आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई' मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
सर्वश्री विजयपाल राव, न्या.स एवं एन. के. बिलैय्या, लेखा सदस्य ।
BEFORE SHRI VIJAY PAL RAO, JM & SHRI N. K. BILLAIYA, AM

आयकर अपील सं./**I.T.A. No. 548/Mum/2011**
(**निर्धारण वर्ष** / Assessment Year : 2007-08)

M/s Arcadia Share & Stock Brokers P. Ltd. 328, Ninad, 1st Floor Blg. No. 7, Service Road, Near Bhavishya Nidhi Bhavan Bandra(E)-400051	**बनाम**/ Vs.	The Addl. Commissioner of Income Tax, Range 4(1) Aaykar Bhavan, M. K. Road, Mumbai
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

आयकर अपील सं./**I.T.A. No. 1083/Mum/2011**
(**निर्धारण वर्ष** / Assessment Year : 2007-08)

The Addl. Commissioner of Income Tax, Range 4(1) Aaykar Bhavan, M. K. Road, Mumbai	**बनाम**/ Vs.	M/s Arcadia Share & Stock Brokers P. Ltd. 328, Ninad, 1st Floor Blg. No. 7, Service Road, Near Bhavishya Nidhi Bhavan Bandra(E)-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA4562G		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / Appellant by :	Dr. K. Shivaram, Ajay R. Singh & Neelam C. Jadhav
प्रत्यर्थी की ओर से/Respondent by :	Shri O. P. Singh
सुनवाई की तारीख / Date of Hearing :	29th August 2013
घोषणा कीतारीख/Date Of Pronouncement:	13th September 2013

आदेश / O R D E R

PER : विजयपाल राव, न्या.स. / VIJAY PAL RAO, JM

This cross appeals are directed against the order dated 16.11.2010of Commissioner of Income Tax(Appeals) for the assessment year 2007-08.

In appeal ITA No. 548/M/2011

2. The assessee has raised the following grounds as under:

> *"1. The learned Commissioner of Income Tax (Appeals) erred in disallowing Rs. 12,48,083/-, being the amount of foreign travelling expenses incurred by the appellant wholly and exclusively for the purposes of its business.*
>
> *2. The learned Commissioner of Income Tax (Appeals) erred in disallowing u/s. 40(a)(ia) an amount of Rs. 9,56,081/-, being the amount of professional fees payable to Mr. Jaswinder Sachdev.*
>
> *3. The learned Commissioner of Income Tax (Appeals) erred in treating the expenses of Rs. 52,691/- incurred on purchase of software, as capital in nature.*
>
> *4. The learned Commissioner of Income Tax (Appeals) erred in restricting the claim of depreciation on UPS @ 15% as against the depreciation claimed @ 60% by the appellant."*

3. Ground No. 1 regarding disallowance of foreign travelling expenses. The assessee has claimed an amount of ₹ 12,48,083/- as foreign travelling expenses. The Assessing Officer has disallowed the claim of the assessee on the ground that the assessee has not produced any evidence to show that the expenses were incurred for the purpose of business of the assessee. On appeal, the CIT(A) has confirmed the disallowance made by the AO by holding that the expenses are nothing but personal expenses it is not allowable as business expenditure.

4. Before us the Ld. AR of the assessee has pointed out that the assessee has already paid FBT on the foreign travelling expenses. He has further submitted that for the assessment year 2006-07 the Tribunal has considered an identical issue vide order dated 25.1.2012 in ITA No. 1972/M/2010 and set aside the issue to the record of the Assessing Officer

for verification of the fact of payment of fringe benefit tax. Accordingly, the Ld. AR has pleaded that the issue may be remitted to the record of the AO for verification of payment of fringe benefit tax on this expenditure. On the other hand, the Ld. DR has fairly submitted that the issue may be remitted to the AO for limited purpose of verification of payment of fringe benefit tax by the assessee.

5. Having considered the rival submissions and carefully perusal of the relevant record we note that for the assessment year 2006-07 the Tribunal has considered and decided an identical issue in para 3 as under:

> *"3. We have heard the rival submissions of the parties and perused the records. Even before its also nothing has been produced by the assessee except Xerox copies of the pass port and copy of ledger A/C The main thrust of the argument of the Ld. Counsel for the assessee is that Shri Nitin Brahambatt is the CEU of the assessee company who looks after the entire operations of the assessee. He reiterated the arguments made before the authorities below. The assessee could not controvert the findings of the Ld. CIT (A) that Shri Arjun Mudda and Shri Nitin Brahambatt had gone to the foreign tours along with the family members, If the assessee is claiming the expenditure then the burden is on the assessee to at least prove by giving the primary evidence in respect of the purpose of that expenditure. Giving our anxious consideration to the findings, in our opinion no interference is called for. We, therefore, confirm the order of the Ld. CIT(A). The alternate argument of the Ld. Counsel is that the assessee has paid the FBT on the travelling expenditure. We have perused the copy of the return filed by the assessee for the Fringe Benefit Tax (34 to 37). The assessee has shown tour and travel expenditure to the extent of 13,66,492/- but no details are on record. As per the circular No.8 of 2005 issued by the CBDT dated 29.8.2005 277 ITR (Statute) 20 if the assessee has paid the Fringe Benefit Tax on the expenditure then no disallowance can be made. As the required details are not before us, it is very difficult to arrive on any finding en this issue. We, therefore, restore this issue to the file of the A.O. for limited purpose to verify if the assessee has paid the Fringe Benefit Tax then the same should not be disallowed as per the CBDT Circular No.8 of 2005 dated 29.S.2005. Accordingly, ground no. 1 is allowed for the statistical purposes."*

6. It is clear that if the expenditure in question is subjected to payment of fringe benefit tax then as per Circular No. 8 of 2005 dated 29.8.2005 no disallowance can be made. Accordingly, in the facts and circumstances of the case this issue is set aside to the record of the Assessing Officer for limited purpose of verification of payment of fringe benefit tax on this amount of expenditure and then decide the allowability of the same in terms of CBDT Circular No. 8 of 2005.

7. Ground No. 2 regarding disallowance of professional fees u/s 40(a)(ia) of Income Tax Act. We have heard the Ld. AR as well Ld. DR and considered the relevant material on record. For the assessment year 2006-07 the Assessing Officer has disallowed the professional fee of ₹ 9,56,081/- u/s 40(a)(ia) on the ground that the assessee has not paid/deducted TDS on the professional fees paid to one Mr. Jaswinder Sachdev. Since the assessee claimed this expenditure for the assessment year 2006-07 therefore, it was not claimed for the assessment year under consideration however, the claim of the assessee for the assessment year 2006-07 has been disallowed on the ground of non-deduction/payment of TDS. The disallowance for the assessment year 2006-07 has been confirmed by this Tribunal vide order dated 25.1.2012. The assessee has stated that the TDS has been deducted and paid during the year under consideration therefore as per the provisions of section 40(a)(ia) the same is allowable for the year under consideration. In view of the facts and circumstances of the case we are of the opinion that when the claim of the assessee was disallowed for the assessment year 2006-07 due to non-

deduction/payment of TDS and subsequently the assessee has deposited the TDS during the year under consideration then on Principle, the claim of the assessee shall be allowed in this year. However, sine the issue has not been examined by the authorities below therefore, in the interest of justice we set aside this issue to the record of the Assessing Officer to verify the deduction and payment of TDS as claimed by the assessee and accordingly decide this issue as per law.

8. Ground No. 3 regarding disallowance of software expenditure. The assessee has debited an amount of ₹ 19,17,271/- on account of computer/software charges. The AO has disallowed a sum of ₹ 52,691/- treating the same as capital in nature and allowed depreciation at 60%. On appeal, the CIT(A) has confirmed the disallowance made by the AO. Before us the Ld. AR of the assessee has submitted that the disallowance of ₹ 52,691/- pertains to two items namely RT Pro subscription of ₹ 28.060/- and subscription charges towards Iris software of ₹ 24,631/-. The Ld. AR has submitted that as it is clear for the nature of expenditure this is only a subscription charges and not purchase of software therefore, the same is allowable revenue expenditure. He has referred the details of expenditure at page no. 23 of the paper book. On the other hand, the Ld. DR has submitted that the AO and CIT(A) has given a finding that the expenditure has been incurred by the assessee for purchase of software and therefore it is not recurring nature of expenditure. He has relied upon the order of the authorities below.

9. Having considered the rival submissions as well as relevant material on record we note that the expenditure of ₹ 52,691/- has been incurred towards RT Pro Subscription and Iris Software Subscription. If the expenditure is only for subscription or renewed of the software for a limited period say one year then it is a recurring nature of expenditure and therefore, allowable as revenue expenditure. However, from the details as well as the orders of the authorities below it is not clear whether this subscription charges are annual or once for all or for a period of many years. Accordingly, in the facts and circumstances of the case and in the interest of justice we set aside this issue to the record of the Assessing Officer for limited purpose of verification of the fact whether the subscription charges are annual in nature or otherwise and then decide this issue as per law and in the light of our observation.

10. Ground No. 4 regarding higher rate of depreciation on UPS. The assessee claimed depreciation @ 60% on UPS by claiming being part of computer. The AO rejected the claim of the assessee and allowed the depreciation @15%. On appeal, the CIT(A) has confirmed the action of the AO by following the decisions of Delhi Benches of this Tribunal in case of Nestle India Limited 111 TTJ 498. Before us the Ld. AR of the assessee has submitted that in the business of the assessee the constant working of the computer is essential and inevitable therefore, the UPS as an essential part of the computer to facilitate the interrupted working of computer. He has further submitted that in the subsequent decisions, this Tribunal has

taken a different view and decided this issue in favour of the assessee. He has relied upon the following decisions:

- *ITO Vs Omni Globe Information Technologies India P. Ltd. 131 ITD 280*
- *Haworth (India) (P.) Ltd. Vs DCIT 131 ITD 215*
- *Order dated 19.7.2013 in case of Sundaram Asset Management Vs DCIT in ITA No. 1774/Mds/2012 (Chennai)*

11. On the other hand, the Ld. DR has relied upon the order of the authorities below and submitted that the UPS is only an uninterrupted power supplying instrument/machines and is not essential part of the computer. He has further submitted that the function of the computer is not dependent on UPS but the role of the UPS is only to supply the power without any interruption therefore, the UPS does not fall under the term computer.

12. We have considered the rival submissions as well as relevant material on record. Though in the case of Nestle India Limited (supra) the Delhi Benches of this Tribunal has held that UPS is not part of computer and therefore, is not eligible for higher rate of depreciation as applicable for computer however, in the subsequent decisions as relied upon by Ld. AR the Tribunal has time and again taken a view that the UPS is part of the computer and is eligible for depreciation @ 60%. In the case of Sundaram Asset Management Vs DCIT (supra), the Tribunal by following the decision in case of Haworth (India) Pvt. Ltd. and Engineering Systems India P. Ltd. has decided this issue as under:

"The fifth ground of appeal of the assessee relates to the issue of depreciation on UPS: The assessee has claimed depreciation on UPS @ 60% treating the same as part of computer. On the other hand, the Assessing Officer has considered the UPS at par with Plant & Machinery and restricted the depreciation to 15%. It has been repeatedly held in various decisions of the Tribunal that depreciation @ 60% has to be provided on UPS treating it to be the part of computer. This issue has been decided by the Tribunal in the case of Haworth (I) P. Ltd., (supra) and Macawber Engineering Systems (India) P. Ltd., (supra) wherein it has been held that UPS is an integral part of the computer. This view has been consistently followed by the Tribunal in various other appeals. Accordingly, this ground of appeal of the assessee is allowed and the assessee is entitled to claim depreciation @ 60% on UPS."

13. Thus, it is clear that in a series of decision the Tribunal has taken a view that UPS is an integral part of computer and consequently eligible for depreciation @ 60%. Accordingly following the decision of this Tribunal in favour of the assessee we allowed the claim of the assessee of higher depreciation on UPS.

In appeal ITA No. 1083/M/2011

14. The revenue has raised the following effective grounds:

"1. i "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.2115059/- and Rs.2608156/- made u/s.40(a)(ia) in respect of VSAT charges and leaseline charges respectively paid to Stock Exchange, without appreciating the facts that these were composite charges for professional and technical services rendered by the stock exchange to its members and the assessee has failed to deduct TDS thereon.".

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2179155/- made u/s. 14A r.w. Rule 8D of the Income-tax Act by Assessing Officer."

15. Ground No. 1 regarding disallowance of VSAT and lease line charges u/s 40(a)(ia). We have heard the Ld. DR as well as Ld. AR and considered the relevant material on record. The AO disallowed VSAT charges and lease line charges by invoking section 40(a)(ia) as the assessee has not deducted TDS. On appeal, the CIT(A) has deleted the disallowance by following the decision of this Tribunal in case of CIT Vs Kotak Securities 25 SOT 440 (Mum.) wherein it has been held that VSAT charges and lease line charges are paid to the stock exchange are not liable to TDS u/s 194J being fee for technical services. The Ld. AR of the assessee has invited our attention that an identical issue has been considered by the Hon'ble Jurisdiction High Court in case of ITO Vs Angel Capital & Debit Market Ltd. in ITA No. 475/2011 dated 28.7.2011 wherein the Hon'ble High Court has held in para 2 as under:

> *"2. As regards first two questions are concerned, the finding of fact recorded by the ITAT is that VSAT and Lease Line charges paid by the assessee to Stock Exchange were merely reimbursement of the charges paid/payable by the Stock Exchange to the Department of Telecommunication. Since the VSAT and Lease Line charges paid by the assessee do not have any element of income, deducting tax while making such payments do not arise. Hence, question Nos. (A) and (B) cannot be entertained."*

16. Following the decision of Hon'ble High Court (supra) we do not find any error or illegality in the order of the CIT(A) qua this issue.

17. Ground No. 2 regarding disallowance u/s 14A. The Assessing Officer has disallowed a sum of ₹ 21,79,155/- u/s 14A by applying rule 8D of Income Tax Rules, 1962. On appeal, the CIT(A) has held that rule 8D is not applicable for the year under consideration in view of the decision of

Hon'ble Jurisdiction High Court in case of Godrej & Boyce Co. Ltd. Vs DCIT 328 ITR 81 and restricted the disallowance at 5% of the exempt income. We have heard the Ld. DR as well as Ld. AR and considered the relevant material on record. As far as the applicability of rules 8D for the assessment year under consideration is concerned, the CIT(A) has followed the decision of Hon'ble Jurisdiction High Court in case of Godrej & Boyce therefore, we do not find any merit or substance in the ground raised by the revenue. Further the CIT(A) has disallowed the administrative and managerial expenditure at 5% of the dividend income which in our view is just and proper. Accordingly, we do not find any error or illegality in the order of the CIT(A) qua this issue.

18. In the result, the appeal of the assessee is partly allowed and the appeal of the revenue is dismissed.

Order pronounced in the open Court on this 13th day of September 2013

Sd/-	Sd/-
(एन. के. बिलैय्या) लेखा सदस्य **(N. K. BILLAIYA)** Accountant Member	(विजयपाल राव) न्यायिक सदस्य **(VIJAY PAL RAO)** Judicial Member

Place: Mumbai : Dated: 13th September 2013
Subodh
Copy forwarded to:

1	Appellant
2	Respondent
3	CIT
4	CIT(A)
5	DR

/TRUE COPY/
BY ORDER

Dy /AR, ITAT, Mumbai