

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.2126 & 2127/CHNY/2019.
निर्धारण वर्ष /Assessment years : 2015-16 & 2016-2017.

M/s. Financial Software and Syste
Private Limited,
No.42, Saradha, Ground floor,
3rd Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 2(1),
Chennai.

[PAN AAACF 2351C]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Sriram Seshadri, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Abani Kanta Nayak, CIT.

सुनवाई की तारीख/Date of Hearing : 16-03-2020
घोषणा की तारीख /Date of Pronouncement : 17-03-2020

आदेश / O R D E R

PER BENCH:

These are appeals filed by the assessee directed against common order of Id. Commissioner of Income Tax (Appeals)-6, Chennai, ('CIT(A)' for short) dated 29.04.2019 for the Assessment Years 2015-2016 and 2016-2017.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose of the same vide this common order.
3. For the sake of convenience and clarity the facts relevant to the appeal in ITA No.2126/Chny/2019 for assessment year 2015-16 are stated herein.
4. The Assessee raised the following grounds of appeal:

'General Grounds

1. The lower authorities have erred in finalizing an order of assessment which suffers from legal defects such as being passed in violation of principles of natural justice and the provisions of the Act and is devoid of merits and are contrary to facts on record and applicable law, and has been completed without adequate inquiries and as such is liable to be quashed.

2. The lower authorities have finalized their order with improper adjustments to the reported loss of the Appellant, as a result of misapplying the provisions of the Act.

II. Disallowance of depreciation claimed on Automated Teller Machines (ATM)

3. The lower authorities have, in facts and circumstances of the case and in law, failed to appreciate that ATMs are computerized telecommunication device and it would fall under the definition of computer network included under the definition of Computers.

4. The lower authorities have, in facts and circumstances of the case and in law, erred in not following the decisions of High Court and Tribunal, which have held that ATMs are to be classified as computers.

5. The lower authorities have, in facts and circumstances of the case and in law, erred in relying on the principle of common

parlance stating that the ATM would be considered as electronic device and not computer peripherals.

6. The appellant humbly submits that the above issue is covered in favour of your appellant by the order of the Co-ordinate Bench of this Hon'ble Tribunal in the appellant's own case for the earlier two AYs 2013-14 and 2014-15.

The grounds of appeal raised by the Appellant herein are without prejudice to each other. The Appellant craves leave to add to and or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this appeal".

5. The brief facts of the case are as under:

The appellant namely M/s. Financial Software and Systems Private Limited. is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of ATM management services. The return of income for the AY 2015-16 was filed on 24.11.2015 disclosing loss of Rs.5,35,75,794/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Corporate Circle 2(1), Chennai (hereinafter called "AO") vide order dated 21.12.2017 passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of ₹40,00,83,210/-. While doing so, the AO allowed depreciation on ATM machines @15% as against the claim of the assessee at 60%, rejecting the contention of the assessee that ATM machine falling within the meaning of "computer" qualifying for depreciation @60%

by placing reliance on the decision of Hon'ble Karnataka High Court in the case of *Diebold Systems (P) Ltd vs. Commissioner of C.T. (2006) 144 STC 59*, under Karnataka VAT Act, 2003.

6. Being aggrieved by the above additions, an appeal was preferred before the Id. CIT(A), who vide impugned order confirmed the action of the Assessing Officer.

7. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. It is contended before us that the issue in the present appeal is covered in favour of assessee in assessee's own case in ITA Nos.2564 & 2565/Chny/2018 for assessment years 2013-2014 and 2014-2015 vide order dated 07.06.2019 following the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Saraswat Infotech Ltd in ITA(L) No.1243 of 2012, dated 15.01.2013*, allowed the appeal.

8. On the other hand, the Id. CIT- Departmental Representative placed reliance on the decision of Hon'ble Karnataka High Court in the case of *Diebold Systems (P) Ltd (supra)*.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal is covered in favour of the

assessee in assessee's own case for assessment years 2013-2014 and 2014-2015, wherein it is held as follows.

"6. We have heard the rival submissions. The primary facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. The short point that arise for our consideration is as to whether the ATMs are eligible for depreciation at the rate of 60% treating it at par with the computer and computer peripherals. The Id DR vehemently argued that the ATM is not a computer and it is merely a cash dispensing machine. From the paper book submitted by the assessee, more particularly in pages 1 to 4, it is evident from the pictorial representation thereon, that the ATM has got a card reader, biometric reader, cash camera, consumer awareness mirrors, has got highly reliable note validation technology, having deposit capacity of 10000 bank notes minimum in secure deposit box, minimized jam rate with self diagnosis and failure recovery capability, etc. He also argued that ATM is built to consume upto 40% less energy than the previous generation of cash dispensers currently available in the Indian market and it delivers incremental power savings and sustainable deployment throughout the year.

6.1. We find that the issue under dispute is directly addressed by the co-ordinate bench of Kolkata Tribunal in the case of Royal Bank of Scotland N.V. vs DDIT (International Taxation) reported in (2017) 88 taxmann.com 330 (Kolkata – Trib.) dated 13.4.2016 (wherein one of us was the author) had held that :-

8.2 We have heard the rival submissions. We find that the ATM machines are nothing but computers as they deal with the functions of decoding the information, processing the same and giving the output. The Learned AR submitted that ATM is a computer terminal activated by a magnetically encoded debit card that allows a person to make deposits to and withdrawals from his account pay bills, transfers money between his account at any time. The inbuilt computer software therein allows the person to make financial transactions and check the account balances. It was the submission of the Learned AR that inside every ATM there is a computer which is not very different from any other personal computer but the basic function of connecting a person to the bank ATM network and accessing his account information are done by the ATM and the software used in the ATM is also the same software which is used in the computer. We also find that similar issue has been addressed by the Special Bench of Mumbai Tribunal in the case of Dy. CIT v. Datacraft India Ltd. [\[2010\] 40 SOT 295](#) wherein the definition of 'computer' given by the Information Technology

Act, 2000 has been discussed and it has been held that the computer is to perform logical, arithmetical and memory functions on data etc and it is not only the equipment which perform such functions that could be called as computer but includes all input and output devices which are connected to or related to it. The Special Bench accordingly held that routers and switches are also to be included in the block of computers entitled to depreciation at the rate of 60%. We find that the ATM machine is doing the logical, arithmetic and memory functions by manipulations of electronic magnetic or optical impulses giving debit or credit cash and thereafter dispenses the cash and gives a printed receipt and hence it could be safely concluded that computer is an integral part of ATM machine and on the basis of the information processed by the computer in the ATM machine only, the mechanical functions of the dispensation of cash or deposit of cash is done.

8.2.1. *We find that the issue is dealt with by the co-ordinate bench of Delhi Tribunal in the case of Global Trust Bank Ltd. (supra), wherein it was held that :—*

- 7. ATM is the computerized telecommunication device that allows bank's customers to access the bank at places other than the normal bank without having to take the trouble to go to the bank in person and collect the cash as is done under the conventional method of withdrawing money from the bank. The ATM machines are computerized machines which not only allow the customers to withdraw money but they can check the account balance, pay bills, purchase goods and services, and therefore, unless it is computerized and linked with the main server, it is not possible to operate the ATM.*
- 10. In this connection, a reference is also invited to the Information Technology Act, 2000 wherein section 2(i) defines the term "computers" which also includes "computer network". The term "computer network" means the interconnection of one or more computers through the use of satellite, microwave, terrestrial line or other communication media and terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained. From this angle also, Local Area Network (LAN), Wide Area Network (WAN) and ATM would undoubtedly form a part of computer.*
- 11. In the light of the view we have taken above, we direct the AO to allow depreciation at the rate of 60% on LAN, WAN and ATM equipments. We order accordingly.*

8.2.2

8.2.3 *In respect of the case relied on by the Learned DR on the decision rendered by this tribunal in assessee's own case for Asst Year 2004-05, we find that this decision was rendered*

on 30.6.2010 and thereafter much water has flown on the impugned issue by the decisions of Delhi and Mumbai Tribunal and the decision of Bombay High Court. Respectfully following the aforesaid judicial precedents, we have no hesitation in directing the Learned AO to allow depreciation at the rate of 60% on ATMs. Accordingly, the ground no. 5 raised by the assessee for the Asst Years 2005-06 and 2006-07 are allowed.

6.2. We also find that the decision relied upon by the Id DR on Hon'ble Karnataka High Court supra was rendered in the context of Karnataka Sales Tax Act and not under Income Tax Act. In this regard, we find that the Hon'ble Supreme Court in the case of Jagatram Ahuja vs CIT reported in 246 ITR 609 (SC) had observed as under:-

23. We find that Kantilal Trikamlal's case (supra) supports the view taken in N.S. Getti Chettiar's case (supra). Added to this, section 2(15) of the Estate Duty Act, defining 'property' came up for consideration in Kantilal Trikamlal's case (supra). We may state here itself that the word and expressions defined in one statute as judicially interpreted do not afford a guide to construction of the same words or expressions in another statute unless both the statutes are pari materia legislations or it is specifically so provided in one statute to give the same meaning to the words as defined in other statute. The aim and object of the two legislations, namely, the Gift-tax Act and the Estate Duty Act are not similar.

It is obvious that the purpose behind introduction of Karnataka VAT Act and Income Tax Act 1961 are totally different and moreover one is a state legislation and another is a central legislation. Hence the words and expressions in one statute cannot be imported into another statute unless both the statutes are pari materia legislations or one statute provides for the meaning to be imported specifically from another statute in respect of certain words and expressions. In the instant case, none is present and hence the reliance placed on the decision of Hon'ble Karnataka High Court rendered in the context of Sales Tax Act supra does not advance the case of the revenue.

6.3. In any case, we find that the decision of Hon'ble Bombay High Court on the very same issue is in favour of the assessee in the case of CIT vs Saraswat Infotech Ltd in Income Tax Appeal (L) No. 1243 of 2012 dated 15.1.2013. The question raised before the Hon'ble Bombay High Court was as under:-

b) Whether on the facts and circumstances of the case the ITAT was right in holding that depreciation on ATM is allowable @

60% ignoring the fact that ATM is a cash dispensing machine with a projector and therefore is in nature of plant and machinery and therefore depreciation should be provided @ 15% ?

The Hon'ble Bombay High Court observed as under:-

3) The Assessing Officer was of the view that the UPS and ATMs would not fall under the category of computers and being part of plant and machinery / office equipment would be eligible for depreciation only at 15%. Similarly, he disallowed the claim for depreciation on software licence on the ground that the same was not put to use in the previous year to the assessment year 2008-09 . Consequently the excess claim of depreciation made by the respondent assessee was disallowed.

4) In appeal the CIT(Appeals) upheld the findings of the Assessing Officer.

5) In second appeal, the Tribunal by its order dated 14/3/2012 held that UPS is an integral part of the computer system and regulate the flow of the power to avoid any kind of damage to the computer network due to fluctuation in power supply which could lead to loss of valuable data. The Tribunal relied upon the decision of the Delhi High Court dated 20/1/2011 in the matter of CIT v. Orient Ceramics and Industries Ltd in which UPS was held to be the part of the computer system and depreciation at 60% was allowed. Similarly, so far as ATMs are concerned, the Tribunal on finding of fact concluded that ATM cannot function without the help of computer and would be a part of the computer used in the banking industry. Reliance was placed by the Tribunal upon the decision of the Delhi Bench of Tribunal in the matter of DCIT v. Global Trust Bank (ITA No. 474/D/09) wherein it has been held that ATM was a computer equipment and depreciation @ 60% was allowed. So far as the use of software is concerned, the Tribunal records a fact that the evidence of the use of the software on 31/3/2008 was produced before the Tribunal. Thus, the Tribunal held that depreciation @ 30% on software was rightly claimed.

6) We note that the Tribunal has arrived at a finding of fact on all the three questions. The revenue has not been able to show that the above finding of fact is perverse. Thus, we do not see any reason to entertain question (i) , (ii) and (iii) above.

7) Accordingly, the appeal is dismissed with no order as to costs.

6.4. We find that the Hon'ble Apex Court in the case of CIT vs Vegetable Products Ltd reported in 88 ITR 192 (SC) had held that when there are two conflicting decisions of two different high courts (non-jurisdictional) , then the construction that is favourable to the assessee is to be adopted.

6.5. Hence in the instant case, the decision of Hon'ble Bombay High Court supra which was rendered in the context of Income Tax Act and duly addressing the arguments of the Id DR before us also, would rule the fort and accordingly we direct the Id AO to grant depreciation at the rate of 60% on ATMs for the Asst Year 2013-14 and the grounds raised by the assessee in this regard are allowed. This decision would apply with equal force for Asst Year 2014-15 also”.

The submission of the Id. CIT-Departmental Representative that higher rate of depreciation cannot be allowed on ATM machines as applicable to the computers cannot be accepted in view of the fact the Hon'ble Karnataka High Court in the case of Diebold Systems (P.) Ltd. (supra) wherein while interpreting an entry in the schedule in Karnataka Sales Tax Act, 1957 on the basis of commercial parlance meaning, over technical meaning, holding thereunder that ATM is not a computer by itself but are electronic goods would not govern the interpretation to be assigned on the same issue arising under the Income-tax Act, 1961 in view of the settled principle of judicial interpretation, namely, that the words and expressions defined in one statute as judicially interpreted do not afford a guide to the construction of the same words or expression in another statute, unless both the statutes are *pari materia* legislations or it is

specifically provided in one statute to give the same meaning to the words as defined in another statute [Jagatram Ahuja v. CGT (2000) 246 ITR 609/113i Taxman 459 (SC)]. The Hon'ble Supreme Court of India in the case of Jagatram Ahuja (supra) while laying down the said principle clarified that aims and object of the two legislations, namely, the Gift Tax Act and the Estate Duty Act, are not similar. The Karnataka Sales Tax Act and the Income-tax Act, 1961 are not similar, i.e., *pari materia* legislations. In the matter of interpretation of an entry under the sales tax laws 'Trade Test' or 'Common Parlance Test' is applied while considering whether a particular item/goods fall in an entry or not, whereas under the Income-tax Act, 1961, particularly when considering whether an item is to be considered as 'plant and machinery' and/or 'building' or any of the items specified in the Appendix to the Incometax Rules, 1962, functional test is the decisive test, as ruled by the Hon'ble Supreme Court of India in numerous cases, one such being CIT vs. Anand Theatres (2000) 244 ITR 192/110 Taxman 338. In other words, the test would be: Does an ATM fulfil the functions of a Computer in the business activity of an assessee? Is it a tool of his trade with which it carries on his business? If the answer is in affirmative, it would be a computer and moreover the issue was already decided in favour of the assessee in assessee's own case by the Co-ordinate Bench of the Tribunal and hence, we do

not find any reason to depart from the findings of the Co-ordinate Bench of the Tribunal. Accordingly, we direct the Assessing Officer to allow depreciation @60% as claimed by the assessee. Thus, the appeal filed by the assessee in ITA No.2126/CHNY/2019 for assessment year 2015-2016 stands allowed.

ITA No.2127/CHNY/2019 for assessment year 2016-17

10. Since, the facts in the present appeal are identical to the facts in ITA No.2126/Chny/2019, for assessment year 2015-16, for the reasons mentioned therein, we allow the appeal in the same lines indicated in appeal ITA No.2126/Chny/2019 supra. Hence, the above captioned appeal filed by the assessee stands allowed.

11. In the result, the appeals filed by the assessee in ITA Nos. 2126 & 2127/CHNY/2019 for assessment years 2015-16 and 2016-17 are allowed.

Order pronounced on 17th day of March, 2020, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 17th March, 2020.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |

