IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A. Nos. 340 and 341 of 2015

Commissioner of Income Tax,
Chennai. .. Appellant in both cases

-vs-

M/s. Danfos Industries Pvt Ltd.,
296, Old Mahabalipuram Road,
Sholinganallur,
Chennai – 600 119. .. Respondent in both cases

Appeals filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras'B' Bench, Chennai dated 28.06.2013 passed in I.T.A. Nos. 369 & 370/Mds/2013 for the Assessment year 2007-08, 2008-09.

Against the Appellate order passed by the Commissioner of Income-tax (Appeals) IX Chennai made in ITA No's 356/11-12 and 550/10-11 dated 27.12.2012, for the Assessment year 2008-09, 2007-08, and against the Assesment order passed by the Assistant Commissioner of Income Tax company Circle-1(4) Chennai made in PAN No. AAACD0321M dated 29.12.2011 and 31.12.2010, for the Assessment year 2008-09 and 2006-07.

For Appellant (in both cases) : Mrs. R. Hemalatha
Senior Standing Counsel

For Respondent (in both cases) : Mr. R. Sivaraman

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

These appeals filed by the Revenue under Section 260-A of the Income Tax Act, 1961 ('the Act' for short) is directed against the order dated 28.06.2013 by the Income Tax Appellate Tribunal, Madras “B” Bench, Chennai in ITA Nos.369 & 370/Mds/2013 for the assessment years 2007-08 and 2008-09.

2. The above appeals were admitted on 14.07.2015 on the following substantial questions of law :-

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the software expenses incurred by the assessee were revenue expenditure?
2. Is not the finding of the Tribunal bad by holding that the claim of license fee on software expenses paid to its parent company was for the utilization of the software which gave a enduring benefit and therefore capital in nature?

3. Heard Mrs. R.Hemalatha, Learned Senior Standing Counsel appearing for the appellant-Revenue and Mr. R.Sivaraman, Learned Counsel for the respondent-assessee.

4. The assessee is engaged in the business of marketing and service of automatic control and filed the income tax return for the assessment years under consideration (AY 2007-08 and 2008-09). The return was processed and some details were called for, after issuance of notice under Section 143(2) of the Act. The assessee debited in the profit and loss account the software expenses and classified the same as exempt expenses under the head ‘IT Software Bills and License’. For the assessment year 2007-08 the expenses only towards the software expenses and for the assessment year 2008-09, in addition to software expenses, expenses towards license fee, which was also claimed as exempt expense. The assessee claimed the expenditure to be revenued, as the cost was incurred to access information technology, infrastructure of Danfoss Denmark, primarily comprising maintenance and support software supplement, routine operation, user, support charges for the Enterprises Resources Planning ['ERP' for short] systems and cost incurred for the purpose of generating standardized templates, which integrated

business function and claimed this expenditure as it facilitates routine business function, which had no enduring benefits.

5. Further, the assessee contended that the software license were valid only for one year or they are contingent upon upgradation of the same. The Assessing Officer while completing the assessments by orders dated 31.12.2010 and 29.12.2011 respectively held to be capital in nature by applying the functional tests by relying upon the decision of the Hon'ble Supreme Court in Tata Consultancy Services Ltd -vs- State of Madhya Pradesh reported in 271 ITR 401 (SC). Accordingly, the Assessing Officer relies on the decision of the ITAT, Delhi in the case of Amway India Ltd. -vs- Deputy Commissioner of Income-tax, Circle1(1), New Delhi reported in 2009 27 SOT 344 (Delhi).

6. Aggrieved by the same, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-IX, Chennai (CIT), who by orders dated 27.12.2012 allowed the assessee's appeals, after noting the decision of the Tribunal in the assessee's own case for the assessment year 2005-06 in I.T.A.No.612/Mds/2011, dated 09.05.2012.

7. Aggrieved by the same, the Revenue preferred an appeal before the Tribunal, which has been dismissed by the impugned order. As could be seen from the orders passed by the CIT(A) as well as the Tribunal, the functional test was applied to the assessee's case and it was found that the software does not found part of the profit-making apparatus of the assessee and it only facilitates the assessee's trading operations or to conduct the assessee's business more efficiently or more profitably, but, it is not in the nature of the profit-making apparatus.

8. Further, with regard to the license, the Tribunal found that it is valid for only one year and it may be useful for the assessee for various functions, like sales, finance and logistics operations and use of ERP system and may confer certain benefits to the assessee but it cannot be said that there is enduring benefit to the assessee.

9. The CIT(A), while allowing the assessee's appeal, took note of the decision of the Tribunal in the assessee’s own case for the assessment year 2005-06, wherein the functionality

test was analysed by the Tribunal and it has noted that the components of software expenses are for running its software system and not for acquiring any new system and consumables and others were purchases for servicing the existing net work. Another item is internet charges and small expenditure expended on training and the major amount is spent for IT help desk and none of the expenses were incurred for acquiring any new system of facility of enduring nature.

10. In such circumstances, we find that the Tribunal was right in confirming the order passed by the CIT(A). We note the decision, which was referred to by the Tribunal in the case of CIT Vs. Raychem RPG Ltd. reported in [2012] 21 Taxmann.com 507 (Bombay). Wherein the ERP package software, which facilitated the assessee's trading operation to conduct its business more efficiently or more profitably but was held to be not in the nature of ‘profit-making apparatus' and the software expenditure was allowable as revenue expenditure.

11. With regard to the license fee, which was for acquiring a software license of shelf life of less than two years was held to be as allowable as revenue expenditure in CIT Vs. Toyota Kirloskar Motors (P.) Ltd. reported in [2013] 30 Taxmann.com 294 (Karnataka). In CIT, Bangalore Vs. Robert Bosh India Ltd. reported in [2014] 50 Taxmann.com 275 (Karnataka), the amount paid by the assessee for purchase of software was held to be revenue expenditure even when the same was used in course of business of assessee not only during the assessment year under consideration, but also during the subsequent year. In Oriental Bank of Commerce Vs. Additional CIT reported in [2018] 93 Taxmann.com 432 (Delhi), the expenditure incurred by the assessee on acquiring license to use software which did not confer any enduring benefit on assessee was allowed as a deduction under Section 37(1) of the Act, wherein the decision of the Hon'ble Supreme Court in Alembic Chemicals Works Co. Ltd Vs. CIT reported in 177 ITR 377 (SC) was followed. In CIT, Trichy Vs. Lakshmi Vilas Bank Ltd. reported in [2018] 97 Taxmann.com 105 (Madras), expenditure incurred by the assessee towards software expenses was treated as revenue expenditure as advantage, though endured for an indefinite period, it merely facilitated assessee's trading operation, enabling it to carry on business more efficiently. In the said case, the contentions of the assessee that the software was a pre-designed software

and not customized to suit the assessee's particular requirement was taken note of. We pointed out this fact, because the Tribunal has rendered a factual finding that the software was to operate the Windows platform, which will go to show that it has not been customised for a particular requirement. Similar decision taken in KGISL Technologies and Infrastructures Private Limited Vs. Assistant/Deputy Commissioner of Income Tax, Company Circle-V, Chennai [decided on 27.11.2018 in TCA Nos.73 to 74 of 2011], wherein the Court, apart from taking note of decision in Alembic Chemicals Works Co. Ltd Vs. CIT, noted the decision in CIT Vs. Southern Roadways Ltd decided on 07.10.2006 in T.C.(A). No. 2454 of 2006 and decided the substantial questions of law in favour of the assessee by treating the expenses incurred in developing/upgrading the software to be revenue expenditure.

12. In the light of the above discussions, we hold that the Tribunal was right in dismissing these appeals filed by the revenue. In the result, the Tax Case Appeals are dismissed and the substantial questions of law are answered against the Revenue. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-V)

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Sub Assistant Registrar

Sp/Maya
To
1. The Commissioner of Income Tax, Chennai.

2. The Income-tax Appellate Tribunal,
Madras 'B' Bench, Chennai.

3. The Commissioner of Income-tax
(Appeals)-IX, Chennai-34.

4. The Assistant Commissioner of Income-tax
Company Circle 1(4), Chennai-34.

+1CC to M/s.T.Ravi Kumar, Advocate, SR.No. 48283

T.C.A.Nos.340 and 341 of 2015

RLD(CO)
B.VC (25/10/2021)