

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'G', NEW DELHI**

**BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT
AND
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2762/Del/2019
Assessment Year: 2015-16

Taxman Publications Pvt. Ltd., 21/35, New Rohtak Road, West Punjabi Bagh, New Delhi – 110 026 PAN No. AA ACT 2774 P	Vs.	ACIT Circle- 25 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Gaurav Jain & Ms. Manisha Sharma, Adv.
Respondent by	Shri Saras Kumar, Sr. D.R.

Date of hearing:	01/07/2020
Date of Pronouncement:	08/07/2020

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 08.02.2019 of the Commission of Income Tax (A)-27, New Delhi relating to Assessment Year 2015-16.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company which is stated to be engaged in the business of publication of books on taxation corporate laws and trading in software. Assessee electronically filed its return of income for A.Y. 2015-16 on 27.11.2015 declaring total income of Rs.69,03,560/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Income tax Act, 1961, vide order dated 14.11.2017 and the total income was determined at Rs.1,14,53,530/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 08.02.2019 (in Appeal No.339/18-19) dismissed the appeal of assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds :-

1. *“That on the facts and circumstances of the case, the CIT(A) erred in sustaining disallowance of depreciation of Rs. 22,74,987 claimed @12.5% on ‘Content Management Software’ (‘CM Software’) under section 32 of the Income Tax Act, 1961 (‘the Act’) on the ground that (i) the said depreciation was claimed on ‘webmaster software’; (ii) for which the appellant failed to satisfy the test of ownership for claiming depreciation.*
 - 1.1 *That the CIT(A) erred on facts and in law in not appreciating that the depreciation was not claimed on webmaster software, but CMS software, satisfied the test in the hands of appellant.*
 - 1.2 *Without prejudice that the CIT(A) erred on facts and in law in not appreciating if the appellant was not owner of the software, the expenditure incurred for development of software for providing services to DIT(Systems) was allowable as revenue expenditure under section 37(1) of the Act.*
2. *That the CIT(A) erred on facts and in law in not allowing expenditure incurred for development of software as revenue expenditure under section 37(1) of the Act holding that the said*

plea did not emanate from the assessment order and was not a subject matter of the appeal.

The appellant craves leave to add to, alter, delete, modify or vary the above grounds of appeal at or before the time of the hearing.”

4. Before us, at the outset, Learned AR submitted that though assessee has raised various grounds but the sole issue for adjudication is with respect to the denial of claim of depreciation on the expenditure incurred on development of software and an alternative claim that alternatively, the expenditure be allowed as Revenue expenditure u/s 37(1) of the Act.

5. During the course of assessment proceedings, on the basis of the details furnished by the assessee, it was noticed that assessee had developed “Web Master Software” and on which the assessee had claimed depreciation. The assessee was asked to show-cause as to why the depreciation claimed on such intangible assets not be disallowed as the software was not owned by it and the ownership of the software belonged to the Income tax Department. The submissions that were made by the assessee were not found acceptable to AO. The AO was of the view that since the intangible was not owned by the assessee, the conditions stipulated u/s 32 of the Act were not fulfilled by the Assessee and therefore assessee was not eligible to claim depreciation. He accordingly denied the claim of depreciation amounting to Rs.45,49,974/-. Thereafter, the AO vide order passed u/s 154 dated 15.02.2018 restricted the disallowance of

depreciation to Rs. 22,74,987/- (computed @ 12.5% instead of 25% disallowed in the assessment order) as the expenditure incurred for the software was capitalized on 31.03.2003. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who upheld the order of AO and thereby dismissed the appeal of the assessee. Aggrieved by the order of CIT(A) assessee is now before us.

6. Before us, Learned AR submitted that it is a leading publisher of books of taxation and corporate laws and is also engaged in the development and maintenance of the national website of Income tax Department (i.e. www.incometaxindia.gov.in). During the year under consideration, Assessee had incurred expenditure for the development of Content Management Software (CMS), the ownership which lies with the assessee. The expenditure was capitalized as "CMS" (intangible assets) in the books of accounts. The CMS software developed by the Assessee is a computer application that supports the creation and modification of content used for management and version control of content used by it for publication of books and for maintenance of the website of the Income tax Department. The CMS which has been developed has not even been licensed to the Income tax Department nor has the assessee parted with the title on such intangible assets. He submitted that the CMS software for which the expenses have been incurred is used for the internal purpose of the assessee and

also for providing the services to the Income tax Department under webmaster contract. The software supports most of the contents including text, pdf, embedded graphics, photos, program code that displays content or interacts with the users. The CMS has the capability of version control and document trail with redressal human efforts and corresponding decrease in the cost of content making and updating resulting into improvement in quality, accuracy and finesse of the output. A part of the CMS is also used to control the version and to update the contents provided by the assessee to the Income tax Department. He submitted that in March 2014, assessee had entered into a website development and maintenance contract with Income Tax Department. The agreement was for providing the service of managing / updating the legal content on the website owned by the Income Tax Department namely "incometaxindia.gov.in" which is referred to as "Web Master Software". The services were interalia for development of content and management of Web Master Software/website of the Income Tax Department. He submitted that in order to execute the services, assessee had to develop / update, upgrade its content and in-house software namely CMS from time to time for the purpose of updating the ITAT's website Web Master Software from which it had incurred Rs.1,81,99,897/-. He submitted that since the expenditure was incurred on the content / software owned by the assessee, the expenditure was treated as capital expenditure and on which the depreciation was claimed by the assessee. He submitted that the

AO while framing the assessment order has misconstrued expenditure to have been incurred on the software that belong to the Income Tax Department and therefore concluded that the assessee to be not been eligible for depreciation u/s 32 of the Act. He submitted that CMS, which has been developed by the assessee is computer application which supports the creation and modification of content and is often used to support multiple users working in a collaborative environment. He submitted that CMS is used *inter alia* for web based publishing, history editing, Version control, search indexing and boosting, retrieval. He submitted that it is designed to support the easy management of the content of various titles published by the assessee and it supports contents including text, PDF, embedded graphics and photos etc. He submitted that the customized CMS which has been developed by the assessee is to control the content which is updated regularly and it is also used to content provided by the assessee for the national website of Income Tax Department. He submitted that the CMS is also used to update and manage more than 200 other Bare Acts and Rules which are published by the assessee and it is not only used to update the documents but also used for integrating all the related documents. He submitted that CMS is not an off-shelf software but a proprietary and customized solution developed solely as per the requirements of the assessee which is owned by the assessee. The cost incurred by the assessee for the development of such software has been capitalized in its books of accounts. He submitted that since the

software is owned by the assessee and used for the purpose of business the assessee has complied with the requirements of section 32 of the Income tax Act and is therefore entitled to claim depreciation. As an alternate contention he submitted that if the contention of the assessee with the expenditure pertains to the “Web Master Software” development for Income Tax Department is accepted than the entire expenditure incurred by the assessee should be allowed as a revenue expenditure more so as the expenditure has not been found to be not for the purpose of business. He further submitted that the alternate contention of claiming the entire expenses as revenue expenditure u/s 37(1) was raised before the CIT(A). during the course of appellate proceedings but the same were dismissed by CIT(A) by holding that the issue does not emanate from the assessment order and is not subject matter of appeal. He submitted that the assessee was fully justified in raising the issue before the CIT(A) in view of the decision of Hon’ble Supreme Court in the case of NTPC Ltd vs. CIT reported in (1998) 229 ITR 383 (SC). He further submitted that in subsequent year no disallowance of depreciation has been made though the assessment has not been made u/s 143(3) but u/s 143(1). He, therefore, submitted that the claim of the assessee be allowed.

7. Learned DR on the other hand pointing to the orders of the lower authorities supported their orders.

8. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the claim of depreciation on the intangible being CMS software. Before us, assessee has given the description of the software, its functionality which was also submitted before the CIT(A) as can be noted from the order of CIT(A) wherein the contentions of the assessee have been reproduced. From the details and the submissions made by the Learned AR, it is the assessee's contention that the CMS Software has been developed by it, owned by it and it is used for the purpose of business by updating and managing the Income Tax Act and the other Acts and Rules published by assessee each year. The contention of the assessee of having owning the CMS software by it has not been controverted by the Revenue. Further, the incurring of expenditure on its development has also not been disputed by the Revenue. Before us the Ld AR has also pointed out the the software apart from being mainly used by the assessee for its own business is also being used by it to upgrade the website of the Income tax Department. These contentions of the Ld AR has not been controverted by Revenue by placing any material on record. Further the claim of depreciation made by the assessee in the subsequent year has not been disturbed by the Revenue. Considering the totality of the aforesaid facts and the submissions of Learned AR, we are of the view that the AO was not justified in denying the claim of depreciation u/s 32 of the Act. We, therefore, direct the AO to allow the claim of

depreciation. Since we have held the assessee to be eligible for claiming depreciation, the alternate claim of allowing the entire expenditure u/s 37(1) is rendered academic and therefore, not adjudicated. **Thus, the ground of assessee is allowed.**

9. In the result, the appeal filed by the assessee is allowed

Order pronounced in the open court on 08.07.2020

Sd/-

**(SUSHMA CHOWLA)
VICE PRESIDENT**

Priti Yadav, Sr.PS

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 08.07.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI