

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA No.661 & 662 /Coch/2019
Assessment Years: 2007-08 & 2010-11

The Deputy Commissioner of Income-tax, Circle-1(1), Trivandrum	Vs.	Asianet Satellite Communications Ltd., 2 nd floor, Leela infopark, Technopark Campus, Kazhakuttom, Trivandrum-695 581. [PAN:AAECA 5548E]
(Revenue-Respondent)		(Assessee-Respondent)

Revenue by	Shri Mritunjaya Sharma, Sr. DR
Assessee by	Shri Rajeev R., CA

Date of hearing	02/03/2020
Date of pronouncement	04/03/2020

ORDER

Per CHANDRA POOJARI, AM:

These two appeals filed by the assessee are directed against the different orders of the CIT(A) of even date 23/08/2019 for the assessment years 2007-08 and 2010-11.

2. The assessee has raised the following grounds of appeal in ITA No. 661/Coch/2019:

1. The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that "interest amount for the delayed payment of the pole rent payable by the assessee since 2002-03 is an allowable expense."
2. CIT(A) ought to have noticed that the interest on pole rent was demanded by KSEB due to non-payment of pole rent which had to be paid by appellant within prescribed time limit.
3. The Ld.CIT(A) ought to have considered the difference between the liability of interest due and penal interest arose out of demand by a Competent authority.
4. CIT(A) ought to have noticed that the amount is penal in nature, as it is for the delayed payment of pole rent since 2002-03, and not compensatory.
5. For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax(Appeals), Thiruvananthapuram on the above points may be set aside and that of the Assessing Officer restored.

2.1 The assessee has raised the following grounds of appeal in ITA No.662/Coch/2019:

The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that "the depreciation on Modems is allowable at 60%." CIT(A) ought to have noticed that as per the rate chart under Rule 5 of Income tax Rules, the rate of depreciation at 60% is allowable for computers including computer software. "Computer software" is defined in the "Rule as "any computer programme recorded on any disc, tape, perforated media or other information storage device"- Ld CIT(A) ought to have noticed that "modem" cannot be considered under this definition but it is only "a device that modulates an analog carrier signal to encode digital information, and also demodulates such a carrier signal to decode the transmitted information The order on which Ld CIT(A) relied upon does not discuss the issue of depreciation of modems in detail, but passed the 'order simply considering the decision held

in ITA No.1241/Hyd/2010, for other peripherals which are not at all similar to "modems".

For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax (Appeals), Thiruvananthapuram on the above points may be set aside and that of the Assessing Officer restored.

3. The brief facts of the case as narrated in ITA No.661/Coch/2019 are that the Assessing Officer disallowed the portion of interest expense amounting to Rs. 2,37,71,066/- by way of interest demand raised by KSEB and accepted by the company was in the nature of penal interest for delayed payment of pole rent since 2002-03. According to the Assessing Officer, the amount debited and claimed is a prior period expense and secondly, the amount claimed is a provision made for the said liability, the payment of which was not made during the relevant FY prior period expenses can be claimed only on payment basis. The Assessing Officer noticed that no documentary evidence was also furnished by the assessee. Moreover, it was noticed that the said expenses were penal in nature and hence, on this account also the amount claimed was not allowable. Therefore, the amount of Rs. 2,37,71,066 was added back to the rental income.

4. On appeal, the CIT(A) observed that the Assessing Officer arrived at this conclusion without any basis or understanding of the issue. It is a fact that there was dispute between assessee and KSEB with regard to pole rent chargeable and the same was settled by High Court vide order dated 16.06.2005. The CIT(A) observed that subsequent to this order, KSEB finalized the pole rent payable by the assessee with arrears and also charged interest for the delay in payment. From the

nature of transaction, the CIT(A) concluded that the interest liability was only compensatory payment and the said liability was accrued during the AY 2007-08. Accordingly, the CIT(A) deleted the addition of interest amount of Rs. 2,37,71,006/-

5. Against this, the Revenue is in appeal before us. The Ld. DR relied on the grounds raised.

6. The Ld. AR submitted that the interest paid was only compensation for delayed payment of pole rent and liability accrued during the FY 2006-07. The Ld. AR filed copy of letter dated 28.09.2006 received from KSEB as a proof of crystallization of liability of interest. The learned AR further submitted that the assessee was following mercantile system of accounting and therefore, interest liability accrued is deductible expenditure.

7. We have heard the rival submissions and perused the record. The only issue in the appeal is the admissibility of interest paid of Rs.2,37,71,066 to KSEB towards delayed payment of pole rental charges during the F.Y. 2006-07 corresponding to the A.Y. 2007-08 which was written off. The above amount represents interest for the delayed payment of pole rental charges from the year 2002-03 based on the demand raised by the KSEB. In this demand notice the original demand of Rs.22.99 crores based on the earlier order of KSEB dated 05/12/2019 was reduced to Rs.14.35 crores in pursuance of the order of the High Court. The KSEB revised the demand which was accepted by the assessee in the year 2016-17. Thus, the entire dispute was finally settled based on mutual verifications conducted by the parties.

This was due the serious anomalies in the apportionment of poles in the urban and in the rural areas. The assessee has placed a copy of the demand raised by KSEB on 28.09.2006 and copy of the order of High Court in OP No. 323210 of 2002 dated 16.06.2015 settling the dispute. In view of the fact that the demand had arisen and liability crystallized during the year, the statutory auditors had disclosed the expenditure under extraordinary item in the financial statements of the company in accordance with the provisions of AS-5 on net profit or loss for the year prior period items and changes in the accounting policies issued by the ICAI considering the largeness of the amount involved. In view of the above, there is no case for the department that the expenditure is in the nature of prior period expenses. The Chennai Bench of the Tribunal in the case of ITO(OSD) vs. Sicgil India Pvt. Ltd. (2009) (119 ITD 184) dealt with a case wherein the contractual liability which was disputed arose in the year of settlement of dispute. In the instant case, the dispute involved was finally settled during the F.Y. 2006-07 relevant to the A.Y. 2007-08. Hence, we do not find any infirmity in the order of the CIT(A) and the same is confirmed. This ground of appeal of the Revenue in ITA No.661/Coch/2019 is dismissed.

8. The next ground of the Revenue in ITA No. 661/Coch/2019 is with regard to the difference between liability of interest due and penal interest which arose out of the demand by a competent authority.

9. The Ld. DR submitted that the CIT(A) ought to have noticed that the amount is penal in nature as it is for the delayed payment of pole rent charges since 2002-03 and hence, not compensatory.

10. The Ld. AR relied on the order of the CIT(A).

11. We have heard the rival submissions and perused the material on record. There is no merit in the above ground raised by the Department in so far as it is clear that irrespective of the long delay involved and also the period of default interest computed at a stipulated percentage on the amount of pole rent charges remitted with delay. Therefore, the nature of the payment continues to remain as interest charges only which is of compensatory nature. Reliance is placed on the judgment of the Supreme Court in the case of Prakash Cotton Mills vs. CIT reported in 1993 AIR 2174, 1993 SCR(2) 983 that the Assessing Officer should examine the provisions of the particular statute to verify whether the levy or charge is in the nature of penalty imposed for contravention of law and only in such cases where penalty is levied and prescribed in the statute, the expenditure would become inadmissible u/s. 37(1) of the I.T. Act. Reliance is placed on the judgment of the Supreme Court in the case of Mahalakshmi Sugar Mills Co. vs. CIT (1980) (123 ITR 429) where it was held that the interest for delayed payment of statutory dues is an allowable deduction u/s. 37(1) of the Act. The same view was taken by Supreme Court in the case of Lachmandas Mathurdas vs. CIT (254 ITR 799). Similarly, in the recent decision of the Cochin Bench of the Tribunal in the case of Lakshdweep

Development Corporation Limited in ITA No. 312/Coch/2019 dated 03/10/2018, the Tribunal has held that interest on delayed payment of VAT and TDS is only compensatory and is not penal in nature. Therefore, the CIT(A) has correctly deleted the disallowance made for the interest expenditure claimed on delay payment of VAT and TDS. Thus, this ground of appeal of the Revenue is dismissed. Thus, the appeal of the Revenue in ITA No.661/Coch/2019 for the assessment year 2007-08 is dismissed.

ITA No. 662/Coch/2019 : AY 2010-11

12. The assessee has raised the following grounds of appeal in ITA No.662/Coch/2019:

The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that "the depreciation on Modems is allowable at 60%." CIT(A) ought to have noticed that as per the rate chart under Rule 5 of Income tax Rules, the rate of depreciation at 60% is allowable for computers including computer software. "Computer software" is defined in the "Rule as "any computer programme recorded on any disc, tape, perforated media or other information storage device"- Ld CIT(A) ought to have noticed that "modem" cannot be considered under this definition but it is only "a device that modulates an analog carrier signal to encode digital information, and also demodulates such a carrier signal to decode the transmitted information The order on which Ld CIT(A) relied upon does not discuss the issue of depreciation of modems in detail, but passed the 'order simply considering the decision held in ITA No.1241/Hyd/2010, for other peripherals which are not at all similar to "modems".

For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax (Appeals), Thiruvananthapuram on the above points may be set aside and that of the Assessing Officer restored.

13. The facts of the case as narrated in ITA No.662/Coch/2019 are that the Assessing Officer restricted the depreciation on Modem to 15% as against the claim of 60% by the assessee.

14. Before the CIT(A), the Id. AR submitted that depreciation on Modem is allowable at 60%. The CIT(A) relied on the decision of the ITAT, Hyderabad in the case of Ushodaya Enterprises Ltd, 41 taxmann.com 304 wherein it was held as follows:

"14. The only issue in the aforesaid appeal is with regard to the disallowance of depreciation amounting to Rs.2,30,96,110/-made by the Assessing Officer and confirmed by the CIT (A) on certain equipment and peripherals by treating them as not forming part of computer.

15. Since we have already dealt with the facts quite exhaustively in assessee's appeal in ITA No.1241/Hyd/2008, it is not necessary to deal with them over again in this appeal. However, suffice it to say that, in the impugned year also during the scrutiny assessment proceedings the Assessing Officer noticed that the assessee has claimed depreciation at 60% on various items like printers, scanners, modems, switches, hubs, cables/cards and software etc., by treating them as computer. Though the assessee argued that all these items being integral part of computer are eligible for depreciation at 60% but the Assessing Officer rejected all the contentions of the assessee and allowed depreciation @25% by treating it as plant and machinery. While coming to such conclusion, the Assessing Officer as in case of assessment Year 2002-03 held that only CPU, monitor, key board, mouse can be considered to be computer whereas other peripherals like printers, scanners, modems, switches, photo/edit/equipment, UPS, net work cables and software cannot be considered as computer. This view of the Assessing Officer was also upheld by the CIT (A).

16. We have heard the submissions of the parties and perused the material on record. We have decided identical issue in assessee's appeal in ITA No.1241/Hyd/2008 for the asstt. Year 2002-03. In view of our finding in paras 11 and 12 of the order hereinbefore, we also decide this issue in favour of the assessee by holding that depreciation claimed at 60% on printers, scanners, modems, switches, hubs, cables/cards and software etc., should not be disallowed as these devices are used along with the computer and their

functions are integrated with the computer. Accordingly, we set aside the order passed by the CIT (A) by allowing the grounds of the assessee”

15. Following the above decision of the Tribunal, the CIT(A) held that the depreciation on Modems is allowable at 60% and directed the Assessing Officer to allow the same. Thus, the CIT(A) allowed the ground with regard to depreciation on Modems.

16. Against this, the Ld. DR is in appeal before us. The Ld. DR relied on the grounds raised.

16.1 The Ld. AR submitted that the Assessing Officer had himself allowed depreciation at 60% for modems in the assessments of succeeding four years i.e., AY 2011-12 to AY 2014-15 and in the said years disallowance of depreciation claimed at 60% was made only in respect of set top boxes and depreciation on modems claimed at 60% was allowed.

17. We have heard the rival submissions and perused the material on record. The Special Bench of the ITAT, Mumbai has held in the case of Dy.CIT vs. Data Craft India Ltd. reported in (2010) (40 SOT 295) that definition of computer should not be restricted to Central Processing Unit of the computer but should also extend to all input and output devices which support computer in the receipt of input on outflow and output to and from the computer. Further, in the following decision of High

Courts and Tribunals, it has been held that modem is an integral part of a computer eligible for high rate of depreciation of 60%:

i) In the case of Dina Malar vs. ITO (2016) (74 taxmann.com 2014, the Madras High Court has held that the computer peripherals like CTP machine, scanner, SISCO, router modem etc. are eligible for 60% depreciation being a part of computers as computer peripherals.

ii) In the case of Ushodaya Enterprises Ltd. vs. DCIT (2015) (60 taxmann.com 85 (Hyderabad Trib.), it was held that the printers, scanners, modems and routers constitute integral part of computer systems and are eligible for depreciation at higher rate of 60% applicable to computer.

(iii) In the case of DCIT vs. Microsoft corporation India Pvt. Ltd. (2011) (9 taxmann.com 253) (Delhi Trib.), the Tribunal held that networking equipment which includes routers, modems etc. are used as a part of computer in its functions and thus it can be termed as computer only and therefore would be eligible for depreciation at higher rate of 60%.

17.1 In view of the above legal decisions, we do not find any infirmity in the order of the CIT(A) and the same is confirmed. Accordingly, this ground of appeal of the Revenue is dismissed. Thus, the appeal of the Revenue in ITA No.662/Coch/2019 for the assessment year 2010-11 is dismissed.

18. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 4th March, 2020.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 4th March, 2020
GJ

Copy to:

1. Asianet Satellite Communications Ltd., 2nd floor, Leela infopark, Technopark Campus, Kazhakuttom, Trivandrum-695 581.
2. The Deputy Commissioner of Income-tax, Circle-1(1), Trivandrum.
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr. Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin