**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri A.T. Varkey, Judicial Member**

**I.T.A. Nos. 1020 & 1021/KOL/2017
Assessment Years: 2007-2008 & 2010-2011**

Deputy Commissioner of Income Tax,.....Appellant
Circle-22, Kolkata,
54, Rafi Ahmed Kidwai Road, 4th Floor,
Kolkata-700 016

-Vs.-
M/s. Lovelock & Lewes,.....Respondent
Plot NY 14, Block-EP, Sector-V, Salt Lake,
Kolkata-700 091
[PAN: AABFL 5878 L]

Appearances by:
Shri Radhey Shyam, CIT (D.R.), for the Appellant

Shri Kanchan Kaushal, FCA, Shri K.M Gupta, Advocate, Shri B.K. Jain, FCA and Shri Pulkit Chhajer, ACA, for the Respondent

Date of concluding the hearing : January 09, 2019
Date of pronouncing the order : March 08, 2019

O R D E R

Per Shri P.M. Jagtap Vice-President (KZ):-

These two appeals are preferred by the Revenue against two separate orders of ld. Commissioner of Income Tax (Appeals)-6, Kolkata for assessment years 2007-08 and 2010-11 and the same have been heard together and are being disposed of by a single consolidated order.

2. **First we take up the appeal of the Revenue for A.Y. 2007-08 being ITA No. 1020/KOL/2017**, which is directed against the order of ld. CIT(Appeals)-6, Kolkata dated 13.02.2017 and the ground raised therein by the Revenue reads as under:-

> *"The ld. CIT(A), Kolkata has erred both in fact and law by deleting the addition made on the grounds of disallowance of expenditure under the head "interest*

paid on delayed payment of taxes, personal use of telephone, PWC Global Services Charges & Software licence fee".

3. The assessee in the present case is a firm of Chartered Accountants. The return of income for the year under consideration, i.e. A.Y. 2007-08 was filed by it on 31.10.2007 declaring total income of Rs.51,94,80,507/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.1,73,456/- was debited by the assessee on account of interest on late payment of taxes. The said amount included a sum of Rs.94,992/- incurred on account of interest paid on delayed deposit of service tax, which was claimed by the assessee as a deductible expenditure. The Assessing Officer disallowed the said amount on the ground that interest on delayed payment of tax was not allowable. The ld. CIT(Appeals), however, deleted the said disallowance made by the Assessing Officer on the ground that the interest paid by the assessee on delayed deposit of service tax was compensatory in nature.

4. During the year under consideration, the assessee had incurred telephone expenses of Rs.18,29,339/-. The Assessing Officer disallowed the said expenses to the extent of 10% on the ground that the personal use of telephone could not be ruled out. On appeal, the ld. CIT(Appeals) deleted the said disallowance made by the Assessing Officer on adhoc basis.

5. During the year under consideration, the assessee had incurred a total expenditure of Rs.1,81,41,550/- on account of PWC Global Service Charges paid to M/s. Price Water House Coopers Services BV Netherlands in terms of Firm Service Agreement entered into by the assessee with the overseas entity. In the assessment completed under section 143(3), the Assessing Officer disallowed the said expenditure holding it to be capital in nature. On appeal, the ld. CIT(Appeals) deleted the disallowance made by the Assessing Officer on this issue by observing that there was no

evidence of any underlying assets having come into existence which might provide enduring benefits to the assessee.

6. During the year under consideration, the assessee had incurred a total expenditure of Rs.10,98,467/- on account of payment made to M/s. Wipro Limited for renewal of software licence for personal computers. The Assessing Officer disallowed the said expenditure on the ground that payment made towards software licence fees was a capital expenditure as it resulted into enduring benefit to the assessee. On appeal, the ld. CIT(Appeals) deleted the disallowance made by the Assessing Officer on this issue holding that the expenditure incurred on payment of software licence fees was a revenue expenditure.

7. Aggrieved by the order of the ld. CIT(Appeals) giving relief to the assessee on these four issues, the revenue has preferred this appeal before the Tribunal raising a consolidated ground as Ground No. 1.

8. We have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the ld. Representatives of both the sides, all the four issues involved in this appeal of the Revenue are covered in favour of the assessee by the various decisions of the Tribunal. As regards the issue relating to disallowance of interest paid on delayed deposit of service tax, it is observed that a similar issue involved in the case of DCIT –vs.- M/s. Webel Consumer Electronics Limited has been decided by the Tribunal in favour of the assessee vide its order dated December 28, 2012 passed in ITA No. 392/KOL/2012, wherein interest paid on delayed payment of sales tax was held to be a deductible expenditure by the Tribunal. To the similar effect is another decision of the Tribunal in the case of ACIT –vs.- Price Water House (ITA No. 611/KOL/2011). Respectfully following these decisions of the Coordinate Bench of this Tribunal, we uphold the impugned order of the ld. CIT(Appeals) deleting the disallowance made

by the Assessing Officer on account of interest paid by the assessee on delayed payment of service tax.

9. As regards the issue relating to *adhoc* disallowance made by the Assessing Officer out of telephone expenditure, it is observed that a similar disallowance made by the Assessing Officer in the case of ACIT – vs.- Price Water House was deleted by the Tribunal vide its order dated 22.09.2006 passed in ITA No. 1280/KOL/2005 holding that the adhoc disallowance made by the Assessing Officer on the basis of presumption without bringing any material evidence on record to show the personal use of telephone was not sustainable. Respectfully following this decision of the Coordinate Bench of this Tribunal, we uphold the impugned order of the ld. CIT(Appeals) deleting the adhoc disallowance made by the Assessing Officer out of telephone expenses.

10. As regards the issue of disallowance of PWC Global Service Charges, it is observed that a similar issue has been decided by the Tribunal in favour of the assessee in the case of M/s. Price Water House Coopers Pvt. Limited –vs.- ACIT vide paragraph no. 23 of its order dated 12.09.2018 passed in ITA No. 483/KOL/2017, which reads as under:-

> *"23. The as essee's next substantive ground challenges correctness of disallowance amounting to ₹150,046,130/- in respect of PWCDA network form charges. There is no dispute about the same to have been paid to its eponymous "Dutch" entity incorporated in Netherlands against invoices raised by PWCDA services in terms of firming Services Agreement. The lower authorities seem to have disallowed the above payment mainly for the reason that the assessee could not establish the relevant business nexus / purpose and there was also a failure on its part in not deducting TDS thereupon. We have heard rival contentions reiterating both parties respective facts. There is no dispute in principle about the assessee's firm service agreement with the payee M/s PWCD's services as well as its role played as providing central services to the entire "PWC" group based on cost allocation method keeping in mind the nature of services rendered benefits derived as per pages 117 to 261 of the paper book. The assessee has also prepared a list of services availed via the payee concerned in respect of all member firms of the group involving sample cases of e-learning and education, mandatory foundation programmes, training programmes alloys specific / technical programmes etc. All this has gone unrebutted from the Revenue side whose case is that there is no business link forthcoming from the impugned expenditure. We find no substance in*

Revenue's instant stand. We make it clear that the assessee- company is engaged in multi functional consultancy services as a group entity of PWCDA organization based in Netherlands. Learned counsel has also filed before us relevant assessment records with regard to the payee entity pertaining to the impugned assessment year itself accepting the returned income without making any addition. Necessary reference regarding Firm Services Agreement is also made to paper book pages 6304 and 6305. It emerges that this Tribunal's decision in DCIT vs. Ernst & Young (P) Ltd. 49 taxman.com 386 (Kol) also holds that no TDS is deductible in case of such firm services agreement payments not including any income component but only reimbursement of expense on cost allocation formula. We take into account all these facts as well as judicial precedents to delete impugned disallowance of Firm Services expenditure payment amounting to ₹150,046,130/-".

11. It is also observed that a similar claim of the assessee for deduction on account of PWC Global Service Charges was allowed by the Assessing Officer himself in the assessment completed for AY 2005-06 and 2006-07 in assesse's own case under section 147/143(3) of the Act vide orders dated 16.07.2010. Keeping in view the decision of the Tribunal in the case of Price Water House Coopers Services (supra) as well as the stand taken by the Assessing Officer himself in assessee's own case for AY 2005-06 and 2006-07, we uphold the impugned order of the ld. CIT(Appeals) allowing the claim of the assessee for deduction on account of PWC Global Service Charges.

12. As regards the issue relating to software licence fees paid by the assessee to M/s. Wipro Limited, it is observed that the Assessing Officer himself has allowed the similar claim made by the assessee for A.Ys. 2005-06 and 2006-07 vide its order dated 16.07.2010 passed under section 147/143(3) of the Act. It is also observed that a similar issue was decided by the Tribunal in favour of the assessee in the case of DCIT –vs.- Excide Industries Limited vide its order dated 13.04.2016 passed in ITA No 1347/KOL/2013. Keeping in view the said decision of the Tribunal and the stand taken by the Assessing Officer himself on the similar issue allowing the similar claim for A.Ys 2005-06 and 2006-07, we uphold the impugned order of the ld. CIT(Appeals) allowing the deduction claimed by

the assessee on account of software licence fees paid to M/s. Wipro Limited.

13. In the result, the appeal of the Revenue for A.Y. 2006-07 being ITA No. 1020/KOL/2017 is dismissed.

14. **Now we take up the appeal of the Revenue for A.Y. 2010-2011 being ITA No. 1021/KOL/2017**, which is directed against the order of the ld. CIT(Appeals)-6, Kolkata dated 14.02.2017.

15. In Ground No. 1, the Revenue has challenged the action of the ld. CIT(Appeals) in treating the receipt of Rs.7,92 57,500/- as business receipt instead of income from other sources as held by the Assessing Officer.

16. During the year under consideration M/s. Price Water House Coopers Services BV, Netherlands (PWC BV) had provided a non-refundable grant of Rs.7,92,57,500/- at the request of the assessee. The said amount was claimed to be received by the assessee as per the Firm Services Agreement dated 16.03.2011. In the Profit & Loss Account, the amount of grant received was credited by the assesee-company as sundry income and in the computation of total income, it was claimed to be a professional income. According to the Assessing Officer, the assessee during the course of assessment proceedings could not explain the circumstances in which the PWC BV had provided the said non-refundable grant. He also observed that the assessee could not produce any document showing any professional services rendered to PWC BV. The claim of the assesese that the said receipt was directly and inextricably linked to its profession was not found acceptable by the Assessing Officer. He held that just because the assessee was engaged in professional services, every amount received by him could not be said to be a professional receipt. He held that the said amount of grant received

by the assessee thus did not constitute the business income of the assessee and the same was chargeable to tax under the head "income from other sources".

17. The action of the Assessing Officer in treating the grant received from PWC BV as income from other sources was challenged by the assessee in the appeal filed before the ld. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the ld. CIT(Appeals) allowed the claim of the assessee and directed the Assessing Officer to treat the amount of grant in question as business income of the assessee for the following reasons given in paragraph no. 4.3 of his impugned order:-

> *"4.3. I have considered the facts of the case and the appellant's submissions. It is an undisputed fact that the appellant received an amount of Rs.7,92,57,500/- from PWC BV, Netherland which was non refundable. The AO has stated in the assessment order that, as per the agreement between PWC BV and the appellant PWC BV had agreed to pay the appellant for maintaining a d enhancing its resources and capabilities to further the objective of the network of member firms. However, the AO was of the view that no evidence of any professional se vice rendered by the appellant for receiving the said non-refundable grant was provided. The grant could not be termed as a professional receipt merely for the reason that the appellant was otherwise engaged in professional activity The appellant's contention is that the non-refundable grant has been received for facilitating enhancement of the firm resources and skills and is, accordingly inextricably linked to business or profession carried on by the appellant firm I have examined the relevant agreement dated 16.03.2011 and find that the appellant firm is an independent member firm of the Pricewaterhouse Cooper network which provides audit services to Indian and multinational clients including work that is referred to it by other member firms of the network. As the clients increasingly conduct business on a cross-border basis, the appellant is stated to recognize the need to maintain level of human, technological and capital resources consistent with the level maintained by other member firms and competitors. The grant is provided by PWC BV with a specific undertaking by the appellant firm' to use the grant to enhance its resources by meeting the cost of acquiring / enhancing the required expertise and skill sets as specifically set out in the Grant Agreement. It is also agreed that no specific services are to be provided by the appellant and PWC BV to each other. Various ways in which the grant*

can be utilized are laid down in clause 2.3 under the general heading, "2.Grant & Purpose" which include inter-alia, development of and acquisition of resources for additional technical excellence and knowledge in the fields of professional practice development, maintenance and enhancement of quality standards, dissemination of reference and research material. to professionals, continuing education, improvement and implementation of risk management policies. The AO has rejected the appellant's claim of nexus between the grant and its profession by only stating that the appellant has not rendered any professional services. However, the clear description of the purpose the grant and its link with the profession of the appellant firm makes it clear that the AO has not properly appreciated the terms of the grant agreement. It is not the case of the AO that the grant was not received by the appellant from PWC BV or was not offered for taxation as a revenue receipt. The agreement available on record clearly proves that the grant was received only in connection with and because of the nature of professional services of the appellant firm. The grant cannot be treated as income from other sources only because no services were provided by the appellant firm to PWC BV. Hence, the second ground is allowed. The AO is directed to treat the non-refundable gran as income from business or profession".

18. The ld. D.R. strongly relied on the order of the Assessing Officer in support of the revenue's case on this issue. He contended that the amount of grant in question received by the assessee was non-refundable in nature and since the same was having no nexus whatsoever with the profession or bus ness carried on by the assessee-company, it was chargeable to tax in the hands of the assessee under the head "income from other sources" as rightly held by the Assessing Officer. He invited our attention to the relevant portion of the assessment order to point out the specific reasons given by the Assessing Officer for treating the amount of grant in question as income from other sources and contended that this cogent and convincing reasons given by the Assessing Officer are not appreciated by the ld. CIT(Appeals) while allowing the claim of the assessee that the amount of grant in question was in the nature of business income.

19. The ld. Counsel for the assessee, on the other hand, submitted that the amount of grant in question was received by the assessee for the purpose of its business and the same, therefore, was in the nature of its business income being directly and inextricably linked with the business carried on by the assessee. He relied on the decision of the Hon'ble Supreme Court in the case of CIT –vs.- Meghalaya Steels Limited [383 ITR 217], wherein it was held that the head "income from other sources" is only a residuary head of income that can be availed only if income does not fall under any of the other four heads of income and the subsidies which go to reimbursement of cost in the production of goods of a particular business would have to be included under the head "profits and gains of business or profession" and not under the head "income from other sources". He invited our attention to the copy of Grant Agreement entered into by the assessee with PWC BV on March 16, 2011 (copy placed at page no.165 of the paper book) to point out that the grant in question was provided to the assessee in order to enable it to improve the quality of its human, technological and capital systems and maintain their quality such that it is consistent with the standards of PWC network. He also pointed out that the said grant was available for utilization for the specific purpose connected with the business of the assessee. He contended that this purpose for which the grant in question was specifically given to the assessee is relevant to decide its nature and since the said purpose was directly connected with the business of the assessee, the grant constituted its business income as rightly held by the ld. CIT(Appeals). He submitted that a similar grant received by M/s. Price Water House Pvt. Limited was accepted by the Assessing Officer as business income in the case of the said assessee.

20. We have considered the rival submissions and also perused the relevant material available on record. The question whether particular receipt is in the nature of business income or income from other sources is primarily to be decided having regard to the facts and circumstances of

the case and in accordance with law. While determining the nature of receipt, one should be guided by the terms of the agreement genuinely entered into between the parties and the revenue authorities cannot ignore the genuine agreement between the assessee and the party from whom the amount in question is received when there is nothing to suggest that the parties were not dealing with each other at arm's length and there is no suggestion for any collusion. In the present case, the grant in question received by the assessee from PWC BV was held to be the income from other sources by the Assessing Officer and not the business income as claimed by the assessee and a perusal of the assessment order passed by the Assessing Officer shows that this decision was arrived at by the Assessing Officer on the basis of an agreement entered into between PWC BV and the assessee on 01.07.1998. The sa d agreement made on 01.07.1998 was filed by the assessee during the course of assessment proceedings before the Assessing Officer and it was stated by the assessee that it is on his request PWC BV had provided the grant as per the agreement dated 01.07.1998. It was also observed by the Assessing Officer that this is the first time that the assessee during the year under consideration had received such a non-refundable amount from PWC BV since 1998 when they entered into an agreement.

21. It is observed that the ld. CIT(Appeals) did not endorse the stand taken by the Assessing Officer and accepted the claim of the assessee that the amount of non-refundable grant received from PWC BV constituted the assessee's business income. He, however, arrived at this conclusion on the basis of agreement dated 16.03.2011 entered into between PWC BV and the assessee. He examined the same agreement and decided the issue in favour of the assessee by relying on the terms and conditions of the said agreement. He, however, ignored the fact that the issue was decided by the Assessing Officer by reference to the agreement dated 01.07.1998 between PWC BV and assessee and apparently the agreement dated 16.03.2011 filed by the assessee before him and relied upon by the ld.

CIT(Appeals) to decide the issue in favour of the assessee was not filed before the Assessing Office as there was no mention whatsoever to the said agreement in the assessment order. Even at the time of hearing before the Tribunal, the ld. Counsel for the assessee has supported the impugned order passed by the ld. CIT(Appeals) in favour of the assessee by relying on the said agreement dated 16.03.2011, a copy of which is placed at page no. 165 of the paper book and has not referred to any agreement dated 01.07.1998, which was filed before the Assessing Officer and the issue was decided by the Assessing Officer by relying on the terms and conditions of the said agreement. In the written submission dated 27.03.2013 stated to be filed with the Assessing Officer on 28.08.2013, there is a mention made by the assessee to the agreement dated 16.03.2011, but it appears that the same filed at the fag end of the proceedings was not considered by the Assessing Officer while completing the assessment vide an order dated 30.03.2013. It is also pertinent to note that the said agreement was entered into between the assessee and PWC BV only on March 16, 2011, i.e. after about one year from the end of the year under consideration and although there was a mention that the said agreement was intended to memorialise previous grants, which had been provided to the assessee by PWC BV prior to the date of the agreement from March 01, 2010, it is necessary to ascertain as to whether the amount of grant in question was received by the assessee as per the agreement dated March 16, 2011, which was not even in existence during the year under consideration or as per the agreement dated 01.07.1998 which was apparently in force during the year under consideration as it was specifically stated by the assessee before the Assessing Officer that it is on his request PWC BV had provided the grant in question as per the said agreement. Keeping in view all these facts and circumstances of the case, we are of the view that the matter needs re-examination by the Assessing Officer as the matter was decided by him with reference to the agreement dated 01.07.1998 and not with reference to the agreement dated 16.03.2011, which was referred to and relied

upon by the ld. CIT(Appeals). As already observed by us, it is relevant to ascertain for deciding the exact nature of the non-refundable grant received by the assessee from the PWC BV as to whether the same was received as per the agreement dated 01.07.1998 or as per the agreement dated 16.03.2011. As observed by us while determining the nature of receipt, one should be guided by the terms of the agreement genuinely entered into between the parties. We, therefore, set aside the impugned order passed by the ld. CIT(Appeals) giving relief to the assessee on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after considering both the agreements dated 01.07.1998 and 16.03.2011 and after giving the assessee proper and sufficient opportunity of being heard. Ground No. 1 of the Revenue's appeal is accordingly treated as allowed for statist cal purposes.

22. The issue involved in Ground No. 2 of the Revenue's appeal for A.Y. 2010-11 relates to the deletion by the ld. CIT(Appeals) of the disallowance of Rs.4,75,32,761/ made by the Assessing Officer on account of partner's remuneration under section 40(b)(v).

23. In the computation of total income for the year under consideration, a deduction of Rs.13,17,28,800/- was claimed by the assessee on account of partner's remuneration as per section 40(b)(v) on the basis of book profit. In the assessment completed under section 143(3), the Assessing Officer recomputed the book profit of the assessee-company for the year under consideration after reducing sundry income in the form of grant amounting to Rs.7,92,57,500/- and interest income of Rs.16,520/- and accordingly restricted the claim of the assessee for deduction under section 40(b)(v) on account of partner's remuneration to Rs.8,41,78,039/- resulting in a disallowance of Rs.4,75,32,761/-. On appeal, the ld. CIT(Appeals) allowed relief to the assessee on this consequential issue on the basis of the decision rendered by him allowing the claim of the assessee that the non-refundable grant of

Rs.7,92,57,500/- received by the assessee during the year under consideration constituted its business income.

24. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. It is observed that the issue involved in Ground No. 2 is consequential to the main issue involved in Ground No. 1 and since the issue in Ground No. 1 was decided by the ld. CIT(Appeals) in favour of the assessee by his impugned order, he allowed the consequential relief to the assessee on the issue involved in Ground No. 2. Since we have set aside the impugned order passed by the ld. CIT(Appeals) giving relief to the assessee on the main issue involved in Ground No. 1 and restored the said issue to the file of the Assessing Officer for fresh consideration, it ollows that even the issue involved in Ground No 2, which is consequential in nature, should also go back to the Assessing Officer for fresh consideration depending on his decision on the main issue. At the time of hearing before us, the ld. Counsel for the assessee has also raised an alternative ground in support of the assessee's case on this issue by relying, inter alia, on the decision of the Hon'ble Calcutta High Court in the case of Md. Serajuddin & Brothers –vs.- CIT [2 Taxmann.com 46]. We accordingly direct the Assessing Officer to consider this alternative contention raised on behalf of the assessee if the assesese fails to get relief on the main issue, which is restored by us to the file of the Assessing Officer. Ground No. 2 of the Revenue's appeal is accordingly treated as allowed for statistical purposes.

25. As regards Ground No. 3 of the revenue's appeal for A.Y. 2010-11, it is observed that the issue involved therein relating to the assessee's claim for deduction on account of PWC Global Service Charges amounting to Rs.2,37,86,375/- is similar to the one involved in Revenue's appeal for A.Y. 2007-08, which has already been decided by us in favour of the assessee in the foregoing portion of this order. Following our conclusion

drawn in A.Y. 2007-08, we uphold the impugned order of the ld. CIT(Appeals) giving relief to the assessee on this issue and dismiss Ground No. 3 of the Revenue's appeal.

26. Another issue that is raised by the revenue in Ground No. 3 of its appeal for A.Y. 2010-11 relates to the deletion by the ld. CIT(Appeals) of the addition made by the Assessing Officer in treating the expenditure incurred by the assessee on payment of software licence fees as capital expenditure.

27. During the year under consideration, an amount of Rs.1,38.67.293/- was paid by the assessee to M/s. Price Water House Cooper Global Licensing Services Corporation, Canada and the said payment was claimed to be made for maintenance and technical support fees for Microsoft, WinZip Pro, Verity, IBM-Lotus. From the relevant details furnished by the assessee in this regard, the Assessing Officer noticed that the relevant software were purchased by the assessee and charges were made per computer basis. According to the Assessing Officer, the assessee-company thus had acquired right in the software license entered into by its Canadian entity and the amount in question paid for acquiring the said right was capital expenditure. He accordingly disallowed the deduction claimed by the assessee on account of expenditure incurred towards software licence fees.

28. The disallowance made by the Assessing Officer on account of software licence fees was challenged by the assessee in the appeal filed before the ld. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the ld. CIT(Appeals) deleted the said disallowance made by the Assessing Officer for the following reasons given in paragraph no. 7.3 & 7.4 of his impugned order:-

"7.3. I have considered the facts of the case and the appellant's submissions. The AO has disallowed the software license fees as capital expenditure as the Canadian Company, PWC Global Licensing Services Corporation, through whom the license to use the software was acquired was not making any profit on the transaction and the assessee being a member for the network for which the license was being acquired, had rights in the software licensing. Thus, according to the AO, the appellant had acquired enduring benefits in the licensing. The appellant's argument is that the software license is for a short period, the invoice shows that recurring expenditure has to be incurred and regular payments have to be made. It has also stated that the software for which license is acquired is becomes obsolete very fast. Various case laws have been relied upon to state that software expenses are revenue expenditure incurred to enable the business to run smoothly and if rights for a limited period are acquired to use software under an agreement, the expenses incurred on acquiring such rights would be revenue expenditure. The appellant has also referred to earlier assessment orders of the AO for A.Y. 2005-06 and A.Y. 2006-07 in which he has allowed similar expenditure on software license fees as revenue expenditure.

7.4. The material on record shows that the appellant has acquired right to use/licen e to use various softwares for a limited duration and recurring payments have to be made for renewal of licenses or obtaining new licenses for using software. The software is required for smooth day-to-day conduct of the appellant's business. There is no material on record to indicate that the appellant has acquired any enduring benefits out of the license to use various softwares. Also, the facts are similar to earlier years in which similar claims were made for software licensing fees and in A.Y. 2005-06 and A.Y. 2006-07, the AO had allowed similar claims. In an appeal by the appellant for the A.Y. 2007-08, I have allowed the appeal no. l022/CIT(A)-6/Kol/09-10 of the appellant on a similar issue in my order dated 13.02.2017 as under:

> *"6.2. I have considered the appellant's submissions. The appellant has relied upon the order dated 13.04.2016 in ITA No. 1347/Kol/2013 for AY. 2008-09 in the case of DCIT Circle, Kolkata v M/ s. Exide Industries Ltd. of Hon'ble ITAT "C" Bench, Kolkata in which the Revenue's ground of appeal against deletion of disallowance on account of software expenses of Rs. 1,36,32,019/- by the Ld. CIT(A) was rejected. In the present case the AO has not discussed as to what enduring benefits are expected from the software license fees. The appellant's*

case is that the software license fee pertains to a particular period of time and no enduring benefits are derived. Moreover, in earlier years, the AO has himself allowed similar software licence fees holding that the same did not result in any enduring benefits. The facts for the instant assessment year are similar. It has been held in the case of Radhasoami Satsang Vs CIT 193 ITR 321 by the Hon'ble Supreme Court that "res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. This ratio is squarely applicable to the facts of the appellant's case Hence the addition of Rs.10,98,467/- is delet4ed and the AO is directed to withdraw the depreciation of Rs.3,29,540/- in relation to the software license fee as also depreciation allowed in subsequent assessment years, if any".

The facts for the instant assessment year being similar, the expenses on software license fees of Rs.1,38,67,283/- are held to be revenue in nature and the disallowance is deleted".

29. The ld. D.R. submitted that the expenditure in question was incurred by the asse see on purchase of software licence and the same, therefore, was rightly treated by the Assessing Officer as capital in nature. He contended that the question as to whether the expenditure incurred on computers software is capital or revenue in nature is required to be decided by applying a functional test and onus in this regard was on the assessee-company, which it failed to discharge. He relied on the decision of the Hon'ble Rajasthan High Court in the case of CIT –vs.- Arawali Construction Co. Pvt. Limited [259 ITR 30], wherein it was held that the expenditure incurred by the assessee on acquiring computer software was rightly disallowed being expenditure of capital nature.

30. The ld. Counsel for the assessee, on the other hand, submitted that the assessee engaged in the profession of Chartered Accountancy is required to have various basic software like Microsoft, WinZip Pro, Verity, IBM-Lotus etc. to carry out smoothly its day-to-day functioning for which licence is required. He submitted that updating such software is required to be undertaken on a continuous basis for which the Canadian Company of the assessee back charges such cost on user count of the assessee. He contended that since all the software used by the assessee are application software which are required for conduct of the assessee's business/profession as an integral part of profit earning process and not for acquisition of asset or right of permanent nature, the expenditure in question incurred towards payment of software licence fees was revenue in nature as rightly held by the ld. CIT(Appeals). In support of this contention, he, inter alia, relied on the decision of the Hon'ble Delhi High Court in the case of CIT –vs.- Asahi India Safety Glass Limited [346 ITR 329]. He further contended that the amount in question having been paid by the assessee for the right to use he software for a limited/particular period of time, it did not result in any enduring benefit to the assessee and there was no question of treating the same as capital in nature.

31. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the assessee is engaged in the profession of Chartered Accountancy and for the said profession, it requires to have basic software to carry out its day to day functioning smoothly. As per the practice consistently followed by the group to which the assessee belongs, the licence to use such software is acquired by its Canadian entity PWC Global Licensing Services Corporation and the assessee being a member of the network for which the licence is acquired gets right in the software licensing. As stated on behalf of the assessee before the authorities below as well as before us, the various basic software like Microsoft, WinZip Pro, Verity, IBM-Lotus etc. for which the licence to use was acquired were essentially

applications software going by the use of the same in the profession of the assessee for day-to-day functioning and since the amount in question was paid by the assessee for the right to use the software for limited/particular period of time, we find merit in the arguments of the ld. Counsel for the assessee that the expenditure in question incurred by the assessee did not result in any enduring benefit to the assesese so as to treat the same as capital in nature. If we consider the nature of the software for which licence was acquired by the assessee and the use for which the same were put in the profession of the assessee of Chartered Accountancy, the expenditure in question incurred by the assessee as its share in the licence acquired to use the said software is revenue in nature and the same is allowable as deduction as rightly held by the ld. CIT(Appeals). We, therefore, uphold the impugned order of the ld. CIT(Appeals) giving relief to the assessee on this issue.

32. One more issue raised by the Revenue in Ground No. 3 relates to the deletion by the ld. CIT(Appeals) of t e addition of Rs.1,78,83,131/- made by the Assessing Officer by way of disallowance of insurance premium paid by the assessee towards Accountants risk policy.

33. After considering the rival submissions and perusing the relevant material available on record, it is observed that this issue is squarely covered in favour of the assessee by the decision of the Tribunal rendered vide its order dated 11.05.2016 passed in ITA No. 1278/KOL/2014 for AY 2009-10, which was against the order passed by the ld. CIT under section 263, wherein it was held that it could not be disputed that the payment of policy premium to cover the risk of damages owing to professional negligence was in relation to the business of the assessee and the fact remains that the said payment had a direct nexus with the business of the assessee and had to be recorded as expenses wholly and exclusively for the purpose of the business of the assessee. The ld. Counsel for the assessee has also cited another decision of the Tribunal rendered in the

case of Price Water House vide its order dated 22.09.2017 passed in ITA No. 1135/KOL/2017, wherein it was held that the premium paid towards Accountants Risk Policy cannot be considered as one falling within the ambit of Explanation 1 to section 37 of the Act. Respectfully following both these decisions of the Coordinate Bench of this Tribunal, we uphold the impugned order of the ld. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of insurance paid by the assessee towards Accountant Risk Policy. We accordingly decide all the three issues raised in Ground No. 3 of the Revenue's appeal for A.Y. 2010-11 in favour of the assessee and dismiss Ground No. 3 of the revenue's appeal.

34. In the result, the appeal of the Revenue for A.Y. 2010-11 being ITA No. 1021/KOL/2017 is treated as partly allowed for statistical purposes.

35. To sum up, the appeal of the Revenue for A.Y. 2007-08 being ITA No. 2020/KOL/2017 is dismissed and the appeal of the Revenue for A.Y. 2010-11 being ITA No 1021/KOL/2017 is treated as partly allowed for statistical purposes.

Order pronounced in the open Court on March 08, 2019.

Sd/-	**Sd/-**
(A.T. Varkey)	**(P.M. Jagtap)**
Judicial Member	**Vice-President (KZ)**

Kolkata, the 8th day of March, 2019

Copies to : *(1)* ***Deputy Commissioner of Income Tax, Circle-22, Kolkata, 54, Rafi Ahmed Kidwai Road, 4th Floor, Kolkata-700 016***

(2) ***M/s. Lovelock & Lewes, Plot NY 14, Block-EP, Sector-V, Salt Lake, Kolkata-700 091***

(3) Commissioner of Income Tax (Appeals)-6, Kolkata,

(4) Commissioner of Income Tax- ,

(5) The Departmental Representative
(6) Guard File

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.