

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.5244/Del/2019
(Assessment Year: 2015-16)**

Arcserve India Software Solution Pvt. Ltd.,
701, Vikrant Tower 4,
Rajendra Place,
New Delhi – 110 008.

vs. ACIT, Circle 3 (1),
New Delhi.

(PAN : AAMCA8054F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rohit Tiwari, Advocate
Ms. Tanya, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 31.01.2024
Date of Order : 06.02.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-32, New Delhi dated 08.04.2019 for the assessment year 2015-16.

2. The assessee has taken the following Ground of appeal :-

“The Ld. CIT (A) has erred in confirming the disallowance of the depreciation of Rs.88,58,662/- made by the Ld. ACIT while framing assessment on the premise that some of the invoices were in the name of associate company of USA and some invoices were bearing the date of next Financial Year without appreciating the fact on record.”

3. Brief facts of the case are that assessee company had filed its ITR for AY 2015-16 on 28.11.2015 declaring an income of Rs.68,36,090/-. The case was selected for scrutiny through CASS under the reason 'Depreciation claimed at higher rates/higher addition depreciation claimed'. During the course of assessment proceedings, assessee was asked to give the details and evidence of procurement of assets during the year on which depreciation has been claimed. Assessee furnished the details of addition made to fixed assets during the year under consideration. On perusal of the bills, AO noted that certain bills were in the name of Associated Enterprise of USA and certain bills were dated after 31.03.2015. AO observed that assessee was in the phase of setting up of its business and had not claimed any expense for employee cost and hence the assets could not have been put to use. He also observed that some of the fixed assets bills were not in the name of assessee and some of the bills pertained to next assessment year. In view of the above, AO disallowed the claim of depreciation in respect of Plant and Machinery i.e. computers Rs.8,397,818/-, furniture & fittings Rs.2,59,133/- and building Rs.2,01,711/- aggregating to Rs.88,58,662/-. AO also held that since the assets were not put to use the claim of depreciation for arriving at book profit under the Company Law was not also allowable. Accordingly, he disallowed depreciation of Rs.9.86.208/- claimed for arriving book profit for the purpose of MAT.

4. Upon assessee's appeal, ld. CIT (A) confirmed the order of the AO by concluding as under :-

“ I have carefully considered the observations of AO and submissions of appellant. It is seen that appellant is a 100% subsidiary of Arcserve UK Holding Pvt Ltd which was incorporated on 01.08.2014. During the year, appellant was involved in setting of its business. It is also seen that all the procurements were handled by Arcserve USA which is a recipient of 'Software Analysis and Testing Modules' services from Arcserve Software India It is also seen that during A.Y. 2015-16 appellant signed a business transfer agreement for purchase of running business of 'CA India Technologies Pvt Ltd.' on slump sale basis. Appellant has stated that agreement dated 26.02.2015 provided the details of employees alongwith assets to be transferred to Arcserve India on 01.03.2015, but due to technical reason the record date of acquisition was extended to 31.05.2015 Therefore, it is apparent that appellant had no employee during the F Y 2014-15 as all the employees were acquired from M/s CA India Technologies Pvt. Ltd. Further it is seen that ownership of computers in the name of Arcserve USA has been transferred through inter office memo to appellant and appellant claims that depreciation is allowable to it as it has been put to use in Indian office prior to closer of financial year. However, it is clear that user and ownership is not established in the case of appellant. There is no evidence that these computers were used by appellant in its business as its business was in the process of being set up and the employees were acquired on 31.05.2015 i.e. after the end of the financial year. AO has observed that revenue has been booked on the basis of markup of 15% over and above the expenditure/cost incurred by assessee which shows that in actuality no revenue was earned by appellant during the year. It is also to be noted that the expenses prior to set up of business will be pre-operative expenses which has to be added to the cost of asset and depreciation has to be claimed once the business is set up and operational and which appellant could have claimed in subsequent years. In totality of Circumstances, I am in agreement with AO that assets have not been put to use during the year as there were no employees on the payroll of appellant till the end of financial year and ownership was not established. Therefore, there is no basis in the claim of appellant.”

5. Against the above order, assessee has filed appeal before us. We have heard both the parties and perused the records.

6. Ld. Counsel of the assessee made following submissions :-

“The appellant company was incorporated on August 1, 2014. The appellant company is 100% subsidiary of 'Archserve UK Holding Limited'. The appellant, being in the setup phase, managed procurements through Arcserve USA, a subsidiary of its parent company, Arcserve UK Holding Limited.

Assessment Observations: The AO raised issues with asset bills not being in the company's name, dates beyond the fiscal year, and lack of employee expense claims to question asset usage.

Appellant's Argument:

- **Asset Ownership and Procurement:** Assets were procured through Arcserve USA due to the company's initial setup phase. Ownership of assets invoiced to Arcserve USA was transferred to the appellant via inter-office memos.
- **Transfer Agreement (BTA):** Assets and employees were transferred from CA India Technologies, with some delays in execution.
- **Corrected Invoice and Use:** Invoices from Dell International were initially incorrect but later rectified after the fiscal year-end. Despite this, assets were in use, and payments were made within the fiscal year.
- **Interior Work and Depreciation:** Partial completion of interior work was capitalized and depreciated based on completion within the fiscal year.
- **Employee Costs:** Operations commenced with directors and assistance from Arcserve USA and CA Technologies employees, negating additional manpower costs.

Challenge to AO's Interpretation of Expenses and Revenue:

- The appellant argues against the AO's inference that no expenses were incurred, as operational assets and workspaces were in use.
- Revenue billed to the AE includes all expenses, challenging the AO's contention.

Prayer: The appellant prays that the AO's disallowances of Depreciation are unjust, the depreciation may be allowed.”

7. Per contra, Id. DR for the Revenue relied upon the orders of AO and Id. CIT (A).

8. We find that the only issue involved is disallowance of depreciation as the assets which were held by the assessee were not put to use as per authorities below. In this regard, we note that the first objection of the authorities below is that ownership of the assets and bills were in different names. In this regard, Id. Counsel submitted that assets were procured through Arcserve USA due to the company's initial setup phase. Ownership of assets invoiced to Arcserve USA was transferred to the assessee via inter-office memos. As regards the incorrect invoice, the same was rectified after the fiscal year end but the assets were in use and payments were made during the current assessment year. Assessee stated that there was a business transfer agreement for purchase of running business of 'CA India Technologies Pvt. Ltd.' which was to take place from 26.02.2015 but due to some technical reason the record date of acquisition was extended to 31.05.2015. Furthermore, as regards the objection that no employee cost is there, assessee's submission in this regard is that operations commenced

with directors and assistance from Arcserve USA and CA Technologies employees, negating additional manpower costs. Furthermore, the most important feature is that assessee had arrangement with its AE for billing cost plus 15%. This has been duly billed during the year and entire depreciation cost plus 15% has been billed to the AE. When the Revenue is accepting the revenue earned which is totally based upon depreciation plus 15% markup, there is no reason to deny the cost. Hence, we are of the considered view that the authorities below have erred in disallowing the depreciation. In the facts and circumstances of the case, we are in agreement with the submission of the Id. Counsel of the assessee that depreciation claimed is to be allowed. Accordingly, in view of the above, assessee is entitled to claim the depreciation.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 06th day of February, 2024.

**Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 06th day of February, 2024

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-32, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**