आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC'' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 676/JP/2024
निर्धारण वर्ष/Assessment Year : 2008-09

M/s. Data Ingenious Global Ltd. Bhagwati Sadan, Swami Daya Nand Marg Alwar	बनाम Vs.	The ACIT CentralCircle Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACD 5376 M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से/Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख/Date of Hearing : 07/08/2024
उदघोषणा की तारीख/Date of Pronouncement: 27 /08/2024

आदेश/ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A), Jaipur -4 dated 03-05-2024 for the assessment year 2008-09 raising therein following grounds of appeal.

> ''1. Income-Tax (Appeals)-IV, Jaipur has erred in law as well as on the facts and circumstances of the case in dismissing the appeal of the assessee company on technical ground as mentioned in para number 4.2 on page number 18 of the order appeal against, whereas the facts remains that the detail and nature of disallowance i.e. deferred revenue expenditure is mentioned in the ground of appeal i.e. form number 35 and the same detail and nature of disallowance is also mentioned in the

assessment order, and the mentioning of section 14A of the Income Tax Act, 1961 is amenable to amendment in view of the provision of section 292B of the Income Tax Act, 1961, therefore, the ground taken by the ld Commissioner of Income-Tax (Appeals)-VI, Jaipur, for dismissing the appeal on this ground deserves to be quashed.

2. That the ld. Commissioner of Income-Tax (Appeals)-IV, Jaipur has erred in law as well as on the facts and circumstances of the case in not following the orders of Income Tax Appellate Tribunal, Bench-Jaipur, Jaipur and Commissioner of Income-Tax (Appeals), Alwar in the assessee's own case for the earlier and subsequent assessment years as submitted before him during the course of appeallate proceedings, having the same set of facts and circumstances and without distinguishing them, thus the order so passed is against the well established principle of judicial precedence and consistency as upheld by apex court in the case of Radhasaomi Satsang V/s Commissioner of Income-Tax 193 ITR 321 (SC) and Parshuram Pottery Works v/s Income Tax Officer 106 ITR 1 (SC), thus the order so passed is in total disregard of the apex court decision as referred to hereinabove and deserves to be quashed.

3. That the ld. Commissioner of Income-Tax (Appeals)-IV, Jaipur has erred in law as well as on the facts and circumstances of the case in mentioning that "in view of the absence of facts and evidences from the side of the appellant in the assessment proceedings as well as in the appeal proceedings despite of specific request during the assessment proceedings, this ground of appeal is hereby dismissed on merits also", these findings are an erroneous findings in as much as nature of expenses, year of payments, amounts, details of deferment and year of incurring the expenses. deferment period were submitted and mentioned in para number 6 on page number 11 of the appeallate order under heading "Merits of the Case" thus, this ground taken by the learned Commissioner of Income-Tax (Appeals)-IV, Jaipur is against the facts and disallowance so made deserves to be quashed.

4. That the ld. Assessing officer has erred in law as well as on the facts and circumstances of the case in making a disallowance of deferred revenue expenditure of Rupees 769315.00 and the ld Commissioner of Income-Tax (Appeals)-VI, Jaipur has erred in sustaining the same.''

2.1 Brief facts of the case are that The assessee filed the return declaring NIL income after claiming exemption of Rs.1,07,32,784/- u/s 10A of the Act. However, it declared book profit u/s 115JB of the Act at Rs.52,00,988/- on which tax was paid. The original assessment was completed on 13.12.2010 at total income of Rs.38,99,010/- which includes the disallowance of Rs.7,69,315/- on account of deferred revenue expenditure. Against the assessment order assessee filed appeal before CIT(A) who deleted the addition of Rs.7,69,315/- on account of deferred revenue expenditure but confirmed the other additions made by the AO.

2.2 Against the order of CIT(A) both the assessee and the department filed appeal before Hon'ble ITAT. Hon'ble ITAT vide order dt.09.05.2017 set aside the order of CIT(A) and restored the issue to the file of the AO with certain directions.

2.3 The AO in pursuance to the direction of Hon'ble ITAT assessed the total income at NIL, but confirmed the addition made on account of deferred revenue expenditure of Rs.7,69,315/-. On this issue Hon'ble ITAT has given the following directions :

"6.4 *We have heard the rival contentions and pursued the material available on record. The CIT(A) has relied on the order of his predecessor in A.Y. 2006-07 in allowing the relief to the assessee which is stated to be challenged before the Tribunal. There is nothing on record*

to throw light on the status of the appeal filed before the tribunal for A.Y.2006-07. We accordingly set aside the matter to the file of the AO to consider and decide the matter afresh. In the result, the ground of revenue is allowed for statistical purposes."

2.4 Before the AO, the assessee relied upon the decision of Hon'ble ITAT on this issue in its own case for A.Y. 2010-11 and furnished the ITAT order for A.Y. 2006-07 wherein the Hon'ble ITAT has set aside the issue to the file of CIT(A). The AO however observed that CIT(A) has still not decided this issue in A.Y. 2006-07. Assessee was required to furnish the details of deferred revenue expenditure of Rs.7,69,315/- with supporting documentary evidences but the same was not filed nor the assessee could substantiate how such expenditure is allowable under the provisions of the Act. The decision of Hon'ble ITAT for A.Y. 2010-11 was not followed by the AO stating that revenue has repeatedly not accepted the issue on merits and filed further appeal before the appropriate authorities. Moreover the order of Hon'ble ITAT has not been received yet and the fate of that would be decided in further course of action. Accordingly, he again made the addition of Rs.7,69,315/-.

2.5 The Ld. CIT(A) at Para 4.2 Page 18 of the order observed that in the grounds of the appeal assessee has challenged making disallowance of deferred revenue expenditure amounting to Rs.7,69,315/- u/s 14 of the Act but in the assessment order no addition is made under this section. Accordingly the ground of appeal raised by the assessee is dismissed as infructuous. On merit he quoted the finding

of the AO in the assessment order and in the absence of facts & evidences from the side of the assessee, the appeal of the assessee was dismissed.

2.6 During the course of hearing, the ld. AR of the assessee filed a written submission praying therein to delete the addition made by the AO and confirmed by the ld. CIT(A).

2.7 On the other hand, the ld.DR supported the orders of the lower authorities.

2.8 After having gone through the facts and circumstances of the present case and after hearing both the parties at length and after perusal of the orders passed by the revenue authorities I found that in the grounds taken before ld. CIT(A), the assessee has mistakenly referred to section 14A of the Act. Although he has challenged the disallowance of deferred revenue expenditure and this fact has already been admitted by Ld AR. Therefore in my view for such a Bonafide mistake the ground of assessee cannot be held to be infractuous without providing the opportunity to rectify the mistake.

2.9 Now coming to the merits of the issue, the IT order at para 6. 2 Page 41 of the order, it was submitted by the assessee that in A.Y. 2001-02, it incurred expenditure on advertisement, consultancy charges & foreign travelling expenses of Rs.45,89,096/- which instead of claiming in that year was deferred and only 1/10 of such expenses i.e. Rs.4,58,910/- was claimed in the profit & loss a/c. Again

in A.Y. 2002-03, assessee incurred expenditure on advertisement & consultancy of Rs.31,04,045/- which instead of claiming the expenditure in that year was deferred and only 1/10 of such expenses i.e. Rs.3,10,405/- was claimed in the profit & loss a/c. Accordingly in all subsequent years, Rs.7,69,315/- (4,58,910 + 3,10,405) is claimed in the profit & loss a/c on deferred basis. These expenses are not of the nature falling under section 35D but assessee on the basis of its accounting policy deferred these expenditures and claimed 1/10 of these expenses each year. Thus, assessee has furnished the complete details of the claim of deferred revenue expenditure of Rs.7,69,315/- and therefore CIT(A) is incorrect in holding that assessee has not furnished the details & particulars of the expenditure claimed as deferred revenue expenditure even after incorporating the same at Page 10 of its order. I also noticed that the similar issue has been considered by Hon'ble ITAT in case of Vijay Solvex Ltd. for A.Y. 1995-96 order dt.23.06.2005 where similar claim of deferred revenue expenditure was held allowable relying on the decision of Hon'ble Supreme Court in case of Madras Industrial Investment Corporation v/s CIT 225 ITR 802. This decision was again followed by the Hon'ble ITAT in case of Vijay Solvex Ltd. for A.Y. 1998-99 order dt.27.07.2005. In my view although ld CIT(A) has not yet decided this issue in assessment year 2006 07 in pursuance to the directions of ITAY, but it may be noted that the Ld. CIT(A) has not yet decided this issue in A.Y. 2006-07 in pursuance to the direction of Hon'ble ITAT.

However in all earlier & subsequent years right from A.Y. 2001-02, the deferred revenue expenditure has been allowed to the assessee except of A.Y. 2006-07 & in the year under consideration where the appeal is pending before CIT(A) and Hon'ble ITAT respectively. Therefore in view of the decision of **Hon'ble Supreme Court in case of Excel Industries Ltd. (2013) 358 ITR 295** where considering the principle of consistency it held that revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it. The relevant Para 28 to 31 of the decision are reproduced as under:

"28. Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

29. In Radhasoami Satsang Saomi Bagh v. Commissioner of Income Tax, [1992] 193 ITR 321 (SC) this Court did not think it appropriate to allow the reconsideration of an issue for a subsequent assessment year if the same "fundamental aspect" permeates in different assessment years. In arriving at this conclusion, this Court referred to an interesting passage from Hoystead v. Commissioner of Taxation, 1926 AC 155 (PC) wherein it was said:
"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

30. Reference was also made to Parashuram Pottery Works Ltd. v. Income Tax Officer, [1977] 106 ITR 1 (SC) and then it was held:
"We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

"On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

31. It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it."

Therefore considering the totality of the facts and circumstances as discussed by me Above, and also taking into consideration that in all the earlier and subsequent years right from AY 2001 - 2002 the deferred revenue expenditure has already been allowed in the case of assessee except for assessment year 2006-07 and in the year under consideration, where the Appeal of the assessee is still pending before ldm CIT(A) therefore while taking into consideration the principles laid down by Hon'ble Supreme Court in the case of Excel industries limited (Supra) and also keeping in view the principal of consistency, I hold that Revenue cannot be allowed to flip-flop on the issue and it ought let the matter put to rest rather than spending the tax payers money in pursuing litigation for the sake of it. Thus, I direct the AO to delete the addition

3.0 In the result, the appeal of the assessee is allowed with no orders as to costs.

Order pronounced in the open court on 27/08/2024.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 27 /08/2024

*Mishra

आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- M/s. Data Ingenious Global Limited, Alwar Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle, Alwar
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.676/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar