

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A" MUMBAI

BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 6966/MUM/2013
Assessment Year: 2010-11

DCIT 8(2)
Room No. 209, 2nd Floor,
M.K. Road,
Mumbai - 400020

Vs. M/s. Lotwin Online Lottery Pvt. Ltd.
Shop No 1, Zaver Arcade, Zaver Rd
Mulund (W),
Mumbai - 400080
PAN : AAACL7943C

(Appellant)

(Respondent)

Revenue by: Shri M.V. Rajguru,DR
Assessee by: None

Date of Hearing : 03/01/2017
Date of pronouncement: 03/01/2017

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the revenue. The relevant assessment year 2010-11. The appeal is directed against the order of the Commissioner (Appeals) - 17, Mumbai and arises out of the order under section 143(3) of the Income Tax Act, 1961 (the "Act").

2. The sole ground raised by the revenue in this appeal is that the Ld. CIT(A) erred in upholding the claim of the assessee of depreciation @60% on inverter batteries ignoring the fact that inverter batteries are not separable part of the computer and can be utilised for other functions as back up batteries and hence not eligible for depreciation @60%.

3. In a nutshell, the facts are that during the course of survey, it was gathered that M/s. Jalaram Online Lottery Agency had already closed its lottery business 4-5 years ago. The business was

subsequently taken over by the present assessee. This business was again taken over from them by M/s. B.S. Enterprise (a unit of Goldwin Healthcare Pvt. Ltd.). It was informed that Jalaram Group had used thousand of computer terminals for effecting the sale of online lotteries all over Maharashtra. They had installed batteries for power back up attached with the computers. They were charging depreciation against the batteries @60% as applicable to the computers. In response to a query raised by the AO, the assessee filed a written submission which has been extracted at page 3 of the assessment order. The AO was not convinced with the same and came to a finding that the batteries have independent existence and therefore restricted the depreciation to 10% as in the case of "furniture and fittings including electrical fittings" and thereby disallowed the claim of excess depreciation of Rs. 1,02,52,464/-.

4. The assessee preferred an appeal against the order of the AO before the learned CIT(A). Relying on the judgement of the Hon'ble Delhi High Court in the case of *CIT vs. BSES Yamuna Powers Ltd.* (2013) 40 taxmann.com 108 (Del) and *CIT vs. Orient Ceramics & Industries Ltd.* (2011) taxmann.com 417 (Del), the Ld. CIT(A) held that depreciation @60% was allowable and thus allowed the appeal filed by the assessee.

5. The learned DR supported the order passed by the AO.

6. We have perused the relevant material on record. The short question for adjudication in the instant case is whether the batteries which are used along with UPS and which form system for power back up in case of power failure qualify for depreciation @60% or not. We find that a similar issue arose before the Hon'ble Delhi High Court in the case of *BSES Yamuna Powers Ltd.(supra)*. The issue was whether the Tribunal erred in law in allowing depreciation to the assessee @60% on computers accessories and peripherals instead of normal rate of 25%. The Hon'ble High Court held as under:

"5. However, upon a perusal of the file, we find that the higher rate of depreciation was allowed both by the Commissioner of Income-tax (Appeals) ("the CIT(A)") and the Tribunal. In fact, the Tribunal in its impugned order has observed as under :

"The issue involved in this appeal is covered by the decision of co-ordinate Bench of the Tribunal as discussed below :

In the case of *ITO v. Samiran Majumdar* [2006] 98 ITD 119 (Kol.), Income-tax Appellate Tribunal Kolkata Bench "B", has taken a view that

the printer and scanner are integral part of the computer system and are to be treated as computer for the purpose of allowing higher rate of depreciation, i.e., 60 per cent.

3.2 The Income-tax Appellate Tribunal, Delhi "F" Bench in the case of *Expeditors International (India) (P.) Ltd. v. CIT [2008] 118 TTJ 652 (Delhi)* has held that peripherals such as printer, scanners, NT Server, etc., form integral part of the computer and the same, therefore, are eligible for depreciation at the rate of 60 per cent. as applicable to a computer.

4. Respectfully following the aforesaid decisions of the co-ordinate Bench, we uphold the order of the learned Commissioner of Income-tax (Appeals) in allowing the depreciation at 60 per cent. on computer peripherals and accessories, and, thus, the ground raised by the Revenue is rejected.

5. In the result, the appeal filed by the Revenue is dismissed."

6. We are in agreement with the view of the Tribunal that computer accessories and peripherals such as, printers, scanners and server, etc., form an integral part of the computer system. In fact, the computer accessories and peripherals cannot be used without the computer. Consequently, as they are the part of the computer system, they are entitled to depreciation at the higher rate of 60 per cent."

6.1 Also similar issue has been dealt in *Orient Ceramics & Industries Ltd. (supra)*. The issue was claim of depreciation on UPS by the assessee @60% whereas the AO had allowed it @25%. The Hon'ble High Court followed the judgement in *BSES Yamuna Powers Ltd. (supra)* and allowed depreciation @60% on such items.

7. Respectfully following the judgement of the Hon'ble Delhi High Court in the cases mentioned at para 6 & 6.1 here-in-above, we sustain the order passed by the Ld. CIT(A).

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03/01/2017

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai;

Dated: 03/01/2017

Biswajit, Sr. P.S.

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai