

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No.1521/Kol/2013
Assessment Year: 2003-04

Deputy Commissioner of Income-tax, Vs. M/s. Pricewaterhouse Coopers Pvt. Ltd.
Circle-2, Kolkata. (PAN: AABCP9181H)
(Appellant) (Respondent)

&

I.T.A No.2033/Kol/2013
Assessment Year: 2003-04

M/s. Pricewaterhouse Coopers Pvt. Ltd. Vs. Asstt. Commissioner of Income-tax,
(Appellant) Range-2, Kolkata.
(Respondent)

&

I.T.A No.1523/Kol/2013
Assessment Year: 2005-06

Deputy Commissioner of Income-tax, Vs. M/s. Pricewaterhouse Coopers Pvt. Ltd.
Circle-2, Kolkata. (Respondent)
(Appellant)

Date of hearing: 29.06.2016
Date of pronouncement: 13.07.2016

For the Revenue: Shri A. K. Pandey, JCIT, Sr. DR
For the Assessee: Shri K. M. Gupta, AR

ORDER

Per Shri M. Balaganesh, AM:

Both these cross appeals by revenue and assessee for Asst Year 2003-04 i.e. ITA No.1521/K/2013 and ITA No. 2033/K/2013 are arising out of order of CIT(A)-XX, Kolkata vide appeal No.148/CIT(A)-XX/Circle-2/2011-12/Kol dated 01.02.2013 and the appeal by revenue for Asst Year 2005-06 i.e. ITA No. 1523/K/2013 is arising out of order of CIT(A)-XX, Kolkata vide appeal No. 150/ CIT(A)-XX/Circle-2/2011-12/Kol dated 04.02.2013. Assessments were framed by Addl. CIT, Range-2, Kolkata and DCIT, Cir-2, Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AYs 2003-04 and 2005-06 vide his separate orders dated 23.03.2006 and 24.12.2008 respectively. All the appeals are taken up together for the sake of convenience.

ITA No. 2033Kol/2013 – Asst Year 2003-04 – Assessee Appeal

2. The only issue to be decided in the appeal of the assessee is as to whether the interest subsidy received by the assessee in the sum of Rs. 86,90,000/- could be brought to tax in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is primarily engaged in the business of providing consultancy services in the specialized field of management, finance and tax. The services rendered are classified as Management Consultancy Services (MCS) , Financial Advisory Services (FAS) and Tax and Regulatory Services (TRS). MCS division apart from management consultancy services caters to the software solutions of various clients. FAS provides business advisory services on corporate finance, restructuring and other related services. TRS largely caters to compliance, advice, litigation and planning of various tax and other regulatory issues. The assessee was in receipt of interest subsidy from West Bengal Industrial Development Corporation (WBIDC) under the West Bengal Incentive Scheme, 2000 for new investment in Salt Lake, Kolkata. As per Clause 9.1 & 9.2 of the Scheme, an eligible industrial unit for its approved project would be entitled to Interest Subsidy to the extent of 50% of the annual interest liability on the loan borrowed from a commercial bank / financial institution / NBFC approved by the Reserve Bank of India for implementation of the approved project, subject to a limit of Rs 100 lakhs per year depending on the location of the unit. The assessee treated the interest subsidy as a capital receipt by directly crediting it to reserves and surplus in the original return of income. Later on based on the assessment order framed u/s 143(3) of the Act dated 18.3.2003 for the Asst Year 2002-03 , the assessee made a revised claim before the Id AO by crediting the interest subsidy to the cost of asset and claimed reduced depreciation accordingly. The Id AO observed that in the assessment proceedings u/s 143(3) of the Act for the Asst Year 2002-03, he had treated the capital subsidy to be reduced from the cost of the asset and had given reduced depreciation accordingly and with respect to interest subsidy, the same were treated as revenue receipt by crediting the same to interest expenditure account. The Id AO accordingly observed that the interest subsidy is clearly given on the annual interest liability year to year on the loan borrowed by the assessee. He held that any interest payment on loan taken for

business purpose is always revenue expenditure. Therefore by following the principle laid down by the Hon'ble Supreme Court in the case of Sahney Steel and Press Works Ltd vs CIT reported in (1997) 228 ITR 253 (SC) , the interest subsidy received by the assessee should also be treated as revenue receipt.

2.2. On first appeal, the Id CITA held that the interest subsidy should not be taxed as revenue receipt but the same needs to be reduced from the cost of the asset and assessee is entitled to claim reduced depreciation accordingly. Aggrieved, the assessee is in appeal before us on the following grounds:-

"1. That under the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) [hereinafter referred to as "Ld.CIT(A)"] erred in confirming the action of the Assessing Officer to treat the subsidy aggregating to INR 86,90,000/- received by the appellant towards interest on loan taken for procurement of capital asset as revenue receipt.

2. That even after allowing the alternate ground of the appellant to reduce the interest subsidy from written down value (WDV) of the assets, the Ld. CIT(A) erred in confirming the order of the assessing officer to treat the same as revenue receipt.

3. That the Ld. CIT(A) erred in noting that interest subsidy was added in the WDV, whereas actually the interest was initially added to the WDV and subsequently reduced upon receipt of the subsidy.

4. That the above action of the Ld. CIT(A) in directing to reduce the interest from the WDV even after confirming that such subsidy be taxed as revenue income, erroneously led to double taxation of the same amount."

2.3. The Id AR argued that the purpose test is to be understood in the facts of the case wherein, the interest subsidy was given for the purpose of setting up of the unit. It is not in dispute that the assessee indeed had set up an unit in Salt Lake Electronic Complex XI – 7, Block –EP, Sector –V, Salt Lake City, Kolkata – 700091 for setting up of a computer software (expansion) project. The Eligibility Certificate for Incentives under W.B. Incentive Scheme, 2000 was issued by the West Bengal Industrial Development Corporation Ltd vide Proceedings No. INC-2000(8)/General/3626 dated 16.10.2001 confirming the setting up of the unit by the assessee and its eligibility to receive incentives under the WB Incentive Scheme 2000.

Treatment of Interest Subsidy in Asst Year 2002-03

He stated that in Asst Year 2002-03, the interest subsidy was treated as a capital receipt in the original return of income by the assessee. The same was treated as a revenue receipt

by the Id AO in the assessment. On first appeal, the Id CITA held that the interest subsidy has to be reduced from the cost of the asset and reduced claim of depreciation to be granted accordingly as per Explanation 10 to section 43 of the Act. On further appeal to this tribunal, it was held that in the event the interest expense was charged to profit and loss account, the corresponding subsidy would be treated as revenue.

Treatment of Interest Subsidy in Asst Year 2003-04

The assessee treated the interest subsidy of Rs. 86,90,000/- as a capital receipt by directly crediting it to reserves and surplus in the original return of income. Later on based on the assessment order framed u/s 143(3) of the Act dated 18.3.2003 for the Asst Year 2002-03, the assessee made a revised claim by filing a revised statement before the Id AO by crediting the interest subsidy to the cost of asset and claimed reduced depreciation accordingly. The Id AO treated the interest subsidy as a revenue receipt in the assessment. The Id AR, in line with the directions given by this tribunal for the Asst Year 2002-03, submitted that the interest subsidy related to interest capitalized in the books and not related to any interest accrued and charged in the profit and loss account during the financial year 2002-03 relevant to Asst Year 2003-04 for which he referred to the interest details given in page 32 & 33 of the paper book explaining that the assessee had debited its capital account with the interest on loan taken from Exim Bank for the purpose of the new project at Salt Lake (i.e Interest was capitalized). The Id AR stated that the interest on Exim Bank Loan were allocated against the various capital additions expended in the said project and was not claimed as deduction u/s 36(1)(iii) in any of the respective assessment year. The subsidy that has been paid by the West Bengal Industrial Development Corporation Ltd is against the interest paid by the assessee on the Exim Bank Loan which was borrowed for setting up of the new project at Salt Lake. However, this aspect has not been properly represented before this tribunal during the appellate proceedings for the Asst Year 2002-03. He further fairly stated that the assessee in view of the smallness of the amount involved in the Asst Year 2002-03 chose not to prefer further appeal to the Hon'ble Calcutta High Court against the order of tribunal. Effectively, he argued that the interest paid on borrowings from Exim Bank for the purpose of setting up of the project has been capitalized by the assessee upto the date of commencement of project which was in Nov 2001 and the interest payments made thereon from that date till 18.12.2001 was

alone charged off to profit and loss account by the assessee in line with the established principles of accounting and well settled judicial precedents upto Hon'ble Apex Court on the said subject. He also placed evidences for repayment of the Exim Bank Loan on 21.12.2001. He accordingly pleaded that in view of the following judgments, the interest subsidy received for the purpose of setting up of the project should only be treated as a capital receipt not chargeable to tax :-

CIT vs Ponni Sugars & Chemicals Ltd reported in (2008) 306 ITR 392 (SC)
CIT vs Rasoi Ltd reported in (2011) 335 ITR 438 (Cal)
Shree Balaji Alloys vs CIT reported in (2011) 333 ITR 335 (J & K) – This was later affirmed by the Hon'ble Supreme Court in CIT vs Shree Balaji Alloys in Civil Appeal No. 10061 of 2011 dated 19.4.2016.

Without prejudice to the aforesaid argument, he argued that in any case, the interest subsidy may kindly be directed to be credited to the cost of the assets and consequential reduced depreciation may kindly be granted to the assessee.

2.4. In response to this, the Id DR vehemently relied on the order of the Id AO.

2.5. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. We find that the Objects of the scheme could be understood from the foreword of West Bengal Incentive Scheme, 2000 issued by the Commerce & Industries Department and Cottage & Small Scale Industries Department, Government of West Bengal. For the sake of convenience, the same is reproduced hereunder:-

“Whereas in pursuance of a National Policy the sales tax related incentives have been withdrawn from the 1st January, 2000.

And Whereas the State Govt. have considered it necessary and expedient to extend new types of incentives for promotion of industries in the State from the same date.

Now, therefore, the Governor is pleased hereby, in supersession of the West Bengal Incentive Scheme 1999 sanctioned under Commerce & Industries Department's Notification No. 580-CI/H dated 22.06.1999 and amended from time to time, to approve and sanction a New Incentive Scheme for large, medium and small scale industrial units as under.”

It would be pertinent to reproduce the relevant clauses of the said scheme as under:-

“1. Short Title:

This Scheme may be called the West Bengal Incentive Scheme, 2000 (hereinafter referred to as the 2000 Scheme) for Industrial Projects of large, medium and small scale units (hereinafter referred to as Units) to be set up in the State.

9. Interest Subsidy:

9.1. An eligible Industrial unit for its approved project will be entitled to Interest Subsidy to the extent of 50% of the annual interest liability on the loan borrowed from a Commercial Bank/Financial institution /NBFC approved by Reserve Bank of India, for implementation of the approved project, subject to a limit of rs.100.00 lakhs per year depending on the location of the unit as follows:

i) Group ‘B’ area : 5 years;

ii) Group ‘C’ area: 7 years.

9.2. The Interest Subsidy will be payable annually subject to submission of a statement/certificate by the lending Banks/Financial Institutions/NBFC so as that the unit has paid the due interest to the institutions on the due dates.”

15.2. New units in the area of Information Technology (Software, Hardware) Electronics, Agro & Food Processing Industry & HPL Downstream Projects located in Group ‘B’ and Group ‘C’ areas will be entitled to additional interest subsidy of 10% of interest liability subject to a further ceiling of Rs.20.00 lakhs. The total interest subsidy will be available for an additional period of 2 years in all such cases.”

2.5.1. It is not in dispute that the West Bengal Industrial Development Corporation Ltd had acknowledged the fact of assessee setting up a new unit for the software development at Salt Lake Electronic Complex XI – 7, Block –EP, Sector –V, Salt Lake City, Kolkata – 700091. The Eligibility Certificate for Incentives under W.B. Incentive Scheme, 2000 was issued by the West Bengal Industrial Development Corporation Ltd vide Proceedings No. INC-2000(8)/General/3626 dated 16.10.2001 confirming the setting up of the unit by the assessee and its eligibility to receive incentives under the WB Incentive Scheme 2000 and accordingly had sanctioned the State Capital Investment Subsidy under West Bengal Incentive Scheme 2000 as per Para 8.1 of the Scheme. Similarly Interest Subsidy was granted as per Para 9 and Para 15.2 of the Scheme respectively.

2.5.2. We hold that where subsidy was given to offset the cost of an asset, such payment would fall within the expression ‘met’, whereas the subsidy received merely to accelerate the industrial development of the state cannot be considered as payments made specifically to meet a portion of the cost of the asset. A careful perusal of the West Bengal Incentive Scheme 2000 shows that the scheme was intended to accelerate industrial development of the state and the incentive was given for setting up of industries in West Bengal and for the purpose of determining the amount of subsidy to be given, cost of eligible investment was taken as the basis, though it was not specifically intended to

subsidise the cost of the capital. Under these circumstances, we are of the view that incentive in the form of subsidy cannot be considered as a payment directly or indirectly to meet any portion of the actual cost and thus it falls outside the ken of Explanation 10 to Section 43(1) of the Act. In the light of the above discussion, we are of the view that for the purpose of computing depreciation allowable to the assessee, the subsidy amount cannot be reduced from the cost of the capital asset.

2.5.3. We also find that the Hon'ble Apex Court in the case of CIT vs Ponni Sugars & Chemicals Ltd & Ors reported in (2008) 306 ITR 392 (SC) had held as under:-

“14. In our view, the controversy in hand can be resolved if we apply the test laid down in the judgment of this court in the case of Sahney Steel and Press Works Ltd. In that case, on behalf of the assessee, it was contended that the subsidy given was up to 10 per cent of the capital investment calculated on the basis of the quantum of investment in capital and, therefore, receipt of such subsidy was on capital account and not on revenue account. It was also urged in that case that subsidy granted on the basis of refund of sales tax on raw materials, machinery and finished goods was also of capital nature as the object of granting refund of sales tax was that the assessee could set up new business or expand his existing business. The contention of the assessee in that case was dismissed by the Tribunal and, therefore, the assessee had come to this court by way of a special leave petition. It was held by this court on the facts of that case and on the basis of the analyses of the scheme therein that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade or business. On the facts of that case, it was held that the subsidy given was to meet recurring expenses. It was not for acquiring the capital asset. It was not to meet part of the cost. It was not granted for production of or bringing into existence any new asset. The subsidies in that case were granted year after year only after setting up of the new industry and only after commencement of production and, therefore, such a subsidy could only be treated as assistance given for the purpose of carrying on the business of the assessee. Consequently, the contentions raised on behalf of the assessee on the facts of that case stood rejected and it was held that the subsidy received by Sahney Steel could not be regarded as anything but a revenue receipt. Accordingly, the matter was decided against the assessee. The importance of the judgment of this court in Sahney Steel case lies in the fact that it has discussed and analysed the entire case law and it has laid down the basic test to be applied in judging the character of a subsidy. That test is that the character of the receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words, in such cases, one has to apply the purpose test. The point of time at which the subsidy is paid is not relevant. The source is immaterial. The form of subsidy is immaterial. The main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilized for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account. Therefore, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form or the mechanism through which the subsidy is given are irrelevant.

15. In the decision of the House of Lords in the case of Seaham Harbour Dock Co. v. Crook [1931] 16 TC 333, the Harbour Dock Co. had applied for grants from the Unemployment

Grants Committee from funds appropriated by Parliament. The said grants were paid as the work progressed the payments were made several times for some years. The Dock Co. had undertaken the work of extension of its docks. The extended dock was for relieving the unemployment. The main purpose was relief from unemployment. Therefore, the House of Lords held that the financial assistance given to the company for dock extension cannot be regarded as a trade receipt. It was found by the House of Lords that the assistance had nothing to do with the trading of the company because the work undertaken was dock extension. According to the House of Lords, the assistance in the form of a grant was made by the Government with the object that by its use men might be kept in employment and, therefore, its receipt was capital in nature. The importance of the judgment lies in the fact that the company had applied for financial assistance to the Unemployment Grants Committee. The committee gave financial assistance from time to time as the work progressed and the payments were equivalent to half the interest for two years on approved expenditure met out of loans. Even though the payment was equivalent to half the interest amount payable on the loan (interest subsidy) still the House of Lords held that money received by the company was not in the course of trade but was of capital nature. The judgment of the House of Lords shows that the source of payment or the form in which the subsidy is paid or the mechanism through which it is paid is immaterial and that what is relevant is the purpose for payment of assistance. Ordinarily, such payments would have been on revenue account but since the purpose of the payment was to curtail/obliterate unemployment and since the purpose was dock extension, the House of Lords held that the payment made was of capital nature."

2.5.4. We also find that the Hon'ble Calcutta High Court in the case of CIT vs Rasoi Ltd reported in (2011) 335 ITR 438 (Cal) had held as under:-

"14. Section 3 of the scheme describes entitlement to the industrial promotion assistance and the same is also quoted below :

"3. Entitlement to the industrial promotion assistance.—Where a registered dealer manufactures in his unit goods specified in Schedule A or manufactures in his SSI unit goods specified in Schedule B and sells such goods in the State-intra-State or in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales tax Act, 1956 (Act No. 74 of 1956), from any place in the State, such dealer shall be entitled to a payment of a sum equal to ninety per centum of the amount of sales tax paid by him, for any quarter under the Sales tax Act in respect of sales of such goods, as industrial pro motion assistance." (emphasis supplied by us).

It may be mentioned here that under the said scheme as would appear from sub-section (2) of section 1 that the same was given effect to from April 1, 1994, and initially, was in force only one year from that date and, thus, the benefit was then available to the assessee only for that year which is the assessment year we are concerned with.

14A. From the objects and the reasons of the aforesaid scheme as well as the entitlement as indicated in section 3 mentioned above, it is clear that the Government has decided to grant the subsidy by way of financial assistance to tide over the period of crisis for promotion of the industries mentioned in the scheme which have the manufacturing units in West Bengal and which are in need of financial assistance for expansion of their capacities, modernization, and improving their marketing capabilities and such subsidy for the financial year in question was only for that year and was equivalent to ninety per centum of the amount of sales tax paid by the industry concerned, for any quarter under the Sales tax Act in respect of sales of such goods.

15. We find that the principles laid down in the case of *Sahney Steel and Press Works Ltd. [1997] 228 ITR 253* (SC), relied upon by Mr. Nizamuddin has been explained by the

Supreme Court in a subsequent decision in the case of *CIT v. Ponni Sugars and Chemicals Ltd.* [2008] [306 ITR 392](#) (SC), relied upon by Mr. Poddar in the following terms (page 399) :

"In our view, the controversy in hand can be resolved if we apply the test laid down in the judgment of this court in Sahney Steel and Press Works Ltd. [1997] [228 ITR 253](#). In that case, on behalf of the assessee, it was contended that the subsidy given was up to 10 per cent. of the capital investment calculated on the basis of the quantum of investment in capital and, therefore, receipt of such subsidy was on capital account and not on revenue account. It was also urged in that case that subsidy granted on the basis of refund of sales tax on raw materials, machinery and finished goods was also of capital nature as the object of granting refund of sales tax was that the assessee could set up new business or expand his existing business. The contention of the assessee in that case was dismissed by the Tribunal and, therefore, the assessee had come to this court by way of a special leave petition. It was held by this court on the facts of that case and on the basis of the analyses of the scheme therein that the subsidy given was on revenue account because it was given by way of assistance in carrying on of trade or business. On the facts of that case, it was held that the subsidy given was to meet recurring expenses. It was not for acquiring the capital asset. It was not to meet part of the cost. It was not granted for production of or bringing into existence any new asset. The subsidies in that case were granted year after year only after setting up of the new industry and only after commencement of production and, therefore, such a subsidy could only be treated as assistance given for the purpose of carrying on the business of the assessee. Consequently, the contentions raised on behalf of the assessee on the facts of that case stood rejected and it was held that the subsidy received by Sahney Steel could not be regarded as anything but a revenue receipt. Accordingly, the matter was decided against the assessee." (emphasis supplied by us.)

In the aforesaid case, it was held that if the object of the subsidy scheme was to enable the assessee to run the business more profitably the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit the receipt of the subsidy was on capital account. Therefore, the court proceeded, it is the object for which the subsidy/assistance is given which determines the nature of the incentive subsidy. The form of the mechanism through which the subsidy is given is irrelevant.

*16. In the case before us, the object of the subsidy is for expansion of their capacities, modernization, and improving their marketing capabilities and thus, those are for assistance on capital account. Similarly, merely because the amount of subsidy was equivalent to 90 per cent. of the sales tax paid by the beneficiary does not imply that the same was in the form of refund of sales tax paid. As pointed out by the Supreme Court in the case of *Senairam Doongarmall v. CIT* reported in [1961] [42 ITR 392](#) (SC) ; AIR 1961 SC 1579, it is the quality of the payment that is decisive of the character of the payment and not the method of the payment or its measure, and makes it fall within capital or revenue. Thus, in the case before us, the amount paid as subsidy was really capital in nature."*

2.5.5. We also find that the Hon'ble Apex Court in the case of CIT vs Shree Balaji Alloys in Civil Appeal No. 10061 of 2011 dated 19.4.2016 had held as under:-

"The issue raised in these appeals is covered against the Revenue by the decision of this Court in "Commissioner of Income Tax, Madras Vs. Ponni Sugars and Chemicals Ltd.", reported in (2008) 9 SCC 337, or in the alternate, in "Commissioner of Income Tax Vs. M/s. Meghalaya Steels Ltd.", reported in (2016) 3 SCALE 192.

The appeals are, therefore dismissed. No costs.

2.5.6 We also hold that this tribunal while rendering the decision in assessee's own case for the Asst Year 2002-03 on the impugned issue, did not have the benefit of the aforesaid Supreme Court judgments and Jurisdictional High Court decision. We find that much water had flown on this issue and more clarity has been reached on the same. In this regard, we place reliance on the decision of the Hon'ble Apex Court in the case of CIT vs Brij Lal Lohia and Mahabir Prasad Khemka reported in (1972) 84 ITR 273 (SC) wherein it was held that :-

"On going through the Tribunal's order, we are satisfied that the finding of the Tribunal cannot be said to be a perverse finding. That finding being finding of facts, it was not open to the High Court nor is it open to this court to interfere with that finding.

The fact that in the earlier proceedings the Tribunal took a different view of those deeds is not a conclusive circumstance. The decision of the Tribunal reached during those proceedings does not operate as res judicata. As seen earlier there was a great deal more evidence before the Tribunal during the present proceedings, relating to those gift deeds.

In the result these appeals fail and the same are dismissed with costs. One hearing fee."

2.5.7. In view of the facts and circumstances of the case, keeping in view the objects of the West Bengal Incentive Scheme 2000 and various judicial precedents relied upon hereinabove, we hold that the interest subsidy of Rs. 86,90,000/- is to be treated as capital receipt. Consequentially the assessee need not reduce the same from the cost of the asset for the purpose of claiming depreciation. We hold accordingly. Accordingly, the grounds raised by the assessee in ITA No. 2033/Kol/2013 for Asst Year 2003-04 are allowed.

3. **In the result, the appeal of the assessee in ITA No. 2033/Kol/2013 is allowed.**

ITA NO. 1521/KOL / 2013 – REVENUE APPEAL – ASST YEAR 2003-04

4. The first issue to be decided in the appeal of the revenue is as to whether the ld CITA is justified in deleting the disallowance made towards lease rental payment of Rs.38,24,645/- in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the ld AO observed that depreciation on leased cars amounting to Rs. 49,78,576/- was claimed by the assessee and assessee was asked to explain as to why the depreciation should be allowed on the cars which are not owned by

it. In response to this, the assessee filed a written submission by placing reliance on the Board's Circular No. 9 of 1943 together with copies of the lease agreement. The Id AO disallowed the depreciation on leased cars amounting to Rs. 49,78,576/- in the assessment. Before the Id CITA, the assessee stated that it had claimed depreciation on owned vehicles amounting to Rs. 32,47,999/- and depreciation on leased assets amounting to Rs. 17,30,577/-. The assessee stated that the assessee had taken vehicle on finance lease. As per the terms of the agreement, all obligations to maintain the cars lies with assessee i.e the Hirer and the terminal option to procure the asset lies with assessee under separate letter dated 12.8.2002. The assessee even has an option to sell the asset at the end of the lease term. It was argued that by obtaining the right to sell the vehicles within 3 months from the end of the lease period, the assessee has the right to purchase the vehicle at 1% of the value or has the right to sell to a third party at its choice. It is based on this understanding that the assessee had claimed depreciation on such leased cars, since the cost had been added to the block of motor vehicles by the assessee by capitalising the cost of assets taken on value at a value which reflected the purchase price on the date of the agreement. The assessee claimed that it had capitalized the leased assets under finance lease scheme in the books of accounts which is being depreciated within the period of lease. In doing so, the cost of the assets alone is treated as the addition, whereas the interest element payable is not considered. It was stated that this treatment was in line with the CBDT's Circular No. 9 dated 23.3.1943 as well as the Accounting Standard 19 prescribed by the Institute of Chartered Accountants of India. The Id AO was of the view that since the complete ownership of the vehicle is not transferred to the lessee during the lease term, such agreement would not tantamount to finance lease and disallowed the claim of depreciation. It was argued that the Board's Circular No. 9 dated 23.3.1943 states that where the terms of the agreement provide that the equipment shall eventually become the property of the hirer or confer on the hirer an option to purchase the equipment, the transactions should be regarded as one of hire purchase. In such case the periodical payments made by the hirer should for tax purposes be regarded as made up of :-

- a) Consideration for hire, to be allowed as a deduction in the assessment (i.e interest element); and

b) Payment on account of purchase to be treated as capital outlay, depreciation being allowed to the lessee on the initial value (i.e. the amount for which the hired subject would have been sold for cash at the date of agreement – i.e. the purchase price)

4.2. The Id CITA observed in his order as below:-

“8.2. I have perused the assessment order and considered the submission of the appellant. The fact of the case is that the block of assets of the appellant includes leased vehicles-as well as their owned vehicle. The A.O. disallowed the claim of depreciation on these vehicles on the ground that the terms of agreement with the lessor did not fulfil the conditions prescribed by the Board's Circular No. 9 of 1943 in this regard. The appellant argued that even on their owned vehicle no depreciation was allowed. After careful consideration of the facts of the case, I find that so far the leased vehicles are concerned, the A.O. was justified in disallowing the depreciation thereon. So far the judgment cited by the appellant in the case of Indus Ind Bank Ltd. Vs. Addl. CIT reported in 19 Taxmann.com 173 (Mum)(SB), the facts of both the cases are not identical. However, the A.O is directed to allow depreciation on appellant's owned vehicles. Further, the alternative argument of the appellant that if the depreciation on leased vehicles is disallowed than they would be eligible to get the lease rental (net of interest element), in this regard, I find merit in the submission of the appellant. The ground of appeal is accordingly decided.”

4.3. Aggrieved, the revenue is in appeal before us on the following ground:-

“1. Whether on the facts and the circumstances of the case the Ld. CIT(A)-XX, Kolkata has erred in directing the AO to allow “lease rental payment” of Rs.38,24,645/- although the assessee did not claim the same?”

4.4. The Ld DR stated the claim of lease rental was not made by the assessee in the return of income. He vehemently relied on the order of the Id AO. In response to this, the Id AR argued that the Id AO had allowed the lease premium in the next succeeding asst year 2004-05 in section 143(3) proceedings for which he placed a copy of the assessment order dated 28.12.2006.

4.5. We have heard the rival submissions and perused the materials available on record. In the facts and circumstances of the case, we find that the Id CITA had rightly appreciated the alternative argument of the assessee that the lease rentals (net of interest element) would have to be allowed as deduction. We find no infirmity in the order of the Id CITA in this regard. Accordingly, the ground no.1 raised by the revenue is dismissed.

5. The second issue to be decided in the appeal of the revenue is as to whether the Id CITA is justified in deleting the disallowance made towards credit card expenses of Rs. 74,137/- in the facts and circumstances of the case.

5.1. The brief facts of this issue is that the Id AO observed that the assessee had made certain credit card payments and gifts purchased as below:-

Amex Card Payment NV Sivakumar	4243.00
Sanjeev Malhotra gift for Staff Training	4450.00
Provision for expenses for 02-03	2200.00
Gifts purchased	3060.00
Paid to Uralia Entertainment	23,012.00
Cost of Mont Blanc Pen	11,340.00
Gift wrapping paper	580.00
Citibank Credit Card payment	10,395.50
Citibank Credit card payment	430.21
Payment towards Amex Card	14,426.59
Total	74,137.30

The Id AO felt that these are not incurred wholly and exclusively for the purpose of business and accordingly disallowed the same.

5.2. Before the Id CITA, it was argued that the assessee came to know of this disallowance only after the order was passed and served on it and therefore submission of note or supporting vouchers during assessment stage could not be envisaged. It was submitted that the 'gifts' were nothing but mementoes given to various speakers in the technical seminar organized by the assessee. Such mementoes are given as a token of appreciation and express the gratitude of the assessee towards such speakers who have enlightened the participants by sharing his experience and knowledge. It was submitted that M/s Urila Entertainment was engaged to arrange for some programmes during the intervening period of the 'Continuing Education Programme' to entertain the participants who were going through a residential training programme. Similarly payment towards purchase of Mont Blanc Pen given to a senior foreign executive who had attended a business discussion for preparation of technoforecast feedback. Technoforecast is a global journal published by the world wide firm. Each country gives a detailed industry wise analysis of the present law for doing business in that country along with its recommendation for each industry. The assessee conducted a detailed survey among industry houses and then make a presentation requiring their feed back on the various options / models and business analysis prepared by the assessee. Thereafter the industry wise analysis is posted for publication . In order to conduct such survey and such business

meetings, the assessee has to undertake various expenses. Some of the expenses were directly met from the credit card of senior executives, which are then reimbursed to them. Accordingly it was submitted that reimbursement of credit cards represent expenses incurred by the senior executives while attending such seminars and expenses incurred in connection thereto and should thus be allowed as business expenditure. The assessee also placed all the evidences in this regard before the Id CITA. The Id CITA appreciated the contentions of the assessee on going through the bills and evidences filed by the assessee and deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

“2. Whether on the facts and the circumstances of the case the Ld. CIT(A)-XX, Kolkata has erred in deleting expenses of Rs.74,137/- incurred through Credit Card although these were not incurred wholly & exclusively for the purpose of the business?”

5.3. The Id DR argued that the assessee had not proved the business purpose of incurring of these expenses and accordingly argued that the Id AO had rightly made the disallowance. In response to this, the Id AR vehemently relied on the order of the Id CITA and also stated that the reimbursements were made to senior executives who had incurred expenses on behalf of the assessee during the performance of their duties.

5.4. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee in this regard containing the sample copies of credit card bills and invoices vide pages 26 to 43 of paper book together with the complete details of expenses incurred thereon. From the perusal of the said details and the various arguments advanced by the Id AR, we are convinced that the said expenditures were incurred wholly and exclusively for the purpose of business of the assessee as they are related to staff training expenses, continuing education programme expenses, expenses on technoforecast (international journals) and recruitment expenses and accordingly dismiss Ground No. 3 raised by the revenue.

6. The last ground to be decided in this appeal of the revenue is as to whether the Id CITA is justified in deleting the disallowance made on account of foreign currency loss of Rs. 4,33,760/- in the facts and circumstances of the case.

6.1. The brief facts of this issue is that the assessee made certain reimbursement of expenses in foreign currency to its Associated Enterprises and on restatement of the same, incurred exchange fluctuation loss of Rs. 4,33,760/- and claimed the same as revenue expenditure as it was incurred only in the discharge of its contractual obligations and in the normal course of its business. The Id AO however felt that the said loss needs to be borne only by the Associated Enterprises to whom reimbursements were made and accordingly disallowed the same in the assessment. The assessee stated that the aforesaid amount represents the foreign currency loss arising from the restatement of out of pocket expenses receivable in US dollars from foreign clients. The loss has been booked by restating the foreign debtors in view in the fall in the exchange rate as per the existing Accounting Standard 11, which prescribes that in order to reflect the true and fair view the said debtors/bill has to be restated at the exchange rate on the last date of the accounting year. The assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of Woodward Governor of India P Ltd. vs CIT reported in 312 ITR 254 (SC) in support of its contentions. The Id CITA duly appreciated the contentions of the assessee and deleted the disallowance by observing as under:-

"10.2. I have perused the assessment order and considered the submission of the appellant. The fact of the case is that the A.O. noted that the expenses claimed by the appellant towards foreign currency loss was to be borne by the Associated Enterprises. There was no contractual obligation on the appellant to bear such expense. However, the appellant argued that the loss was booked by restating the foreign debtors in view in the fall in the exchange rate as per the existing accounting standard -11. They relied on the judgments of the Hon'ble Supreme Court in the case of Dhakshwari Cotton Mills Ltd. Vs. CIT reported in 26 ITR 775. Further, in the case of Sulej Cotton Mills Ltd. reported in 116 ITR 1 and also in the case of Woodward Governor India (P) Ltd. vs. CIT reported in 312 ITR 254 (SC). In view of facts and circumstances of the case and also the judgments of Hon'ble Apex Court, appeal on this issue is allowed."

6.2. Aggrieved, the revenue is in appeal before us on the following ground:-

"3. Whether on the facts and the circumstances of the case the Ld. CIT(A)-XX, Kolkata has erred in directing to allow foreign currency loss of Rs.4,33,760/- though the assessee had no contractual obligation to bear this loss?"

6.3. We have heard the rival submissions and perused the materials available on record. We find that the facts stated hereinabove are not controverted by the revenue before us. We find that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Woodward Governor of India P Ltd vs CIT reported in 312 ITR 254 (SC) in favour of the assessee. The revenue was not able to bring any contrary decision in this

regard. Respectfully following the said apex court decision, we find no infirmity in the order of the Id CITA in this regard. Accordingly, the ground no.3 raised by the revenue is dismissed.

7. In the result, the appeal of the revenue in ITA NO. 1521/Kol/2013 for Asst Year 2003-04 is dismissed.

ITA NO. 1523/KOL / 2013 – REVENUE APPEAL – ASST YEAR 2005-06

8. The first issue to be decided in this appeal of the revenue is as to whether the Id CITA is justified in deleting the disallowance made on account of software expenses in the sum of Rs. 48,28,899/- in the facts and circumstances of the case.

8.1. The brief facts of this issue is that the Id AO observed that assessee had debited a sum of Rs. 1,34,90,366/- to the profit and loss account and disallowed a sum of Rs. 13,35,562/- as capital costs. The Id AO directed the assessee to explain why the remaining sum of Rs. 1,21,54,804/- should not be treated as capital costs. The Id AO observed that the assessee replied that most of the expenses were attributable to annual or quarterly renewal fees which, by their nature, were revenue costs. The Id AO on preliminary verification of the said reply found that Rs. 96,90,173/- is attributable to such renewals and disallowed the remaining sum of Rs. 24,64,628/- (1,21,54,804 – 96,90,173) straight away in the assessment. Later the Id AO proceeded to verify the details of Rs. 96,90,173/- extensively, wherein, he observed that the following expenses were not attributable to annual or quarterly renewals and were in fact capital in nature :-

Application user perpetual-full use –software updates (from oracle) -	2,62,108
Lotus Communications user CEO	- 21,02,163

Accordingly, he proceeded to disallow a total sum of Rs. 48,28,899/- (24,64,628 + 2,62,108+ 21,02,163) in the assessee as capital in nature but however granted depreciation @ 60% on the same in the assessment.

8.2. The assessee before the Id CITA assailed the disallowance on the following lines:-

(i) At the very first instance, the Assessing Officer made an ad hoc disallowance of Rs.24,64,628/- on his own surmise, without giving any specific reasons for the same, by

just stating that such amount did not seem to be periodical charges and correspondingly allowed depreciation @ 60%.

Rebuttal

Such an action of the Assessing Officer in arbitrarily disallowing such expenditure on adhoc basis was unjust and not legally tenable.

(ii) Secondly, on perusal of the documents substantiating such expenses, the Assessing Officer disallowed a sum of Rs.2,62,108/- which was incurred on charges payable to Oracle India Private Limited on the ground that such amount was not an annual renewal charge and correspondingly allowed depreciation @ 60%.

Rebuttal

In this connection, it is most humbly submitted that the invoice, which has been scrutinised by the Assessing Officer, clearly indicates that such expenditure was on account of annual fee towards technical support on oracle software. Hence the action of the Assessing Officer in concluding that such expense was not an annual charge is factually incorrect and disallowing such amount is not legally tenable.

(iii) Finally, on perusal of further documents substantiating such expenses, the Assessing Officer disallowed another sum amounting to Rs.21,02,163/- for Lotus Communications on the ground that such amount was not an annual renewal charge and correspondingly allowed depreciation @ 60%.

Rebuttal

It may please be noted that the appellant had actually charged Rs.18,05,052/- to its profit & loss account for the FY 2004-05 (as apparent from the list showing break-up of software expenses) and not 21,02,163/- towards Lotus Communication. Although the invoice raised by the vendor claimed an amount of Rs.21,02,163/-, it was finally settled at Rs.18,05,052/- and charged to the profit & loss accordingly. In this connection, it is most humbly submitted that the said expenditure was incurred on account of an annual license fee for a specific number of users for using the Lotus Communication system for a period of one year. The software or the copyright of the software was never acquired by the appellant. Hence the action of the Assessing Officer in concluding that such expense was not an annual charge is factually incorrect and disallowing such amount is not legally tenable.

As per section 32 of the LT. Act, it is clear that the assessee would be entitled to depreciation only when the assessee acquires the license. Incidentally such acquisition of licenses deals with outright purchase of software along with its copyrights, which would enable the assessee to exploit the rights to such software commercially. In other words, if the assessee would have acquired the right to tile software in a manner to have been able to reproduce the software by copying the same and thereafter selling it commercially, then the view taken by the Assessing Officer would have been correct. However a license for use of application software which needs to be renewed after a lapse of time or even otherwise would not be termed as a capital expenditure since the assessee has not acquired the right.

8.3. The Id CITA on going through the submissions of the assessee together with the copy of the invoices and supporting case laws, observed as under:-

“I have perused the assessment order and considered the submission of the appellant. The fact of the case is that the appellant claimed a sum of Rs.1,34,90,366/- towards software expenses as revenue expenditure. However, the A.O. observed that the payment made to IBM/Wipro and Oracle was not of the nature of annual renewals but of the nature of up-gradation and accordingly Rs.48,28,899/- was disallowed treating the same as capital expenditure, however, depreciation on the same was allowed. The appellant argued that a detailed list of software expenses claimed amounting to Rs.1,21,54,804/- was furnished to

the A.O. A disallowance of Rs.24,64,628/- was made by the A.O. on ad-hoc basis without giving any specific reason, Rs.2,62,108/- which was incurred on charges payable to Oracle India Pvt. Ltd. as annual fee towards technical support on Oracle software, Rs.21,02,163/- for Lotus Communication was incurred on account of an annual license fee for a specific number of users for using the Lotus Communication System for a period of one year. The Software or the copyright of the software was never acquired by the appellant. The aforesaid expenditure was incurred on account of annual/quarterly renewal charges for a mere right to use certain software or technical assistance in connection with such software but the appellant did not acquire any software or copyright for the same. After careful consideration of the facts of the case, I find that A.O. had not brought any material on record which could establish that the submission of the appellant was not considerable. In view of the facts and circumstances of the case and case laws relied upon, the appeal on this ground is allowed. However, the depreciation already allowed by the A.O. needs to be disallowed."

8.4. Aggrieved, the revenue is in appeal before us on the following ground:-

"1. On the facts and circumstances of the case CIT(A) has erred in deleting disallowance of Rs.48,28,899/- made by the AO out of software expenses treating the same as capital asset."

8.5. The Id DR vehemently relied on the order of the Id AO. In response to this, the Id AR made specific arguments by making reference to the relevant pages of the paper book containing the details of expenses and the evidences in support of the same. He argued that the Id AO made ad hoc disallowance of Rs. 24,24,628/- without making any specific reference to the bills and details filed before him and the sum of Rs. 24,24,628/- could never be traced from the total details filed by the assessee. With regard to disallowance made in the sum of Rs. 2,62,108/-, he argued that the same represent charges payable to Oracle India Pvt. Ltd. as annual fee towards technical support on Oracle Software and with regard to Rs. 21,02,163/-, he stated that the same represents amounts paid for lotus communication on account of annual licence fee for 2150 users as could be evident from the invoice itself for using the Lotus Communication System for a period of one year. He argued that the assessee did not derive any enduring benefit in the capital field and accordingly prayed for confirmation of the order of the Id CITA in this regard.

8.6. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee in this regard. We find that the Id CITA had given categorical findings with regard to each and every disallowance made by the Id AO. We also find from the evidences filed in the paper book, the expenditure incurred are only towards licence fees paid on an annual basis / quarterly basis for specific usage of the software for a certain period of time. Hence we find lot of force in the argument of the Id

AR that there is no enduring benefit derived by the assessee in the capital field warranting capitalization of the said expenditure. We also find that similar issue was adjudicated by the Hon'ble Delhi High Court in the case of CIT vs Amway India Enterprises reported in (2012) 22 taxmann.com 22 (Delhi) dated 4.11.2011 wherein the facts before the Hon'ble Delhi High Court were as under :-

"The captioned appeals pertain to the years 2001-02 and 2002-03. The said appeals involve two issues: The first issue being: the treatment to be accorded to expenditure incurred by the assessee on purchase of software applications. These applications being: MS Office Software, Anti Virus software, Lotus Notes Software and Message Exchange applications. The assessee in respect of these applications acquired a licence to use the said applications on payment of consideration. The said expenditure has been disallowed by the Assessing Officer in each of the assessment years by treating the expenditure as one incurred on capital account. Accordingly, depreciation at the rate of 25% was allowed to the assessee. The assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)]. The CIT(A) while sustaining the order of the Assessing Officer, allowed depreciation at the rate of 60%. This resulted in both the assessee and the revenue being aggrieved. Consequently, cross appeals were filed by both the assessee and the revenue."

It was held that –

"the first issue, in our opinion, has been considered and decided against the revenue in a judgment delivered by us passed in CIT Vs. Asahi India safety Glass Ltd. (2011) 203 Taxman 277/15 taxmann.com 382 (Delhi)"

In view of the aforesaid facts and findings and evidences in the paper book and respectfully following the judicial precedent relied upon hereinabove, we find no infirmity in the order of the Id CITA in this regard. Accordingly, the ground no.1 raised by the revenue is dismissed.

9. The second issue to be decided in this appeal of the revenue is as to whether the Id CITA is justified in deleting the disallowance of bad debts in the sum of Rs. 1,36,38,982/- in the facts and circumstances of the case.

9.1. The brief facts of this issue is that the assessee claimed a total sum of Rs.1,36,38,982/- as bad debts in the return. The Id AO observed that the assessee had written off the debts due from the following parties:-

- “1. Calcutta Municipal Corporation
2. Chhatisgarh Satate Electricity Board
3. Bengal Chamber of Commerce and Industry
4. Eicher Motors Ltd.
5. Essar Power Ltd.
6. ONGC Ltd.

7. Kotak Mahindra Bank
8. Jindal Steel Limited
9. Tata Motors Ltd.
10. Tata Tea Ltd.
11. TISCO”

The Id AO observed that these concerns are credit worthy companies and some are governmental bodies and the assessee had recovered substantial portion of the debts from them pertaining to other transactions. The assessee had not brought any evidences to prove that there were some disputes with regard to recovery of the said dues. He also observed that some of the bad debts written off included certain sums receivable from its own sister concerns, viz PWC Bristol, PWC Development Associates Ltd & PWC LLP, San Jose. He accordingly held that the assessee had not established the fact that the debt had become bad and had merely written off in the books to reduce its tax burden.

9.2. The assessee explained before the Id CITA that these are regular debts appearing in the normal course of business and assessee had duly offered to tax as income in the earlier years and had written off the same as irrecoverable in its books of accounts and there is no need to establish that the debt had indeed become bad post 1.4.1989 due to the amendment brought in section 36(1)(vii) of the Act. The Id CITA appreciated the contentions of the assessee and deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

“2. On the facts and the circumstances of the case the Ld. CIT(A)-XX, Kolkata has erred in directing to allow bad debts of Rs.1,36,38,982/-.”

9.3. The Id DR vehemently relied on the order of the Id AO. In response to this, the Id AR vehemently relied on the order of the Id CITA and also placed on record a copy of the CBDT Circular No. 12/2016 dated 30.5.2016 wherein the CBDT had directed the revenue to even withdraw the ground of disallowance of bad debts as the issue is well settled by the decision of the Hon’ble Apex Court in the case of TRF Ltd reported in 323 ITR 397 (SC).

9.4. We have heard the rival submissions. We find that the revenue had not disputed the fact that the debts were offered to tax as income in the earlier years and some portion of the same debts were treated as irrecoverable and were written off in the books of accounts of the assessee. We find that the issue is squarely covered by the decision of the

Hon'ble Supreme Court in the case of TRF Ltd reported supra wherein it was held that post 1.4.1989, the assessee is not required to establish that the debt had indeed become bad and deduction shall be granted on write off of the same subject to fulfillment of condition prescribed in section 36(2) of the Act. We also find that the CBDT in its recent Circular No. 12/2016 dated 30.5.2016 had stated as below:-

"3. The legislative intention behind the amendment was to eliminate litigation on the issue of the allowability of the bad debt by doing away with the requirement for the assessee to establish that the debt, has in fact, become irrecoverable. However, despite the amendment, disputes on the issue of allowability continue, mostly for the reason that the debt has not been established to be irrecoverable. The Hon'ble Supreme Court in the case of TRF Ltd. In CA Nos. 5292 to 5294 of 2003 vide judgment dated 9.2.2010, has stated that the position of law is well settled. "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of accounts of assessee."

4. In view of the above, claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii) of the Act, if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in sub section (2) of sub-section 36(2) of the Act."

We hold that the Circulars issued by the CBDT are binding on the revenue. In view of the aforesaid facts and respectfully following the apex court decision and the CBDT Circular, we find no infirmity in the order of the Id CITA in this regard. Accordingly, the ground no. 2 raised by the revenue is dismissed.

10. The next issue to be decided in this appeal of the revenue is as to whether the Id CITA is justified in deleting the disallowance on account of write off of service tax in the sum of Rs. 5,96,525/- in the facts and circumstances of the case.

10.1. The brief facts of this issue is that the Id AO observed that the assessee had written off a sum of Rs. 5,96,525/- on account of service tax collectible. He observed that the assessee failed to discharge its primary onus of explaining its book entries on account of service tax written off and since the write off of service tax of the related debts itself has been disallowed, the related service tax also is liable to be disallowed. On first appeal, the Id CITA observed as under:-

"10.2. I have perused the assessment order and considered the submission of the appellant. The fact of the case is that the appellant identified few debtors as irrecoverable and wrote them in the balance sheet and accordingly corresponding service tax liability raised in respect of the same had also been reduced as the same was to be paid to the service tax authorities in case of corresponding amount was received from the debtors. From the facts and circumstances of the case, I agree with the submission of the appellant

that the entries made by the appellant in this regard would not increase its claim of expenditure. Under these facts, appeal on this ground is allowed.”

10.2. Aggrieved, the revenue is in appeal before us on the following ground:-

“3. On the facts and the circumstances of the case the Ld. CIT(A)-XX, Kolkata has erred in directing to allow write off service tax of Rs.5,96,525/-.”

10.3. The Id DR vehemently relied on the order of the Id AO. In response to this, the Id AR vehemently relied on the order of the Id CITA.

10.4. We have heard the rival submissions. We find that the assessee had initially credited the service tax portion on the bills raised by it as a liability and as and when the debts are written off as irrecoverable, the service tax liability portion is reversed by passing the following journal entry :-

Service tax liability Account	Dr	XX
To Debtors Account	Cr	XX

We find that the assessee had not even claimed the write off of service tax in its books of accounts by way of charge to profit and loss account. We find that the Id AO had merely made this addition without understanding the accounting treatment of the assessee vis a vis its income tax return. We find that there is no basis for the Id AO for making this addition as the profit and loss account is not at all hit by the said write off of service tax portion. Hence we hold that the Id CITA had rightly deleted the addition. Accordingly, the ground no. 3 raised by the revenue is dismissed.

11. The last issue to be decided in this appeal of the revenue is as to whether the Id CITA is justified in deleting the disallowance on account of recruitment expenses in the sum of Rs. 20,51,000/- in the facts and circumstances of the case.

11.1. The brief facts of this issue is that the Id AO observed that the assessee regularly recruits professionals through recruitment consultants and pays professional fees to the said agencies. The said fees are charged to P&L Account and is allowed as revenue cost. However, during the year, it was noticed that in two isolated cases, the quantum of payment of such fees was disproportionately higher than any other similar charge. The two

sums of Rs.15,00,000/- and Rs.5,51,000/- were seen to be paid as fees to recruitment agencies in connection with the recruitment of Shri Jairaj Purandare and Shri Mohnish Sinha who went on to occupy very high positions in the hierarchy of the assessee. The Id AO observed that recruitment of a highly skilled professional results in the acquisition of an enduring human resource asset. Fees paid in connection with the same is thus a one-time cost related to the acquisition of such an enduring asset and as such, the same must be considered as capital in nature. Hence the total sum of Rs.20,51,000/- was disallowed.

11.2. Before the Id CITA, the assessee explained that recruitment of staff is an ongoing process necessary for the smooth running of business and does not partake the character of a capital expenditure and hence such expenditure on recruitment of staff is an allowable revenue expenditure u/s 37(1) of the Act. In support of which, the assessee placed reliance on the following decisions :-

Assam Bengal Cement Co. Ltd vs CIT reported in 27 ITR 34 (SC)
Empire Jute Co. Ltd vs CIT reported in 124 ITR 1 (SC)
Hindustan Commercial Bank Ltd in RE reported in 21 ITR 353 (All HC)
U.M. Cables Ltd vs ITO in ITA No. 2442/Kol/2007 rendered by Kolkata Tribunal

The Id CITA taking into account the aforesaid submissions and by placing reliance on the aforesaid decisions deleted the disallowance made by the Id AO. Aggrieved, the revenue is in appeal before us on the following ground:-

“4. On the facts and circumstances of the case the Ld. CIT(A)-XX, Kolkata has erred in directing to allow recruitment expenses of Rs.20,51,000/-.”

11.3. The Id DR vehemently relied on the order of the Id AO. In response to this, the Id AR vehemently relied on the order of the Id CITA. He also argued that the persons employed are for senior positions in the assessee company and they were employed through recognized recruitment agency. He argued that no enduring benefit is obtained in the capital field by virtue of such recruitment expenses for the assessee and hence the same is allowable as a revenue expenditure.

11.4. We have heard the rival submissions and perused the materials available on record. We are in complete agreement with the Id AR that no enduring benefit is obtained by the assessee pursuant to incurrence of recruitment expenses paid to recruitment agency for appointing two members for the senior position in the assessee company. We find that

this aspect is also adjudicated by the co-ordinate bench decision of Delhi Tribunal in the case of DCIT vs M/s Sapient Corporation Pvt Ltd in ITA NO. 1856 (Del) of 2010 for Asst Year 2005-06 dated 8.4.2011 wherein , the Delhi Tribunal, by placing reliance on its earlier decision in the case of Sony India P Ltd vs DCIT in para 83 , held that recruitment expenses were incurred in the ordinary course of business and no capital asset has been acquired by the assessee. The recruitment and training expenditure had been incurred by the assessee to facilitate its business operations more profitably and efficiently. The recruitment is an on-going process and does not bring into existence any capital asset. Under these facts and circumstances and respectfully following the co-ordinate bench decision of Delhi Tribunal, we do not find any reason to interfere with the order of the Id CITA in this regard. Accordingly, the ground no. 4 raised by the revenue is dismissed.

12. In the result, to sum up, the appeals of the revenue in ITA No. 1523/Kol/2013 for AY 2005-06 and ITA No. 1521/Kol/2013 for AY 2003-04 are dismissed and assessee's appeal in ITA No. 2033/Kol/2013 for AY 2003-04 is allowed.

Order is pronounced in open court on 13.07.2016

Sd/-

(S. S. Viswanethra Ravi)
Judicial Member

Sd/-

(M. Balaganesh)
Accountant Member

TAX SCAN
SIMPLIFYING TAX LAWS
Dated : 13th July, 2016
WWW.TAXSCAN.IN

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – DCIT, Circle-2, Kolkata
2. Respondent –M/s. Pricewaterhouse Coopers Pvt. Ltd., Block-EP, Sector-VI, Salt lake, Kolkata-91.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.