

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.745&746/Bang/2019
Assessment Year: 2012-13& 2013-14

Century Link Technologies India Pvt. Ltd. Block B, 002 B Wingh Survey No.15/3 and 16 Salapuria Hallmark Kadubeesanahalli, Varthur Hobli Bengaluru-560103 PAN NO : AAHCS7683M	Vs.	Deputy Commissioner of Income-tax Circle-2(1)(1) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri H. Padamchand Khincha, A.R.
Respondent by	:	Shri Muzaffar Hussain, D.R.

Date of Hearing	:	19.02.2020
Date of Pronouncement	:	11.03.2020

ORDER

PERB.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee are directed against orders passed by Ld. CIT(A)-2, Bengaluru and they relate to the assessment years 2012-13 and 2013-14. Both the appeals were heard together and hence they are

being disposed of by this common order, for the sake of convenience.

2. The common issues urged in both the appeals relate to following:

- a) Addition made u/s 80JJAA of the Income Tax Act, 1961 (hereinafter called as 'the Act').
- b) Disallowance of expenditure incurred in lease hold premises treating the same as capital expenditure.
- c) Claim of MAT credit.

3. In assessment year 2012-13, assessee has raised issues relating to assessment of interest u/s 244A of the Act and non-granting of TDS credit.

4. We heard the parties and perused the record. The assessee is engaged in the business of developing computer software.

5. The first issue relates to disallowance of deduction claimed u/s 80JJAA of the Act. The Ld. A.R. submitted that the provisions of section 80JJAA of the Act have undergone changes from time to time. He submitted that the A.O., in both the years under consideration, has

applied the amended provisions, which are applicable to assessment year 2014-15 by observing that the amendment has been made in order to discourage software companies from claiming deduction u/s 80JJAA of the Act. Accordingly the AO has disallowed the deduction claimed u/s 80JJAA of the Act in both the years. He submitted that Ld. CIT(A) has also confirmed the disallowance made in both the years. The Ld A.R submitted that the provisions of sec.80JJAA as applicable to the years under consideration should have been applied by the tax authorities. Accordingly, he prayed that this issue may be restored to the file of the A.O. with a direction to apply correct provisions of law as applicable to the years under consideration.

6. We heard Ld. D.R. and perused the record. We notice from the assessment order that the A.O. has incorporated the provisions of section 80JJAA of the Act relating to assessment year 2014-15 and has applied the same to both the years under consideration. It is pertinent to note that sub-section (3) of section 80JJAA of the Act, as amended by Finance Act 2016 makes it clear that the provisions that existed before 1st day of April, 2016 shall apply to the earlier years, meaning thereby,

the provisions, which are applicable to a particular year, should be applied for determining the eligibility of the assessee to claim this deduction. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. with the direction to apply with the provisions of section 80JJAA of the Act as applicable to the years under consideration.

7. The next issue relates to disallowance of claim of repair expenses incurred on lease hold building, treating the same as capital expenditure. The Ld. A.R. submitted that the assessee has incurred certain expenses on lease hold premises and claimed the same as revenue expenditure. However, in the books of accounts, the above expenditure has been capitalized by the assessee. The Ld. A.R. submitted that the entries made in the books of accounts shall not bind the Income tax Act. He submitted that most of the expenses incurred by the assessee do not give rise to any capital asset. He submitted that assessee has furnished details of all expenses before the tax authorities. However, the said details have not been critically examined by the tax authorities. He submitted that the Ld. CIT(A) has applied provisions of Explanation 1 to section 32(1) of the Act

without giving a finding as to whether the impugned expenditure is in the nature of capital expenditure or not. Accordingly, he prayed that this issue may also be restored to the file of the A.O. for examining it afresh.

8. The Ld. D.R. on the contrary supported the order passed by Ld. CIT(A). Ld. D.R. further submitted that the assessee itself has capitalized this expenditure in its books of accounts, which clearly prove the nature of expenditure. Accordingly he submitted that this expenditure was rightly treated as capital expenditure by the Ld. CIT(A).

9. We heard the parties on this issue and perused the record. There should not be any dispute that under Explanation 1 to section 32(1) of the Act, depreciation is granted on the capital expenditure incurred by any assessee on lease hold building. As rightly pointed out by Ld. A.R., in order to invoke the provisions of Explanation 1 to sec. 32(1), a finding has to be given first as to the nature of expenditure incurred by the assessee. If the nature of expenditure is capital in nature, then the provisions of explanation 1 to section 32(1) of the Act shall apply. It is the case of the assessee that most of the

expenditure incurred by it on lease hold premises are revenue in nature. We notice that the tax authorities have not examined the nature of expenditure incurred by the assessee. We also notice that the assessee has furnished the various details of expenditure incurred by it on lease hold premises. Accordingly, we are of the view that this issue requires fresh examination at the end of the A.O., since the nature of expenditure incurred by the assessee is required to be examined in order to apply the provisions of Explanation 1 to section 32(1) of the Act. Accordingly, we set aside the order passed by the Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh.

10. The next common issue relates to claim for credit of MAT as per provisions of section 115JAA of the Act. Since the claim of the assessee requires examination at the end of the A.O., we restore this issue to the file of the A.O.

11. In assessment year 2012-13, the assessee has raised issue relating to assessment of interest of income tax refund u/s 244A of the Act and non-credit of TDS amount. Both these claims require examination at the end of the A.O. Accordingly, we set aside both the issues

to the file of the A.O. for examining them in accordance with law.

12. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 11.3.2020

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 11th March, 2020.
/VG/

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.