

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2418/MUM/2024
Assessment Year: 2012-13**

Cheers Interactive (India) Pvt. Ltd., Office No.173, 2 nd Floor, Pitru Chhaya Jain society, Sion, Mumbai – 400 020 (PAN : AABCC3894L)	Vs.	The Assistant Commissioner of Income Tax, Circle – 6(1)(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Dhaval Shah, Advocate
Revenue : Shri Krishna Kumar, Sr. DR

Date of Hearing : 29.10.2024
Date of Pronouncement : 24.01.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2023-24/1062531003(1), dated 13.03.2024 passed against the assessment order by the Assistant Commissioner of Income Tax-6(2)(2), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 25.03.2015 for Assessment Year 2012-13.

2. Grounds taken by the assessee are reproduced as under:

"1. The Ld. CIT (Appeal) (National Faceless Appeals Centre), in the facts and circumstances of the case and in law grossly erred in passing the impugned appellate order u/s. 250 of the Act without granting opportunity of hearing and ignoring

(a) The statement of facts as mentioned in the appeal petition filed:

(b) During the course of several physical hearings before the then Id. CIT(A)-12 during the period from April 2017 to February, 2019, various papers, documents and submissions made during the course of the hearings;

(c) Letters written/notes/charts submitted from time to time in connection with the said appeal hearings;

(d) Letter dated 31 August 2020 submitted in response to notice dated 24 August 2020 together with Gist of submissions made till then.

2 The Ld. CIT Appeals) in the facts and circumstances of the case and in law ought to have passed appellate order after considering the above and the Ld. CIT (Appeal) and hence the appellate order passed by him ignoring the same is illegal and bad-in-law.

3. The Ld. CIT(Appeals) in the facts and circumstances of the case and in law grossly erred in:

(a) Summarily dismissing the appeal petition filed by the appellant without mentioning proper reasons and justification;

(b) not holding that the appellant acquired the "intangible asset from EADS France SAS in terms of agreement dated 28 July 2011:

(c) stating that mere signing of the legal document i.e. "Agreement for services related to Support of Licensing activity" would not make it as acquiring any rights or business or commercial rights of similar nature Le. intangible assets eligible for depreciation.

(d) not granting depreciation amounting to Rs. 3,14,71,750/- in respect of the said intangible assets as claimed by the appellant.

(e) Alternatively, not allowing the entire amount of Rs. 12,58,87,000/- paid/ incurred by the appellant in respect of the said intangible under the said agreement dated 28th July 2011 with EADS France SAS as revenue expenditure u/s 37(1) of the Act having been incurred in the course and for the purpose of the business.

4. The Learned CIT(A) in the facts and circumstances of the case and in law erred in not considering the additional grounds filed whereby:

(a) The appellant withdrew the claim of foreign exchange loss of Rs.89,59,000/- as revenue expenditure.

(b) The appellant claimed depreciation of Rs. 2,76,672/- on foreign exchange loss of Rs. 22,13,375/- being actually paid, as part of the cost of intangibles u/s 43A of the Act.

(c) Alternatively, claimed the entire amount of Rs. 22,13,375/- as revenue expenditure.

3. From the above grounds, the moot point in this appeal is in respect of claim of depreciation by the assessee on intangible assets being “*commercial rights acquired under an agreement*” for providing commercialisation services across the globe for underlying Intellectual Property Rights (IPR) for technologies identified. In the alternate, assessee claims the same as revenue expenditure u/s.37(1) incurred in the course of and for the purpose of business. Thus, the dispute is on recognising the amount paid/incurred by the assessee as a capital transaction eligible for depreciation or to treat it as revenue expenditure allowable in full, in the year under consideration.

4. Brief facts of the case are that assessee filed its return of income on 29.09.2012, reporting total income at Rs.3,32,56,880/- with a book profit at Rs.4,67,43,257/-. Assessee is engaged in the business providing services in custom research and data analytics across multiple sectors such as automotives, chemicals, life sciences, pharmaceuticals, engineering, energy, etc. Assessee also engages itself in identifying technology licensing opportunities to address business innovation and technological needs of its various customers/clients. In this pursuit, assessee partnered with one such group to license their technologies and IPRs to its customers.

4.1. Assessee entered into an agreement on 28.07.2011 for rendering its services to EADS Deutschland GmbH, a company incorporated in the state of Federal Republic Germany and EADS, France SAS, a company incorporated under the laws of France (hereinafter referred to

as EADS) in connection with their business of offering IPRs possessed by them. Under the said agreement, assessee is appointed as “Global Intellectual Property and Technology Consultancy Services Company”. Assessee shall provide commercialisation services across the globe for the underlying IPRs for technologies to industries globally including “aerospace”, “defence sector” and “shared sector” as defined in the said agreement. In terms of this agreement, assessee is entrusted with the commercialisation services as stated hereunder:

"All technology licensing support services including but not limited to technology and patent analysis and mapping and marketing, advertising, building lists of potential customers, identifying, approaching, discussing, negotiating and facilitating licensing negotiations with customers interested in licensing EADS Technology/ies and IPRS thereto that are available for licensing under EADS Technology Licensing Initiative."

4.2. Article 2 of this agreement listed the deliverables and scope including duties and responsibilities of assessee towards providing commercialisation services. Against this, the deliverables of EADS in this agreement are listed in Clause 2.3 of Article 2, which requires EADS to provide and perform certain services and obligations. In Clause 2.4 of the agreement which deals with “*Principles of the agreement*”, assessee has been granted to market and promote the IPRs of EADS to all the corporates/clients across all the sectors of industries including “aerospace”, “defence sectors” and “shared sectors” in consideration of which assessee is entitled to receive a share of the net licensing revenues as specified in clause 3.3 of the agreement. For the purpose of this agreement, net licensing revenue is defined in Article 1 as “*the amount invoiced in the framework of EADS Technology Licensing Initiative to customers as licensing fees for providing a license to use any EADS technology and IPR*”.

4.3. Under this agreement, assessee is required to pay to EADS a sum of 2 Million (2,000,000) Euros plus the amount of tax deducted under

the laws applicable in the jurisdiction of the assessee, if required. Upon entering this agreement, entire amount of EURO 2 million became due as payable, though, the said amount is stated to be paid in instalments as specified in Clause 3.1 of the agreement. Further, assessee guaranteed in Clause 3.2, to generate a minimum of Euro 50 Million of net licensing revenues for EADS over a period of 10 years until year 2021 with specified minimum targets for each of the year as contained in Clause 3.2.

4.4. On the strength of the above stated averments in the agreement, assessee claims that it has acquired exclusive rights to market the licensing of EADS technology and IPRs from EADS, made available to the assessee for licensing under EADS Technology Licensing Initiative. Assessee claims that the right acquired in this agreement is a valuable asset enabling it to earn substantial revenue from various corporates and others across the globe which are available to the assessee up to 31.12.2021, i.e., for a period of 10 years and 5 months from the date of entering of the said agreement. Assessee, thus by resorting to the definition of “Capital Asset” u/s. 2(14) classified the right acquired by it under the agreement as the “Commercial Rights” falling within the expression “Assets” as explained in Explanation 3 to Section 32 of the Act, whereby *interalia* “Assets” shall mean “*intangible assets, being know how, patents, copy rights, trade marks, licences, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession*”.

4.5. Assessee reported this transaction in its audited financial statements by way of an addition to fixed assets during the year under the nomenclature “Intangible Fixed Assets - rights under agreement” at Rs.12,58,87,000/-. This is reflected in “Note No.11 – Fixed Assets”

forming part of the audited balance sheet for the year ended as on 31.03.2012, placed in the paper book at page – 26. On these rights under agreement identified as intangible fixed asset, assessee claimed depreciation at the rate of 25% in its gross block of assets while computing profits and gains of business or profession under the Act which amounts to Rs.3,14,71,750/-. According to assessee, depreciation is allowable in respect of intangible assets, owned wholly or partly by the assessee and used for the purpose of business or profession. According to assessee, the aforesaid commercial rights granted under the said agreement by EADS to the assessee is a capital asset, owned and used by it for the purpose of business and hence eligible for depreciation.

5. On this claim of depreciation, ld. Assessing Officer perused the contents of agreement and made the following observations:

- i) Terms of payments shows that this agreement is related only to provide commercialisation services to prospective customers.
- ii) Under Article 3 of the agreement, assessee is liable to pay a predetermined amount of Euros 2 Million upto December, 2013 and also give guarantee to generate a minimum net licensing revenue of Euros 50 Million over a period of 10 years until 2021, this agreement is an arrangement to operate business of behalf of EADS.
- iii) Intangible assets in the form of right under agreement is not correct as the same is not owned by the assessee.
- iv) No revenue is recognised to show that this intangible asset has been put to use during the year.
- v) The said agreement is “agreement for services related to support to licensing activities”, which is an arrangement for

providing the services as per terms and conditions mentioned therein for predetermined price and commission receivable after achieving a requisite target.

- vi) Mere signing of any document is not sufficient for acquiring any rights therein since in the payment schedule, there is condition which leads to termination of the agreement in case of failure of making the payment.

5.1. Ld. Assessing Officer, thus concluded that assessee has neither acquired any right or business of commercial rights of similar nature as contained in Explanation 3 to Section 32 nor same being put to use for the business purpose of the assessee during the year. Accordingly, depreciation of Rs.3,14,71,750/0 claimed by the assessee was disallowed and added to the total income. However, there is no dispute on the fact of assessee undertaking this business transaction with EADS by entering into the referred agreement and paying part of consideration as per the specified terms and conditions.

6. Aggrieved, assessee went in appeal before the Id. CIT(A) who summarily disposed the contentions raised by the assessee, upholding the disallowance made by the Id. Assessing Officer. The observations and findings of the Id. CIT(A) on this issue as contained in para 2 are extracted below:

2. The ground no. 283 is against disallowing depreciation and not allowing Rs.12Crore incurred in acquiring intangible assets as revenue expenditure. The assessee contention is wrong. The assessee has submitted in own admission that this is a signing amount to obtain the commercial rights and as per agreement payments for the same has to be made upto December 2013, and by paying this agreement signing fees the assessee company has secured its commission in subsequent year. Mere signing a legal document is not sufficient for acquiring any rights therein as in the payment schedule it clearly mentioned that in case of failure for making payment the agreement will terminate. The agreement may be called as "Agreement for services related to Support of Licensing activity" clearly speaks that this is an agreement between the assessee and EADS for providing services as per terms and condition mentioned therein for predetermine price and commission will be payable after achieving requisite

target. In view of the above the assessee has neither acquired any rights or business or commercial rights of similar nature nor being put to use for the business purpose of the assessee during the year. Hence action of the AO in disallowing depreciation is fully justified. Ground nos. 2 and 3 are dismissed.

6.1. Aggrieved, assessee is in appeal before the Tribunal.

7. Before us, ld. Counsel for the assessee reiterated various clauses and terms and conditions contained in the agreement entered into by the assessee with EADS which are not repeated for the sake of brevity. The sole thrust of the contentions is that assessee has acquired an intangible asset in the form of commercial rights as explained in Explanation 3 in respect of intangible assets wherein commercial rights are included, hence eligible for depreciation at the rate of 25% u/s.32 of the Act. Since the incurring of expenditure/amount paid by the assessee is not in dispute in terms of the aforesaid agreement, in the alternate, it is submitted that if the claim of depreciation is not accepted then it is allowable u/s.37(1) as revenue expenditure incurred wholly and exclusively for the purpose of business of the assessee. Ld. Counsel also referred to quantum of aggregate revenue of Rs.4,89,68,666/- generated during the period from 01.04.2010 to 31.03.2017 i.e. during the period of agreement to demonstrate that benefits had accrued to the assessee under the said agreement with EADS. Details of the said revenue from the ledger account of EADS, France as contained in page – 77 of the paper book is extracted below:

