

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM

ITA No. 185/Del/2016 : Asstt. Year : 2012-13

Dy. Commissioner of Income Tax, Circle-7(1), New Delhi	Vs	Digital Radio (Mumbai) Broadcasting Ltd., 401, Dakha House, 18/17, WEA Karol Bagh, New Delhi-110005
(APPELLANT)		(RESPONDENT)
PAN No. AABCRE7871C		

ITA No. 186/Del/2016 : Asstt. Year : 2012-13

Dy. Commissioner of Income Tax, Circle-7(1), New Delhi	Vs	Digital Radio (Delhi) Broadcasting Ltd., 401, Dakha House, 18/17, WEA Karol Bagh, New Delhi-110005
(APPELLANT)		(RESPONDENT)
PAN No. AABCRE7864B		

**Assessee by : Sh. Sanjiv Sapra, FCA
Revenue by : Sh. Atiq Ahmad, Sr. DR**

Date of Hearing : 20.09.2017	Date of Pronouncement : 22.09.2017
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ORDER

Per N. K. Saini, AM:

These two appeal by the department are directed against the separate orders each dated 21.10.2015 in respect of each of the assessee by the ld. CIT(A)-XIII, Delhi

2. Since the issues involved are common having identical facts and the appeals were heard together so these are being

disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 186/Del/2016 for the assessment year 2012-13. The only effective ground raised in this appeal reads as under:

“Ld. CIT(A) erred in law and on facts of the case in directing the AO to allow the claim of 1/10 deduction of Rs.1,26,58,244/-.”

4. During the course of hearing, the ld. Counsel for the assessee at the very outset stated that this issue is squarely covered in favour of the assessee vide order dated 24.11.2015 of the ITAT Delhi Bench -Dø New Delhi in ITA No.1316/Del/2011 for the assessment year 2006-07 and the said order has been affirmed by the Honøble Jurisdictional High Court vide order dated 24.05.2017 in ITA No. 432/2016 (copies of the said orders were furnished which are placed on record).

5. In his rival submissions the ld. DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue have similar facts was a subject matter of the appeal by both the parties in ITA Nos. 1316 & 1720/Del/2011 i.e. cross

appeals filed by the assessee and the department for the assessment year 2006-07 wherein the issue has been decided in favour of the assessee and against the department. The relevant findings have been given in paras 27 & 33 of the order dated 24.11.2015, the relevant portion is reproduced as under:

“27.....We have also carefully perused the reason given by CIT (A) for allowing the deduction of fees paid by assessee under PHASE -I over the remaining life of the license granted under PHASE-II of the regime. We do not find any infirmity in the finding as well as reasoning given by CIT (A) as in substances the reason canvassed by CIT (A) are similar to what we have propounded in our order. In view of this we confirm the order of CIT (A) in granting deduction of Rs.1,26,58,244/- being 1/10th of Rs.12,65,82,440/- being fees paid by assessee in Phase -I-as deductible expenditure u/s 35ABB(1) during the year under consideration i.e. A.Y. 2006-07. In result ground no 1 of the appeal of the assessee is dismissed.

33. Coming to the appeal of the revenue against the order of CIT(A) raising ground no 1 of the appeal that on the facts and circumstances of the case and in law, Id. CIT (A) has erred in allowing Rs.1,26,58,244/- being 1/10th of the total license fees claimed u/s 35ABB of the Act. In view of our finding in ground no 1 of the appeal of the assessee we have decided this issue and confirmed findings of CIT (A) regarding allowability of license fee paid by the assessee in Phase-I. Accordingly we dismiss ground no 1 of the appeal of revenue.”

7. The aforesaid order dated 24.11.2015 was a subject matter of the departmental appeal in ITA No. 432/2016 before the Honøble

Jurisdictional High Court wherein vide order dated 24.05.2017, it has been held as under:

“11. Having heard learned counsel for the parties, the Court is of the view that no substantial question of law arises on any of the above issues. As far as the questions 2.1 to 2.3 are concerned, the purport of the said questions raised by the Revenue are that Phase-II licence regime was not in continuation of Phase-I when in fact it was. It is on this basis that the amount equivalent to 1/10th of the total capital expenditure was allowed proportionately over 10 year period in accordance with Section 35ABB (1) of the Act. It provides that any capital expenditure actually incurred by the Assessee on the acquisition of any right to operate telecom services is to be allowed as a deduction in equal installment over the period for which the licence remains in force. The concurrent findings of the ITAT and CIT (A) in this regard are not shown to be perverse or contrary to the express terms of those licenses. Consequently, the Court declines to frame the questions as posed by the Revenue at 2.1 to 2.3 above.”

8. From the above narrated facts, it is clear that now the issue stands covered against the department. Therefore, respectfully following the aforesaid referred to orders, we do not see any merit in this appeal of the department.

9. As regards to the issue raised in ITA No. 185/Del/2016, the facts are identical as were involved in ITA No. 186/Del/2016 for the assessment year 2012-13. Therefore, our findings given in the former

part of this order shall apply *mutatis mutandis*. In that view of the matter, we do not see any merit in this appeal of the department also.

10. In the result, the appeals of the department are dismissed.

(Order Pronounced in the Court on 22/09/2017)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 22/09/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR