In the High Court of Judicature at Madras

Dated : 08.7.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.409, 410 and 412 of 2019
& CMP.Nos.13651 & 13674 of 2019

The Commissioner of Income Tax,
Chennai ...Appellant

Vs

M/s.Computer Age Management
Services Pvt. Ltd., Chennai-2 ...Respondent

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 14.12.2018 made respectively in ITA.Nos.1141, 1140 & 1142/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench respectively for the assessment years 2013-14, 2012-13 and 2014-15 against the order's of the Commissioner of Income Tax (Appeals)5 dated 12.01.2018 in I.T.A. Nos.72/CIT(A)-5/2016-2017 ITA.No. 71/CIT (A)-5/2016-2017, I.T.A. No.s 70/C.I.T.(A) -5/2016-2017 against the Assessment order dated 27.02.2015 for the Assessment year 2012-2013 in P.A.N. No. AAACC 3035G by the Deputy Commissioner of Income Tax, LTU II, Chennai and Assessment order dated 09.12.2016 for the Assessment year 2013-2014 in PAN No. AAACC3035G and Assessment year 2014-2015 in PAN No. AAACC3035G by the Deputy Commissioner of Income Tax, LTU 2, Chennai

For Appellant : Mrs.Hemalatha, SSC
For Respondent : Ms.K.S.Neelayadakshi for Mr.Sandeep Bagmar



COMMON JUDGMENT
(Judgment was delivered by T.S.Sivagnanam,J)

We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant and Ms.K.S.Neelayadakshi, learned counsel accepting notice on behalf of Mr.Sandeep Bagmar, learned counsel for the respondent.

2. These appeals, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act), are directed against the common order dated 14.12.2018 in ITA.Nos.1140 to 1142/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench respectively for the assessment years 2012-13, 2013-14 and 2014-15.

3. The Revenue has filed these appeals by raising the following substantial questions of law :

> "Common Question in all the TCAs:
>
> Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the software license acquired by the assessee are in the nature of software application and hence, the assessee was eligible to claim depreciation at 60% ?
>
> Additional Question in TCA.No.412 of 2019 (AY 2014-15) :
>
> Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the non compete fee was a revenue expenditure and had to be allowed in one go irrespective of the method of accounting adopted by the assessee?"

4. The assessee is engaged in the business of registrar and transfer agent licensed by the Security Exchange Bureau of India (SEBI). In these appeals, two issues are raised by the Revenue for consideration. The first issue, which is common for all the assessment years, is as to whether the assessee was entitled to claim depreciation at 60% in respect of the software or software applications. The second issue, which pertains to the assessment year 2014-15 alone, is as to whether the payment effected for non compete fee should be treated as revenue expenditure or otherwise.



5. The Assessing officer held that the assessee was not entitled to depreciation at 60%, but was entitled to only 25% by referring to Part B of New Appendix I, which deals with intangible assets. The assessee carried the matter on appeal to the Commissioner of Income Tax (Appeals)-5, Chennai-34 (for brevity, the Act), who confirmed the orders passed by the Assessing Officer. On further appeal by the assessee, the Tribunal accepted the case of the assessee and it was held that the assessee was entitled to depreciation at 60% in terms of Entry 5 of Part A of New Appendix I read with Note 7.

6. Mr.R.Hemalatha, learned Senior Standing Counsel appearing for the Revenue would vehemently contend that what were acquired

by the assessee were only licenses, which are intangible. However, the Assessing Officer held that they would fall under Part B of New Appendix I and that the assessee was entitled to depreciation at 25%.

7. As noticed above, the assessee is in the business of registrar and transfer agent as licensed by the SEBI handling large volume of market sensitive data and information, which is available only through general customized application software. The assessee acquired software licenses capitalized during the relevant years in the books of accounts and claimed depreciation at 60%. In paragraph 20 of the order passed by the Tribunal, the nature of items, on which, the assessee claimed depreciation at 60%, has been listed out and they are 17 in number, from which, we find that substantial amount of server licences, which have been obtained by the assessee are customized and some of which are single user licenses.

8. The question would be as to whether the software application, which was acquired by the assessee would fall under Entry 5 of Part A of New Appendix I, which states that computers including computer software are entitled to depreciation at 60%. Note 7 of the Appendix defines the expression 'computer software' to mean any programs recorded on CD or disc, tape, perforated media or other information storage devices.

9. The case of the Revenue is that software are licences and that they are intangible assets and would fall under Part B of New Appendix I, which deals with knowhow, patents, copyrights, trademarks, licenses, francises or any other business or commercial rights of similar nature.

10. We find that Part B of New Appendix I is a general entry whereas Entry 5 of Part A of New Appendix I is a specific entry read with Note 7. In the instant case, the Tribunal, in our considered view, rightly held that the assessee is eligible to claim depreciation at 60%.

11. In the decision rendered by a Division Bench of this Court in the case of CIT Vs. M/s.Cactus Imaging India Private Limited [reported in (2018) 406 ITR 406], to which, one of us (TSSJ) was a party, an identical question came up for consideration wherein the object was printer (computer printer). This Court, after taking into consideration as to how the entries would be interpreted, referred to the decision in the case of Bimetal Bearings Ltd. Vs. State of Tamil Nadu [reported in (1991) 80 STC 167] and held as hereunder :

> "9. The Hon'ble Division Bench took note of the decision of the Hon'ble Supreme Court pointing out that the 'entry' to be

> interpreted is in a taxing statute; full effect should be given to all words used therein and if a particular article would fall within a description, by the force of words used, it is impermissible to ignore the description, and denote the article under another entry, by a process of reasoning.
>
> 10. It was further pointed out that the rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous.
>
> 11. By applying the rule of interpretation, we find that the relevant entry under old appendix I Clause III (5) states computers including computer software and the Notes under the Appendix defines 'computer software' in Clause 7 to mean any computer program recorded on disc, tape, perforated media or other information storage device. Noteworthy to mention that the notes contained in the appendix, the term 'computer' has not been defined. Therefore, as pointed out by the Division Bench in Bimetal Bearings Ltd. (supra), if a particular article would fall within the description by the force of words used, it is impermissible to ignore the word description. Thus, going by the usage of the equipment purchased by the petitioner, we have to take a decision."

12. As held in the above decision, if a particular article would fall within the description by the force of the words used, it is impermissible to ignore the word 'description' and going by the usage of the equipment purchased by the assessee, a decision has to be arrived at. We find that there is no error in the decision arrived at by the Tribunal by taking note of the specific entry in contra distinction with the general entry. Therefore, the first substantial question of law has to be necessarily answered against the Revenue.

13. So far as the second substantial question of law is concerned, which arises only for the assessment year 2014-15, the Tribunal accepted the case of the assessee by interpreting the non compete clause in the agreement, which has been reproduced in paragraph 25 of the impugned order. After

analyzing the same, the Tribunal held that the tenor of the agreement was only 18 months and it could not be stated that the assessee derived any enduring benefit due to the payment effected by it for obtaining certain commitments from one Mr.V.Shankar and restricting himself from indulging in any competition with the business of the assessee or from weaning way the employees.

14. The Tribunal took note of the decision a Division Bench of this Court in the case of M/s.Asianet Communications Ltd. Vs. CIT [TCA.No.174 of 2005 dated 26.6.2018], to which, one of us (TSSJ) was a party, wherein this Court considered a similar condition imposed in a non compete agreement. Therefore, we find that the Tribunal, on appreciation of the factual position, rightly held that a non compete fee has to be treated as a revenue expenditure. Hence, the second substantial question of law is to be necessarily answered against the Revenue.

15. For the above reasons, the above tax case appeals are dismissed. The substantial questions of law are answered against the Revenue. No costs. Consequently, the connected CMPs are also dismissed.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To
1.The Income Tax Appellate Tribunal, Chennai 'C' Bench, Chennai
2. The Commissioner of Income Tax (Appeals)-5
Chennai
3.The Deputy Commissioner of Income Tax
LTU-2, Chennai 101.

+1 CC to Mr.Sandeep Bagmar, Advocate sr 56684.
+2 Ccs to Mr.T. Ravi Kumar, Advocate sr 57107



TCA.Nos.409, 410 and 412 of 2019
& CMP.Nos.13651 & 13674 of 2019

SS(CO)
SP(12/09/2019)