1-Apr-2010 to 31-Mar-2017

Date	Particulars	Vch Type	Vch No.	Debit	
For F.Y 2012-2013:-					
31/03/2013	To INTERNATIONAL SALES	Sales	2012/ETL/01	283,723	283,723
For F.Y 2013-2014:-					
30/04/2013	To INTERNATIONAL SALES	Sales	2013/ETL/01	916,589	
30/06/2013	To INTERNATIONAL SALES	Sales	2013/ETL/02	1,146,306	
30/09/2013	To INTERNATIONAL SALES	Sales	2013/ETL/04	114,305	
30/09/2013	To INTERNATIONAL SALES	Sales	2013/ETL/03	444,518	
31/12/2013	To INTERNATIONAL SALES	Sales	2013/ETL/05	1,226,623	
31/12/2013	To INTERNATIONAL SALES	Sales	2013/ETL/06	96,030	
31/03/2014	To INTERNATIONAL SALES	Sales	2013/ETL/07	715,391	
31/03/2014	To INTERNATIONAL SALES	Sales	2013/ETL/08	4,248,741	8,908,502
For F.Y 2014-2015:-					
30/06/2014	To INTERNATIONAL SALES	Sales	2014/ETL/01	605,346	
30/06/2014	To INTERNATIONAL SALES	Sales	2014/ETL/02	184,523	
30/06/2014	To INTERNATIONAL SALES	Sales	2014/ETL/03	338,607	
30/06/2014	To INTERNATIONAL SALES	Sales	2014/ETL/04	482,219	
01/03/2015	To INTERNATIONAL SALES	Sales	2014/ETL/05	584,118	
12/03/2015	To INTERNATIONAL SALES	Sales	2014/ETL/06	35,613,000	
31/03/2015	To INTERNATIONAL SALES	Sales	2014/ETL/07	151,898	
31/03/2015	To INTERNATIONAL SALES	Sales	2014/ETL/08	648,096	38,607,805
For F.Y 2015-2016:-					
31/03/2016	To INTERNATIONAL SALES	Sales	2015/ETL/01	532,202	
31/03/2016	To INTERNATIONAL SALES	Sales	2015/ETL/02	636,434	1,168,636
					48,968,666

7.1. Per contra, ld. Sr. DR strongly placed reliance on the orders of the authorities below.

8. We have heard both the parties and perused the material on record. "Business or commercial rights of similar nature" has to be understood in the facts and circumstances of every business or commercial arrangement undertaken by assessee. For this purpose, we analysed the terms and conditions set forth in the agreement entered into between the assessee and EADS which is titled as "Agreement for services related to support of licensing activities". Assessee has capitalized the consideration under this agreement payable to EADS as an 'Intangible asset' claiming depreciation on the same which the ld. Assessing Officer as disallowed. Recognition of "business or commercial rights of similar nature" as its peculiar nuances. In the present case,

facts of undertaking business transaction by the assessee with EADS in terms of aforesaid agreement is not in dispute. The sole issue is regarding whether to recognize the same as an asset eligible for depreciation u/s. 32 or as revenue expenditure eligible for deduction u/s. 37(1) of the Act. To put it differently, it is only a matter of timing difference on the allowability of the claim, i.e. spread over several years by way of charging depreciation or in one go in the year under consideration. Since assessee has taken an alternate plea of considering the claim as revenue expense for allowability u/s. 37(1) if the treatment of Id. Assessing Officer is not negated, we are inclined to consider the same for adjudicating this appeal.

8.1. In the above paragraphs, we have already analysed the contents of the agreement entered by the assessee with EADS for rendering commercialisation services cooperation in technology licensing initiative for specified time period upto 31.12.2021, commencing from 28.07.2011. Assessee has demonstrated generation of revenue under this agreement over the period from 01.04.2010 to 31.03.2017, tabulated above. In terms of section 37(1), assessee has incurred the expenditure which is laid out wholly and exclusively for the purposes of the business. Keeping the above terms and conditions in the agreement in perspective with the alternate claim made by the assessee of treating the amount payable under the aforesaid agreement as a “revenue expenditure” allowable u/s. 37(1) of the Act, we find it proper to allow the said alternate claim. Ld. Assessing Officer is directed to recompute the total income while giving effect to the aforesaid finding of considering the claim allowable u/s 37(1). Accordingly, ground no. 3(e) raised by the assessee is allowed.

8.2. In ground no. 4 also, assessee has raised alternative claim towards foreign exchange loss of Rs.22,13,375/- actually paid as revenue expenditure which it has considered as part of cost of intangible. This ground is covered by our above stated observations and finding since it stems from the same transaction of impugned agreement under which assessee had recognized it as an intangible asset, having consequential effect. Accordingly, in terms of our aforesaid finding, ground no. 4(c) is allowed. Ld. Assessing Officer is directed to give appropriate effect in computing the total income.

8.3. Since appeal of the assessee is adjudicated on the alternate grounds raised by it, in terms of our above stated observations and finding, other grounds raised are kept open and not adjudicated upon.

9. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 24 January, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 24 January, 2025

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai