

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R.SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.853/Ahd/2016
Assessment Year :2012-13

The DCIT, Cir.1(1)(1) Vadodara.	Vs.	Gujarat Green Revolution Co. Ltd. P.O. Fertilizernagar Vadodara 391 750 PAN : AABCG 0798 F
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(Applicant)		(Responent)
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Assessee by :	Shri Bhavin Marfatia, AR
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 07/03/2023
घोषणा की तारीख /Date of Pronouncement: 24/03/2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This appeal has been filed by the Revenue against order passed by the Id.Commissioner of Income Tax(Appeals)-1, Vadodara dated 01.01.2016passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short]for the Asst.Year 2012-13.

2. This appeal was originally adjudicated vide order dated 13-5-2019 and has been recalled on Miscellaneous Application filed by the Revenue vide order in MA No.4/Ahd/2020 dated 23.12.2022. The Revenue in its application before the ITAT had pointed out that solitary ground raised in the present appeal had been adjudicated by

the ITAT following the decision in another appeal of the assessee in ITA No.852/Ahd/2016. It was pointed out in the application that the issue in ITA No.852/Ahd/2016 was different to that raised in the present appeal, and therefore, the decision of the ITAT in ITA No.852/Ahd/2016 did not apply to the issue raised in the present appeal; that accordingly, there was mistake in the ITAT order passed. Finding merit in the contention of the Revenue, the appeal was accordingly recalled for hearing afresh. As a consequence, the present appeal before us.

3. The ground raised in the present appeal reads as under:

“1. On the facts and in the circumstances of the case and in law, the ld.CIT(A) erred in deleting the addition made by AO on disallowance on account of excess depreciation claimed on software licenses without considering the decision of Hon’ble ITAT, Delhi in the case of Sony India (P) Ltd. Vs. Addl. (ITAT-Delhi) 141 TTJ 432”

4. The facts of the case are that the AO had restricted depreciation claimed by the assessee on Licences to use software @ 25% as opposed to rate of depreciation of 60% claimed by the assessee resulting in disallowance of depreciation of Rs.2,25,170/- .The Ld.CIT(A) held that the assessee is entitled to depreciation on softwares @60% following the decision of the Special Bench of the ITAT in the case of Amway India Enterprises vs DCIT (2008) 111 ITD 112(Del) (SB).

5. The ld.counsel for the assessee at the outset pointed out that identical issue was there in the assessee’s case pertaining to the Asst.Year 2013-14, wherein the Department was in appeal on the same issue, which was dismissed by the ITAT in its order in ITA No.619/Ahd/2018 dated 14.10.2019, finding the issue covered in

favour of the assessee by the decision of the Special Bench in Amways(supra). Our attention was drawn to the Ground No.3 of the said appeal of Revenue raising identical ground as under:

“3) On the facts and in the circumstances of the case and in law, the Id. CIT(A)erred in deleting the addition made by AO on disallowance on account of Excess Depreciation claimed on Software Licenses without considering the decision of Hon'ble IT AT, Delhi in the case of Sony India (P) Ltd. Vs. Addl. CIT(ITAT, Del) 141 TJ 432. ”

And to the finding of the ITAT on the issue as under:

“5. Now we take up ground no.3 of the appeal. Learned Departmental Representative fairly agreed that this issue is also now covered in favour of the assessee by a Special Bench decision in the case of Amway India Enterprise vs. DCIT, 111 ITD (SB) 112. We, therefore, see no reasons to interfere in the matter on this count either. We approve the finding of the authorities below and decline to interfere in the matter. This ground is also thus dismissed.”

6. The ld.counsel for the assessee thereafter contended that the Department had filed an MA against this order of the ITAT contending that the ITAT had incorrectly followed the decision of Special Bench of the ITAT in the case of Amway India Enterprise Vs. DCIT, 111 ITD (SB) 112 while adjudicating the issue infavour of the assessee. The contention of the Revenue was that the Special Bench had in fact restored the issue back to the file to the AO and not decided in favour of the assessee.

7. The ld.counsel for the assessee contended that this MA of the Revenue was also dismissed by the ITAT noting that its contention in this regard was incorrect, since the Special Bench had not restored this issue to the AO, but some other issues, and the issue of depreciation claimed on software licence had been decided in favour of the assessee. Our attention was drawn to the order of the ITAT in MA No.133/Ahd/2020 dated 16.12.2022 as under:

“4. On going through the contents of the same, it was noted by us that it was the department in fact which had misunderstood the decision of the Special Bench of the ITAT, while the ITAT had correctly applied the ratio laid down in the same. We have noted from the order of the Special Bench of the ITAT that there were two issues for adjudication before the ITAT;

- that whether the expenditure incurred on acquiring computer software or licence to use software, is to be treated as revenue or capital in nature and
- the rate of depreciation on such computer softwares whether to be allowed at the rate of 20% qualifying as tangible assets under the head “plant” or at the rate of 60% as per the amendment to the Income Tax Rules 1962, brought w.e.f 01-04-1999, prescribing rates of depreciation.

It was only with respect to the issue of nature of expenditure incurred on acquiring licences for software, whether capital or revenue, that the Special Bench had laid down certain guidelines for deciding the same and had restored the matter to the AO to adjudicate in accordance with the guidelines so laid down. With respect to the rate of depreciation, it was categorically held that w.e.f. 1.4.1999 the computer software had been included with computers for the purpose of rate of depreciation in the Rules, entitling the assessee to rate of depreciation at the rate of 60% thereon and had held that the said amendment was prospective in nature and the assessee was entitled to depreciation at the rate of 60% on computer software w.e.f. 1-4-1999 as prescribed by the Rules.

Therefore, it is evident that the issue of rate of depreciation had not been restored back to the AO by the Special Bench of the ITAT, and the contention of the Revenue in this regard, we hold, therefore is incorrect. In the present case, the issue being the rate of depreciation to be allowed to the assessee on computer software, which the ITAT had allowed at the higher rate, is in accordance with the Special Bench’s decision in the case of Amway India Enterprise (supra) and there is no error in the order of the ITAT in this regard. The Miscellaneous Application filed by the Revenue being devoid of any merit, therefore stands rejected.”

8. The ld.counsel for the assessee contended that the issue was squarely covered in favour of the assessee by the order of the ITAT in the case of the assessee for the Asst.Year 2013-14 and Revenue’s appeal on this, therefore, need to be dismissed.

9. The ld.DR was unable to controvert the contention of the ld.counsel for the assessee before us.

10. In view of the above, since the issue of depreciation claim of software license which as per the Revenue the assessee had claimed in excess, having decided in favour of the assessee in Asst.Year 2013-14, following the said decision, we find no merit in the present

ground raised by the Revenue before us. The ground no.1 therefore is dismissed.

11. In effect, appeal of the Revenue is dismissed.

Order pronounced in the Court on 24th March, 2023 at Ahmedabad.

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

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 24/03/2023