

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1544, 1545 & 1546/Mds/2017

निर्धारण वर्ष / Assessment Years : 2012-13, 2013-14 & 2014-15

M/s ILink Multitech Solutions Pvt.
Ltd.,

C/O M/s Ramesh & Ramachandran
Chartered Accountants,
New No.39, Old No.29/3,
Viswanathapuram Main Road,
Kodambakkam, Chennai - 600 024.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle 2(2),
Chennai - 600 034.

PAN : AAACI 8958 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Y. Sridhar, FCA

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 16.11.2017

घोषणा की तारीख/Date of Pronouncement : 28.12.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -6, Chennai, dated 26.04.2017 and pertain to assessment years 2012-13, 2013-14 and 2014-15. Since common issue arises for

consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. The common issue arises for consideration for all the three assessment years is with regard to expenditure incurred by the assessee towards licence fee paid for using MS Office software.

3. Shri Y. Sridhar, the Ld. representative for the assessee, submitted that the assessee purchased licence for use of MS Office software from M/s Power Centre Pvt. Ltd. The assessee has subsequently renewed the licence for use of MS Office software for using the same in the business. According to the Ld. representative, the assessee claimed the expenditure as revenue under Section 37 of the Income-tax Act, 1961 (in short 'the Act'). However, the Assessing Officer found that the expenditure incurred by the assessee is capital in nature. Placing reliance on the judgment of Madras High Court in CIT v. Southern Roadways Ltd. (2009) 183 Taxman 234, the Ld. representative submitted that the expenditure incurred by the assessee in computer software package has to be treated as revenue expenditure. The Ld. representative has also placed reliance on the judgment of Karnataka High Court in CIT v. IBM India Ltd. (2013) 357 ITR 88

and judgment of Delhi High Court in CIT v. Asahi India Safety Glass Ltd. (2012) 346 ITR 329. The Ld. representative has also placed his reliance on the judgment of Bombay High Court in CIT v. Kotak Securities Ltd. (2012) 346 ITR 349.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee purchased MS Office software which gave enduring benefit in the business of the assessee. Therefore, according to the Ld. D.R., the Assessing Officer found that the expenditure incurred by the assessee is a capital expenditure. Accordingly, he allowed depreciation. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee purchased MS Office software and used the same in its business. By purchasing MS Office software, the assessee has not become owner of the software. The ownership of MS Office software remained with Microsoft company. The assessee has to necessarily renew the licence periodically for using

the same in the business. Merely because the assessee is using MS Office software as operating software in its system, it does not mean that MS Office software is the capital asset in the hands of the assessee-company. All assets / licence for use of software cannot be construed as capital asset merely because it gives an enduring benefit. By using MS Office software in the business of the assessee, the assessee gets enduring benefit in the course of earning of profit. So long as the assessee is a licensee, the ownership of MS Office software remains with Microsoft company. This Tribunal is of the considered opinion that the expenditure cannot be construed to be capital expenditure. The judgment of Madras High Court in Southern Roadways Ltd. (supra) in respect of software package is squarely applicable to the facts of the case. Therefore, the CIT(Appeals) is not justified in distinguishing the judgment of Madras High Court.

6. In view of the above discussion, we are unable to uphold the order of the lower authority. Accordingly, orders of both the authorities are set aside and the Assessing Officer is directed to allow the expenditure incurred by the assessee in acquiring licence

of MS Office software as revenue expenditure while computing the taxable income.

7. The next ground of appeal is regarding the diminution in value of investment for assessment year 2012-13.

8. Shri Y. Sridhar, the Ld. representative for the assessee, submitted that the assessee established a subsidiary company, namely, M/s iLink Systems UK. Since the company was suffering loss continuously, the Board of Directors passed a resolution to wind up the UK subsidiary company and consequently, made a provision for diminution of investment. From the material available on record, according to the Ld. representative, only a resolution was passed, therefore, the diminution in value has to be allowed as revenue expenditure during the year under consideration. The Ld. representative placed his reliance on the judgment of Himachal Pradesh in CIT v. H.P. Mineral And Industrial Development Corporation Ltd. (2008) 305 ITR 111.

9. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the income from investment made in subsidiary company of UK was exempted from

taxation in India, therefore, the loss cannot be allowed while computing the total income. According to the Ld. D.R., the loss on diminution in value of investment in UK is not an allowable expenditure, therefore, the CIT(Appeals) has rightly confirmed the addition of ₹11,04,289/-.

10. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly invested in the subsidiary company, namely, M/s iLink Systems UK. Due to continuous loss suffered by the subsidiary company, the Board of Directors passed a resolution to wind up the subsidiary company. Therefore, they valued the investment and the diminution value was claimed as deduction. Both the authorities below rejected the claim of the assessee on the ground that income from UK subsidiary company is not taxable in India. Therefore, the loss in diminution in value cannot be allowed while computing the total income. The fact is that the control and management of subsidiary company in India was not considered by the both the authorities below. Moreover, the Double Taxation Avoidance Agreement between UK and India was also not considered. Therefore, the matter needs to be re-examined by the Assessing

Officer. Accordingly, the orders of both the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh after considering the control and management of the UK subsidiary company and Double Taxation Avoidance Agreement between UK and India. Thereafter, the Assessing Officer shall decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

11. For the assessment year 2012-13, the assessee has taken one more ground with regard to bad debts written off to the extent of ₹47,64,549/-.

12. Shri Y. Sridhar, the Ld. representative for the assessee, submitted that the assessee advanced a sum of ₹47,64,549/- to its sister concern. According to the Ld. representative, the assessee is holding substantial shares in its sister concern. The sister concern was closing its business due to continuous loss, therefore, according to the Ld. representative, the advance given by the assessee could not be recovered. The Assessing Officer without recording any reason has simply rejected the claim of the assessee. Placing reliance on the judgment of Apex Court in S.A. Builders Ltd.

v. CIT (2007) 288 ITR 1, the Ld. representative submitted that the money was advanced to its subsidiary company and the same was used by the subsidiary company for its business, therefore, the same has to be considered as utilization of funds for assessee's own business. Since it cannot be recovered, it has to be allowed as bad debt.

13. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the impugned amount advanced to sister concern is not a debt at all. Moreover, it was not written off in the books of account. According to the Ld. D.R., the CIT(Appeals) further found that the judgment of Apex Court in S.A. Builders Ltd. (supra) was in the context of allowability of interest on the borrowed money and not the allowability of money advanced to its sister concern. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

14. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly advanced money to sister concern for its business. It is not in dispute that the money was used by the sister concern for its

business. For the purpose of claiming an amount as bad debt, it should have been taken as income of the assessee in any one of the earlier years and it has to be written off in the books of account. The Assessing Officer has not verified whether the claim made by the assessee was written off in the books. Moreover, the assessee claims that the money was advanced and invested in the sister concern. Whether it is a loss during the course of business or not also needs to be examined. Since these facts are not examined by both the authorities below, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of both the authorities below are set aside and the issue of addition made on account of bad debt is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh on the basis of material available on record and examine whether the bad debt is written off in the books of account. The Assessing Officer shall also examine whether the assessee's claim can be allowed as business loss in the course business activity.

15. With the above observation, the assessee's appeal in I.T.A. No.1544/Mds/2017 is partly allowed for statistical purposes,

whereas, the appeals in I.T.A. Nos.1545 & 1546/Mds/2017 are allowed.

Order pronounced on 28th December, 2017 at Chennai.

sd/-
(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th December, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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