant for assessment year 1997~he software was based on application software, commonly known as oracle application.

1. The expenditure incurred by the Assessee was towards development of a software **which was to improve the efficiency of its existing operations.**

2. **No asset was created.** The in-development software did not even meet the basic functionalities and hence had to be shelved off.

3. When no asset was created, the concept of enduring benefit itself does not arise.

4. Even if the software had been developed and was successful, it has been held by the decisions of the various Hon'ble Courts that expenditure towards Software, incurred towards improving the existing business operations, was purely revenue in nature."

12. Considering the facts, findings and circumstances and ratio of the judicial precedents, referred by the assessee, we are of the considered view that the expenditure claimed for development of software to the tune of Rs.1,17,54,611/- during the assessment year 2009-10 was in the nature of revenue

expenditure. Therefore, we do not find any infirmity or mistake in the order of Id.CIT(A) in allowing such expenditure by deleting the additions made by the Assessing Officer and hence, we uphold the order of the Id. CIT(A) and reject the ground taken by the revenue.

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

Order pronounced in the open court on 31st May, 2024 at Chennai.

Sd/-
(एबी टी वर्की)
(ABY T VARKEY)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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