IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case Appeal Nos.846, 849 and 850 of 2018

M/s.Royal Sundaram General
Insurance Co. Ltd.,
"Sundaram Towers",
45 & 46, Whites Road,
Chennai-600 002.
PAN AABCR7106G. ... Appellant/Appellant in all the Appeals

(Cause title accepted vide Court order dated 13.11.2018 made in C.M.P.Nos.15577 to 15584 and 15736 to 15745 of 2018)

-vs-

The Deputy Commissioner of Income Tax,
Large Tax Payer Unit,
Chennai-600 001. ... Respondent/Respondent in all the Appeals

Tax Case Appeals filed under Section 260A of the Income-tax Act, 1961 against the common order of the Income-tax Appellate Tribunal Chennai 'A' Bench, dated 06.08.2018, in I.T.A.Nos.1629, 1630 and 1628/Chny/2011, for the assessment years 2007-08, 2008-09 and 2006-07 respectively.

For Appellant (In all the Appeals) : Mr.Percy Pardiwallia, Senior Counsel assisted by
: Mr.Sandeep Bagmar
: Mr.Bharat R. Srinivas
: & Ms.Neelaya Dakshi

For Respondent (In all the Appeals) : Mr.M.Swaminathan, Senior Standing Counsel assisted by

: Mrs.V.Pushpa, Junior Standing Counsel

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These appeals, filed by the assessee, are directed against the common order passed by the Income-tax Appellate Tribunal Chennai 'A' Bench (for brevity "the Tribunal"), dated 06.08.2018, in I.T.A.Nos.1629, 1630 and 1628/Chny/2011, for the assessment years 2007-08, 2008-09 and 2006-07 respectively. The substantial question of law raised in these appeals, de hors the other questions which we have already decided in T.C.A.Nos.754 of 2018 and etc., batch dated 12.12.2018, is as hereunder:-

> "Depreciation on EPABX
>
> (xiii) Whether the Tribunal was correct in treating the EPABX as part of electrical fittings eligible for depreciation at a rate of 10% instead of as part of computers eligible for depreciation at a rate of 60%."
>
> **** "(i) Whether the ITAT erred in deciding the validity of reinsurance ceded to the non-resident reinsurers when such issue was not even raised before it by either the Department or the Appellant?**
>
> **(ii) Whether the ITAT erred in holding that the IRDA (General Insurance – Reinsurance) Regulation, 2000 is contrary to section 101A of the Insurance Act, 1938 when it does not have the power to decide the validity of regulations made by the IRDA?**
>
> **(iii) Whether the ITAT erred in holding that reinsurance payments to non-residents are prohibited by law and therefore hit by Explanation 1 to Section 37 of the Act?**
>
> **(iv) Whether the ITAT erred in failing to follow co-ordinate bench decisions on the very questions of reinsurance payments to non-residents when it ought to have referred the matter to a larger bench if it disagreed with such judgments?"**

2.One more issue is with regard to the eligibility of depreciation at higher rate of 60%. The assessee claimed depreciation on EPABX at the rate of 60% for three of the assessment years, viz., 2006-07, 2007-08 and 2008-09.

3.The Assessing Officer appears to have called for details from the assessee and came to the conclusion that EPABX cannot be considered as part of IT equipment and the assessee was directed to show cause as to why depreciation should not be restricted to 15%. In response to that, the assessee submitted that the EPABX is integral part of the IT equipment and hence to be included under the IT equipment and 60% depreciation can be claimed as per law.

4.The Assessing Officer referred to the decision of the Delhi Tribunal in the case of Nestle India Ltd. vs. Deputy Commissioner of Income Tax, (2007) 111 TTJ Delhi 498, which held that UPS is not an integral part of computer and also referred to a decision of the CIT(A)-LTU in the assessee's own case for the assessment year 2005-06, in I.T.A.No.70/2007-08/LTU(A), dated 29.08.2008 wherein, it was held that UPS is not an integral part of computer. Accordingly, excess depreciation claimed by the assessee was disallowed. Aggrieved by the same, the assessee preferred appeal to the CIT(A), who confirmed the said order. On appeal to the Tribunal, it was pointed out that this Court found that UPS is a part of computer system and eligible for depreciation at the rate of 60%. Similar view taken by the Tribunal in Sundaram Asset Management Co. Ltd. vs. DCIT in 145 ITD 17 was relied on. The Tribunal after considering the contentions raised, came to the conclusion that EPABX is not a computer part.

5.Heard Mr.Percy Pardiwallia, learned Senior Counsel for the appellant and Mr.M.Swaminathan, learned Senior Standing Counsel for the respondent.

6.The Tribunal, after considering the rival submissions on either side and perusing the relevant material available on record, held that the equipment in question is a telecommunication system for transmitting voice signal from one end to another end and the computer, which is used for processing the data and EPABX is used for transmitting voice signal from one end to another end. Therefore, it was held that EPABX cannot be construed as a computer part and not eligible for depreciation at the rate of 60%.

7.We fully subscribe the view taken by the Tribunal. At best, it can be construed as an equipment, plant or a machinery in an establishment.

8.The work done by the EPABX is transmission of voice signal. It may be true that there may be certain electrical parts in the equipment that by itself will not make a computer or an information technology product. We are supported by the decision of the High Court of Kerala in Federal Bank Ltd. vs. Asstt. CIT & Anr., (2011) 332 ITR 0319, wherein it was held that the Tribunal rightly held that the equipments are not computers entitling the assessee for depreciation at 60%.

9.As pointed out earlier, the Assessing Officer has examined the matter, considered the type of function performed by the EPABX and rendered a finding. This finding of fact was affirmed by the CIT(A) and confirmed by the Tribunal. Thus, we find there is no substantial question of law arises for consideration.

10.It is pointed out by the learned counsel for the assessee that for the assessment year 2006-07, the Assessing Officer, construed the same as plant and machinery / equipment, granted depreciation at the rate of 15%, whereas for the assessment years 2007-08 and 2008-09, the Assessing Officer has treated the same as electrical fittings and granted depreciation at the rate of 10%. In the preceding paragraphs, we have pointed out that the equipments, viz., EPABX can be construed as a plant and machinery and therefore, the assessee will be entitled for depreciation at the rate of 15%. Accordingly, the Assessing Officer is directed to extend the benefit for the assessment years 2007-08 and 2008-09 and we allow the appeals in part. No costs.

**** 11.In the light of the above, the matter stands remanded to the Tribunal to take a decision on the following points:**

(i)Whether the Assessing Officer was right in disallowing the reinsurance premium under Section 40(a)(i) of the Act;

(ii)Whether the CIT(A) was right in rejecting partially the appeal filed by the assessee; and

(iii)Whether the CIT(A) was justified in restricting the claim of the assessee to 15% instead of confirming the order passed by the Assessing Officer.

12.We make it clear that the Tribunal shall decide the above questions alone and nothing more and the decision shall be taken based on the available material and the assessee and the Revenue are not entitled to place any fresh material before the Tribunal so as to enable the Tribunal to take a decision as expeditiously as possible."

Sd/-
Assistant Registrar
06.03.2019

**** Amended as per order dated 05.02.2019 and made herein**

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
   Chennai 'A' Bench.

2. The Commissioner of Income Tax (Appeals),
   Large Taxpayer Unit,
   Chennai.

3. The Deputy Commissioner of Income Tax,
   Large Tax Payer Unit,
   Chennai.

4. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   Rajaji Bhavan, IIIrd Floor,
   Besant Nagar, Chennai-90.

T.C.A.Nos.846, 849 and 850 of 2018

AK(CO)
CS/12/03/2019
CS/26/03/2019