आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI

श्री एम बाला गणेश, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी न्यायिक सदस्य के समक्ष

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./**I.T.A.Nos.2564 & 2565/CHNY/2018**

(निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15)

M/s. Financial Software and Systems Private Limited, 42, "Saradha", Ground Floor, 3rd Main Road, Gandhi Nagar, Adyar, Chennai – 600 004.	Vs	The Asst. Commissioner of Income Tax, Corporate Range 2, Chennai – 34.
PAN: AAACF2351C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**I.T.A.Nos.2584/CHNY/2018**

(निर्धारण वर्ष / Assessment Years: 2013-14)

The Asst. Commissioner of Income Tax, Corporate Range 2, Chennai – 34.	Vs	M/s. Financial Software and Systems Private Limited, 42, "Saradha", Ground Floor, 3rd Main Road, Gandhi Nagar, Adyar, Chennai – 600 004.
		PAN: AAACF2351C
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri Sriram Seshadri, CA
राजस्व की ओर से /Revenue by	:	Shri M. Srinivasa Rao, CIT

सुनवाई की तारीख/Date of hearing	:	04.06.2019
घोषणा की तारीख /Date of Pronouncement	:	07.06.2019

आदेश / O R D E R

PER M. BALAGANESH, ACCOUNTANT MEMBER:

These appeals of the assessee arise out of the orders of the Ld. Commissioner of Income Tax (Appeals)-6, Chennai vide proceedings in ITA Nos. 587/CIT(A)-6/2016-17 and ITA No.408/CIT(A)-6/2016-17

both dated 29.06.2018 for the assessment years 2013-14 & 2014-15 respectively against the orders of assessment passed by the ACIT, Corporate Range-2, Chennai (herein after referred to as Ld. AO) u/s. 143(3) of the Income Tax Act,1961 (herein after referred to as the Act). The Revenue has raised an appeal against the order of the Ld.CIT(A) for the assessment year 2013-14. As the issues involved in all these appeals are identical in nature, the same are taken up together and disposed off by this common order for the sake of convenience.

2. The facts of Asst Year 2013-14 are taken up for adjudication and the decision rendered thereon would apply with equal force for Asst Year 2014-15 also except with variance in figures in respect of assessee appeal.

3. The Ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.

4. The only identical issue to be decided in these appeals is as to whether the ld CITA was justified in restricting the allowance of depreciation on Automated Teller Machines (ATM) at the rate of 15%

as against the claim of 60% by the assessee in the facts and circumstances of the case.

5. The brief facts of this issue are that the assessee is engaged in the business of software development, sale, service and maintenance of ATMs for banks. The assessee entered into contracts with Banks wherein the assessee was awarded the contract to carry out end to end maintenance, software development and integration between ATMs and Banks. It is not in dispute that the ownership of such ATMs would be retained with the assessee company together with the risks and responsibilities of maintaining such ATMs. The return of income for the Asst Year 2013-14 was filed by the assessee company originally and later the same was revised u/s 139(5) of the Act on 19.11.2014 declaring loss of Rs 27,70,84,312/-. During the course of assessment proceedings, the ld AO show caused the assessee as to why the depreciation on ATMs should be granted at the rate of 15% as against the rate of 60% claimed by the assessee. The assessee replied that it had capitalized the ATMs in its books as ‘Computers’ and had accordingly claimed depreciation on such machines at the rate of 60% as prescribed under the Income Tax Rules, 1962 on the basis of

functional similarities between ATMs and Computers and on the ground that ATM machines are computerized telecommunication device and would fall under the definition of 'computer network' which is included in the definition of 'computers' as per the provisions of section 2(i) of the Information Technology Act, 2000. It was also pleaded that the ATM would not work and operate unless it is computerized and linked with the main server. The assessee pleaded that the functions performed by ATMs are to be construed at par with Computers and accordingly entitled for depreciation at the rate at which computers are eligible. The ld AO however disregarded the contentions of the assessee and treated the ATMs as mere Electronic devices and granted depreciation at the rate of 15% by placing reliance on the decision of *Hon'ble Karnataka High Court in the case of Diebold Systems (P) Ltd vs CIT reported in (2006) 144 STC 59 (Kar)*, wherein the Hon'ble Court examined the question whether an ATM machine as a computer with reference to Entry 20(2)(b) of Part C of the Second Schedule to the Karnataka VAT Act, 2003 captioned 'Computer Terminals'. This action of the ld AO was upheld by the ld CITA. Aggrieved, the assessee is in appeal before us.

6. We have heard the rival submissions. The primary facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. he short point that arise for our consideration is as to whether the ATMs are eligible for depreciation at the rate of 60% treating it at par with the computer and computer peripherals. The ld DR vehemently argued that the ATM is not a computer and it is merely a cash dispensing machine. From the paper book submitted by the assessee, more particularly in pages 1 to 4, it is evident from the pictorial representation thereon, that the ATM has got a card reader, biometric reader, cash camera, consumer awareness mirrors, has got highly reliable note validation technology, having deposit capacity of 10000 bank notes minimum in secure deposit box, minimized jam rate with self diagnosis and failure recovery capability, etc. He also argued that ATM is built to consume upto 40% less energy than the previous generation of cash dispensers currently available in the Indian market and it delivers incremental power savings and sustainable deployment throughout the year.

6.1. We find that the issue under dispute is directly addressed by the co-ordinate bench of Kolkata Tribunal in the case of Royal Bank

of Scotland N.V. vs DDIT (International Taxation) reported in (2017) 88 taxmann.com 330 (Kolkata – Trib.) dated 13.4.2016 (wherein one of us was the author) had held that :-

> ***8.2*** *We have heard the rival submissions. We find that the ATM machines are nothing but computers as they deal with the functions of decoding the information, processing the same and giving the output. The Learned AR submitted that ATM is a computer terminal activated by a magnetically encoded debit card that allows a person to make deposits to and withdrawals from his account pay bills, transfers money between his account at any time. The inbuilt computer software therein allows the person to make financial transactions and check the account balances. It was the submission of the Learned AR that inside every ATM there is a computer which is not very different from any other personal computer but the basic function of connecting a person to the bank ATM network and accessing his account information are done by the ATM and the software used in the ATM is also the same software which is used in the computer. We also find that similar issue has been addressed by the Special Bench of Mumbai Tribunal in the case ofDy. CIT v. Datacraft India Ltd. [2010] 40 SOT 295 wherein the definition of 'computer' given by the Information Technology Act, 2000 has been discussed and it has been held that the computer is to perform logical, arithmetical and memory functions on data etc and it is not only the equipment which perform such functions that could be called as computer but includes all input and output devices which are connected to or related to it. The Special Bench accordingly held that routers and switches are also to be included in the block of computers entitled to depreciation at the rate of 60%. We find that the ATM machine is doing the logical, arithmetic and memory functions by manipulations of electronic magnetic or optical impulses giving debit or credit cash and thereafter dispenses the case and gives a printed receipt and hence it could be safely concluded that computer is an integral part of ATM machine and on the basis of the information processed by the computer in the ATM machine only, the mechanical functions of the dispensation of cash or deposit of cash is done.*
>
> ***8.2.1.*** *We find that the issue is dealt with by the co-ordinate bench of Delhi Tribunal in the case of Global Trust Bank Ltd. (supra), wherein it was held that :—*
>
> 7. *ATM is the computerized telecommunication device that allows bank's customers to access the bank at places other than the normal bank without having to take the trouble to go to the bank in person and collect the cash as is done under the conventional method of withdrawing money from the bank. The ATM machines are computerized machines which not only allow the customers to withdraw money but they can check the account balance, pay bills, purchase goods and services, and therefore, unless it is computerized and linked with the main server, it is not possible to operate*

the ATM.

10. In this connection, a reference is also invited to the Information Technology Act, 2000 wherein section 2(i) defines the term "computers" which also includes "computer network". The term "computer network" means the interconnection of one or more computers through the use of satellite, microwave, terrestrial line or other communication media and terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained. From this angle also, Local Area Network (LAN), Wide Area Network (WAN) and ATM would undoubtedly form a part of computer.

11. In the light of the view we have taken above, we direct the AO to allow depreciation at the rate of 60% on LAN, WAN and ATM equipments. We order accordingly.

8.2.2 *……..*

8.2.3 *In respect of the case relied on by the Learned DR on the decision rendered by this tribunal in assessee's own case for Asst Year 2004-05, we find that this decision was rendered on 30.6.2010 and thereafter much water has flown on the impugned issue by the decisions of Delhi and Mumbai Tribunal and the decision of Bombay High Court. Respectfully following the aforesaid judicial precedents, we have no hesitation in directing the Learned AO to allow depreciation at the rate of 60% on ATMs. Accordingly, the ground no. 5 raised by the assessee for the Asst Years 2005-06 and 2006-07 are allowed.*

6.2. We also find that the decision relied upon by the ld DR on Hon'ble Karnataka High Court supra was rendered in the context of Karnataka Sales Tax Act and not under Income Tax Act. In this regard, we find that the *Hon'ble Supreme Court in the case of Jagatram Ahuja vs CIT reported in 246 ITR 609 (SC)* had observed as under:-

23. *We find that Kantilal Trikamlal's case (supra)supports the view taken in N.S. Getti Chettiar's case (supra). Added to this, section 2(15) of the Estate Duty Act, defining 'property' carne up for consideration in Kantilal Trikamlal's case (supra) . We may state here itself that the word sand expressions defined in one statute as judicially interpreted do not afford a guide to construction of the same words or expressions in another statute unless both the statutes are paramateria legislations or it is specifically so*

> *provided in one statute to give the same meaning to the words as defined in other statute. The aim and object of the two legislations, namely, the Gift-tax Act and the Estate Duty Act are not similar.*

It is obvious that the purpose behind introduction of Karnataka VAT Act and Income Tax Act 1961 are totally different and moreover one is a state legislation and another is a central legislation. Hence the words and expressions in one statute cannot be imported into another statute unless both the statutes are pari materia legislations or one statute provides for the meaning to be imported specifically from another statute in respect of certain words and expressions. In the instant case, none is present and hence the reliance placed on the decision of Hon'ble Karnataka High Court rendered in the context of Sales Tax Act supra does not advance the case of the revenue.

6.3. In any case, we find that the decision of *Hon'ble Bombay High Court on the very same issue is in favour of the assessee in the case of CIT vs Saraswat Infotech Ltd in Income Tax Appeal (L) No. 1243 of 2012 dated 15.1.2013*. The question raised before the Hon'ble Bombay High Court was as under:-

> *b) Whether on the facts and circumstances of the case the ITAT was right in holding that depreciation on ATM is allowable @ 60% ignoring the fact that ATM is a cash dispensing machine with a projector and therefore is in nature of plant and machinery and therefore depreciation should be provided @ 15% ?*

The Hon'ble Bombay High Court observed as under:-

3) The Assessing Officer was of the view that the UPS and ATMs would not fall under the category of computers and being part of plant and machinery / office equipment would be eligible for depreciation only at 15%. Similarly, he disallowed the claim for depreciation on software licence on the ground that the same was not put to use in the previous year to the assessment year 2008-09 . Consequently the excess claim of depreciation made by the respondent assessee was disallowed.

4) In appeal the CIT(Appeals) upheld the findings of the Assessing Officer.

5) In second appeal, the Tribunal by its order dated 14/3/2012 held that UPS is an integral part of the computer system and regulate the flow of the power to avoid any kind of damage to the computer network due to fluctuation in power supply which could lead to loss of valuable data. The Tribunal relied upon the decision of the Delhi High Court dated 20/1/2011 in the matter of CIT v. Orient Ceramics and Industries Ltd in which UPS was held to be the part of the computer system and depreciation at 60% was allowed. Similarly, so far as ATMs are concerned, the Tribunal on finding of fact concluded that ATM cannot function without the help of computer and would be a part of the computer used in the banking industry. Reliance was placed by the Tribunal upon the decision of the Delhi Bench of Tribunal in the matter of DCIT v. Global Trust Bank (ITA No. 474/D/09) wherein it has been held that ATM was a computer equipment and depreciation @ 60% was allowed. So far as the use of software is concerned, the Tribunal records a fact that the evidence of the use of the software on 31/3/2008 was produced before the Tribunal. Thus, the Tribunal held that depreciation @ 30% on software was rightly claimed.

6) We note that the Tribunal has arrived at a finding of fact on all the three questions. The revenue has not been able to show that the above finding of fact is perverse. Thus, we do not see any reason to entertain question (i) , (ii) and (iii) above.

7) Accordingly, the appeal is dismissed with no order as to costs.

6.4. We find that the *Hon'ble Apex Court in the case of CIT vs Vegetable Products Ltd reported in 88 ITR 192 (SC)* had held that when there are two conflicting decisions of two different high courts

(non-jurisdictional) , then the construction that is favourable to the assessee is to be adopted.

6.5. Hence in the instant case, the decision of Hon'ble Bombay High Court supra which was rendered in the context of Income Tax Act and duly addressing the arguments of the ld DR before us also, would rule the fort and accordingly we direct the ld AO to grant depreciation at the rate of 60% on ATMs for the Asst Year 2013-14 and the grounds raised by the assessee in this regard are allowed. This decision would apply with equal force for Asst Year 2014-15 also.

7. Let us now take up the revenue appeal in ITA No. 2584/Chny/2018 for Asst Year 2013-14.

8. The only issue involved in this appeal is as to whether the ld CITA was justified in holding that the assessee is entitled for deduction u/s 80JJAA of the Act in the facts and circumstances of the case.

8.1. The brief facts of this issue are that during the course of assessment proceedings, the ld AO noticed that the assessee had claimed a deduction of Rs 4,75,71,586/- u/s 80JJAA of the Act in the return of income filed in ITR-6 , however the same has not been claimed in the statement of computation of total income filed for the Asst Year 2013-14. The reason for the same was stated to be that as there is loss and no positive income for the year under consideration. However, after considering the fact because of addition on account of disallowance of depreciation amounting to Rs 44,98,49,970/-, there will be positive income resulting for the year under consideration, the assessee was asked to justify the claim made in terms of the provisions of section 80JJAA of the Act. In response, the assessee submitted that it is an industrial undertaking, based on the definition under other provisions of the Income Tax Act like section 10(15), 72A(7)(aa) and since there is no definition of 'Industrial Undertaking' under the provisions of section 80JJAA of the Act. The assessee pleaded that it is engaged in the business of computer software and accordingly it also had to be construed as an industrial undertaking as the employees employed by the assessee would fall within the meaning of 'workmen' as defined in Industrial Disputes Act. The assessee also impressed upon the ld AO by stating the intention of

the legislature in introducing the provisions of section 80JJAA of the Act to justify its claim of deduction thereon. The ld AO however by placing reliance on the orders of his predecessor for the Asst Years 2011-12 and 2012-13 , which were also upheld by the ld CITA in those years, disallowed the claim of the assessee for the Asst Year 2013-14 also. Aggrieved, the assessee preferred an appeal before the ld CITA, who by placing reliance in the order of this tribunal in assessee's own case for the Asst Year 2012-13 in ITA No. 1549/Mds/2017 dated 28.11.2017 and for the Asst Year 2011-12 in ITA No. 1070 & 1071/Mds/2016 dated 30.9.2016 directed the ld AO to grant deduction u/s 80JJAA of the Act to the assessee. Aggrieved, the revenue is in appeal before us.

8.2. We have heard the rival submissions. We find that the ld DR argued that there is no evidence to prove that the assessee had submitted the audit report for the claim of deduction u/s 80JJAA of the Act before the ld AO as mandated in the said section. Accordingly, the assessee should not be granted deduction u/s 80JJAA of the Act. Per contra, the ld AR stated that the issue under dispute is squarely covered by the decision of this tribunal in

assessee's own case for Asst Years 2011-12 and 2012-13 supra wherein it was held as under:-

> *25. As per the memorandum to Finance Act, 1988, sec. 80JJAA, the Government of India considered it necessary to provide fiscal incentives in Income-tax Act, in order to encourage the employers to create more and more employment opportunities. When the assessee is creating new employment opportunities, the beneficial provisions should not be summarily rejected. Though the assessee is engaged in manufacture of computer software Firstly it is covered by Explanation 1 of sec. 10(15) of the Act within the meaning of 'industrial undertaking' and it is supported by Hon'ble Madras High court judgment in the case of 246 ITR 722. Secondly the employees working in the companies engaged in the computer software are also covered as 'workmen' within the meaning of Industrial Dispute act as per the decisions of coordinate benches of Bangalore and Delhi cited supra. The Government of Tamilnadu vide letter dated 30/05/2016 clarified that the IT industry is not exempted from the provisions of Industrial Disputes Ac 1947. The assessing officer's case is not that the assessee is not satisfying the eligibility conditions for deduction u/s 80JJAA. The learned DR did not place any material controverting the above decisions. Therefore, we hold that assessee is entitled for the deduction u/s 80JJAA and accordingly, we set aside the orders of the lower authorities and allow deduction u/s 80JJAA. The assessee's grounds on this issue are allowed.*

8.2.1. Respectfully following the same, we have to hold that the assessee is entitled for deduction u/s 80JJAA of the Act. However, we find lot of force in the argument of the ld DR that the assessee should have obtained audit report and submit the same before the ld AO atleast before the completion of assessment proceedings. The orders of the lower authorities does not speak about the same and since this being a statutory requirement, we deem it fit and

appropriate, in these peculiar facts and circumstances, in the interest of justice and fairplay, to remand the matter to the file of ld AO only for the limited purpose to verify whether the assessee had submitted the audit report for claiming deduction u/s 80JJAA of the Act and decide the issue in the light of the aforesaid decision of this tribunal in assessee's own case for the earlier years. Accordingly, the grounds raised by the revenue are allowed for statistical purposes.

9. To sum up, the appeal of the assessee in ITA No. 2564/Chny/2018 for Asst Year 2013-14 is allowed ; the appeal of the assessee in ITA No. 2565/Chny/2018 for Asst Year 2014-15 is allowed and the appeal of the revenue in ITA No. 2584/Chny/2018 for the Asst Year 2013-14 is allowed for statistical purposes.

Order pronounced on the 7th June, 2019 at Chennai.

Sd/-	Sd/-
(ध्रुव्वुरु आर.एल रेड्डी)	(एम बाला गणेश)
(Duvvuru RL Reddy)	(M. Balaganesh)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 7th June, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee 2. राजस्व /Revenue 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF