

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री जी. मंजुनाथा, लेखा सदस्य एवं श्री संजय सरमा, न्यायिक सदस्य के समक्ष
Before Shri G. Manjunatha, Accountant Member &
Shri Sonjoy Sarma, Judicial Member

आयकर अपील सं./I.T.A. No.439/Chny/2022
निर्धारण वर्ष/Assessment Year: 2017-18

M/s. Financial Software and Systems
Private Limited, 42, "Saradha", Ground
Floor, 3rd Main Road, Gandhi Nagar,
Adyar, Chennai 600 020.

Vs. The Deputy Commissioner of
Income Tax, Corporate Circle 2(1),
Room No. 511, 5th Floor, Wanaparthy
Block, #121 Uttamar Gandhi Salai,
Chennai 600 034.

[PAN:AAACF2351C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Ashik Shah, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri A.S. Sumanth, JCIT
सुनवाई की तारीख/ Date of hearing : 17.08.2022
घोषणा की तारीख /Date of Pronouncement : 24.08.2022

आदेश /O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, dated 25.02.2022, relevant to the assessment year 2017-18.

2. The appeal filed by the assessee is delayed by 31 days in filing the appeal before the Tribunal due to outbreak of COVID-19 pandemic and accordingly, the delay is condoned and admitted the appeal for adjudication.

3. Brief facts of the case are that the assessee, M/s. Financial Software and Systems Private Limited, is engaged in the business of Automated Teller Machine [ATM] management services and filed its return of income for the assessment year 2017-18 on 29.11.2017 admitting total income of ₹.81,42,210/- under normal provisions of the Act and of book profit ₹.3,09,79,643/- under section 115JB of the Income Tax Act, 1961 ["Act" in short]. The assessment has been completed under section 143(3) of the Act dated 30.11.2019 and determining total assessed income of ₹.27,98,691/- under normal provisions and book profit of ₹.3,09,79,643/- under section 115JB of the Act. On appeal, the Id. CIT(A) dismissed the appeal filed by the assessee and sustained the addition made by the Assessing Officer towards disallowance against depreciation on ATM machines and addition of cessation of liability under section 41(1) of the Act.

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. The first issue came up for consideration in ground Nos. 3 to 7 relates to disallowance of depreciation on Automated Teller Machine [ATM]. The Id. Counsel for the assessee, at the time of hearing,

submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT, Chennai in assessee's own case for the assessment years 2013-14 onwards, where, the Tribunal has held that the ATM machines are eligible for depreciation at 60% as applicable to computer software.

6. On the other hand, the Id. DR fairly agreed that the issue is covered in favour of the assessee by the decision of the ITAT. However, facts remain that the Assessing Officer has not made addition towards disallowance of depreciation even though he had restricted the depreciation on ATM machines at 15% as against 60% depreciation claimed by the assessee.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for the assessment year 2015-16 & 2016-17 in I.T.A. Nos. 2126 & 2127/Chny/2019 dated 17.03.2020, wherein, the Tribunal by following earlier decision in assessee's own case for the assessment year 2013-14 and 2014-15 and held that the assessee is entitled for 60% depreciation on ATM machines. The relevant findings

are as under:

“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 arises 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 ld 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 coordinate 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 ld 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' carne up for consideration in Kantilal Trikamlal's case (supra). We may state here itself that the word sand 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 paramateria 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 ld DR before us also, would rule the fort and accordingly we direct the ld 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 ld. 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 Income-tax 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."

8. In this view of the matter and following the decisions of the Coordinate Benches of the Tribunal in assessee's own case for earlier assessment years, we direct the Assessing Officer to allow depreciation at 60% on ATM machines as claimed by the assessee.

9. As regards the arguments of the Id. DR that the Assessing Officer has not made the addition towards depreciation, it was the rejoinder of the Id. Counsel for the assessee that the Assessing Officer has computed the depreciation on WDV after allowing 15%, whereas, the assessee has claimed WDV after allowing 60% depreciation and because of this, the depreciation claimed by the assessee in the return of income in the relevant assessment year is higher when the Assessing Officer has worked out the depreciation at 15% on WDV. If the Assessing Officer considered 60% of depreciation and worked out WDV then the depreciation worked out by the Assessing Officer will be higher than or equal to the depreciation claimed by the assessee. We

find substance in the arguments of the Id. Counsel for the assessee that there is difference in working of depreciation because of the different rates considered by the assessee as well as the Assessing Officer. But, the fact remains that once the assessee is entitled for 60% of depreciation on ATM machines, the Assessing Officer has to work out the depreciation right from the beginning at 60% to compute WDV. Accordingly, we direct the Assessing Officer to allow 60% of depreciation and work out the opening WDV and compute the correct depreciation to be allowed for the impugned assessment year.

10. The next issue came up for consideration in ground Nos. 8 to 11 is addition towards cessation of liability under section 41(1) of the Act. The Id. Counsel for the assessee has submitted that the assessee does not want to address the ground challenging addition made towards cessation of liability under section 41(1) of the Act.

11. We find that the Assessing Officer has made an addition towards cessation of liability under section 41(1) of the Act because the assessee could not justify with necessary evidences. Even before the Id. CIT(A), the assessee could file any evidence to justify the existence of the liabilities. Therefore, considering the fact and circumstances of

the case and also the plea of the Id. Counsel for the assessee, we confirm the addition made towards the disallowance of cessation of liability under section 41(1) of the Act and reject the ground taken by the assessee.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on 24th August, 2022 at Chennai.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Chennai, Dated, 24.08.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.