

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.6.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.291 of 2019

The Commissioner of Income
Tax, Chennai.

...Appellant/Appellant

-Vs-

M/s.Chona Financial Services
Pvt. Ltd., Chennai-17

...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 02.11.2018 in MP.No.383/Chny/2017 in ITA No.3039/Mds/2016 on the file of the Income Tax Appellate Tribunal Chennai 'B' Bench for the assessment year 2000-01 and against the order of the Principal Commissioner of Income Tax, Appellate Tribunal, 'B'Bench, Chennai, dated 31.05.2017 made in ITA No.3039/Mds/2016, Assessment Year, 200 -01, and the Order of The Commissioner of Income Tax, (A)-1, Chennai -1, dated 12.08.2016 made in ITA No.237/07 -08/A-III, (New No.ITA.42/CIT (A)01/2007-08) and the order of The Assistant Commissioner of Income Tax, Company circle (3), Chennai -34, dated 26.11.2007, made in GIR No.AAACC 3031C.

For Appellant : Mrs.R.Hemalatha, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard the learned Senior Standing Counsel for the appellant.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), is directed against the order dated 02.11.2018 passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench (for brevity, the Tribunal) in MP.No.383/Chny/2017 in ITA No.3039/Mds/ 2016 for the assessment year 2000-01.

3. The Revenue has filed this appeal by raising the following substantial questions of law :

"i. Whether, on the facts and in the circumstances of the case, the Tribunal was

right in holding that the expenditure incurred for purchase of computer to computer link software is revenue in nature especially when the software provides an enduring benefit over a period of time to the assessee by performing integrated market watch, market depth analysis, order entry, trade book, historic trade, etc where the analytical and historic data is gathered by the software in the present case and can be used for maximizing the profits market opportunity in future ? And

ii. Is not the finding of the Tribunal bad by holding that the CTCL software purchased is a revenue expenditure when, admittedly, the same was not incurred for the maintaining of the existing software but for a new client access software which would come under the block of assets, plant and machinery - computer including computer software at 60% depreciation under the Income Tax Act, 1961 ?"

4. The appeal filed by the Revenue before the Tribunal was dismissed by order dated 31.5.2017 on the ground that it was hit by low tax effect, as the demand was less than Rs.10 lakhs. Subsequently, the Revenue filed a miscellaneous petition to recall the order dated 31.5.2017 on the ground that the appeal was filed before the Tribunal due to audit objection. Thereafter, the Tribunal heard the appeal on merits and by the impugned order, the Tribunal dismissed the appeal filed by the Revenue.

5. The short question, which falls for consideration, is as to whether the expenditure incurred by the assessee towards software installed in their computer system to the tune of Rs.16.16 lakhs qualifies as a revenue expenditure or as a capital expenditure.

6. The Assessing Officer, vide order dated 26.11.2007, which was an assessment under Section 147 of the Act, held the expenditure to be a capital expenditure. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-1, Chennai-34 [for brevity, the CIT(A)] and it was allowed by order dated 12.8.2016. As against the same, the Revenue was on appeal before the Tribunal and it was dismissed by the impugned order. Hence, the Revenue is now before us.

7. Mrs.R.Hemalatha, learned Senior Standing Counsel would vehemently contend that the software, which was licensed to the assessee, is not an upgradation software or a replacement of the existing software, but it is a new software installed for the first time in the computer system and it definitely goes to enhance their business activities and their income earning capacity. Thus, it has an enduring effect and qualifies as capital in nature.

8. In our considered view, the decision arrived at by the CIT(A) is just and proper. We say so for the following reasons :

Even before the Assessing Officer, when the assessment was reopened, the assessee filed an objection stating that the expenditure was incurred by them for the purpose of facilitating the assessee company's day to day business activities, which would no way enhance the longevity of the hardware of the computer system and that the expenditure could not be considered as a capital expenditure. However, this explanation did not find favour with the Assessing Officer. The CIT(A), while considering the said issue, had taken into consideration the terms and conditions of the licence, which was granted to the assessee by M/s.Financial Technologies (India) Limited (FTIL). The CIT(A) referred to the relevant portions of the conditions of licence and more particularly with regard to the copyright and ownership.

9. At this juncture, it would be relevant to take note of the following written submissions made by the assessee before the CIT(A) :

"During the subject assessment year, the appellant has purchased licenses for computer to computer link (CTCL) software from Financial Technologies (India) Limited (FTIL). The software is a multi exchange and multi segment front office trading solution. Some of the features of the said software are integrated market watch, market depth analysis, order entry, order and trade book, historic trade, etc.

The company has taken the licenses of CTCL for use in their day to day share broking activities as per page 7 of software licensing agreement with the vendor.

Copyright and Ownership :

The software is the intellectual property of FTIL and its suppliers and is protected by local copyright law and international treaty provisions, whether registered or unregistered. Nothing in this proposal shall be deemed to be a transfer of

intellectual property rights. Chona Financial Service Private Limited acquires only the non exclusive, non transferable, non assignable and limited right to use a software as permitted herein and do not acquire any rights of ownership in the software. The title or ownership of the physical carrier of the software as provided by FTIL hereunder is retained by FTIL and/or its suppliers. The customizations, modification, change request as carried out become an integral part of respective base packages and the intellectual property rights as well as the rights to license subsequent copies of the software in its then current form will rest solely with FTIL. FTIL represents and warrants that it owns intellectual property rights to the base package offered for licensing.

Since the appellant has acquired only right to use the software, the licence fee cannot be considered to be capital in nature."

10. After taking into consideration of the above conditions, the CIT(A) held that the assessee acquired only a right to use the software (CTCL), that the software renewal expenditure was incurred every year based on the number of licenses used and that the intellectual property rights of the software were held by the software vendor (FTIL). Therefore, it was held that the contentions raised by the assessee merited acceptance and more particularly, when the assessee did not derive any enduring benefit and that they were authorized to use the software on payment of annual fee for the purpose of its business.

11. Mrs.R.Hemalatha, learned Senior Standing Counsel has placed reliance on the decision the Hon'ble Supreme Court in the case of CIT, Madurai Vs. Saravana Spinning Mills (P) Ltd. [reported in (2007) 163 Taxman 201].

12. We find that the said decision of the Hon'ble Supreme Court would be of no assistance to the case of the Revenue, as it was a case of replacement of old machinery.

13. In the case on hand, we test the correctness of the order passed by the Tribunal confirming the order passed by the CIT(A), who examined the terms and conditions of the license and on facts, recorded a finding that the assessee acquired only a right to use the software and that there was no enduring benefit acquired by the assessee on account of the license promoted by

them on payment of annual fee. Thus, in our considered opinion, no substantial question of law arises for consideration in this appeal.

14. Accordingly, the above tax case appeal is dismissed.

Rs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Income Tax,
Income Tax Appellate Tribunal,
Madras 'B' Bench,
Chennai.

2. The Principal Commissioner of
Income Tax,
Appellate Tribunal, 'B' Bench,
Chennai.

3. The Commissioner of Income Tax,
(A)-1, Chennai - 1.

4. The Assistant Commissioner
of Income Tax, Company Circle(3),
Chennai - 34.

+1cc to Mr.T.Ravikumar, Advocate, SR.No.44544

TCA.No.291 of 2019

Kak(17/07/2019)

Kak(05/08/2019)

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