IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI G.S.PANNU, PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.5263/Del/2018
[Assessment Year : 2014-15]

DCIT, Circle-12(1), New Delhi.	vs	Indian Mortgage Guarantee Corporation Pvt.Ltd., A-47, Lower Ground Floor, Hauz Khas, New Delhi-110049. PAN-AACCG6775B
APPELLANT		**RESPONDENT**
Appellant by		Sh. Hiten Chande, CA
Respondent by		Sh. Umesh Takyar, Sr.DR
Date of Hearing		01.11.2021
Date of Pronouncement		09.11.2021

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-22, New Delhi dated 14.05.2018. The Revenue has raised following grounds of appeal:-

1. "Whether, the Ld. CIT (A) has erred on facts and in law in allowing depreciation @ 60% on the Policy Administration Software (PAS) against the rate of 25% applicable to intangible assets.

a). Whether the Ld CIT(A) has erred in holding that the software in question is covered in Item No.5 in Part A "Tangible Assets" under the head "Machinery and Plant" in the Appendix under Rule 5, failing to appreciate that expression "computer including computer software" in the said Item implicitly refers to the systems software which runs the computer and is an integral part of computer itself as a "Tangible Asset" and that the payments for right to use specialized software applications constitute an "Intangible Assets" in Part B,

being in the nature of license on which depreciation @ 25% only is admissible.

b) Whether the Ld CIT (A) has failed to appreciate that the asset in question i.e. payment for acquiring right to use the PAS Software (including the expenditure on its customization) is in the nature of an "Intangible Asset" in Part B as it is a license for use of a specialized software for managing its mortgage guarantee business, independent of the life of the computer, and therefore eligible for depreciation @ 25% only.

2. The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hearing of appeal."

2. The only effective ground in this appeal is against the decision of Ld.CIT(A) to allow depreciation @ 60% on the Policy Administration Software ("PAS") against the rate of 25% allowed by the Assessing Officer treating the same as an intangible assets.

3. Facts giving rise to the present appeal are that the assessee filed its return of income on 28.11.2014 declaring loss of Rs.11,11,33,504/-. The case was selected for scrutiny under CASS and the assessment was framed vide order dated 14.12.2016 . Thereby, the Assessing Officer disallowed the claim of the assessee of depreciation @ 60% and restricted the same to the extent of 25%. The difference was added to the total income of the assessee amounting to Rs.2,45,22,452/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions and relying upon various judicial precedents, allowed the claim of the assessee.

5. Aggrieved against this, the Revenue is in appeal before this Tribunal.

6. Ld. Sr. DR vehemently argued that Ld.CIT(A) was not justified in allowing the claim of depreciation @ 60% as the software was customized and could be used without the operation of computer. He contended that such software would fall within the category of intangible assets. Therefore, the depreciation of such assets is allowable @ 25% only.

7. On the contrary, Ld. Counsel for the assessee opposed these submissions and supported the order of Ld.CIT(A). He submitted that the issue is no more *res integra*. The issue has already been decided in catena of judgements in favour of the assessee by allowing the depreciation @ 60%. He submitted that under the identical facts, the Hon'ble Madras High Court in the case of *CIT vs Computer Age Management Services (P.) Ltd.[2019] 109 taxmann.com 134 (Madras)* decided the issue in favour of the assessee by allowing depreciation @ 60%.

8. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A has decided the issue by observing as under:-

> ***6. "Ground no. 2 & its sub grounds:*** *In this case the addition has been made of Rs.245,22,452/- by disallowing the excess depreciation claimed by the appellant. The AO has noted that the appellant has purchased policy administration software license and claimed depreciation @60%. The AO restricted the same as 25% on the basis that software falls under the definition of intangible assets and allowable deprecation is 25%. In appeal Ld. AR submitted that the appellant has acquired the right to use the software required for mortgage guarantee business in India. The Ld.*

AR further argued on the basis of various case laws that computer software can not work in isolation and it has to be loaded on computer, so it is a part of computer and depreciation is allowable @ 60%. The Ld. AR relied on the following decisions:

I. *ACIT vs i-Flex Solutions Ltd [2010] (42 SOT 7) Mumbai ITAT.*
II. *ACIT vs. Zydus Infrastructure (P.) Ltd [2016] 161 ITD 611, Ahmadabad, ITAT*
III. *Visual Graphics Computing Services India Pvt. Limited vs. DCIT (ITA No.617, 697, 698/Mds/2011), Chennai ITAT.*
IV. *ACIT vs. Voltamp Transformers Ltd. (ITA No. 1676/Ahd/2012), Ahmadabad, ITAT*
V. *TNS India Pvt. Ltd. v. ITO (2015)(69 SOT 22), Hyderabad ITAT*
VI. *Amway India Enterprises Vs. DCIT, 111 ITD 112, Delhi ITAT.*
VII. *Deepak Fertilizers & Petrochemicals Corpn. Ltd vs. DCIT (ITA Nos. 4904 & 5027/Mum/2009)*

6.1. *I have carefully gone through the finding of the AO, submission of the appellant and the case laws. Ld. AR has relied upon decision of IT AT Delhi in the case of M/s Amway India Enterprises (supra) in which ITAT has allowed depreciation on software @60%. Respectfully following the decision of ITAT Delhi. it is held that depreciation @60% is allowable in the case of software. In view of this the appeal of the appellant is allowed."*

9. Further, Ld. Counsel for the assessee has placed reliance on the decision of Hon'ble Madras High Court in the case of *CIT vs Computer Age Management Services (P.) Ltd* (supra). The Hon'ble High Court has held as under:-

11. "In the decision rendered by a Division Bench of this Court in the case of CIT Vs. M/s.Cactus Imaging India Private Limited [reported in (2018) 406 ITR 406], to which, one of us (TSSJ) was a party, an http://www.judis.nic.in identical question came up for consideration wherein the object was printer (computer printer). This Court, after taking into consideration as to how the entries would be interpreted, referred to

the decision in the case of Bimetal Bearings Ltd. Vs. State of Tamil Nadu [reported in (1991) 80 STC 167] and held as hereunder :

> *"9. The Hon'ble Division Bench took note of the decision of the Hon'ble Supreme Court pointing out that the 'entry' to be interpreted is in a taxing statute; full effect should be given to all words used therein and if a particular article would fall within a description, by the force of words used, it is impermissible to ignore the description, and denote the article under another entry, by a process of reasoning.*
>
> *10. It was further pointed out that the rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous.*
>
> *11. By applying the rule of interpretation, we find that the relevant entry under old appendix I Clause III (5) states computers including computer software and the Notes under the Appendix defines 'computer software' in Clause 7 to mean any computer program recorded on disc, tape, perforated media or other information storage http://www.judis.nic.in device. Noteworthy to mention that the notes contained in the appendix, the term 'computer' has not been defined. Therefore, as pointed out by the Division Bench in Bimetal Bearings Ltd. (supra), if a particular article would fall within the description by the force of words used, it is impermissible to ignore the word description. Thus, going by the usage of the equipment purchased by the petitioner, we have to take a decision."*

12. As held in the above decision, if a particular article would fall within the description by the force of the words used, it is impermissible to ignore the word 'description' and going by the usage of the equipment purchased by the assessee, a decision has to be arrived at. We find that there is no error in the decision arrived at by the Tribunal by taking note of the specific entry in contra distinction with the general entry. Therefore, the

first substantial question of law has to be necessarily answered against the Revenue.

13. So far as the second substantial question of law is concerned, which arises only for the assessment year 2014-15, the Tribunal accepted the case of the assessee by interpreting the non compete clause in the agreement, which has been reproduced in paragraph 25 of the impugned order. After analyzing the same, the Tribunal held that the tenor of the agreement was only 18 months and it could not be stated that the assessee derived any enduring benefit due to the payment effected by it for obtaining certain commitments from one Mr.V.Shankar and restricting himself from indulging http://www.judis.nic.in in any competition with the business of the assessee or from weaning way the employees.

14. The Tribunal took note of the decision a Division Bench of this Court in the case of M/s. Asianet Communications Ltd. Vs. CIT [2018] 96 taxmann.com 399/257 Taxman 473/407 ITR 706 (Mad.), to which, one of us (TSSJ) was a party, wherein this Court considered a similar condition imposed in a non compete agreement. Therefore, we find that the Tribunal, on appreciation of the factual position, rightly held that a non compete fee has to be treated as a revenue expenditure. Hence, the second substantial question of law is to be necessarily answered against the Revenue."

10. In view of the binding precedents, we do not see any reason to interfere with the findings of the Ld.CIT(A), the same is hereby affirmed. Thus, ground raised by the Revenue is dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 09th November, 2021.

Sd/-	***Sd/-***
(G.S.PANNU)	**(KUL BHARAT)**
PRESIDENT	**JUDICIAL MEMBER**

* *Amit Kumar* *

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI