<u>आयकर अपीलीय अधिकरण, मुंबई</u>
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E" MUMBAI

सर्वश्री बी.आर.मित्तल, न्या.स / **एवं**
BEFORE SHRI B.R. MITTAL, JUDICIAL MEMBER /AND

श्री राजेन्द्र, ले.स.
SHRI RAJENDRA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 7666/Mum/2011
निर्धारण वर्ष /Assessment Year 2007-08

आयकर अपील सं. / ITA No. 7643/Mum/2011
निर्धारण वर्ष /Assessment Year 2008-09

ITO 8(3)(1), Room No. 201, 2nd Floor, Aayakar Bhavan, Mumbai-20	Vs.	M/s. Seclore Technology Pvt. Ltd., A-2037, Oberoi Garden Estate, Chandivali Road, Andheri(E), Mumbai-400 072. **PAN: AAHCS 9435 K**
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

Revenue by **:** Shri V. Krishnamoorthy
Assessee by **:** Ms. Manisha Bhonsle

सुनवाई की तारीख / Date of Hearing : 18-10-2012
घोषणा की तारीख / Date of Pronouncement : 18-10-2012

<u>आदेश / **O R D E R**</u>

PER RAJENDRA, AM

The common Ground of Appeal for both the Assessment Years filed by the Assessing Officer (AO) challenging the order of the dt. 30-08-2011 of CIT(A)-18, Mumbai reads as under:

> *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Miscellaneous Expenditure of Rs.21,47,617/- on the ground of matching concept without appreciating the fact that the expenditures being amortised by the assessee over three years was not incurred in the year under consideration and is not revenue in nature."*

> *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of Miscellaneous Expenditure of Rs.21,47,617/- on the ground of matching concept relying on the decision of the Jurisdictional High Court in the case of Taparia Tools Ltd. Vs. JCIT (2003) 260 ITR 102 without appreciating the facts that the Department has not accepted the said decision and an SLP has been filed."*
>
> *The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the ITO/AC/DCIT be restored.*
>
> *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."*

For the AY 2008-09 an additional ground was also filed and same reads as under:

> *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the disallowance of rent of Rs. 4.86 lakhs without appreciating the facts that the assessee did not furnish any details at the time of assessment proceedings and the CIT(A) allowed the appeal of the assessee without obtaining any remand report of the A.O. on the same".*

ITA No. 7666/Mum/2011 (AY.2007-08):

2. Assessee-company,engaged in the business of software development, electronically filed its return of income as NIL on 30-09-2008. Initially, the return was processed u/s.143(1) of the Income Tax Act, 1961(Act) subsequently, the return was selected for scrutiny and assessment was done on 03-12-2010 u/s. 143(3) of the Act determining total income of Rs. 24.81 Lakhs.

3. During the assessment proceedings, Assessing Officer (AO) found that assessee-company had debited 'Miscellaneous expenses write-off' amounting to Rs. 21.47 Lakhs in the books of accounts. After considering the submissions filed by the assessee-company in this regard, AO held that 'Miscellaneous expenses write-off' was nothing but deferred revenue expenses, that as per the provisions of Section 37 only revenue expenditure was to be allowed as deduction under the head 'Income from Business', that expenses incurred on research and development on software were capital in nature, that expenses claimed as deferred revenue could not be allowed during the year under consideration. Accordingly, he disallowed an amount of Rs.21. 47 Lakhs and added back it to the total income of the assessee.

Assessee-company filed an appeal before the First Appellate Authority (FAA). After considering the submissions of the assessee and the Assessment Order, he held that all the expenses claimed as deferred revenue expenditure were revenue in nature except for the expenses of Rs. 30,600/- (computer expenses), that benefit of the same could not be got fully in the same year. Relying upon the decision of the Hon'ble Jurisdictional High Court in the case of *Taparia Tools Ltd., (260 ITR 102),* he held that measuring conceded was very relevant to compute taxable income particularly in case where deferred revenue expenditure involved, that appellant had spared the expenses over the period of 3 years, that assessee-company was showing profit in all the 3 years, that same was to be allowed as revenue expenditure. Finally, he directed the AO to allow expenditure amounting to Rs. 21.17 Lakhs for both the AYs.

4. Before us, Departmental Representative (DR) relied upon the order of the AO. Authorised Representative (AR) submitted that assessee had incurred expenditure that was revenue in nature, that deferred revenue expenditure has to be allowed as per the provisions of the Act, that decision of the Hon'ble High Court of Bombay in the case of *Taparia Tools Ltd.,* (supra) was applicable to the facts under consideration. We have heard the rival submissions and perused the material put before us. It is found that assessee-company had incurred expenditure which was of revenue nature. Deferred revenue expenditure is not a new concept for the Income Tax assessment proceedings. It is one of the recognised principles of accounting. Similarly, matching concept is also one of the accepted norms of accountancy. In our opinion; deferring the revenue expenditure spread over a period of three years in the case under consideration is not against the established canons of accountancy or the provisions of the Act. So, FAA has rightly deleted the additions made by the AO,following the decision of the Jurisdictional High Court. In our opinion, his order needs no interference from our side. Ground Nos.1 to 4 filed by the AO are dismissed.

As a result, appeal filed by the AO for the AY 2007-08 stands dismissed.

<u>ITA No. 7643/Mum/2011(AY.2008-09):</u>

5. As stated earlier, except for the Ground related with the rent, claimed to have been paid, all other ground of appeal are identical for the AY under consideration with the Grounds of appeal filed for the AY 2007-08.

5.1. Main ground is about deferred revenue expenditure of Rs.21.17 lakhs incurred for R&D of software. As the facts and arguments for the issue are identical to facts of the earlier AY therefore, following the order for AY 2007-08 (Para 4) we reject the appeal filed by the AO.

Ground No.1 is decided against the Revenue.

6. Ground No.2 is about rent, claimed to have been paid, amounting to Rs.4.86 lakhs. During the assessment proceedings AO found that assessee had debited Rs.4.86 lakhs under the head rent. He called for the details about rent paid and the rent-agreement. As per the AO assessee did not file any detail in this regard. He added the said amount to the total income of the assessee-company. In appellate proceedings before the FAA details of rent payment and tax deducted at source were filed. We find that the FAA had allowed the appeal of the assessee without referring the said material to the AO. In our opinion it was duty of the FAA to call for a report from the AO or to afford him an opportunity of hearing in this regard, because assessee had not filed any detail before the AO. We are aware that FAA can admit additional evidence as per the provisions of Rule 46 of the Income-tax Rules,1962,but for that he has to mention the reasons for invoking the sub-rule 4 of the said rule. In these circumstances we are of the opinion that file should be restored back to the file of the FAA to afford reasonable opportunity of hearing to the AO.

Ground No.2 is allowed in part in favour of the AO.

Appeal of the AO for AY 2008-09 stands partly allowed.

Order pronounced in the open court on 18th October, 2012.

Sd/- Sd/-

(बी.आर.मित्तल **/ B.R. MITTAL**) (राजेन्द्र / **RAJENDRA**)

न्यायिक सदस्य / **JUDICIAL MEMBER** लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai,

दिनांक Date: 18th October, 2012

TNMM

<u>आदेश की प्रतिलिपि अग्रेषित/**Copy of the Order forwarded to**</u> **:**

1. Appellant
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt. Registrar
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai