IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos.1124 & 1125/Del/2018
Assessment Years: 2004-05 & 2005-06

Addl. CIT, Special Range-4, New Delhi	**Vs.**	Hindustan Coca Cola Beverages Pvt. Ltd., B-91, Mayapuri Industrial Area, Phase-1, New Delhi
		PAN :AAACH3005M
(Appellant)		**(Respondent)**

With
C.O. No. 79/Del/2019
[In ITA No.1124/Del/2018]
Assessment Year: 2004-05
With
C.O. No. 80/Del/2019
[In ITA No.1125/Del/2018]
Assessment Year: 2005-06

Hindustan Coca Cola Beverages Pvt. Ltd., B-91, Mayapuri Industrial Area, Phase-1, New Delhi	**Vs.**	Addl. CIT, Special Range-4, New Delhi
PAN :AAACH3005M		
(Appellant)		**(Respondent)**

With
ITA Nos.3448 & 3449/Del/2015
Assessment Years: 2008-09 & 2009-10

Hindustan Coca Cola Beverages Pvt. Ltd., Orchid Centre, 3rd Floor, DLF Golf Course Road, Sector-53, Gurgaon	**Vs.**	DCIT, Circle-11(2), New Delhi
PAN :AAACH3005M		
(Appellant)		**(Respondent)**

With
ITA Nos.4588 & 4589/Del/2015
Assessment Years: 2008-09 & 2009-10

DCIT, Circle-11(2), New Delhi	**Vs.**	Hindustan Coca Cola Beverages Pvt. Ltd., 13, Abdul Fazal Road, Bengali Market, New Delhi
		PAN :AAACH3005M
(Appellant)		**(Respondent)**

Assessee by	Sh. Neeraj Jain, Advocate Sh. Aditya Vohra, Advocate Mr. Arpit Goyal, CA
Respondent by	Mohd. Gayasuddin Ansari, CIT (DR)

Date of hearing	10.05.2023
Date of pronouncement	07.06.2023

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeals and cross objections by the assessee and Revenue relate to the same assessee and against various orders of learned Commissioner of Income Tax (Appeals), pertaining to assessment years 2004-05, 2005-06, 2008-09 and 2009-10.

ITA No. 1124/Del/2018 for AY: 2004-05 (Revenue's Appeal) & C.O. No. 79/Del/2019

ITA No. 1125/Del/2018 for AY: 2005-06 (Revenue's Appeal) & C.O. No. 80/Del/2019

2. These appeals by the Revenue and cross objections by the assessee arise out of two separate orders of learned Commissioner of Income Tax (Appeals) deleting the penalty imposed under section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act')

3. Briefly the facts, more or less common in both the assessment years are, the assessee is a resident corporate entity engaged in the business of manufacture and trading of non-alcoholic beverages. For the assessment years under dispute, the assessee had filed its return of income in regular course declaring loss. The returns of income filed by the assessee were subjected to scrutiny and in course of assessment proceeding, the Assessing Officer called for various information and details and ultimately completed the assessments under section 143(3) of the Act making various additions/disallowances. Contesting the additions/disallowances the assessee preferred appeals before learned first appellate authority. While deciding the appeals, learned Commissioner (Appeals) granted relief to the assessee by deleting certain additions completely. Whereas, he partly sustained the disallowance of non-compete fee claimed as revenue expenses. However, he upheld the disallowance of depreciation on acquisition of bottlers list and disallowance of processing fees.

Challenging the orders of learned first appellate authority, the assessee went in further appeal before the Tribunal. While deciding the appeals, the Tribunal granted further relief to the assessee in respect of disallowances made on account of depreciation claimed on acquisition of bottlers list and disallowances of processing fees. However, the Tribunal upheld the decision of learned Commissioner (Appeals) with regard to disallowance of non-compete fees by following its earlier decisions in assessee's own case.

4. Be that as it may, based on the additions sustained by learned Commissioner (Appeals), the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed orders imposing penalty of Rs.12,02,18,674/- and Rs.8,76,74,041/- for the assessment years 2004-05 and 2005-06, respectively, under the said provision alleging furnishing of inaccurate particulars of income. Against the penalty orders so passed, the assessee preferred appeals before learned first appellate authority. Noticing that the penalty imposed under section 271(1)(c) of the Act in identical facts and circumstances in assessee's case for assessment year 2002-03 was deleted by the first appellate authority, learned

Commissioner (Appeals) deleted the penalty imposed in both the assessment years under dispute.

5. We have considered rival submissions and perused the materials on record. Undisputedly, after decision of the Tribunal in the quantum appeals filed by the assessee for the impugned assessment year, the only additions which survive in both the assessment years are the additions made on account of disallowance of non-compete fee claimed as revenue expenditure. It is a fact on record that this is a recurring issue between the assessee and the Revenue from past assessment years. The assessee has been consistent in its position that the non-compete fee paid is allowable as revenue expenditure. However, according to the department, such payment has to be capitalized. In our view, whether non-compete fee is a revenue or capital expenditure is a highly debatable issue and the assessee over the years is maintaining its position on the issue. Though, the Tribunal has not accepted assessee's claim of revenue expenditure qua payment of non-compete fee, however, it is a fact on record that against the decision of the Tribunal in past assessment years, the assessee has preferred appeals before the Hon'ble High Court and substantial question of law on the issue of allowability of

deduction in respect of non-compete fee has been admitted by Hon'ble High Court. Even, for the impugned assessment year also the Hon'ble High Court has admitted assessee's appeal on the issue. It is not a case where the assessee has accepted the decision of the departmental authorities on the issue in the past assessment years, but has still claimed deduction in subsequent assessment years.

6. On the contrary, the assessee is doggedly contesting the issue in each and every assessment year and the issue is now pending for adjudication before the Hon'ble Jurisdictional High Court. In fact, the decision of the Tribunal in assessment year 2002-03 upholding the disallowance was rendered, post filing of return of income for the impugned assessment year. It is a fact on record that the assessee has disclosed all material facts relating to payment of non-compete fee and the Assessing Officer was conscious of assessee's claim.

7. That being the case, the assessee cannot be accused of furnishing inaccurate particulars of income. It is relevant to observe, penalty imposed under section 271(1)(c) of the Act under identical facts and circumstances in assessee's own case in assessment year 2002-03 was deleted by the first appellate

authority and the Tribunal upheld the decision of the first appellate authority in deleting the penalty.

8. In view of the aforesaid, we do not find any valid reason to interfere with the decision of learned first appellate authority. Accordingly, we uphold the deletion of penalty imposed under section 271(1)(c) of the Act in both the assessment years under dispute. Grounds raised are dismissed.

9. In the result, both the appeals are dismissed.

10. In view of our decision above, the cross objections of the assessee have become infructuous. Hence, dismissed.

ITA No. 3448/Del/2015 (Assessee's Appeal)
AY: 2008-09

11. Ground no. 1 is a general ground, hence, does not require adjudication.

12. In ground no. 2 and its sub-grounds, the assessee has challenged the disallowance of Rs.9,50,68,095/-, being payment made towards non-compete fee.

13. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has treated the amount in dispute as revenue expenditure and has claimed deduction. When called upon to justify the claim, the assessee

submitted that the payment of non-compete fee to the individual shareholders/directors of the bottling companies merely facilitates the conduct of business more efficiently and more profitably leaving the fixed capital untouched. It was submitted by the assessee that the payment made did not create any asset or addition of enduring nature at the hands of the assessee as the scope of the agreement is limited to a particular territory and the term of the agreement was for a short duration between 5 to 10 years. The Assessing Officer, however, was not convinced with the submission of the assessee. He observed that in the preceding assessment years, viz., 1999-2000 onwards identical claim made by the assessee has been disallowed. Following the decision taken in the earlier assessment years, he disallowed the non-compete fee paid to the individual shareholders/directors of the bottling companies. For identical reasons, he also disallowed the non-compete fee paid to Maestro Industries Pvt. Ltd. for surrender of Kinley water rights. The disallowances so made, were also upheld by learned Commissioner (Appeals).

14. Before us, learned counsel for the assessee fairly submitted that this issue has been consistently decided against the assessee by the Tribunal upto assessment year 2007-08. However, he

submitted, in some of the earlier assessment years, assessee's appeals raising substantial question of law on the issue have been admitted by the Hon'ble Jurisdictional High Court.

15. Learned Departmental Representative submitted, the issue is squarely covered against the assessee by the decisions of the Tribunal.

16. We have considered rival submissions and perused the materials on record. The dispute between the parties is whether the non-compete fees paid by the assessee to some of the parties is in the nature of revenue or capital expenditure. On perusal of facts and materials on record, we find that this is a recurring dispute between the parties from assessment years 1999-2000 onwards and has been consistently decided against the assessee, even by the Tribunal. In this regard, we may refer to the following observations of the Tribunal in order dated 12.04.2023, while deciding assessee's appeal for assessment years 2004-05 to 2007-08 in ITA No. 6605/Del/2014 & Ors. :

> *"5.1 Issue no. 1: Disallowance of non compete fee is issue arising from the fact that assessee had acquired running businesses of various bottlers companies. Thus, restricting them from sharing their knowledge and know how in relation to the acquired business for specified period. The assessee claimed deduction for the same as deferred revenue expenditure on amortized basis over the period of non-competition. In the assessment order for assessment year 2001-02, being the first year of payment, the assessing Officer disallowed*

the proportionate deduction on the ground that non compete fee was capital expenditure, resulting in benefit of enduring nature, and therefore, not an allowable as revenue deduction.

5.1.1 Learned CIT(A) had upheld the order of Ld. AO and the issue was carried forward in the assessment year 2002-03 where Tribunal had upheld the view of learned Tax Authorities below. However, the assessee's appeal in this regard stands admitted before Hon'ble Delhi High Court. Subsequently, the appeals for 2001-02 and 2003-04 have been admitted on the same substantial question of law by Hon'ble Delhi High Court.

5.1.2 That being the states of facts of the legacy issue, the propriety requires to follow the rules of consistency as there is nothing to differ. Thus, the issue is decided against the assessee. Consequently, the grounds in that regard raised in the respective A.Y. stand dismissed."

17. Thus, facts being identical, respectfully following the consistent view expressed by the Tribunal on identical issue arising in assessee's own case, we uphold the decision of learned first appellate authority. Grounds raised are dismissed.

18. In ground no. 3, the assessee has challenged disallowance of Rs.1,52,73,245/- claimed towards provision made for reimbursement of sales tax and miscellaneous claims.

19. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has claimed deduction of Rs.14,09,27,038/- towards expenditure on unviable contracts. After calling for necessary details and examining them, he found that the payments of various amounts have been made to nine parties. After examining the nature and details of each individual

payments made to these parties, the Assessing Officer noticed that an amount of Rs.1,02,73,245/- was claimed as reimbursement of sales tax expenses to Salute Beverages, Guntur, on account of old transactions. The Assessing Officer observed, though, the assessee has furnished letter dated 06.03.2007 of Salute Water House Pvt. Ltd., however, there was no mention of the amount as compensation claimed towards tax dues. Thus, alleging absence of cogent evidence, the Assessing Officer disallowed the said amount. Further, he disallowed various other amounts representing provision for sales tax, expenditure incurred to removed plants and machinery, provision for settlement of employees compensation etc. The assessee contested the aforesaid disallowances before learned Commissioner (Appeals). After considering the submission of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) upheld the disallowances. However, in respect of expenditure incurred towards shifting of machinery from one plant to another in case of Brindavan Beverages, he directed the Assessing Officer to allow depreciation on such cost.

20. Before us, learned counsel for the assessee submitted that in earlier years, the assessee had entered into contract of packing

with third party co-packers for processing and packing of non-alcoholic beverages under its name in lieu of processing charges. He submitted, due to certain ongoing disputes/demands and differences between the parties in financial year 2006-07, the assessee entered into a premature/early termination of such agreement prior to completion of its tenure. Therefore, the assessee agreed to undertake certain liability of co-packers as per the terms of the termination contract. He submitted, the liabilities undertaken by the assessee related to reimbursement of sales tax claim of Salute Water House Pvt. Ltd., provision for sales tax claim and VRS claim for Brindawan Beverages. He submitted, since the payments made were in terms of the agreement entered with the third parties, the expenditures are allowable. In support of such contention, he relied upon the following decisions:

i. *Campa Beverages (P.) Ltd. Vs. Inspecting Assistant Commissioner [1990] 34 ITD 241 (Delhi)*
ii. *CIT Vs. Malayalam Plantations Ltd. 53 ITR 140 (SC)*
iii. *CIT Vs. Birla Cotton Spinning & Weaving Mills Ltd., 82 ITR 166 (SC)*
iv. *Madhav Prasad Jatia Vs. CIT, 118 ITR 200 (SC)*
v. *S.A. Builders Ltd. Vs. CIT, 288 ITR 1 (SC)*

21. The learned Departmental Representative submitted, the assessee has not furnished any evidence at all to establish on record that the liability has actually accrued and not in the

nature of mere provision. Further, he strongly relied upon the observations of the departmental authorities.

22. We have considered rival submissions and perused the materials on record. Though, before us, learned counsel for the assessee submitted that the disputed expenses were incurred out of contractual obligation. However, as it appears on record, apart from making the claim, the assessee has not furnished any cogent evidence to establish the authenticity of such claim. Furnishing of termination agreement by itself does not prove incurring of the expenses, unless, strong supporting evidence is placed on record. In the assessment order, the Assessing Officer has made specific allegation that the assessee has not furnished any evidence, either regarding the actual claim made by Salute Water House Pvt. Ltd., nor any evidence of the payment made. Similarly, in respect of payment alleged to have been made to Brindawan Beverages, Bareilly, the assessee has itself shown it as provision. Further, the Assessing Officer has made a categorical observation that no evidence has been furnished to demonstrate that the expenses were actually incurred by the assessee. The factual position remained unaltered before learned Commissioner (Appeals). Even, on perusal of written submission furnished

before the Assessing Officer placed in the paper-book, we find, except quoting some facts and figures relating to certain expenses, some of which, have been classified as provision, no evidence has been furnished by the assessee to substantiate the fact that expenditure was actually incurred during the year. Since, assessee's claim is not supported by any evidence, we are inclined to uphold the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

23. In ground no. 4, the assessee has challenged the disallowance of Rs.41,32,403/- representing payment made towards traffic rule violation. On perusal of record, it is observed, the assessee incurred expenses of Rs.41,32,403/- towards traffic challans for violation of certain rules/regulation. Being of the view that the payment made was for an offence and prohibited by law, the Assessing Officer held that the deduction claimed is not allowable as they fall under the exception provided under Explanation 1 to section 37(1). Though, the assessee contested the said disallowance before the first appellate authority, however, the disallowance was sustained.

24. We have considered rival submissions and perused the materials on record. From the facts on record, it is evident that

the traffic challans were issued for violating traffic rules relating to no-entry areas, no parking zones etc. The issue which arises for consideration is, whether such payments made were for an offence or is prohibited by law. We find, the aforesaid issue has been decided in case of DCIT Vs. Bharat C Gandhi, 46 SPT 258 (Mum. Trib.). In the aforesaid decision, the Coordinate Bench while dealing with identical issue of payment of compounding fee for violation of provision under the Motor Vehicles Act, 1988 and Rules thereunder has held that such expenditure is allowable as business expenditure under section 37(1) of the Act. Thus, following the decision of the Coordinate Bench (supra), we delete the disallowance. Ground no. 4 is allowed.

25. In ground no. 5, the assessee has raised the issue of disallowance of expenditure incurred on Ice Boxes.

26. Briefly the facts relating to this issue are, in course of assessment proceeding, the Assessing Officer noticed that while computing its business income, the assessee has included expenses of signages and iceboxes under the head 'marketing expenses'. When called upon to justify the claim, the assessee submitted that the life of these products is short and no advantage of enduring nature was acquired on them. The

Assessing Officer, however, did not find merit in the submissions of the assessee. Ultimately, he treated such expenses as capital in nature and allowed depreciation thereon. The aforesaid decision of the Assessing Officer was sustained by learned First Appellate Authority.

27. Before us, learned counsel for the assessee fairly submitted that identical issue has been decided against the assessee by the Tribunal in earlier assessment years.

28. Learned Departmental Representative agreed with the aforesaid submission of the assessee.

29. Having considered rival submissions, we find that while considering identical nature of dispute in assessee's own case in assessment years 2004-05 to 2007-08 (supra), the Tribunal, following its earlier decisions, has decided the issue against the assessee. For better appreciation, the relevant observations of the Tribunal is reproduced hereunder:

> *"9. Issue no. 6. Lastly coming to the disallowance expenses incurred on Ice-Boxes the same is the basis of grounds raised exclusively in A.Y. 2006-07 and 2007-08. In this regard it can be observed that assessee had made expenditure on sign board, Ice-boxes etc. provided to vendors which were accounted under the head 'Marketing Expenses'. Ld. CIT(A) has allowed the claim of Sign board as revenue expenditure, however, treated the Ice-Boxes as part of plant and machinery and allowed depreciation in assessee's own*

case for A.Y. 2002-03. The Tribunal has disallowed expenses hold the same to be capital in nature.

9.1 On Behalf of the assessee it is submitted that there is no enduring benefit to the assessee and the purpose of expenditure is to increase the sales at the outlets/vendors therefore, the expenditures were incurred for the purpose of business promotion and advertisement. It is submitted the Ice-boxes do not have as life and scrapped soon.

9.2 The issue is dealt by Co-ordinate Bench, in the case of assessee for A.Y. 2002-03 by co-ordinate Bench with following relevant findings :-

> *"21. We are of the considered opinion that the touchstone applied by Hon'ble Delhi High Court in the case of M/s. Pepsico India Holdings (P) Ltd. (supra) referring the decision of Hon'ble Apex Court in the case of Assam Bengal Cement (Supra) it was held that if the expenditure is made for acquiring or bringing into existence an asset or advertisement for the enduring benefit of the business. It is properly attributable to capital and is in the nature of capital expenditure.*
>
> *22. As per factual the matrix of the present case, in the light of above decisions relied upon by the Revenue, we reach to a conclusion that the expenditure made by the assessee o Ice Chests/ Ice Boxes, Pushcarts, Dealer Sign board was made for acquiring or bringing into existence an asset for the enduring benefit of the business of the assessee for the enduring benefit of the business of the assessee which is properly attributable to a capital and certainly it was of the nature of capital expenditure. Hence, contentions of the assessee are not found to be acceptable and on the other hand submissions of the Special Counsel of the Department arc cogent and acceptable thus, conclusion of the Id. CIT(A) in the impugned order limited to this existent are confirm and upheld. In the result ground nos. 10, 11 & 12 of the assessee is partly allowed in regard to claim of the assessee for Electric Spectaculars, Neon Signs, Artwork, Glow Signs and Neon Signs but these grounds arc partly dismissed on the issue of Ice Chests/Ice Boxes and Dealer Sign board as indicated above as per our foregoing discussions."*

9.3 This bench is of considered opinion that the nature of expenditure on the articles once examined by Co-ordinate Bench, cannot be interfered without there being substantial basis to disagree, that not being there accordingly following the Co-ordinate Bench decision in assessee's own case for A.Y. 2002-03, ***the ground is decided*** *against the assessee."*

30. Thus, respectfully following the consistent view of the Tribunal on identical issue, we uphold the disallowance. This ground is dismissed.

31. In the result, appeal is partly allowed.

ITA No.4588/Del/2015 (Revenue's Appeal)
AY: 2008-09

32. The only issue arising in the appeal relates to deletion of disallowance of processing charges.

33. Briefly the facts are, the assessee had outsourced packing and processing work to third parties on payment of processing charges. While completing the assessment, the Assessing Officer disallowed 10% of the processing charges on ad-hoc basis. Whereas, while deciding assessee's appeal, learned Commissioner (Appeals) deleted the disallowance on the ground that the assessee had produced party-wise details of such charges, which are subjected to TDS.

34. At the time of hearing, learned counsel for the assessee submitted before us that while dealing with identical issue in assessee's own case in assessment years 2004-05 to 2007-08 (supra), the Tribunal has restored the issue to the Assessing

Officer with a direction to examine the issue on the basis of evidences filed by the assessee.

35. Learned Departmental Representative submitted, in view of the earlier decision of the Tribunal, the issue may be restored back to the Assessing Officer.

36. Having considered rival submissions, we find, while dealing with identical issue in assessee's own case in assessment years 2004-05 to 2007-08 (supra), the Tribunal has restored the issue to the Assessing Officer with the following directions:

> *"7. Issue no. 3; in regard to adhoc disallowance to the extent of 10% of the processing charges it comes up that in relation to packing and processing work outsource to third parties, the processing charges were claimed during the relevant previous years and the same have been disallowed on adhoc basis on the basis of non-sustenance of same on the basis of notices issued to the concerned parties. The claim of the assessee is that there is no variations in the details of processing charges furnished during the course of assessment proceedings with the amount debited in the books of accounts. The amounts were made through banking channels. It also comes up that in assessment years 2006-07 to 2009-10 the Ld. CIT(A) has deleted the adhoc disallowance not being supported by any adverse evidence. However, in assessee's own case for assessment year 2003-04, the Tribunal has restored the issue to the files of ld. AO with the direction to the assessee to file the requisite details and reconcile the differences between the amounts appearing in the books of accounts and the balance appearing in the accounts of third parties and thereafter it is for the Assessing Officer to decide the issue as per facts and law.*
>
> *7.1 On behalf of the assessee, however, it is submitted that the assessee ca t be prejudiced for non-appearance of the parties providing processing vices and assessment on the basis of a guesswork cannot be sustained.*

> *7.2 The bench accordingly is inclined to restore the issue to the files of Ld. AO with direction to examine the issue of processing charges on the basis of evidence made available by the assessee showing genuineness of the payments made to the suppliers. The non-availability of the suppliers or their failure to appear on the behest of assessee is not required to be considered to discredit the expenditure otherwise established from books and mode of payment. Accordingly, the ground arising out of this issue in appeal of assessee for the assessment year 2004-05 and 2005-06 are* ***allowed for statistical purposes.*** *While of Revenue for A.Y. 2006-07 and 2007-08, against the Revenue"*

37. Consistent with the view expressed by the Tribunal in the preceding assessment years, we restore the issue to the Assessing Officer with a similar directions. Needless to mention, before deciding the issue, the assessee must be provided due and reasonable opportunity of being heard.

38. In the result, the appeal is allowed for statistical purposes.

ITA No. 3449/Del/2015 (Assessee's Appeal)
AY: 2009-10

39. Ground no. 1 is general in nature, hence, does not required adjudication.

40. In ground no. 2 and its sub-grounds, the assessee has challenged disallowance of deduction claimed of non-compete fee. This ground is identical to ground no. 2 with its sub-grounds of ITA No. 3448/Del/2015. Facts being identical, our decision

therein, will apply *mutatis mutandis* to this appeal as well. Accordingly, grounds are dismissed.

41. In ground no. 3 and its sub-grounds, the assessee has challenged disallowance of expenditure incurred towards traffic challans. This amount is identical go ground no. 4 of ITA No. 3448/Del/2015 decided in the earlier part of the order. Consistent with the view taken by us therein, we delete the disallowance. This ground is allowed.

42. In ground no. 4, the assessee has challenged the disallowance of expenditure incurred on Ice boxes. This ground is identical to ground no. 5 of ITA No.3448/Del/2015 decided by us in the earlier part of the order. Following our decision therein, we decide the issue against the assessee. This ground is dismissed.

43. In the result, the appeal is partly allowed.

ITA No.4589/Del/2015 (Revenue's Appeal)
AY: 2009-10

44. The issue raised in ground no.1 is identical to the issue raised in ITA No.4588/Del/2015 decided by us in the earlier part of the order. Following our decision therein, we restore this issue to the Assessing Officer with similar direction.

45. In ground no. 2, the Revenue has challenged deletion of disallowance made under section 40(a)(ia) of the Act of payments made towards purchase of software without deducting tax at source (TDS).

46. We have considered rival submissions and perused the materials on record. As could be seen from the factual finding recorded by learned Commissioner (Appeals), the amount in dispute was paid by the assessee towards purchase of copyrighted software and not for any licence to use software. He has further recorded a finding of fact that the assessee has capitalized the purchase cost in its fixed assets on which deprecation has been claimed. Thus, learned Commissioner (Appeals) concluded that what the assessee has purchased is a copyrighted article and not the copyright. Hence, he held that the payment made is not in the nature of royalty so as to require deduction of tax at source under section 195 of the Act. The aforesaid factual finding of learned first appellate authority remains uncontroverted before us.

47. In any case of the matter, the issue now stands squarely settled in favour of the assessee by the decision of the Hon'ble Supreme Court in case of ***Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT (432 ITR 471)***.

48. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

49. In the result, appeal is partly allowed for statistical purposes.

50. To sum up, the appeals are decided as under:

1.	*ITA No.1124/Del/2018*	*Revenue's appeal*	*Dismissed*
2.	*ITA No.1125/Del/2018*	*Revenue's appeal*	*Dismissed*
3.	*C.O. No.79/Del/2019*	*Assessee's cross objection*	*Dismissed*
4.	*C.O. No.80/Del/2019*	*Assessee's cross objection*	*Dismissed*
5.	*ITA No.3448/Del/2015*	*Assessee's Appeal*	*Partly allowed*
6.	*ITA No.3449/Del/2015*	*Assessee's Appeal*	*Partly allowed*
7.	*ITA No.4588/Del/2015*	*Revenue's Appeal*	*Allowed for statistical purposes.*
8.	*ITA No.4589/Del/2015*	*Revenue's appeal*	*Partly allowed for statistical purposes*

Order pronounced in the open court on 7th June, 2023

Sd/-	***Sd/-***
(M. BALAGANESH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 7th June, 2023.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi