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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Apr-26-2007

Judge : S K Yadav, V Gupta

Appellant : Routermania Technologies (P.)

Respondent : ito

Judgement :

1. This appeal by the assessee is preferred against the order of the Commissioner (Appeals) on a solitary ground that the Commissioner (Appeals) has erred in confirming the order of the assessing officer wherein depreciation on Routers was restricted to 25 per cent instead of 60 per cent as applicable to the computers.

2. We have heard the rival submissions and carefully perused the orders of the authorities below and documents placed on record.

3.The facts in brief are that the assessee has claimed depreciation @ 60per cent on computers and routers. The assessing officer has restricted the depreciation @ 25 per cent on routers having held that these are not computers. The assessing officer has examined the difference between the computers and routers, before holding that function of routers is only of communication of the data and is not a part of the computer system.

The relevant observation of the assessing officer at page Nos. 2 to 4 are extracted hereunder for the sake of reference: In common parlance, the term 'computer' has been defined in the Oxford Dictionary as under: Computer' as an electronic device for storing and processing data and making calculation on the controlling machinery. Thus, it may be stated that the computer includes an input device like keyboard or the mouse and output device like the printer or monitor. The main Central Processing Unit (CPU) consist of a mother board having a microprocessor and some cards like was a display card and the sound card and hard disk." All these in conjunction perform the function of storing and processing data and making calculations of controlling machinery as rightly defined in the Oxford Dictionary.

Further, the term 'Computer System' has been defined in Explanation (a) to below Sub-section (ix) to Section 36(1) of the Income Tax Act as under: "Computer System" means a device or collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files or more of which contain computer programmes, electronic instructions, input data and output data that performs functions including but not limited to logic, arithmetic, data storage and retrieval, communications and control.

Routers is a telecommunication device. A routers is an electronic circuitry facilitating switching between different computers in a net working environment. Thus, if any information is to be sent or retrieved through several network of computers a routers is the device which links or connect such computers for exchange of relevant data. In other words, a routers is an electronic device is switched between computers for connectivity. It is a main link which decides and facilities connectivity between computers in a net work which could be a lan or wan. Routers are switches, doing the job of multiplexing. These are basically complex electronic circuits managing the links between various computers. It is not necessarily a stand alone system as commonly understood vis-a-vis a computer. In other words, it has to be dependent for its functioning in the computer. It can also be a dedicated device performing the lone function of establishing links.

Since nowhere in the Act or the IT Rules the term 'Computer' has been defined the same therefore has to be understood as used in common parlance. The Oxford

Dictionary defines 'Computer' as an electronic device for storing and processing data and making calculation on the controlling machinery. Thus, it may be stated that the computer includes an input device like keyboard or the mouse and output device like the printer or monitor. The main Central Processing Unit (CPU) consist of a mother board having a microprocessor and some cards like was a display card and the sound card and hard disk. All these in conjunction perform the function of storing and processing data and making calculations of controlling machinery, as rightly defined in the Oxford Dictionary. In the instant case the device is a switch/routers and cannot by any stretch of imagination be called a computer since it does not have a CPU consisting of mother board, Micro Processor etc.

It may also be worthwhile to consider here the intention of the Legislature in offering depreciation @ 60 per cent on computer vis-a-vis the depreciation offered @ 25 per cent on plant and machinery. The Legislature intended proliferation of widespread use of computers amongst the people so that there is an increased use of home computers for services like communication or maintaining database etc. Moreover, the Income Tax Act always gives definitions of items such as 'small scale industrial undertaking' as contained in Industrial (Development) Regulation Act, 1951 and 'Company' as per Section 25 of the Companies Act, 1956 whereas the definition of 'Computers' has not been given anywhere in the Income- tax Act.

Thus, this equipment does not even qualify as 'computer system' as per the definition given in Explanation (a) below Section 36(1)(ix) of the Income Tax Act. Since the function of routers is limited only to communication of the data.

It is, therefore, held that the routers are entitled for depreciation @ 25 percent under the block of assets, i.e., plant and machinery and not @ 60 perDcent allowed to computers as per Appendix (I) to Income-tax Rules. The details of depreciation allowable according to the date of acquisition of routers is as under: Routers purchased during financial year 2000-01 and used for more than 180 days Routers purchased during financial year 2000-01 and used for less than 180 days Thus, the excess of depreciation claimed of Rs. 4,85,070 (the difference between Rs. 8,45,748 being the depreciation claimed on the routers and Rs. 3,60,678 being the depreciation allowable on such assets) is disallowed and added back to the total income of the assessee.

4. The assessee preferred an appeal before the Commissioner (Appeals) and has invited his attention to the definition of the computer as provided by the Cyber Law and Information Technology Act, 2000. The Commissioner (Appeals) re-examined the issue, but, was not convinced with the explanation of the assessee and has held that routers are totally different than the computers. He, accordingly, confirmed the disallowance of excess depreciation of routers.

5. Now the assessee has preferred an appeal before the Tribunal and reiterated its contention raised before the Commissioner (Appeals). He has also invited our attention the definition of the computer given in the Cyber Law and Information Technology Act, 2000 with the submissions that the word 'computer' has not been defined under the Income Tax Act and in these circumstances, the computer is to be understood in the light of the definition given in the Cyber Law and Information Technology Act, 2000.According to it, computer means any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetical and memory functions by manipulations of electronic, magnetic or optical impulses and includes an input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network. Since the routers is an essential part to connect the two computers and transmit datas from one computer to other, it can only be called to be the part of the computer and eligible for depreciation @ 60 per cent.

6. The learned DR. has invited our attention to the definition of the computer as well as the computer network given in the Cyber Law and Information Technology Act, 2000. According to its definition clause, computer network means, the inter-connection of one or more computers through the use of satellite, microwave, terrestrial line or other communication media. The assessee has not filed the full text of Cyber Law and Information Technology Act, 2000 or any other document to establish that router is a part of computer. Whatever is obvious from the material placed is that the computer means the electronic, magnetic and upward other high

speed data processing device or system. The instrument which is used to connect the two computers, it can only be fall within the definition of computer network and not a part of the computer. He has also invited our attention that according to Appendix (I), 60 per cent of the depreciation is to be allowed, only to computers and not on the computer network system. The learned DR further invited our attention that it is not a case where the router is an essential part of the computer system without which the computer cannot work. Computer can independently work and process the datas. The router can only be used to connect more computers and transmit the datas from one computer to other. It can only be termed to be the computer network.

7. Having heard the rival submissions and from careful perusal of the Orders of the lower authorities, we find that assessing officer has examined the difference between the computer and routers and according to him, router is a tele-communication device. It is an electronic circuitry, facilitating switching between different computers in a net working environment. Thus, if any information is to be sent or retrieved through several network of computers, a router is the device which links or connects such computers for exchange of relevant data.

In other words, a router is an electronic device switched between computers for connectivity. It is a main link which facilitates connectivity between computers in a network which could be Ian or wan.

We have also examined the definition of computer given in Oxford Dictionary and other dictionaries. Undisputedly, the computer has not been defined under the Income Tax Act. But, the computer system had been explained in Explanation for the purpose of Clause (ix) of Section 36(1) of the Income Tax Act. According to this Explanation, computer system means, a device or a collection of devices including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files or more of which contain computer programmes, electronic instructions, input data and output data that performs functions including, but not limited to logic, arithmetic, data storage and retrieval communication and control. While looking to this old Appendix (I) of the I.T. Rules which deals with the percentage of depreciation allowable on different capital assets, we find that depreciation at 60 per cent was allowed only on computers and not a computer system. The word 'computer' has also been defined in the Cyber Law and Information Technology Act, 2000, according to which, computer means, any electronic, magnetic, optical or other high speed data processing device or system which performs logical, arithmetical and memory functions by manipulations of electronic, magnetic or optical impulses and includes an input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network. The computer network is also defined under this Act and according to it, a computer network means, the interconnection of one or more computers through the use of satellite, microwave terrestrial line or other communication media.

Undisputedly, a router is used to provide a connectivity between the computers and also to process the data from one computer to another. A router of its own does not perform logical, arithmetical or memory functions by manipulations of electronic, magnetic or optic impulses.

Without a router, a computer can independently work and perform all functions.

8. Before us, the learned Counsel for the assessee did not filed complete text of computer network. He has tried to draw an inference from the definition of computer given in this Act that the router is a part of computer system and not a computer network. Since the depreciation is to be allowed only on the computer and not the computer system and in any case a router cannot be called to be the part of the computer, we are not convinced with the arguments raised by the assessee. Moreover, the assessing officer has made a detailed analysis and distinction between the computer and the routers. We, therefore, of the view that lower authorities have rightly adjudicated the issues by holding that router is not a part of computer and is not eligible for depreciation @ 60 per cent. We, accordingly, confirm the order of the Commissioner (Appeals).