IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.4849/Mum./2019
(Assessment Year : 2013–14)

Dy. Commissioner of Income Tax Central Circle–6(4), Mumbai	……………. Appellant

v/s

Indiabulls Housing Finance Ltd. M–62 & 63, First Floor Connaught Place, New Delhi 100 001 PAN – AABCI3612A	……………. Respondent

Revenue by : Ms. Shreekala Pardeshi
Assessee by : Shri Chetan Karia

Date of Hearing – 27.01.2021	Date of Order – 8.03.2021

O R D E R

PER S. RIFAUR RAHMAN, A.M.

The present appeal has been filed by the assessee challenging the order dated 30th April 2019, passed by the learned Commissioner (Appeals)–22, Mumbai, for the assessment year 2013–14.

2. The issue arising out of the grounds of appeal raised by the assessee is, whether or not the learned Commissioner (Appeals) was justified in deleting the disallowance of ₹ 14,17,240, made by the Assessing Officer being excess claim of depreciation on software expenses.

3. As it transpires from the facts on record that during the year under consideration, the assessee was engaged in the business of housing finance and filed its return of income on 29th November 2013, declaring total income at ₹ 861,28,40,140. The return of income was processed under section 143(1) of the Income Tax Act, 1961 (for short *"the Act"*) and the same was selected for scrutiny under CASS and the statutory notices under section 143(2) and 142(1) of the Act were issued and served on the assessee. Subsequently, the return of income was revised by the assessee on 31st March 2015, declaring total income at ₹ 850,24,44,390. Notice dated 20th October 2015 under section 142(1) of the Act along with a questionnaire was issued and served upon the assessee. In response, the learned Authorised Representative of the assessee attended and filed the relevant information as called for by the Assessing Officer. The Assessing Officer during the course of assessment proceedings observed that the assessee in the immediate preceding assessment year 2012–13 was assessed under scrutiny when the then Assessing Officer had found that the assessee had made addition in software during that year and claimed depreciation thereon @ 60% whereas it was allowable @ 25% being intangible asset. The assessee, in response the confrontation of the Assessing Officer to explain as to why depreciation be not restricted to 25%, the assessee stated that the depreciation on

software is allowable @ 60%. According to the Assessing Officer, there was no force in the submissions made by the assessee and observed that the addition in software was made during the year at ₹ 40,49,255 was made in the first half of the year. Since the assessee has claimed depreciation on such addition of software assets @ 60% (₹ 24,29,553), whereas it was allowable @ 25% (₹ 10,12,553), the excess depreciation claimed being intangible asset was restricted to ₹ 14,17,240 (₹ 24,29,553 – ₹ 10,12,313) and the disallowance so made by the Assessing Officer was added back to the income of the assessee.

4. Not being satisfied by the stand of the Assessing Officer, the assessee contested the disallowance made by the Assessing Officer before the first appellate authority wherein before the learned Commissioner (Appeals), the learned Authorised Representative placed reliance upon the decision of the Co–ordinate Bench of the Tribunal, Delhi Bench, in M/s. Globe Capital Market Ltd. v/s Deptt. Of Income Tax, ITA no.2926/Del./2012, and argued for deleting the addition. The learned Commissioner (Appeals) observed that identical issue was allowed by his predecessor–in–office i.e., learned CIT(A)–4, who after considering the facts of the case and relying upon the decision of the Tribunal, Delhi Special Bench, in Amway India Enterprises v/s DCIT, [2008] 111 ITD 112 (Del.)(SB) allowed depreciation @ 60%. Since the

facts of the case before the learned Commissioner (Appeals) were identical to the facts of the case decided by his predecessor–in–office i.e., learned CIT(A)–4, following the same, the learned Commissioner (Appeals) allowed the appeal of the assessee. Being aggrieved, the Revenue is in appeal before the Tribunal.

5. Before us, the learned Departmental Representative assailing the order of the learned Commissioner (Appeals) submitted that the assessee is eligible for depreciation @ 25% and hence, prayed for upholding the order of the Assessing Officer.

6. The leaned Counsel for the assessee submitted before us that two issues i.e., (i) rate of depreciation on software and (ii) claim for deduction on account of ESOP raised in the present appeal due to transactions of the said erstwhile entity. He submitted that the learned Commissioner (Appeals) while allowing the claim on the said two issues as referred to and relied on the order passed by his predecessor–in–office i.e., learned CIT(A)–4, for A.Y. 2012–13. The assessee in the said case in Indiabulls Financial Services Ltd., which has merged into the assessee company w.e.f. 1st April 2012. He submitted that the appeal for the assessment year 2012–13 in case of Indiabulls Financial Services Ltd., identical issue has been decided in favour of the assessee by the Co–ordinate Bench of the Tribunal, Delhi

Bench, in ITA no.6602/Del./2016, order dated 11th March 2020 and prayed for allowing depreciation @ 60%.

7. Considering the rival submissions and on a perusal of the material on record in the light of the decisions relied upon, we find that the issue before us is squarely covered in favour of the assessee by the decision of the Co–ordinate Bench of the Tribunal in assessee's own case in ITA no.6602/Del./2016, order dated 11th March 2020, for the immediate preceding assessment year 2012–13 wherein the Bench declined to interfere with the order of the first appellate authority. We may, in this regard, refer to the observations made by a Co-ordinate bench, wherein the Tribunal has declined to interfere with the order of the learned Commissioner (Appeals) by observing as follows:-

> *"14, Having gone through the record, we find that the nature of the software acquired were licenses, which do not confer any enduring right and could be used for the duration as acquired for by the licensor. The taxpayer's objective was to use computer software to maximize its performance and streamline efficiency. The Hon'ble Bombay High Court in the case of M/s I-Flex Solutions Ltd. reported in 225 Taxmann 37 held that there is no reason to differentiate the computer and the software as the latter is an integral part of the former. The software cannot be seen in isolation delinked from the computers. Similar view has been taken by the Co-ordinate bench of ITAT in the case of Make My Trip (India) Pvt. Ltd. Vs DCIT in ITA No, 6055/Del/2010 and Globe Capital Market Ltd. Vs CIT in ITA No, 2926/Del/2012. The issue of depreciation ©60% on the software is now a settled issue beyond any perplexity. Hence, we decline to interfere with the order of the Id. CIT (A)."*

8. Since the issue before us is mutatis mutandis identical to the issue decided by a Co-ordinate Bench of the Tribunal in assessee's own case cited supra, respectfully following the same, we find no infirmity in the order of the learned Commissioner (Appeals) warranting interference at the instance of the Revenue.

9. In the result, Revenue's appeal is dismissed.

Order pronounced in the open court on 8.3.2021

Sd/-	**Sd/-**
PAVAN KUMAR GADALE	**S. RIFAUR RAHMAN**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

MUMBAI, DATED: 8.3.2021

<u>Copy of the order forwarded to</u>:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai