

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE SH. LALIET KUMAR, JUDICIAL MEMBER  
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

**I.T.A. Nos. 234 & 316/Asr/2017  
Assessment Years: 2012-13 & 2013-14**

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| M/s Kohinoor Indian Pvt. Ltd.,<br>Basti Bawakhel, Kapurthala<br>Road, Jalandhar<br>[PAN: AAACK 5426F]<br>(Appellant) | <b>V<br/>s.</b><br><br>(Respondent) | Asstt. Commissioner of<br>Income Tax, Circle-1,<br>Jalandhar |
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| <b>Appellant by</b>  | <b>Sh. Sandeep Vijn, C. A.</b>   |
| <b>Respondent by</b> | <b>Smt. Ratinder Kaur, D. R.</b> |

|                                  |                    |
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| <b>Date of Hearing</b>           | <b>08.07.2021</b>  |
| <b>Date of<br/>Pronouncement</b> | <b>16 .08.2021</b> |

**ORDER**

**Per Laliet Kumar, J.M.**

Both the appeals of the assessee are directed against the order dated 14.03.2017 passed by the Commissioner of Income Tax (Appeals)-1, Jalandhar in respect of A.Ys. 2012-13 & 2013-14.

**2. Grounds of appeal in ITA No. 234/Asr/2017**

- "1. The Learned Commissioner of Income Tax (Appeals), has erred in upholding the action of the Assessing Officer in restricting the depreciation on apple Ipad at general rate of 15% (further restricted to 7.5% on the basis of date of purchase). Depreciation on apple Ipad was rightly claimed by treating it as computer.





2. The Learned Commissioner of Income Tax (Appeals), has erred in upholding disallowance u/s 40(a) (ia) to the extent of Rs. 379,561/- being the interest paid to M/s. Kotak Mahindra Private Limited. The said party was not co-operating in providing form 26A to the assessee.
3. The Learned Commissioner of Income tax (Appeals) has erred in upholding disallowance out of foreign travelling expenses to the extent of 5% of the expense (excluding cost of air tickets and visa fee) on account of personal nature of expenditure. Being the case of a company no disallowance for personal expenses was called for."

## **2. Grounds of appeal in ITA No. 316/Asr/2017**

- "1. The Learned Commissioner of Income Tax (Appeals), has erred in upholding the action of the Assessing Officer in restricting the depreciation on apple Ipad at general rate of 15%. Depreciation on apple Ipad was rightly claimed by treating it as computer.
2. The Learned Commissioner of Income Tax (Appeals) has erred in upholding disallowance out of foreign travelling expenses to the extent of 5% of the expense (excluding cost of air tickets and visa fee) amounting to Rs. 295,795/- on account of personal nature of expenditure. Being the case of a company no disallowance for personal expenses was called for."

**1) At the outset the Ld.AR for the assessee had submitted, that the assessee is not pressing the ground No. 2 in ITA No. 234/2017, requested that the same may kindly be dismissed as not pressed.**

2) In respect to ground No. 1 of both the appeal, the Ld.AR for the assessee had submitted that the detailed argument and the submission which out of the following effect:





1. The first ground of appeal is that the Id. CIT(A) has erred in upholding the action of the assessing officer of restricting depreciation on apple ipad at the general rate of 15 % which was reduced to 7.5 % on the basis of the date of purchase of the fixed asset, in place of the rate applicable to a computer i.e. 60 %. The facts of the case are that the assessee had purchased an apple ipad during the year and copy of the purchase bill is at page no. 6 of the paper book. Printout of the specifications of the model of ipad purchased by the assessee is enclosed at page no. 7. Ipad is basically a small/ tablet computer and depreciation applicable to a computer is to be allowed for an ipad/tablet [1<sup>st</sup> para at page no. 1 of the paper book].
2. The term computer has not been defined in the Income Tax Act. It would therefore be relevant to consider the definition contained in the Information Technology Act 2000 or the meaning of the term in common parlance. The term computer has been defined in section 2(1)(i) of the above referred act and its definition is given below:

*"computer means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic, and memory function by manipulation of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network"*

Oxford dictionary defines computer as:

*"An electronic device which is capable of receiving information (data) in a particular form and of performing a sequence of operations in accordance with a predetermined but variable set of procedural instructions (program) to produce a result in the form of information or signals."*

3. The definition of computer under the Information Technology Act as well as its meaning in common parlance is relevant to decide the issue at hand. An apple ipad is an electronic device which performs data processing through manipulation of electronic impulses and thus qualifies as being a computer. The bare function of composing and sending an email and receiving a reply will qualify ipad as a computer though the apple ipad performs many more functions of a computer such as word processing, preparing excel sheet, power point presentation, accessing internet etc. Most of these features listed under the head "FEATURES" in the technical specifications of ipad filed at page no. 7. The term computer should not be confused with a desktop computer. Over a period of time, the size of the computers has shrunk. Initially computers being huge were a part of the table itself, after passage of time desktops evolved the next generation was laptops and then came tablets/ palmtops which are even smaller than laptops. Desktop, laptop as well as tablet devices have to be treated as computer as they perform basically



the same functions. Even if a tablet computer has a feature to make telephone/ data calls, it cannot be treated as a phone just as a desktop/ laptop has the facility to make a data call through skype and various similar software applications cannot be treated as a phone. The assessing officer was thus not justified in treating the ipad as a general machine and should have allowed depreciation on the same by treating it as a computer.

4. The reasoning given by the assessing officer for not treating ipad as a computer, as discussed in the assessment order, is given below [page no. 3/4 of 143(3)]:

- a) Apple has two other variants - one is "iphone" and the other is "Mac Book" and comparison of the technical specifications would reveal that ipad has more similarity with iphone in that both of them share the same operating system i.e. "IOS" whereas Mac Book uses "OS-X".
  - b) Both ipad and iphone contain an inbuilt 2G/3G/4G connectivity and GPS primarily an inherent feature of mobile phone whereas Mac Book does not contain the same.
  - c) Sim card and mobile network comes under both ipad and iphone and not Mac Book.
5. After making the above comparison, between the various products of Apple Inc, the Id. A.O concluded that ipad had more similarity with iphone and thus was a phone and not a computer. With regard to the above observation, we are to submit:
- a) Comparing various products of the same supplier is not the way to determine the exact nature of the electronic device in question. The Id. Assessing officer erred in taking apple products as a benchmark. The exact functions which can be performed by ipad have not been considered at all.
  - b) Having 2G/3G/4G connectivity and GPS does not define a device as a phone. Even security devices have above features to transmit data / warning but these are not classified as a phone.
  - c) Sim card and mobile network are also not a determinative test of a computer. As submitted above even security devices have above features but these are not classified as a phone. Sim card is available in the ipad for transmission of data only. The model of ipad purchased did not have any calling as a cellular





phone. It can only make a phone call using Wifi or using VoIP (voice over internet protocol) which any desktop computer and other devices can also make.

6. The Id. CIT(A) after considering the submissions made during the appellate proceedings upheld the action of the assessing officer. The view expressed by the Id. CIT(A) was that:

- i) That ipad does not have a USB port which is most important for storing and transferring data or documents by way of a pen drive.
- ii) Ipad does not have a CD Drive and therefore CD's cannot be run on the ipad nor they can be used to transfer data or documents.
- iii) Ipad is not compatible with Windows which is the single most popular operating system used by business all over the world and documents like word, excel sheets, power point presentations which are used and exchanged between business are on the windows platform and these cannot be used there is no question of considering ipad as a computer.

7. With regard to the observations of Id. CIT(A) we are to submit that:

- i) Availability of USB port is not necessary for describing a device as a computer. Computers existed even before USB port. It is only a means of transferring data which can be done through wired (charging port of ipad) as well as wireless communication such as wifi, 2G/3G/4G, Bluetooth etc. What is pertinent to mention is that an apple ipad as USB port which is used for transfer of data as well as charging of ipad. This is clear from the specification of ipad as mentioned under the head "COMMS" of the specification sheet filed at page no. 43.
- ii) Availability of CD drive port is not necessary for describing a device as a computer. Computers existed even before CD drive was invented. Computers initially worked with punch cards and magnetic storage. CD is only a means of copying data for safe keeping or for copying on to other devices. The data in ipad is stored in solid state storage. Also icloud is used for storing documents which can be accessed from any other device which is synced. Wifi is used for transferring data from ipad along with



USA port. CD is only a means of transferring data which can be done through wired as well as wireless communication such as USB, wifi, 2G/3G/4G, Bluetooth etc.

- iii) Windows is only one of the operating systems used by computers. Computers existed before windows operating system was available. The earlier operating system "DOS" is remembered by many who used computers in 1980's and 1990's. Even today, the other operating systems are available such as - MacOS, Linux, Android, Chrome etc. Also programs like word, excel and power point are available on ipad through from other software providers. The assessing officer has presumed that there is no software supplier other than Microsoft. The specifications of ipad as given at page no. 7 show that it is capable of messaging, email, push mail etc. Word processor, excel sheet and power point are also available on ipad under the name of numbers (Equivalent to excel), pages (equivalent to word) and keynote (equivalent to power point).

8. Ipad which has all the essential features of a computer and performs the functions of a computer as defined above has to be treated as a computer. Even otherwise the size of ipad is 9.7 inches and with a weight of over 600 gms and is not practical to use it as a phone. **It is pertinent to mention that no cellular call can be made from the ipad in question.** The specification given in the document filed at page no. 43 under the head NETWORK clearly bears this out. The reasons given by the authorities below for rejecting the stand of the assessee that ipad is to be treated as a computer are not justified.
9. Regarding the query raised by the Hon'ble Bench as to whether the apple ipad in question has an IMEI number, it is respectfully submitted that the apple ipad purchased by the assessee did not have any cellular phone feature. During the course of the assessment proceedings copy of bills for addition to all fixed assets were filed. The assessee besides having purchased apple ipad had also purchased an apple iphone during the year under consideration. Copy of the purchase bill of ipad has already been filed at page no. 6 of the paper book. Copy of the purchase bills of iphone which was filed with the assessing officer at page no. 287 of the reply dated 28/1/2015 is enclosed at page no. 38. A comparison of these purchase bills will show that IMEI (International Mobile Equipment Identity) number has been mentioned in the purchase invoice for iphone and not in the invoice for the purchase of ipad. The apple ipad thus did not have any IMEI number.





10. Detailed specification regarding the apple ipad in question could not be found from the website of apple inc. as the model being discussed has been discontinued. As suggested by the local apple store, we have downloaded specification of apple ipad pro which is a recent model and even this product has two models, one with cellular ability and one without cellular ability. Copy of the detailed specifications with the website from where it was downloaded enclosed at page no. 39 to 42 [please see page no. 40]. The bill issued by the supplier for ipad purchased by us and enclosed at page no. 6 of the paper book does not mention the word cellular as it did not have any cellular calling facility.
11. We have also downloaded the specification of the ipad purchased by us from another prominent tech website named "gsmarena.com" which is enclosed at page no. 43. As stated above, as per the specification sheet under the head Network it has been clearly mentioned that there is no cellular connectivity. This is further supported by the fact that under the head Comm i.e. communication it is clearly stated that the communication of "ipad 2 wifi" could be through WLAN (Wireless Local Area Network) i.e. wifi, Bluetooth, GPS and through USB. Cellular network capability has not been mentioned in the features.
12. Importantly, the Id. CIT(A) has wrongly presumed that ipad does not have a USB port and this was one of the reasons given for rejecting the claim of the assessee that ipad was a tablet computer. The specification sheet filed at page no. 43 shows that ipad purchased has USB 2.00 port which is a common port for data transfer as well as charging of ipad.
13. Attention is also drawn to the decision of the Karnataka High Court in the case of CIT vs. NCR Corporation P. Ltd reported 117 Taxmann.com 252 / 193 DTR 66 wherein it was held that an ATM machine is a computer entitled to higher rate of depreciation. This device also does not have a USB port or a CD drive. Copy of the decision is enclosed at page no. 44 to 46.
14. Merely because a computer is small it cannot be treated otherwise. Ipad is basically a tablet computer and this category is now having a sizeable market share. In fact making a cellular call also cannot be the determinative factor as to whether a device is to be treated as computer or as a phone. Phone calls can also be made using skype or other such applications even from desktop computers. As long as a device is performing functions as described under the Information Technology Act 2000 or those which define



a computer in common parlance, the device has to be treated as a computer [please refer to page no. 1 of the synopsis]. Necessary relief may please be allowed.

3) On the other the Ld. DR for the revenue relied upon the order passed by the assessing officer as well as by the CIT(A). The Ld.DR had submitted that both ipad as well as mobile smartphone are having the common feature of processing the information and are in broader terms, are "computer" in nature. She had further submitted that the pre-dominant purpose is required to be determined for the purpose of classification the iPad / mobile. If the predominant usage of the iPad is computer, then the necessary higher depreciation is allowable however if the purposes using the iPad as a mobile instrument, then lower rate of the depreciation is allowable. She had submitted that the ipad usage is mobile in nature and is not a substitute of computer hence the ground raised by the assessee is required to be dismissed.

4) We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the course of hearing by both the parties. Under the income tax act there is no definition of computer. However the computers are considered to be part of the "plant" under broader definition of tangible things in section 32 of the income tax act.

5) Admittedly an assessee is entitled to depreciation on building, machinery plant or furniture if it is wholly or partly owned by the assessee and is used by the assessee for the purpose of business or profession.





5.1) In the present case we are called upon to adjudicate whether the iPad falls in the definition of computer or mobile phone. If iPad falls in the definition of computer then high rate of depreciation is allowable however if it falls within the definition of mobile phone then lower rate of depreciation is allowable.

5.3) No definition of plant/ computer has been provided by the income Tax Act. In the schedule of depreciation it only mentioned as "computers include computer software".

5.4) Definition of computer as provided under Information Technology act in section 2(1)(i) to the following effect :

*"computer means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetic, and memory function by manipulation of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network"*

5.5) Undoubtedly, iPad and smart mobile phones are high-speed data processing devices. Both are akin to computer as per the definition of computer under Information Technology Act, being capable of processing, assimilating, collating information, storage of data, means of communication for audio and video calls, email, whatsapp, facebook, youtube, can be used for accounting, automation, surveillance, gaming etc. In terms of storage both are having high internal memory with





expandable memory. Beside that now both are having addition feature of storing the information on cloud by taking on rent the cloud space of Google, Samsung, Apple etc. Transfer/ receipt of data is no more dependent upon availability of USB/C port etc , data are capable of being received and transfer with the help of internet, Bluetooth, personal hotspot, airplay, airdrop etc . Undoubtedly FaceTime video and audio calls can be made with the use of iPad even if the user is on Wi-Fi mode, hence to say that ipad in question was not capable of making calls, was in our view was not correct. In fact there is hardly any difference between the Tablets (ipad) and smart phone as are available in the market on the basis of usage etc , however the only difference in our view is size of screen, as the size of screen in tablet (ipad) is bigger in comparison to phones, however this distinction of size of screen is also no more available, as many foldable mobile phones are available in the market.

5.5) Having noticed that the IPad and smart phones are akin to computers within the meaning of computers, as per the Information Technology Act now we have to find out whether the definition of computer given under the information technology Act can be utilised for the purpose of providing the depreciation to the computers under the income tax act or not. We may usefully utilized the finding recorded by the special Bench while adjudicating the disputes pertaining to routers in the matter of ITA. Nos. 7462 & 754/Mum/2007 DCIT VS Datacraft India Ltd wherein it was held as under :-

“17. Having seen the object of the Information Technology Act, 2000, the question which arises for consideration is that can we import the definition of ‘computer’, as given in it, in the Income





Tax Act, 1961 for the purposes of section 32 ? It has been held by the *Hon'ble Supreme Court in CIT vs. Venkateswara Hatcheries (1999) 237 ITR 174 (SC)* that the meaning assigned to a particular word in a particular statute cannot be imported to a word used in a different statute. Similar view has been expressed by the *Hon'ble Rajasthan High Court in Arihant Tiles & Marbles (P) Ltd. vs. ITO (2007) 295 ITR 148 (Raj.)* holding that the interpretation of any expression used in the context of one statute is not be automatically imported while interpreting similar expression in another statute. This judgment has been approved by the *Hon'ble Supreme Court in ITO vs. Arihant Tiles & Marbles (P) Ltd. (2010) 320 ITR 79 (SC)*.

18. From the afore stated portion of the Statement of objects and reasons and the preamble of the Act, it is evident that the rationale behind the Information Technology Act, 2000 is quite distinct from that of the Income-tax Act, as can be seen from its preamble, which is 'An Act to consolidate and amend the law relating to income-tax and super tax' Thus it is palpable that both these Acts are not in *pari material*. There is significant difference in the scope, purpose and substance of these two statutes. *Ex consequential* the definition of 'computer' as given in the Information Technology Act, 2000, cannot be applied in the context of section 32 of the Income-tax Act. However, though the learned Authorised Representative also agreed that the definition in the Information Technology Act cannot be imported, we are of the opinion that a perusal of the objects of that enactment and a perusal of the definition of the term 'computer' given in the Information Technology Act, 2000 are nothing but common parlance definition which can be of some use in the definition of a Computer. Thus in our considered view, aid can be taken of the definition of the term 'computer' given in Information Technology Act, 2000.

19. As per the General Clauses Act, 1897, if a particular word is not defined in the Central statute then meaning given to such expression under General Clauses Act may be considered for guidance and adoption in the former enactment. However, it is



noticed that the word 'Computer' has not been defined therein. Under such circumstances meaning of an expression has to be understood by applying the principles of statutory interpretation i.e, in this context we have to give a meaning to the expression **'computer' not merely going by the dictionary meaning but by applying common parlance and commercial parlance tests as well as by analysing the intendment of providing for higher rate of depreciation.** We may refer to several case law to analyse as to which formula would aptly suit the situation in the given case.

1. In *Indian Hotels Co. Ltd. & Ors. Vs. ITO & Ors.* (2000) 245 ITR 538 (SC), the issue was about the granting of deduction u/s. 80J to an industrial undertaking. It was noticed that Section 80J provides for grant of deduction to an assessee who derives income from an industrial undertaking or a ship or the business of a hotel to which the section applies and the section applies to any industrial undertaking, any ship or business of any hotel if the conditions prescribed under sub-sections (4), (5) and (6) respectively, are satisfied. It was noticed that the words 'industrial undertaking' have not been defined in the Act. In this background of facts, the Hon'ble Court posed the question to itself as to whether the assessee has derived profits and gains from an "industrial undertaking" or from the "business of a hotel". After discussing the issue threadbare, it was held that: 'Industrial undertaking is not given any meaning under the Act, hence it is to be understood as per common parlance language. Taking into this account, apparently, the business of the assessee is that of a hotel, which is a trading activity and not that of an industrial undertaking.' Resultantly the benefit of deduction was denied.

21. In *Aspinwall & Co. Ltd. vs. CIT* (2001) 251 ITR 323 (SC), their Lordships were concerned with the question of granting investment allowance, for which one of the pre-requisite conditions as per section 32A was that the industrial undertaking should be engaged *inter alia* in the manufacturing. It was noticed that the word "manufacture" was not defined in the Income-tax Act. In such circumstances it was held that: 'In



the absence of a definition, the word "manufacture" has to be given a meaning as is **understood in common parlance**. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity.'

22. Similar view has been taken by the *Hon'ble Supreme Court in Manglu Sahu Ramahari vs. The State Tax Officer 1974 CTR (SC) 14* by holding that in the absence of specific definition, the meaning as **understood in common parlance has to be adopted**. From the legal position as enunciated in the above judgments, it is crystal clear that where a word has not been defined in the Act, it is desirable to comprehend its meaning as is understood in its natural sense.


23 A computer, in common sense and as popularly understood, refers to any electronic or other high speed data processing device which performs 'logical, arithmetic and memory functions on data' (hereinafter called the 'computer functions') and includes all input and output devices which are connected to or related to it. Para 24 of the assessment order indicates that the Assessing Officer was also of the opinion that the meaning of the word "computer", as understood in the common parlance is 'an electronic device for storing and processing data and making calculating and controlling machine which also includes input device like keyboards or mouse and the output devices like the printer or monitor.'

24 We would like to clarify here that the meaning of computer cannot be extended to a device or set of devices which are meant to perform some independent function(s) even though in achieving such desired independent function(s), some sort of 'computer functions' are also involved. Today is an electronic age. Most of the products used by us involve some sort of mechanism, which may be loosely called as computer functions. Take the instance of Television set, Mobile phone



and cars etc., all of which, *inter alia*, involve one form or the other of computer functions. Simply because some 'computer functions' are involved in these equipments or the assistance of computers is taken as such at one stage or the other in their operation, these will not become Computer. **The meaning of computer cannot be extended to another machine that operates with the assistance of computer.** Conversely an item, which is an integral part of the computer, cannot be defined by its operations which it is capable of performing, for eg : A wire and plug are electrical items in general but cost of a wire, integrally connected to television, may be added to cost of TV whereas a wire and plug attached to the computer system has to be treated as computer.

25. Thus in order to determine whether a particular machine can be classified as a computer or not, the **predominant function, usage and common parlance understanding, would have to be taken into account.** To analyse further, let us take the case of a Television, the principal task of which is to deliver visuals accompanied with audio. The signals are received through the relevant networks such as Dish TV, Tata Sky etc. But TV does not become computer for the reason that its principal function cannot be done only with the aid of 'computer functions' notwithstanding the fact that in the entire process of networking or receiving the output from different channels and making it available to the viewers, some sort of computer functions are necessarily involved. Similarly take the case of mobile phone. Its principal task is to receive and send calls. It is not a standalone apparatus which can operate without the relevant network, such as Airtel, BSNL, Reliance. It, therefore, follows that any machine or equipment cannot be described as computer, if its principal output or function is the result of some sort of 'computer functions' in conjunction with some non-computer functions. In order to be called as computer, it is *sine qua non* that the principal output/object/function of such machine should be achievable only through 'computer functions'.





5.6 In this age of technology, most of gadgets/ machines available or functioning in commercial/ industrial set up are working with the aid of computers whether CNC (computerised numerical control), computerised printing machine , computerised stitching and designing machine ,biometric attendance machine etc , however as held by the special bench we have to see principal purpose of the device like in CNC, is manufacturing machine though working with the aid of computer and using pre instructions for designing , shaping metal woods etc . In our view CNC cannot be said to be computer as principal purpose o CNC is to design/ shape or manufacture . Similarly computerised embroidery machine also function to make design as per specifications on the cloths without the aid / partial aid of human, than again ,we can only term computerised embroidery machine as designing machine working with the aid of computer not the computer.

5.7 Similarly the predominate purpose of iPad is a communication and not a computing device, as its main features are email, whatsapp, Facetime calls , calls , music, films etc though iPad may discharge some of the functions of computers. In our view iPad is not a substitution of computer/ laptop , which have various utilities/ functions, though some functions may be common with Ipad . In common parlance also, iPad is considered as communicating device with the some additional features of computer and lastly Apple store do not sell Ipad as computer device rather it is selling it as communicating/ entertainment devise .

5.7 There is yet another reason for holding that the iPad is a communication device, as it is having IMEA number, though assessee had denied to have IMEI number , in the subject matter of iPad , however no



concrete evidence has been produced on record in this regard. Lastly we are also of the opinion that in case the assessee wishes to claim that iPad is a computer and is required to have depreciation at the higher rate, then in our opinion, the onus is on the assessee to prove that the assessee is entitled to higher depreciation and merely on the basis of deduction/assumption it cannot be held that the iPad is computer. We may rely on Dilip Kumar & Company [2018] 95 taxmann.com 327 (SC)

“40. After considering the various authorities, some of which are adverted to above, we are compelled to observe how true it is to say that there exists unsatisfactory state of law in relation to interpretation of exemption clauses. Various Benches which decided the question of interpretation of taxing statute on one hand and exemption notification on the other, have broadly assumed (we are justified to say this) that the position is well settled in the interpretation of a taxing statute: **It is the law that any ambiguity in a taxing statute should enure to the benefit of the subject/assessee, but any ambiguity in the exemption clause of exemption notification must be conferred in favour of revenue – and such exemption should be allowed to be availed only to those subjects/assesses who demonstrate that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption.** (emphasis supplied by us) Presumably for this reason the Bench which decided **Surendra Cotton Mills & Fert. Co's Case** (*supra*) observed that there exists unsatisfactory state of law and the Bench which referred the matter initially, seriously doubted the conclusion in **Sun Export Corporations's Case** (*supra*) that the ambiguity in an exemption notification should be interpreted in favour of the assessee.

41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.





**42.** In *Govind Saran Ganga Saran v. Commissioner of Sales Tax* 1985 Supp (SCC) 205, this Court pointed out three components of a taxing statute, namely subject of the tax; person liable to pay tax; and the rate at which the tax is to be levied. If there is any ambiguity in understanding any of the components, no tax can be levied till the ambiguity or defect is removed by the legislature [See *Mathuram Agrawal v. State of Madhya Pradesh* [1999] 8 SCC 667; *Indian Banks' Association v. Devkala Consultancy Service* [2004] 4 JT 587 and *Consumer Online Foundation v. Union of India* (2011) 5 SCC 360.]”

5.7 In view of the above , we are of the opinion that iPad is not a computer , hence depreciation at low rate is applicable . Hence this ground of the assessee is dismissed.

6. The third ground of appeal is that the Id. CIT(A) was not justified in sustaining disallowance from out of foreign travelling expenses @ 5% (excluding air ticket & visa fee). Ld Ar had submitted that detail of foreign travelling expense was filed before AO and the books/ vouchers were examined. Ld. CIT(A) had restricted to 5% disallowance in respect to expense incurred as per para 12 of the order.

7. Ld AR had submitted, that this is the case of a company and there cannot be any personal expenditure of the company as alleged by the Id CIT(A) while upholding part disallowance

8. The Id. DR for the revenue relied upon the order passed by the lower authorities. It was the contention of the DR that the lower authorities had already granted to the assessee and no more indulgence is required.



9. We have heard the rival contentions of the parties and perused the material on record. The assessing officer has restricted the disallowance to the 10% of the total expenditure incurred for foreign travel to than amount of Rupees 48,273/-. The said amount of Rupees 48,273/- was restricted to 5%, by the CIT appeal on appeal filed by the assessee. Admittedly some vouchers for the expenditure incurred by the assessee was missing and as such the lower authorities have taken a view of restricting the expenditure to 5%. In our considered opinion the expenditure restricted by the lower authority, in the absence of the supporting document was reasonable and no interference is called for at available.

In the result the appeal of the assessee is devoid of merit in the same is dismissed.

The grounds raised by the assessee in appeal no 316/2017 are similar, therefore respectfully following the decision in the case ITA number 234/2017, we dismiss the appeal of the assessee for this assessment year also.

In the result both the appeal of the assessee are dismissed.

**Order pronounced in the open court on 16.08.2021**

  
(Dr. M. L. Meena)  
Accountant Member

Dated: 16.08.2021

  
(Laliet Kumar)  
Judicial Member



Copy of order forwarded to:

- |                                 |                    |
|---------------------------------|--------------------|
| (1) The appellant               | (2) The respondent |
| (3) Commissioner                | (4) CIT(A)         |
| (5) Departmental Representative | (6) Guard File     |

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Agra Bench, Agra

|     |  | Date | Initial |          |
|-----|--|------|---------|----------|
| 1.  | Draft dictated on                                |      |         | Sr.PS/PS |
| 2.  | Draft placed before author                       |      |         | Sr.PS/PS |
| 3.  | Draft proposed & placed before the Second Member |      |         | JM/AM    |
| 4.  | Draft discussed/approved by Second Member        |      |         | JM/AM    |
| 5.  | Approved Draft comes to the Sr. P.S./P.S.        |      |         | Sr.PS/PS |
| 6.  | Kept for pronouncement on                        |      |         | Sr.PS/PS |
| 7.  | File sent to the Bench Clerk                     |      |         | Sr.PS/PS |
| 8.  | Date on which file goes to the Head Clerk        |      |         |          |
| 9.  | Date on which file goes to the AR                |      |         |          |
| 10. | Date of dispatch of Order                        |      |         |          |