

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member
and Shri Pawan Singh, Judicial Member**

ITA Nos. 5044 to 5046/Mum/2015
(Assessment Years: 2006-07 to 2008-09)

M/s. Allied Digital Services Ltd. DCIT, Central Circle-3
13-A, 13th Floor, Earnest House Mumbai
NCPA, Nairman Point Vs.
Mumbai 400020

PAN – AAACA5509K

Appellant

Respondent

ITA No. 5155/Mum/2015
(Assessment Year: 2009-10)

DCIT, Central Circle-1(3) M/s. Allied Digital Services Ltd.
Room No. 905, Old CGO 13-A, 13th Floor, Earnest House
Bldg. Annex, M.K. Road Vs. NCPA, Nairman Point
Mumbai 400020 Mumbai 400020

PAN – AAACA5509K

Appellant

Respondent

Appellant by: Shri Rakesh Joshi
Respondent by: Shri R.P. Meena

Date of Hearing: 25.04.2018
Date of Pronouncement: 25.04.2018

ORDER

Per G.S. