

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
' B' BENCH : CHENNAI

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2358/CHNY/2014
निर्धारण वर्ष /Assessment year : 2006-2007.

The Deputy Commissioner of Income Tax, Company Circle II(4) i/c Chennai 600 034.	Vs.	M/s. Kumudam Publications Pvt. Ltd, Old No.151, New No.306, Purasawakkam High Road, Kilpauk Chennai 600 010. [PAN AAACK 2957P]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Sridhar Dora, JCIT.
प्रत्यर्थी की ओर से /Respondent by : Shri. V. Sridharan, Sr. Adv.
for P.J. Rishikesh, Advocate.

सुनवाई की तारीख/Date of Hearing : 06-02-2019
घोषणा की तारीख /Date of Pronouncement : 12-02-2019

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Department in this appeal, filed against an order dated 05.06.2014 of the Id. Commissioner of Income Tax (Appeals)-IV, Chennai has raised two issues. First is on the cost, which is to be adopted for calculating depreciation on an LED panel acquired by the assessee from its sister concern called M/s. Tricom Vision. Second is

whether the LED panel could be considered as equivalent to a computer for allowing depreciation at the rate of 60%.

2. Ld. Counsel for the Revenue, strongly assailing the order of the Id. CIT(A) allowing the claims of the assessee submitted that assessee had acquired one LED panel from M/s.Tricom Vision on 04.08.2004 and commissioned it on 05.12.2005. As per the Id. DR, M/s.Tricom Vision had claimed depreciation on this LED panel from assessment year 2001-2002 and the written down value of the LED in their books was Rs.8,41,579/- only. Further, as per the Id. DR, cost for this LED panel, when originally acquired by M/s. Tricom Vision, was Rs.1,80,00,000/- only. Contention of the Id. DR was that against a written down value of Rs.8,41,579/-, assessee had paid a sum of Rs.3,00,00,000/- to M/s. Tricom Vision and claimed depreciation thereon. As per the Id. DR, if depreciation was to be allowed on a cost of Rs.3,00,00,000/-, aggregate depreciation on the LED panel would exceed its original cost of Rs.1,80,00,000/-. This according to the Id. DR was against first proviso to Rule 5(1A) of Income Tax Rules, 1962 (in short "the Rules"). Submission of the Id. DR was that Managing Partner of M/s. Tricom Vision, from whom assessee purchased LED panel was also the Managing Director of the assessee company. Thus, according to him, huge price of Rs.3,00,00,000/-

paid was only with an intention of claiming undue benefit by way of depreciation.

3. Alluding to the question of depreciation rate applicable for an LED panel, Id. DR submitted that it was only an electrical appliance and could not be allowed depreciation at 60%. As per the Id. DR, LED panel was not a computer. According to the Id. DR, LED panel could at best be considered only as an electrical appliance and not as a computer. Thus, according to him, it was not eligible for depreciation @60% available to a computer, but only 10% available for electrical appliance.

4. Continuing his arguments further, Id. DR submitted that Id. CIT(A) had allowed the claim of the assessee taking an erroneous view that Explanation (3) to Section 43(1) of the Act, enabled the Id. AO to determine the market rate as actual cost and not any other figure. As per the Id. DR, this was an erroneous conclusion drawn by the Id. CIT(A). Contention of the Id. DR was that even if both M/s. Tricom Vision and assessee were subject to tax at maximum marginal rate, it was an admitted position that they were claiming set off of carried forward loss and hence there would be undue tax benefit arising to them in future. According to him, Id. CIT(A) fell in error in holding that the cost that was to be considered for allowing

depreciation was Rs.3,12,60,000/- (including VAT of Rs.12,60,000/-) paid by the assessee for acquiring the LED panel board from M/s. Tricom Vision. Further, according to him, Id. CIT(A) also erred in holding that LED board was a computer eligible for depreciation at the rate of 60%.

5. Per contra, Id. Authorized Representative strongly supporting the order of the Id. CIT(A) submitted that depreciation was to be allowed on the actual cost to the assessee. Reliance was placed on the judgment of Hon'ble Apex Court in the case of *Jogta Coal Co. Ltd vs. CIT (1959) 36 ITR 521*. As per the Id. AR, actual cost to the assessee was Rs.3,12,60,000/-. Contention of the Id. AR was that there was no reduction of Income Tax liability in the hands of the seller or the buyer, since the surplus arising on sale of the panel was considered as short term capital gains in the hands of the seller M/s. Tricom Vision and such assessment was accepted by the said firm. Id. AR also pointed out that assessee had filed a valuation report dated 02.01.2004 from an approved valuer who had placed the fair market value of the LED display at Rs.3,05,00,000/-. However, as per the Id. AR, the Id. AO had rejected such valuation report without giving any reason.

6. Adverting to the rate of depreciation, Id. Authorized Representative submitted that the LED panel acquired by the assessee was an electronic display system with large of number of display screens and data processing abilities, for displaying pictures in a synchronized manner over various display screens after processing the inputs. According to him, its architecture and design was the same as of a computer and hence it was eligible for claiming depreciation at the rate of 60%.

7. We have considered the rival contentions and perused the orders of the authorities below. First we will deal with the issue regarding cost on which on deprecation is to be calculated. It is not disputed that assessee had acquired the LED panel from M/s. Tricom Vision for a total cost of Rs.3,12,60,000/- including the VAT. It is also not disputed that Managing partner of the said firm and Managing Director of the assessee was the very same person. Id. AO had taken the written down value of Rs.8,41,579/- in the books of M/s. Tricom Vision as the cost for the assessee, on which depreciation was allowed. Claim of the assessee before us is that it had filed a valuation report from a registered valuer which had valued the LED panel at Rs.3,05,00,000/-. Copy of the valuation report has been placed at paper book pages 1 to 11. It is not disputed by the Revenue that

assessee had placed the valuation report before the lower authorities. At this juncture, it will be apposite to have an understanding of the term "actual cost" as defined in Section 43(1) of the Act. Said Section is reproduced hereunder:-

"Actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority".

Explanation 3 to the said Section which has ostensibly been invoked by the Id. AO is reproduced hereunder:-

Where, before the date of acquisition of the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the (Assessing) Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee was the reduction of a liability to income tax (by claiming depreciation with reference to an enhanced cost) the actual cost to the assessee shall be such an amount as the (Assessing) Officer may, with the previous approval of the (Joint Commissioner) determine having regard to all the circumstances of the case".

The above Explanation in our opinion does not empower the Id. AO to adopt the written down value of the seller as the actual cost for the buyer acquiring the asset. It has to be determined according to the circumstances of the case. In the present case before us, assessee had filed a valuation report from the Government approved valuer named Shri. V. Shanmugavel who had assessed the fair market value

at Rs.3,05,00,000/-. No reason has been mentioned by the Id. AO for disregarding the valuation of the approved valuer. Hon'ble Apex Court in the case of *Jogta Coal Co. Ltd (supra)* has clearly held the cost for the purpose of depreciation allowance would be cost in the hands of the assessee and not that of the previous owner. That apart, assessment order of M/s. Tricom Vision, the seller, for the very same assessment year, placed at paper book pages 1 to 7 clearly show that the surplus on sale of the LED panel was considered in its hands as short term capital gains. Relevant paras of their assessment order is reproduced hereunder:-

'From the method deployed as explained above, it is clear that the assessee had resorted to the provisions of Section 41(2). On being asked to clarify, the AA of the assessee filed in his reply dated 28.11.2007. a note on the sale of LED - Board. In that reply, the assessee admitted

-that it had sold one of its LED Display Equipment board to M/s. Kumudam Publications Private Ltd for a consideration of Rs 300 lakhs. The WDV of the concerned block of assets as on the date of sale is Rs 8,41,579. The original cost of the LED Display Equipments is Rs 188.0 Lakhs. The differential value of Rs 1,79,58,421 has been considered as balancing charge U/S 41(2) of the IT Act, 1961" and that the difference between the sale consideration and the actual cost amounting to Rs 112.0 Lakhs (300-188 lakhs) has been admitted as short term capital gains as per section 50 of IT Act ...

However, though the assessee had quoted the provisions of section 41(2) verbatim in his above mentioned reply, it is seen here that he has failed to understand the nuances of the above mentioned subsection.

For the purpose of clear understanding, the provisions of

Section 41(2) is reproduced as under :

*41 (2): Where any building, machinery, plant or furniture,-
(a) which is owned by the assessee;*

(b) in respect of which depreciation is claimed under clause (i) of subsection (1) of Section 32; and

(c) which was or has been used for the purpose of business

is sold, discarded, demolished or destroyed and the moneys payable in respect of such building, machinery, plant or furniture, as the case may be, together with the amount of scrap value, if any, exceeds the written down value, so much of the excess as does not exceed the difference between the actual cost and the written down value, shall be chargeable to income tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture became due.

From a careful reading of the above sub section, there emerge three conditions that are to be fulfilled by Q person to claim the benefits as per the provisions of Sec 41(2). , They being: 1) That the asset should be owned by the assessee 2) That for that particular asset, depreciation has been claimed under clause (i) of Sub section (1) of Section 32 and 3) that the asset was or has been used for the purpose of business. All the conditions must be simultaneously fulfilled by a person to claim, the benefits CIS given under S 41(2).

For the sake of clarity, sub section 1 of Section 32 is also reproduced below :

32 (1) In respect of depreciation of -

(i) buildings, machinery, plant or furniture, being tangible assets;

(ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, Owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed -

(i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed.

(ii) in the case of block of assets, such percentage on the written down value thereof as may be prescribed ..."

From the above, it is clear that for a person who can claim the benefits u/s 41 (2), the depreciation for such an asset must satisfy all the three conditions imposed in that sub section. Apart from being owned by the assessee and used for the PU-po5e of business, the depreciation for the asset must have been claimed under clause (i) of Sub section 1 of Section 32. Going back to such clause and reading it would clearly mention that the assets must not only be of an undertaking engaged in generation ~~a~~ generation and distribution of power but also undergo depreciation under the straight line method. The words ... such percentage on the actual cost thereof,' clearly mentions this. In the above case, the assessee engaged in advertising business, cannot, under any figment of imagination, be termed as an undertaking engaged in the generation of power. Hence, for not fulfilling one of the three basic conditions of section 41(2), the assessee would not be entitled to the benefits of the sub section,

Even assuming for a minute that the assessee is engaged in the business of generating power and is eligible to get the benefits of Balancing Charge, the assessee would not be entitled to claim so for the reason given below :

According to Rule 5(1A) and Appendix 1A, a power generating unit can claim the benefit of Balancing charge only if the depreciation is calculated on a fixed percentage, i.e., Straight line Method of claiming Depredation on the assets which are listed out in the above mentioned IT Rule and Appendix. Since the assessee had claimed depredation of its assets on reducing balance method, his claim of the benefit of Balancing charges is not accordance with the provisions of IT Act.

In short, since the assessee is not a power generating undertaking, the claim of balancing charge cannot be entertained and the capital gains on the sale of LED Display Equipment has to be done following the provisions of section 50 and 50A. As per these two sections, the capital gains on the sale of the asset should be calculated s under:-

<i>Sale consideration of LED</i>	<i>:</i>	<i>3,00,00,000</i>
<i>Less: WDV as on 31.3.2004 (As per the provisions of 50A) :</i>		<i>8,41,579</i>
		<i>-----</i>
<i>Short Term Capital Gain (as per provisions of S 50)</i>	<i>:</i>	<i>2,91,58,421"</i>
		<i>-----</i>

Thus there can be no case for the Revenue that the acquisition of the LED panel from M/s. Tricom Vision by the assessee was for reduction of tax liability by claiming excess depreciation. In our opinion Id. CIT(A) was justified in holding that cost to the assessee for the purpose claiming depreciation was cost incurred by it for acquiring the LED panel from M/s. Tricom Vision.

8. As to the question whether the LED panel is equivalent to a computer for availing depreciation at the rate of 60% for computers in New Appendix I of Income Tax Rules, 1962, term "computer" has not been defined in the Act. However, it has been defined in Section 2(1) of Information Technology, Act, 2000 as under:-

"Computer" means electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or relates to the computer in a computer system or computer network".

Characteristic of the LED Panel acquired by the assessee has been given in the registered valuer's report as under:-

1. *The identified Plant and Machinery is the Natural Color LED Digital display system with display controller and accessories.*
2. *In house software development was carried for online message change, to run animation or even run a DVD on the display panel.*
3. *After the software development, the LED display panel is capable of displaying instant variable messages, scrolling or running messages & playing DVD.*
4. *Royalty was paid to the original equipment supplier.*
5. *Future expected life of the equipment is 6 years.*

In our opinion, the above description does, more or less fits to the definition of computer as given in Information Technology Act, 2000. It had memory function, ability for processing and could also perform logical action by synchronizing the inputs to display. Thus in our

opinion, the LED panel purchased by the assessee was eligible for claiming depreciation at the rate of 60%.

9. For the reasons mentioned at para 7 & 8 above, we find no good reason for interfering with the order of the Id. CIT(A).

10. In the result, the appeal of the Revenue stands dismissed.

Order pronounced on Tuesday, the 12th day of February, 2019, at Chennai.

Sd/-

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 12th February, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड |
| फाईल/GF | | |