

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX APPEAL NO. 728 OF 2014
WITH
INCOME TAX APPEAL NO. 777 OF 2014**

The Commissioner of Income Tax,
Mumbai

.. Appellant

v/s.

M/s. KSB Pumps Ltd.

.. Respondent

Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the appellant
Mr. R. Murlidhar a/w Mr. Balasaheb Yewale i/b Rajesh Shah & Co. for
the respondent

**CORAM : M.S. SANKLECHA &
G.S.KULKARNI, J.J.**

DATED : 5th OCTOBER, 2016.

PC.

1. The Income Tax Appeal No.777 of 2014 is not on board.
Mentioned. Upon mentioning taken up for consideration along with
Income Tax Appeal No.728 of 2014, which is on board.

2. Both these appeals filed under Section 260A of the Income Tax
Act, 1961 (the Act) challenge a common impugned order dated 8th
August, 2013. The impugned order relates to Assessment Years 2006-
07 and 2007-08.

3. The Income Tax Appeal No.728 of 2014 has been filed for A.Y. 2007-08 and Income Tax Appeal No.777 of 2014 has been filed for A.Y. 2006-07.

4. The Revenue urges following identical question of law in both the appeals for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in treating the professional fees paid to its collaborator KSB AG of Germany for implementing the SAP programme as an allowable expenditure when the use of this software enhances the efficiency of the organization which is enduring in nature and as good as the acquisition of an asset?

5. M/s. KSB AG Germany (KSB Germany) is an associate of the respondent assessee. During the subject Assessment Years the respondent assessee along with KSB Germany decided to implement SAP programme in respondent assessee company. This to enable synchronisation and integration of business functions, management control / reporting etc. of all the Associated Companies. KSB Germany were owners of SAP programme. In order to facilitate its use,

respondent assessee requested KSB Germany to provide services relating to data migration, consultation, establishment of connection links, data center operation etc. so as to adapt its system to use the SAP programme. For the aforesaid services rendered by M/s. KSB Germany, the respondent assessee during the subject assessment years paid consideration for the professional services received from it, claiming the same to be revenue expenditure.

6. However, during the assessment proceedings for both the Assessment Years, the Assessing Officer did not accept the respondent assessee's claim that amounts paid as professional services is revenue in nature. This on the ground that the respondent is deemed owner of the SAP Programme. This ownership it holds would lead to a benefit of enduring nature. Moreover, on application of functional test, this expenditure would be capital in nature.

7. Being aggrieved, the respondent assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)] for the Assessment Year 2007-08. The respondent assessee accepted the draft assessment order by not filing any objection to Dispute Resolution Panel (DRP). No appeal was filed to the CIT(A) for the Assessment Year

2006-07, as the final order of assessment was passed consequent to directions of DRP. Therefore, filing an appeal to the Tribunal. The CIT(A) by order dated 23rd March, 2012 rendered a finding of fact that no amount was paid towards purchase of SAP programme. It held that SAP as a software / system which had been acquired (owned) by M/s. KSB Germany. The payments made by the respondent assessee to M/s. KSB Germany were in the nature of professional fees for implementation of the SAP programme in India. Consequently, the CIT(A) allowed the respondent assessee's appeal for 2007-08 holding the same to be revenue in nature.

8. Being aggrieved, the Revenue challenged the order of the CIT(A) for Assessment Year 2007-08 in appeal before the Tribunal. The respondent assessee also filed an appeal to the Tribunal from the final order of assessment passed by the Assessing Officer for Assessment Year 2006-07. The Tribunal in the common impugned order while disposing of both the appeals renders a finding of fact that the respondent assessee had not purchased the SAP Programme. It further records that only the existing software was made compatible with the SAP Programme which was owned by M/s. KSB Germany. It also held as a fact that the professional expenditure incurred in making payment

to M/s. KSB Germany had facilitated the conduct of the respondent assessee's operations in a more efficient manner. This acquisition was not in a nature of a profit making apparatus. Therefore, not in the capital field. Thus, the Revenue's appeal from the order of the CIT(A) for A.Y. 2007-08 and the assessee's appeal from the final order of Assessment of the Assessing Officer for A.Y. 2006-07 were allowed by the impugned order.

9. The grievance of the Revenue before us is that the acquisition of computer software programme such as SAP in terms of Income Tax Rules, is entitled for depreciation. In that view, it is submitted that fees paid to M/s. KSB Germany cannot be considered to be a revenue expenditure.

10. We find that the CIT(A) as well as the Tribunal have concurrently rendered a finding of fact that there was no acquisition / purchase of the SAP programme by the respondent assessee. Consequently, occasion to apply depreciation in accordance with the Income Tax Rules would not arise in the present case.

11. Be that as it may, the impugned orders of the CIT(A) as well as

the Tribunal record the fact that the professional charges paid for upgrading the software has made the respondent assessee's operation more efficient. It did not result in any profit making apparatus coming into existence.

12. Our attention was also drawn to the decision of this Court in ***Commissioner of Income Tax Vs. Geoffrey Manners & Co. Ltd.*** 226 ***Taxman*** 135 wherein in the context of installation of software programme, the Court *inter alia* has observed as under :-

“12. The assessee in such cases installs the computers. This technology is now said to be acceptable in changing world. The rapid advancement of research also contributes a small degree of durability, but that by itself does not mean that the expenses incurred cannot be revenue in nature. Since technology advancement is an aspect which must be taken judicial note of, so also, machinery becoming obsolete that there is necessity of acquiring further technology. This is to meet the growing competition and considering trends in the market. Therefore, such expenditure will have to be treated as revenue expenditure.”

13. Therefore, in view of the Court taking note of rapid technological development, purchase of technology may not lead to any enduring benefit as the same may have to be upgraded very soon. In any case, the finding of fact in this case is that there is no purchase of technology

by the respondent assessee.

14. In the above view, the impugned order essentially renders a finding of fact that question as proposed does not give rise to any substantial question of law. Thus, not entertained.

15. Therefore, both the appeals are dismissed. No order as to costs.

(G.S. KULKARNI, J.)

(M.S. SANKLECHA, J.)