

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

I.T.A. NO.242 OF 2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III
C.R BUILDINGS,
QUEENS ROAD,
BANGALORE-560001.
2. ASSISTANT COMMISSIONER
OF INCOME TAX,
CIRCLE12 (1),
BANGALORE

... APPELLANTS

(By Sri.E.I.SANMATHI, ADV.,)

AND:

M/S NCR CORPORATION PVT LTD
11, 3RD FLOOR, NITON BUILDING,
PALACE ROAD,BANGALORE42

... RESPONDENT

(By Sri.T.SURYANARAYANA, ADV.)

THIS ITA IS FILED UNDER SECTION 260-A OF
I.T.ACT, 1961 ARISING OUT OF THE ORDER DATED 28.02.2011
PASSED IN ITA NO.353/BANG/2010 FOR THE ASSESSMENT YEAR

2003-04, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:

- (I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN.
- (II) SET ASIDE THE ORDERS PASSED BY THE ITAT, 'A' BENCH, BANGALORE IN ITA NO.353/BANG/2010 DATED 28.02.2011 AS SOUGHT FOR IN THIS APPEAL, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ITA COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2003-04. The appeal was admitted by a bench of this Court vide order dated 06.02.2012 on the following substantial questions of law:

- (i) *Whether the tribunal is correct on facts and in law in holding that the expenditure said to have been incurred by the assessee amounting to Rs.89,23,817/- on improvement of interiors, electrical works, modeling and networking of computers, work stations*

and other miscellaneous works in a leased premises is revenue expenditure without appreciating that this one-time expenditure incurred in providing necessary infrastructure resulted in a benefit of enduring nature which will be available to the assessee for many years?

*(ii) Whether the tribunal is correct on facts and in law in holding that ATMs and encoders are computers eligible for 60% depreciation even when they do * not provide processing activity and do not contain all features of computers and such cannot be called as computers?*

*(iii) Whether the tribunal is justified in accepting the change in the method of accounting adopted by the assessee when such change would not bring out or enable ascertainment of true and correct profits of the *assessee for the accounting year in question?*

* Corrected vide Chambers Orders dated 19-06-2020.

(iv) Whether the tribunal is correct in law to accept the change in the method of accounting adopted by the assessee without taking into account the provisions of sale of goods Act as per which the delivery is the point of time when the sale is complete?

2. Facts giving rise to filing of this appeal briefly stated are that assessee is engaged in the business of manufacture of automated teller machines (ATMs) and distribution of NCR book products and commissions in India. The assessee filed the return of income on 01.12.2003 declaring taxable income of Rs.4,66,32,670/-. The return was processed under Section 143(1) and was selected for scrutiny and notice under Section 143(2) of the Act was issued. The assessee had taken premises on lease for a period of three years. The assessee claimed expenditure of Rs.89,23,817/- on account of leasehold improvements as revenue expenditure in the computation of income.

The assessing officer by an order dated 31.03.2006 inter alia held that leasehold improvements expenditure is incurred towards purchase of workstations, improvement of interiors and electrical works, fee paid to the architect, cabling work for networking of computers in connection with setting up of office. Thus, the expenditure was incurred to bring into existence an asset or an advantage for enduring benefit of business, his property is computable as capital expenditure. Accordingly, the leasehold improvement for an amount of Rs.89,23,817/- was disallowed and added back and depreciation towards furniture and fitting at the rate of 15% was allowed. The assessing officer further held that the assessee has changed the revenue recognition method and therefore it is not possible to ascertain true and correct profit of the assessee for the accounting year in question. It was further held that ATMs cannot be termed as computers and therefore are eligible for depreciation to the extent of 25%. Being aggrieved,

the assessee preferred an appeal. The order was affirmed in appeal by the assessee

3. The assessee assailed the order passed by the Commissioner of Income Tax (Appeals) before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal by an order dated 28.02.2011 inter alia held that the expenditure incurred by the assessee for leasehold improvements has to be treated as revenue expenditure under Section 37 of the Act. It was further held that ATMs are computers and therefore, assessee is eligible to depreciation of 60%. It was further held that even though the assessee had changed the method of revenue recognition, however, he is entitled to change the method of accounting as the same has no impact on the revenue. Accordingly, the appeal preferred by the assessee was partly allowed. Being aggrieved, the revenue is in appeal before us.

4. Learned counsel for the revenue submitted that the assessee had created an asset resulting in enduring benefit for business, which was capital in nature and therefore, the tribunal grossly erred in treating the same to be a revenue expenditure and that the asset was capital in nature. In support of aforesaid submission, reliance has been placed on decision of Supreme Court in '**CIT VS. MADRAS AUTO SERVICES (P) LTD.,', 233 ITR 468** and a decision of this court in '**D.P.CHIRANIA AND COMPANY VS. COMMISSIONER OF INCOME-TAX, MYSORE', 112 ITR 12**. It is further submitted that ATMs are not Computers and the tribunal erred in holding that ATMs are computers and assessee is entitled to deduction to the extent of 60%. In support of aforesaid submission, reliance has been placed on decision of this court in '**DIEBOLD SYSTEMS PVT. Ltd. VS. COMMISSIONER OF COMMERICAL TAXES (KARNATAKA)', ILR (KAR)-2005-0-2210**. It is also urged that change

of accounting method is impermissible as the same has resulted in a loss to the revenue.

5. On the other hand, learned counsel for the assessee has pointed out that premises were taken on lease for a period of three years and expenditure was incurred towards purchase of workstations, improvement of interiors and electrical works, fee paid to the architect, cabling work for networking of computers in connection with setting up of office. Therefore, the same cannot be treated as capital asset. It is further submitted that the assessee only derived business advantage on account of expenditure incurred on lease hold property for improvements. In support of aforesaid submission, reliance has been placed on **MADRAS AUTO SERVICES (P) LTD.** supra. It is also pointed out that reliance placed by the revenue on the decision rendered in **DIEBOLD SYSTEMS PVT. LTD.**, supra is misconceived as the aforesaid decision has been rendered in the context of provisions under the

Karnataka Sales Tax Act, 1957. It is also urged that the provisions of Karnataka Sales Tax Act, 1957 and the Income Tax Act, 1961, are not *pari materia* and therefore, no reliance can be placed on aforesaid decision. Learned counsel has also invited our attention of Appendix 1 to the Income Tax Rules and has pointed out that computer has been included under plant and machinery. In support of aforesaid submission, reliance has been placed on decision in the case of '**CIT VS. SARASWAT INFOTECH LTD.,', ITA NO.1243/2012.**

It is also argued that the words and expression defined in another statute cannot be used for construction of same words or expression used in the other statute unless both the statutes are in *pari materia*. In support of aforesaid submission, reliance has been placed on decision of the Supreme Court in '**JAGATRAM AHUJA VS. COMMISSIONER OF GIFT-TAX', (2000) 113 TAXMAN 459 (SC).**' It is also submitted that it is open for the assessee to change the method of accounting

and the burden is on the department to prove that the method in vogue is not correct and distorts the profits of a particular year. It is also argued that in the instant case the aforesaid burden has not been discharged by the revenue. In support of aforesaid submission, reliance has been placed on a decision of the Supreme Court in '**COMMISSIONER OF INCOME-TAX VS. BILAHARI INVESTMENT (P.) LTD.,', (2008) 168 TAXMAN 95 (SC).**

6. We have considered the submissions made on both the sides and have perused the record. Admittedly, in the instant case, the assessee had incurred expenditure of Rs.89,23,817/- towards purchase of workstations, improvement of interiors and electrical works, fee paid to the architect, cabling work for networking of computers in connection with setting up of office. The test for distinguishing capital expenditure and revenue expenditure was laid down by the Supreme Court in '**ASSAM BENGAL CEMENT CO. LTD., VS.**

CIT', (1955) 27 ITR 34, which laid down the text, which reads as under:

1. *Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment.*
2. *Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade. If what is got rid of by a lump sum payment is an annual business expense chargeable against revenue, the lump sum payment should equally be regarded as a business expense, but if the lump sum payment brings in a capital asset, then that puts the business on another footing altogether.*
3. *Whether for the purpose of the expenditure, any capital was withdrawn, or, in other words, whether the object of incurring the expenditure was to employ*

what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital.

7. The aforesaid principles were referred to with approval in **MADRAS AUTO SERVICES (P) LTD.**, supra on the touchstone of aforesaid well settled legal principle, if the facts of the case in hand is examined, it is evident that the assessee had taken the premises on lease for a period of three years and had incurred expenditure of Rs.89,23,817/- for improvements in the lease premises. The premises did not belong to the assessee and the expenditure did not bring into existence any capital asset for the assessee. The expenses were incurred for conducting the business of the assessee more profitably and more successfully. The assessee therefore, got the business advantage and therefore, the tribunal has rightly treated the expenses incurred as revenue expenditure incurred for

improvement in leasehold property as revenue expenditure.

8. This takes us to the second substantial question of law whether ATMs are computers and are eligible for 60% depreciation. It is pertinent to note that provisions of the Karnataka Sales Tax Act, 1957 and provisions of Income Tax Act, 1961 are not *pari materia* provisions. The classification of goods has been provided only for the purposes of sales tax whereas, the provisions of the income tax levy tax on income. It is pertinent to mention here that Appendix 1 to Income Tax Rules, the computer has been treated as plant and machinery. Therefore, the decision relied upon by the revenue in ***DIEBOLD SYSTEMS PVT. LTD.,*** *supra* has no application to the fact situation of the case. The tribunal by placing reliance on the decision of Bombay High Court in '***DCIT VS. DATA CRAFT INDIA LTD.,***' ***(2010) 40 SOT 295*** has held that so long as functions of the computers are performed with other functions

and other functions are dependant on the functions of the computer, ATMs are to be treated as computers and are entitled to higher rate of depreciation. It has further been held that computer is integral part of ATM machine and on the basis of information processed by the computer in ATM machine only, the mechanical function of the dispensation of cash or deposit of cash is done. Therefore, it was held that ATMs are computers and are entitled to higher rate of depreciation. The aforesaid finding of fact has been recorded on correct analysis of the material available on record and by placing reliance on decision of the Bombay High Court.

9. We may now deal with substantial question of law nos. 3 and 4. The Supreme Court in **BILAHARI INVESTMENTS (P) LTD.**, supra has held that in every case of substitution of one method by another method it has been held that burden is on the department to prove that the method in vogue is not correct and distorts the profit of a particular year. From perusal of

the order passed by the assessing officer as well Commissioner of Income Tax (Appeals), it is evident that revenue has failed to discharge the aforesaid burden. Therefore, the tribunal has rightly held that the assessee is entitled to change the method of accounting.

In view of the preceding analysis the substantial questions of law framed by this court are answered against the revenue and in favour of the assessee. In the result we do not find any merit in the appeal. The same fails and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**