आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, AHMEDABAD

सर्वश्री राजपाल यादव, न्यायिक सदस्य एवं अनिल चतुर्वेदी, लेखा सदस्य के समक्ष।

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

1. आयकर अपील सं./I.T.A. No.2479/Ahd/2013
2. (आयकर अपील सं./I.T.A. No.2463/Ahd/2013

(**निर्धारण वर्ष /** Assessment Year : 2008-09)

1. The DCIT (OSD) Range-1, Ahmedabad 2. Bosch Rexroth (India) Ltd. 206/2, 207, 214/P Sanand Viramgam Highway Mouje Iyava, Taluka Sanand, Ahmedabad	**बनाम**/ Vs.	1. M/s.Bosch Rexroth (India)Ltd. Sanand,Ahmedabad 2. Asst.CIT (OSD) Range-1, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM 9898F		
(अपीलार्थी /**Appellants**)	..	(प्रत्यर्थी / **Respondents**)

Revenue by :	Shri Shri James Kurian, Sr.DR
Assessee by :	Shri Sanjay R.Shah, AR

सुनवाई की तारीख / **Date of Hearing**	23/08/2016
घोषणा की तारीख /**Date of Pronouncement**	29/08/2016

आदेश / O R D E R

PER SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER :

These cross-appeals by the Revenue and the Assessee are directed against the order of the Commissioner of Income Tax(Appeals)-VI,

Ahmedabad dated 23/08/2013 passed for Assessment Year (AY) 2008-09.

2. The relevant facts as culled out from the materials on record are as under:-

2.1. Assessee is a company stated to be engaged in the business of manufacturing of hydraulic equipment and its parts. Assessee filed its return of income for AY 2008-09 on 24/09/2008 declaring total income of Rs. 37,19,74,788/-. The case was selected for scrutiny and thereafter assessment was framed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") vide order dated 19/12/2011 and the total income was determined at Rs.39,86,46,102/-. Aggrieved by the order of the Assessing Officer (AO), assessee carried the matter before the ld.CIT(A), who vide order dated 23/08/2013 (in Appeal No. CIT(A)-VI/DCIT(SD)/R-1/225/11-12) granted partial relief to the assessee. Aggrieved by the order of the ld.CIT(A), Revenue and Assessee are in appeal(s) before us.

2.2. The Revenue in ITA No.2479/Ahd/2013 has raised the following grounds:-

> *1. The CIT(A) has erred in law and on facts by considering the capital expenses of Rs.2.27 crores as revenue expenses.*
>
> *2. The CIT(A) has overlooked the fact that the expenses in question are not recurring in nature and have given benefit of enduring nature of the assessee, such expenses cannot be regarded*

as current repairs and are therefore, not deductible u/s.30/31 of the I.T.Act, 1961.

2.3. On the other hand, the Assessee in ITA No.2463/Ahd/2013 has raised the following grounds:-

1. The order passed by the learned Commissioner of Income Tax (Appeals) is erroneous and contrary to the provisions of law & facts and therefore requires to be suitably modified. It is submitted that it be so done now.

2. The learned Commissioner has erred in not allowing the deduction in respect of software expenses of Rs. 18,24,172/- paid in respect of purchase of operating software allowable as revenue expenditure u/s 37 of the Act. It is submitted that it be so held now.

2.1. Learned Commissioner has erred in not allowing the said expenses u/s 37 of the Act by wrongly relying upon the order of Hon'ble CIT(A) for A.Y. 2007-08 which was based on wrong interpretation of facts that these software are purchased as part of computers and therefore requires capitalization and hence eligible for depreciation. Learned Commissioner has erred in not appreciating the fact that the software are application software and not systems software. It is submitted it be so held now.

2.2. Learned Commissioner has also erred in relying upon the order of Hon'ble CIT(A) for A.Y. 2007-08 which was based on the wrong premise that depreciation schedule includes computer which in turn includes computer software on which 60% depreciation is allowable and therefore deduction of software expenses cannot be allowed. It is submitted it be so held now.

2.3. Learned Commissioner has erred in not giving direction to the learned AO to allow the depreciation at the rate of 60% on the software expenditure disallowed in the AY 2007-08 & 2006-07, while computing total income for the year under consideration.

3. We first take up Revenue's appeal in ITA No.2479/Ahd/2013.

3.1. Both the grounds raised by Revenue being inter-connected are considered together.

3.2. During the course of assessment proceedings and on perusing the details of manufacturing and other expenses, AO noticed that assessee had debited Rs.1,12,17,505/- under the head "Repairs and Maintenance of Building" and Rs.1,15,66,776/- under the head "Other Repairs and Maintenance Expenses". Assessee was asked to justify the claim of expenses and why it not be treated as capital expenditure. After perusing the submissions of assessee, the AO concluded that assessee had carried out complete renovation of factory building which involved plastering, flooring, replacement of doors, electrical fittings, etc. AO was of the view that the benefit of expenses resulted in benefit of enduring nature and the expenses were of capital nature expenses. He accordingly considered the aggregate amount of Rs.2,27,84,281/- (Rs.1,12,17,505 + Rs.1,15,66,776) as being capital in nature and disallowed the same. He however, allowed depreciation @10% and accordingly made an addition on net amount of Rs.2,05,05,853/-. Aggrieved by the order of the AO, assessee carried the matter before ld.CIT(A) who deleted the addition by holding as under:-

> *"7.5. In the assessment order A.O observed that appellant had debited to P&L account a sum of Rs. 1,12,17,505/- under the head repairs and maintenance of building and a sum of Rs.1,15,66,776/- under the head repairs and maintenance of others; appellant had*

submitted ledger accounts of building repairs and other repairs, alongwith the copies of invoices; for the amounts exceeding Rs.1 lakh; appellant had failed to offer any explanation as to why the expenditure should not be treated as capital expenditure; the said expenditure was capital in nature and accordingly it was being capitalized and depreciation was being allowed @ 10%. Accordingly, AO made the impugned disallowance.

7.6. The contentions of the Ld.A.R are that all the invoices for the value of Rs,5,000/- and more were submitted to the A.O vide the letters 10/11/2011 & 08/12/2011; other repairs included furniture repairs, sanitary & plumbing repairs, A/C & water cooler repairs, computer repairs, electrical expenses etc.; without specifying a single invoice or transaction A.O had simply presumed that the expenses were for. complete renovation of the factory building; all the expenditure by way of flooring, laying sheets and roofs re-surfacing roads, providing transparent PVC sheets, replacement of doors, electrical fittings etc/were incurred only to address the wear and tear of various premises of the appellant; there was no creation of any new asset; repairs were carried out at the 2 factory buildings at Ahmedabad. & Bangalore and the office buildings at Mumbay, Delhi, Calcutta & Bangalore; the invoices exceeding Rs. 50,000/- in respect of the building repairs show that the payments were made to 23 different parties through which different types of repair works were carried out; since the company is in the business of manufacture of heavy engineering industrial goods like hydraulic crane [which are heavy equipment], the manufacturing process including shifting and storage results in lot of wear and tear to the building; all the premises of the appellant company are rented except one at Ahmedabad Vatva office which is under 99 years lease; as regards the other repairs, all the necessary details like ledger account of the parties, the purpose of repairs, invoices of more than Rs.5,000/- were submitted to the A.O vide submission dtd. 26/0972011, 18/10/2011, 10/11/2011 & 08/12/2011; this expenditure did not create any new asset; the Ahmedabad Vatva office was taken on 99 years lease in the year 1978 i.e. 30 years ago; as may be seen from point 3.1 of page-12 of the lease agreement appellant is responsible to keep the premises in good and tenable repair; as may

be seen from resolution dtd. 26/11/2008 it was decided to purchase land at Sanand with a view to shifting the factory to that place/which indicates that the appellant would not have incurred any capital expenditure in respect of the building which is going to be vacated; as regards the other repairs the payments were made to 75 different parties and keeping in view the various case-laws relied upon impugned disallowance is not in accordance with law.

7.7 In accordance with the sec. 30 (a)(i) where the premises occupied by the assessee as a tenant, the amount of expenditure paid on account of repairs is allowable deduction if the assessee had undertaken to bear cost of repairs for buildings. In accordance with the sec.31 (i) the amount paid on account of current repairs to machinery, plant or furniture is allowable deduction. As per the explanation below both the sections, inserted by the Finance Act 2003 w.e.f. 01/04/2004, such expenditure shall not include any capital expenditure. In the instant case all the premises of the appellant are rented premises. The amount of expenditure incurred towards repairs of buildings is Rs. 1,12,17,505/-. As stated by the A.O himself at para-2 of page-8 of the assessment order, the nature of the repairs was flooring, laying sheets and roofs re-surfacing roads, providing transparent PVC sheets etc. AO's observation at parg-4 of page-8 of the ; assessment order that the appellant had carried out complete renovation of the factory building is without any basis. As seen from the year wise details of building repairs furnished in the written submission, appellant has been incurring expenditure every year. In the immediately preceding assessment year it had incurred expenditure of over 72 lakhs compared to the expenditure of around 112 lakhs in the year under consideration. The appellant is in the business of manufacturing of heavy engineering industrial goods like hydraulic crane involving huge wear and tear to the buildings. Going by the nature of expenses incurred it cannot be stated that any new asset has come into existence. As regards other repairs of Rs.1,15,66,776/-, it was in connection with the furniture, sanitary plumbing, A/C and Water cooler, Computer electrical etc. As seen from the year-wise break-up of other repairs, appellant has been incurring expenditure year after year. To be precise, it had incurred expenditure of Rs.1.11 crores in the preceding year as compared to

Rs.1.15 crores in the year under consideration. A.O has not brought any material on record to suggest that any new asset has come into existence or the expenditure was towards replacement of the existing assets. Therefore I am of the view that impugned disallowance of building repairs and other repairs is not in accordance with law. Reliance is placed in this regard on the case of ACIT Vs. M.P. Warehousing & Logistic Corpn. Ltd 52 SOT 40 (Indore) (2012). In the said case the assessment years involved were 2005-06 to 2008-09, i.e. after insertion of Explanation below Sec.30 & 31. In the said case Tribunal held as under:

> *"To decide the applicability of section 31(i) the primary test is not whether the expenditure is revenue or capital in nature. The basic test to find out as to what would constitute current repair is that the expenditure must have been incurred to 'preserve and maintain' an already existing asset and the object of expenditure must not be to bring a new asset into existence or to obtain a new advantage. 'Repair' implies the existence of a part of the machine/plant or furniture which has malfunctions. The entire machine/plant or furniture, if replaced, the expenditure so incurred would not fall within the meaning of current repairs. The object of repair and maintenance is to preserve and maintain existing asset and not to bring a new asset into existence.*
>
> *The total replacement of damaged machinery/ship or an asset may not constitute repair, but substitution of old/worn out parts of a machine/building/factory, etc., is an expenditure of deductible nature, meaning thereby for claiming the deduction under the provisions of the Act, no new asset should come into existence and the expenditure must have been incurred on the existing asset."*

It is also seen that the appellant itself capitalized an amount of Rs.11,10,99,085/- under the head plant and machinery and an amount of Rs.65,36,701/- under the head building. It is not a case wherein the entire expenditure towards plant and machinery, building and other repairs has been claimed as revenue expenditure. Keeping in view the facts of the case, the case-laws relied on by the A.R and the above mentioned judgment, A.O is directed to allow the expenditure claimed

towards building and other repairs and withdraw the depreciation allowed in the assessment order. This ground of appeal is allowed."

4. Aggrieved by the order of ld.CIT(A), Revenue is now in appeal before us.

4.1. Before us, ld.Sr.DR supported the order of AO. Ld.AR on the other hand reiterated the submissions made before the AO and the ld.CIT(A) and further submitted that the necessary details were filed before the AO and also before the ld.CIT(A). Ld.AR further submitted that assessee manufactures heavy equipments due to which assessee has to incur expenses on repairs frequently and that similar expenses were incurred in earlier years and the same were allowed by the Revenue authorities in the scrutiny assessment proceedings. He further submitted that Ld.CIT(A) after considering the submissions the issue was decided in favour of assessee. He thus supported the order of ld.CIT(A).

5. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The issue in the present is with respect to disallowance of expenses which were considered to be capital in nature by the AO. We find that the ld.CIT(A) while deciding the issue has given a finding that considering the nature of activities undertaken by assessee, there is lot of wear and tear to the building which necessitates incurring of expenditure and the expenses were normal repair expenditure. He has further noted

that going by the nature of expenses incurred it cannot be stated that any new asset has come into existence and that similar expenses were incurred by the assessee in earlier years and have been allowed by the Revenue in scrutiny assessments and that AO has not brought any material which could prove of bringing any new asset into existence or that the expenditure was towards replacement of existing assets. Before us, Revenue has not brought any material on record to point out any fallacy in the finding of ld.CIT(A). In view of the aforesaid facts, we see no reason to interfere with the order of ld.CIT(A) and thus this ground of Revenue is dismissed.

6. In the result, Revenue's appeal in ITA No.2479/Ahd/2013 for AY 2008-09 is dismissed.

7. Now, we take up Assessee's appeal in ITA No.2463/Ahd/2013 for AY 2008-09.

7.1. First ground being general requires no adjudication.

7.2. Second ground is with respect to software expenses:-

7.3. During the course of assessment proceedings, AO noticed that assessee had incurred software expenses of Rs.45,60,530/- debited under the head "Computer Stationery". He was of the view that benefit of the expenses would exceed for more than one year. He accordingly considered it to be a capital expenditure and disallowed it but however,

granted depreciation and made a net addition of Rs.18,24,172/-. Aggrieved by the order of AO, assessee carried the matter before the ld.CIT(A) who decided the issue against the assessee by holding as under:-

> *"4.2. Identical issue arose in the immediately preceding A.Y. 2007-08 in appellant's own case. Vide the order dtd. 06/02/2013 in appeal No.CIT(A)-VI/DCIT (OSD)/R-1/293/10-11, it was held by me as under:-*
>
> > *"4.2. Identical issue arose in the immediately preceding A.Y. 2006-07 in appellant's own case. Vide the order dtd. 17/02/2011 in appeal No.CIT(A)-VI/Addl.CIT.R-1/299/09-10, my predecessor held as under."*
> > *"5.3. I have considered the facts of the case, assessment order and appellant's submission. Appellant purchased computer softwares for the purpose of its business however computer software is part of asset used for the purpose of business. It has been held in several decisions that computer software is a capital asset and part of computers for the purpose of claim of depreciation. As per depreciation schedule, item number 5 of machinery and plant section is computers including computer software on which 60% depreciation is allowable. Since computer software is clearly included as an item of asset eligible for depreciation, claiming the same @100 percent is not correct. In view of this, the addition made by the assessing officer is confirmed."*
> >
> > *Following the said order, impugned disallowance is upheld. This ground of appeal is dismissed."*

Facts remaining the same, following my order for A.Y. 2007-08, impugned disallowance is upheld. This ground of appeal is dismissed."

8. Aggrieved by the order of ld.CIT(A), assessee is now in appeal before us.

8.1. Before us, at the outset, ld.AR submitted that ld.CIT(A) while deciding the issue had relied on the decision of his predecessor passed in AY 2007-08 wherein identical issue was before it. Ld.AR submitted that against the order of ld.CIT(A), the matter was carried before the Tribunal. The Tribunal vide order dated 02/05/2016 in ITA Nos.879/Ahd/2013 & 3189/Ahd/2015 had decided the issue in favour of assessee. He further submitted that since the facts in the year under appeal are identical to that of AY 2007-08 as has also been noted by the ld.CIT(A) and since in AY 2007-08 the issue has been decided in assessee's favour by the Coordinate Bench and therefore following the order of the Coordinate Bench, the ground of the assessee be allowed. Ld.Sr.DR on the other hand supported the orders of lower authorities.

9. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. The issue in the present is whether the software expenses are allowable are Revenue expenses. We find that the ld.CIT(A) while deciding the

issue has noted that identical facts arose in assessee's own case in AY 2007-08. He thereafter following the decision of his predecessor, decided the issue against the assessee. We find that against the order of ld.CIT(A) for AY 07-08 the matter was carried before the Coordinate Bench of Tribunal (ITAT "B" Bench Ahmedabad). The Coordinate Bench of Tribunal vide order dated 02/05/2016 decided the issue in favour of assessee by observing as under:-

> *"8. We have heard the rival contentions and perused the material on record. The sole grievance of the assessee in this appeal is against the action of the ld. CIT(A) in treating the expenditure of Rs.35,30,328/- towards purchasing and upgrading software as capital expenditure which has been claimed by the assessee as revenue expenditure in its return of income. The itemize break-up of the impugned expenditure of Rs.35,30,328/- is as under:-*

Sr. No.	*Particulars*	*Amount (Rs.)*
1.	*Software License*	*16,07,497*
2.	*AUTO CAD LT-2007*	*59,280*
3.	*AUTO CAD Software*	*118,560*
4.	*AUTO Desk Software*	*1,274,624*
5.	*Software Subsct Ser*	*306,400*
6.	*SPC Software*	*55,120*
7.	*Software Charges*	*93,847*
8.	*Software Installed*	*15,0000*
	Total	*35,30,328*

> *The above referred expenditure of Rs.35,30,328/- are mainly relating to the purchase of application software and upgradation of existing software. The ld. Assessing Officer has treated the impugned expenditure of Rs.35,30,328/- as capital expenditure on the only footing that the assessee will receive the benefit for more than a year and has also allowed 60% depreciation on this expenditure of Rs.35,30,328/- and a disallowance of Rs.14,21,131/- has been made. However, from*

going through the submissions of the ld. Authorized Representative, we are able to understand that the impugned expenditure of Rs.35,30,328/- has not been incurred to purchase any new software but they are either application software to run the existing software installed in the computers and also the expenditure has been incurred towards upgradation of the existing application software, because in the fast changing technology world, the software, which was purchased by the assessee in the previous years, needs to be upgraded or updated so as to be suitable with the current technologies brought in by various competitors as well as required for increasing the operational efficiency of the original software.

9. We also find that the Co-ordinate Bench has dealt with the similar issue in assessee's own case for Assessment Year 2006-07 in ITA Nos. 1328 & 1310/Ahd/2011, dated 29.04.2014, dealing with the software expenditure of Rs.8,73,485/- as to whether it is a capital or revenue expenditure, allowed the assessee's appeal by observing as under:-

> *"14. We have heard the rival submissions and perused the material on record. It is an admitted fact that Assessee had incurred Rs 8,73,485/- on software expenses and was claimed as revenue expenses. It is the submission of the assessee that the expenses were for the purchase of software application having a short life span. AO has considered the expenses as capital expenditure and eligible for depreciation @60% and granted depreciation of Rs 5,24,091/- and thereby made a disallowance of Rs 3,49,384/-. In the present case, the incurring of expenses has not been disputed by the Revenue. It is also a fact that the matter pertains to AY 2006-07 and if the impugned expenses is considered to be capital expenditure, the Assessee will have to be granted depreciation @ 60% on WDV basis in A.Y. 06-07 and also in subsequent years. The depreciation of WDV for subsequent years will work out to Rs. 2,09,630/- (for A.Y.07-08), Rs. 83,854 (for A.Y. 08-09), Rs. 33,542(for A.Y. 09-10) and so on. Considering the totality of the facts, the total taxable income of Rs 35.85 crore as determined by the AO, the changes that*

would be required to be made in subsequent assessments orders if the depreciation is to be allowed in all subsequent years and the peculiar facts of the case, we are of the view that the claim of the assessee be allowed in the present case. We may however add that the allowance of the expenditure in the present case should not be considered as a precedence for allowance of the expenditure. Thus these grounds of the Assessee are allowed."

10. We further observe that the Hon'ble Delhi High Court in the case of CIT vs. Asahi India Safety Glass Ltd (supra) has also dealt with the similar issue, wherein the assessee incurred revenue expenditure towards application software to be run on 'oracle' application and the decision was given in favour of the assessee by observing as under:-

"The test of enduring benefit is not a certain or a conclusive test which the Courts can apply almost by rote. What is required to be seen is the real intent and purpose of the expenditure and whether the expenditure results in creation affixed capital for the assessee. It is important to bear in mind that what is required to be seen is not whether the advantage obtained lasts forever but whether the expense incurred does away with a recurring expense(s) defrayed towards running a business as against an expense undertaken for the benefit of the business as a whole. In other words, the expenditure which is incurred, which enables the profit making structure to work more efficiently leaving the source of the profit making structure untouched, would be an expense in the nature of revenue expenditure. Fine tuning business operations to enable the management to run its business effectively, efficiently and profitably, leaving the fixed assets untouched, would be an expenditure in the nature of revenue expenditure even though the advantage may last for an indefinite period. Test of enduring benefit or advantage would, thus, collapse in such like cases. It would be only truer in cases which deal with technology and software application, which do not in any manner supplant the source of income or added to the fixed capital of the assessee. [Para 9]

This is the approach which the Supreme Court has applied even in cases where there is a once for all or a lump sum payment. What is to be seen in the facts of the instant case, is that the Assessing Officer, as a matter of fact, has returned a finding that the expenditure undertaken was for overhauling the accountancy of the assessee and to efficiently train the accounting staff of the assessee. The Tribunal, which is decidedly the final fact finding authority, has after noticing the material on record observed that the expenditure was incurred under various sub-heads, which included licence fee, annual technical support fee, professional charges, data entry operator charges, training charges and travelling expenses. The final figure was a consolidation of expenses incurred under these sub-heads. The Tribunal rightly came to the conclusion that none of these resulted in either creation of a new asset or brought forth a new source of income for the assessee. The Tribunal classified the said expenses as being recurring in nature to upgrade and/or to run the system. [Para 9.1]

In the background of the aforementioned findings, it cannot be said that the expenses brought about in an enduring benefit to the assessee. The Assessing Officer was perhaps swayed by the fact that in the succeeding financial year, i.e., 1997-98 (assessment year 1998-99), the amount spent was large. First of all, the extent of the expenditure cannot be a decisive factor in determining its nature. As observed by the Tribunal, the assessee in the relevant assessment year had a turnover of Rs 150 crores and that even without this expenditure it would have continued to achieve the said turnover, though the expenditure in issue would have enabled it to run its business more efficiently. Therefore, the rationale supplied by the Assessing Officer in support of its order is flawed and, hence, it would have to be rejected. [Para 10]

Secondly, the mere fact that the Assessing Officer records that the expenditure, in financial year 1997-98 (assessment year 1998-99), was incurred towards what he terms as an 'on-going

project' would not ipso facto give it a colour of capital expenditure. A careful reading of the Tribunal's judgment shows that after noticing the submission of the assessee that the expenditure incurred in the said assessment year was for removing deficiencies which were found in the software installed in the earlier assessment year, and that out of a sum of Rs. 1.71 crores, a sum of Rs. 49 lakhs was incurred to modify, customize and upgrade the software installed, while the balance expenditure was used for development and implementation, it returned a finding that the expenses were incurred to upgrade and run the system. In view of these findings, the Assessing Officer discovered an erroneous principle on the basis of which he denied the exemption to the assessee. [Para 10.1]

Software is nothing bui another word for computer programmes, i.e., instructions, that make the hardware work. Software is broadly of two types, i.e., the systems software, which is also known as the operating system which controls the working of the computer: while the other being applications such as word processing programs, spread sheets and database which perform the tasks for which people use computers. Besides these, there are two other categories of software, these being: network software and language software. The network software enables groups of computers to communicate with each other, while language software provides with tools required to write programmes. [Para 11]

The aforesaid would show that what the assessee acquired through A was an application software which enabled it to execute tasks in the field of accounting, purchases and inventory maintenance. The fact that the application software would have to be updated from time to time based on the requirements of the assessee in the context of the advancement of its business and/or its diversification, if any; the changes brought about due to statutory amendments by law or by professional bodies like the Institute of Chartered Accountants of India, which are given the responsibility of conceiving and formulating the accounting

standards from time to time, and perhaps also, by reason of the fact that expenses may have to be incurred on account of corruption of the software due to unintended or intended ingress into the system - ought not give a colour to the expenditure incurred as one expended on capital account. Given the fact that there are myriad factors which may call for expenses to be incurred in the field of software I applications, it cannot be said that either the extent of the expense or the expense being incurred in close proximity, in the subsequent years, would be conclusively determinative of its nature. The Assessing Officer has erred precisely for these very reasons. [Para 12]

The contention of the revenue that in the books of account, the assessee had not written off the expense in issue, while in the succeeding assessment year only a part of the expense had been written off and, therefore, the assessee's own understanding of the nature of the expense involved was that it was expended on capital account is be rejected. The reason being: that the treatment of a particular expense or a provision in the books of account can never be conclusively determinative of the nature of the expense. An assessee cannot be denied a claim for deduction which is otherwise tenable in law on the ground that the assessee had treated it differently in its books. [Para 13 & 13.1]

Therefore, the aforesaid contention is of no avail to the revenue. [Para 13.2]

Therefore, the Tribunal was correct in law in holding that the expenditure incurred by the assessee on account of software and professional expenses was a revenue expenditure. [Para 14]"

11. Applying the ratio of above decision of Hon'ble Delhi High Court as well as decision of Co-ordinate Bench in assessee's own case, we are of the view that the impugned expenditure of Rs.35,30,328/- incurred by the assessee is revenue expenditure, because the same has been incurred towards the purchase of application software and upgradation charges which were required to run efficiently the existing

software as well as license charges for using the existing software uninterruptly so as to run the business efficiently. We are, therefore, of the view that the ld. CIT(A) was not correct in confirming the disallowance of Rs.14,21,131/- and we accordingly delete this disallowance. Thus, the assessee's appeal is allowed."

9.1. Before us, Revenue has not placed on record any material to demonstrate that the expenditure incurred by assessee is for the purchase any new software nor has pointed out any distinguishing feature in the facts of the case in the year under consideration and the facts of the case for earlier years. Before us Revenue has also not placed any material to demonstrate that order of the Coordinate Bench of Tribunal in assessee's own case for earlier years has been set aside by higher judicial authorities. In view of the aforesaid facts and following the reasoning given by the Coordinate Bench while deciding the issue in earlier years, this ground of assessee is allowed.

10. In the result, Revenue's appeal is dismissed, whereas Assessee's appeal is allowed.

This Order pronounced in Open Court on 29/08/2016

Sd/-	Sd/-
राजपाल यादव	अनिल चतुर्वेदी
(न्यायिक सदस्य)	(लेखा सदस्य)
(RAJPAL YADAV)	(ANIL CHATURVEDI)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 29/ 08 /2016

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VI, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad