

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, F, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.4468/Mum/2014
Assessment Year: 2008-09**

DCIT (OSD) 8(1), R. No.204, 2 nd Floor, Aayakar bhavan M.K. Rd. Mumbai – 400020	बनाम/ Vs.	Future Supply Chain Solution Ltd. Knowledge House, Shyam Nagar, Off Jogeshwari Vikhroli Link Road, Shyam Nagar, Jogeshwari (E), Mumbai- 400060
(Revenue)		(Respondent)
P.A. No.AAACF9650N		

Revenue by	Shri Sanjeev Kashyap (DR)
Respondent by	Ms. Medha Naik (Officer - Taxation of Assessee Company)

सुनवाई की तारीख / Date of Hearing :	04/01/2016
आदेश की तारीख / Date of Order:	8/01/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Revenue against the order of Ld. Commissioner of Income Tax (Appeals)-16,

Mumbai {(in short 'CIT(A)}}, dated 28.03.2014 for the assessment year 2008-09, passed against the assessment order of the Assessing Officer (in short 'AO') u/s 143(3) of the Act, on the following grounds:

"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in directing the Assessing Officer to allow depreciation on SAP software acquired by the assessee from PRIL without appreciating the fact that the assessee had purchased/acquired the said software vide invoice dated 31.03.2008 and assessee had not furnished any evidence to show that it was put to use in the financial year relevant to assessment year under consideration.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to allow depreciation on SAP software on the basis of screen-shots filed by the assessee which in no way establish that the SAP was indeed implemented and put to use by the assessee company in February, 2008"

2. During the course of hearing, arguments were made by Ms. Medha Naik, Officer- Taxation of the assessee company on behalf of the Assessee and by Shri Sanjeev Kashyap, Departmental Representative (DR) on behalf of the Revenue.

3. It has been argued by the Ld. DR that there was no evidence to establish that software was used during the year, and therefore, AO had rightly disallowed depreciation on the software in the year under concern.

3.1. On the other hand, it has been argued on behalf of the assessee that Ld. CIT(A) has recorded detailed findings of facts before arriving at the conclusion that software has been used by the assessee company during the year under concern. It was further argued that nothing has been brought on record to negate or controvert the factual findings of Ld. CIT(A). It was also submitted that the genuineness of the claim has not been doubted, the only grievance of Ld. AO was about user in the current year that too on flimsy grounds that bill of software was dated 31.03.2008 i.e., last date of the previous year. It was submitted that the order passed by the Ld. CIT(A) is in accordance with law and facts and should be upheld.

3.2. We have heard both the sides and gone through the orders passed by the lower authorities. The brief facts are that during the course of assessment proceedings the AO found that the assessee had claimed depreciation @ 30% in respect of SAP software acquired and put to use during the year. It was noted by the AO that invoice of the software was dated 31.03.2008, and accordingly, it was put to the assessee to establish the users of the software during the year under concern. The assessee made detailed submissions and furnished evidences to show that software was acquired much earlier and was put to use by the assessee, but somehow the bill was dated 31.03.2008. But the Ld. AO was not satisfied with the response and therefore, he disallowed the claim of depreciation on the ground that purchase bill of the software

date 31.03.2008 and assessee was not able to establish its user during the year under concern.

3.3. Detailed submission were made before the Ld. CIT(A) and further evidences were submitted to show user of the software during the year. Ld. CIT(A) sent the matter to the AO for examination of submissions of the assessee and additional evidences filed by the assessee and furnishing a remand report. Thereafter, the AO sent remand report to the Ld. CIT(A) wherein allegations made in the assessment order were reiterated. The Ld. CIT(A) considered entire material available before him, and thereafter held that software was acquired by the assessee during the year under concern and was very much put to use by the assessee for the purpose of its business. The relevant para of his order is reproduced below:

*“As regards allowability of depreciation on this capital expenditure for this AY, the screen shots filed show both the ‘Document date’ and the ‘Posting date’, the latter is explained to be the date of entering the transaction and cannot be altered once it is entered into the system. Copy of the screen shots filed show the Posting dates as follows:
11/02/2008 (entries relating to Pantaloon, HDFC),
16/02/2008 (entries relating to Kaveri Warehousing, HDFC)
11/03/2008 (entries relating to Kaveri Warehousing TDS pyb-contractors, Pur-F Goods Manual), etc.
14/02/2008 (entries relating to Petty Cash with CJ, conveyance-staff)*

Looking to the above, it can be said that SAP software had been put to use in February, 2008, hence depreciation cannot be denied. Ground no.2 is accordingly allowed.”

3.4. Thus, from the above it is evident that after examining all the evidences, Ld. CIT(A) recorded a clear findings that software was acquired by the assessee much before 31st March 2008. No material has been brought on record by the Revenue before us to controvert the factual findings recorded by the Ld. CIT(A).

3.5. It is further noted by us that in this case the assessee filed its return at loss of Rs.(-)9,63,36,075/- and even after making impugned addition on account of disallowance of depreciation for Rs.79,18,500/-, the assessed income remained at loss of Rs.(-) 8,84,17,575/-. Thus, apparently, there was no motive with the assessee to make a wrong claim on account of depreciation. It is further noted by us that in this case, the genuineness of the claim is not doubted. The Ld. AO has himself allowed depreciation on full value of the software in the next year. Tax rates are same in both the years. In effect, there is no loss to the Revenue. Even, if depreciation is disallowed in this year, the assessee shall be eligible for depreciation in the next year on higher amount of opening amount of WDV.

3.6. We find that this kind of approach adopted by the Revenue has caused undue hardship to taxpayers. In this regard we shall like to quote here guidance given to the Revenue in its recent judgment by **Hon'ble Supreme Court in the case of CIT vs. Excel Industries Ltd. 358 ITR 295**, the relevant para from this judgment is reproduced below:

“32. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.

33. For the aforesaid reasons, we dismiss the civil appeals with no order as to costs, but with the hope that the Revenue implements its litigation policy a little more practically and a little more seriously.”

3.6. We note from the facts of the case before us that Revenue has filed frivolous appeal and that too in a casual manner without examining any facts and figures and giving rise to the litigation. It has been observed by the superior courts time and again that frivolous litigation consumes productive time and energy of entire machinery of the Government as well as all the

litigating parties. We hope that Revenue would be more careful in future while filing the appeal. Once appeal is filed, it should be contested sincerely and after bringing complete facts and requisite documentary evidences on record to negate the factual findings of the first appellate authority.

Thus, with these observations, we dismiss grounds raised in the appeal filed by the Revenue.

4. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 8th January, 2016.

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 8/01/2016

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai