

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 303/Ahd/2024
Assessment Year 2013-14**

Global Tech India Private Limited, 301, 3 rd Floor, Ornet Arcade, Arbindo Society Road, Bodakdev, Ahmedabad-380054 Gujarat PAN: AABCG3725G (Appellant)	Vs	Income Tax Officer, Ward-2(1)(1), Ahmedabad (Respondent)
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**Assessee Represented: Shri Pramod Kedia, AR
Revenue Represented: Shri Santosh Kumar, Sr.D.R.**

Date of hearing : 27-05-2024
Date of pronouncement : 22-08-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 09.01.2024 passed by the Additional Commissioner of Income Tax (Appeals)-4, Kolkata, arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2013-14.

2. The brief facts of the case is that the assessee is a Company engaged in the business of Software Development and Maintenance. The assessee filed its Return of Income for the Asst. Year 2013-14 on 30.09.2012 declaring total income of Rs.38,825/-. The return was taken up for scrutiny assessment. The Assessing Officer disallowed Product Development expenses written off Rs.19,66,641/- and added as the income. The assessee explained the expenditure was incurred for development of one software product on HR Management System in the name of "ProHR" for linking strategy and performance with integrated payroll and Web based self-service which was started in the year 2009-10. The expenditure of Rs.19,27,806/- relates to expenses for the development of this software which was to be capitalized as intellectual Property Rights upon completion of the Project and the same would be amortized for a period of two to four years. However, due to technological obsolescence, the said project is not likely to result in any economic benefits to the assessee. Therefore, the capital work-in-progress of this project was written off and ultimately the project was abandoned. Further New Technology from Microsoft – Dotnet was popular in the market, which was cloud based technology and cost efficiency. Therefore the software project prepared by the assessee namely "Pro-HR" could not get a single client and the same was abandoned. However the Assessing Officer relying upon various case laws disallowed the claim and added the expenses as the income of the assessee and demanded tax thereon.

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A) which was also dismissed by observing when the software has been prepared with a sole motive to use it for a number of years as claimed and it is of enduring nature, suddenly it cannot be converted to revenue expenditure after three years and claim it as expenditure in a single year, it is not an advance of money for any capital asset, that after three years it becomes abandoned. Further Ld. CIT(A) held that the case laws relied by the assessee are not applicable to the facts of the case and then dismissed the assessee appeal.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. On facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in upholding the disallowance of Rs.19,27,806/- (being Project Development Expenses Written off claimed towards the abandoned software product before the project achieved completion) made by the Ld. AO (ITO, Ward 2(1)(1), Ahmedabad) in the assessment order dated 15/02/2016 passed under section 143(3) of the Act. Accordingly, your appellant prays that it may please be held that the impugned disallowance of Rs.19,27,806/- is not sustainable and deserves to be deleted.

2. The Ld. CIT (Appeals) has erred in law and on facts in not following the judicial precedents (including that of Hon. SC) relied upon by the appellant due to factually incorrect / erroneous inference (which inference is contrary to the materials on records) drawn by him that the subject project was completed whereby the software was developed and it already came in to existence. The Ld. CIT(A) ought to have accepted the appellant's contention that the judicial precedents relied upon by the appellant were applicable to the facts of the case and in law and ought to have deleted the impugned disallowance of Rs.19,27,806/- made in the assessment order dated 15/02/2016 passed u/s 143(3) of the Act. Accordingly, your appellant prays that it may please be held that the impugned disallowance of Rs. 19,27,806/- is not sustainable and deserves to be deleted..

3. Without prejudice, Section 37(1) of the Income Tax Act, 1961 permits deduction of any other expenditure (not being personal or capital expenditure and expenditure mentioned in Sections 30 to 36 of the said

Act) laid out or expended wholly and exclusively for the purpose of business or profession. The appellant respectfully prays that the impugned expenditure incurred of Rs.19,27,806/- is also allowable on the grounds of commercial principles and expediency as this was a genuine expenditure expended during the AY: 2013-14 wholly and exclusively for the purpose of business of the appellant. Accordingly, your appellant prays that it may please be held that the impugned disallowance of Rs.19,27,806/- is not sustainable and deserves to be deleted.

4. Your appellant craves leave to add / amend / edit / delete / change / modify all or any of the grounds before or at the time of hearing.

5. The Ld. Counsel reiterated the arguments made before the Lower Authorities and submitted that the assessee decided to abandon the development of the software “ProHR”. Since the software had not fructified as the assessee was not successful in validation of Alpha version of the subject software by initial trials/live testing/feedback, without which completion of software development could not have been achieved. Further due to technological obsolescence, the development of the software “ProHR” was ultimately abandoned by the assessee.

5.1. Ld. Counsel submitted that the Co-ordinate Benches of the Tribunal in the case of DCIT-Vs-Magnetic Meter Systems India Ltd. (2012) 13 ITR (Trib) 43 Chennai and ACIT-Vs-Essar Steel Ltd. (2012) 53 SOT 40 wherein it was held that the expenditure incurred by the assessee on infructuous capital projects is in the nature of revenue expenditure and the assessee is entitled for deduction of the same. Further Ld. Counsel relied upon Hon’ble Calcuta High Court Judgment in the case of Binani Cement Ltd.- Vs-CIT reported in 380 ITR 116 and Hon’ble Bombay High Court in the case of PCIT-Vs-Trigent Software Ltd. (in ITA No. 634 & 640 of 2018) and CIT-Vs- Idea Cellular Ltd. (2016) 76 taxmann.com 77

(Bom.) and prayed to delete the addition made by the Assessing Officer.

6. Per contra, Ld. Sr. D.R. appearing for the Revenue supported the orders passed by the Lower Authorities and requested to uphold the same.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the order passed by the Lower Authorities, Ld. A.O. presumed that the Software Development Project was completed, whereas the software project "ProHR" was not completed and not even put for initial trial with any customers then only the product can be sellable in the open market. Further due to technological advancement with other competitive software in the market, the assessee decided to drop the above project and had written off the expenses in the present Asst. Year 2013-14. In such abandoned projects, the expenses were treated as Revenue in nature in the following judicial precedents.

8. The Hon'ble Bombay High Court in the case of PCIT-Vs-Trigent Software Ltd. (in ITA No. 634 & 640 of 2018) order dated 02.12.2022 wherein it was held as follows:

"...10. The issue as to whether a particular expenditure incurred was of capital or revenue in nature has been the subject matter of legal debate before various Courts in the Country. As held by the Apex Court in the case of Empire Jute Co. Ltd. (Supra), since there does not exist an all-embracing formula which can provide a ready solution to the problem; no touchstone has been devised and that every case has to be decided on its own facts keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred.

However, it referred to one celebrated test laid down in the case of British Insulated & Helsby Cables Ltd. Vs. Atherton 5. The principle as stated therein was as under:

"When an expenditure is made, not only once and for all but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

1. However, notwithstanding that a reference had been made to the said principle of law, the Apex Court held that the "enduring benefit test was not a certain or conclusive test and cannot be applied mechanically without regard to the particular facts and circumstances of a given case and that what was material to consider was the nature of the advantage and that it is only where the advantage was in the capital held that the expenditure would be disallowable on an application of this test. If the advantage consisted merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably, while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The Apex Court held:

11 When dealing with cases of this kind where the question is whether expenditure incurred by an assessee is capital or revenue expenditure, it is necessary to bear in mind what Dixon, J. said in *Hallstrom's Property Limited v. Federal Commissioner of Taxation* 72 CLR 634

"What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the Justice classification of the legal rights, if any, secured, employed or exhausted in the process"

The question must be viewed in the larger contest of business necessity or expediency. If the outgoing expenditure is related to the carrying on or the conduct of the business that it may be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure. See *Bombay Steam Navigation Co (1953) Pvt. Ltd v Commissioner of Income Tax (2)*. The same test was formulated by Lord Clyde in *Robert Addze & Son's Collieries Ltd. v Inland Revenue*(3) in these words

"Is it part of the company's working expenses is it expenditure laid out as part of the process of profit earning or on the other hand is it a capital outlay, is it expenditure

necessary for the acquisition of property or of rights of permanent character, the possession of which is a condition of carrying on its trade at all?

12. In *Indo Rama Synthetic (1) Ltd. (Supra)*, it was held that if the expenditure was incurred for starting a new business which was not carried out by the assessee earlier, then such expenditure would be held to be of a capital nature and it would be irrelevant as to whether the project really materialized or not. However, if the expenditure incurred was in respect of the same business, which was already carried on by the assessee, even if it was for the expansion of the business, i.e., to start a new unit and there was unity of control and a common fund, then such an expense was to be treated as business expenditure. **It was held that in such a case whether a new business/asset came into existence or not would become a relevant factor and that if there was no creation of a new asset, then the expenditure incurred would be of revenue nature and that if the new asset came into existence which was of an enduring benefit, then such expenditure would be of a capital nature.**

This view was also followed in the case of Commissioner of Income-tax, Ranchi Vs. Tata Robins Fraser Ltd.

13. Applying the ratio of the aforementioned judgments in the present case, it can be seen that **the appellant is admittedly in the business of development of software solution and management, and therefore, it's endeavour to develop a new software was nothing but an endeavour in its existing line of business of developing software solutions. Admittedly, the product which was sought to be developed, never came into existence and the same was abandoned. No new asset came into existence which would be of an enduring benefit to the assessee, and therefore, in these circumstances, the expenditure could only be said to be revenue in nature."**

8.1. The Hon'ble Bombay High Court in the case of CIT-Vs- Idea Cellular Ltd. (cited supra) wherein it was held as follows:

"....9. We have carefully perused the memo of the appeal. We have also perused the order of the assessing officer and that of the first appellate authority. Mr. Malhotra has elaborately taken us through these orders to submit that the assessing officer found from the record itself and particularly from a document, namely, a letter or response from the assessee that the purpose of the expenditure cannot be said to be other than bringing up a capital asset into existence. The fact that later on the site was not chosen for hoisting the tower is immaterial. However, we find that the tribunal applied the correct test. The tribunal found that there is no dispute that the expenditure in question was incurred for the purpose of

construction of a cellular tower, but the project was then abandoned due to the reason that the site was not suitable. The reasons assigned by the assessing officer and the first appellate authority are unsustainable, according to the tribunal for the simple reason that cellular towers were being erected for the purpose of assessee's own business of providing cellular services to the customers. The towers are meant for the business of providing cellular services. It is by utilising these towers that such services are provided. It is not an independent source of income. It is only to make the cellular services provided more efficient, convenient and profitable. When the towers are not exclusively meant for leasing out to third parties for earning the revenue, but used for transmission of telephone signals of assessee's own cellular services, then, it cannot be said that the towers, which are used for the assessee's own business, are new source of income. **A cellular tower can be a new independent source of Income, if it is erected exclusively for leasing out to the other operators. However, on facts, this was not the position and the tribunal, therefore, rightly concluded that in series of decisions, the High Courts and the Hon'ble Supreme Court of India has laid down the principle that if an expenditure is incurred for doing the business in a more convenient and profitable manner and has not resulted in bringing any new asset into existence, then, such expenditure is allowable business expenditure. In the present case, no new business was set up, but towers in addition to which were already set up were proposed at site, which project was later on abandoned.**

10. We do not find that the tribunal has committed any perversity or applied incorrect principles to the given facts and circumstances. When the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that questions (a) and (b), as pressed, are substantial questions of law. The appeal is devoid of merits and it is dismissed. There would be no order as to costs."

9. Since the software project "Pro HR" was abandoned, there was no enduring benefit to the assessee, as there is no existence of a new software. Therefore the expenses are to be allowed as Revenue in nature and the addition made by the lower authorities are liable to be deleted.

10. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in the open court on 22 -08-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 22/08/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद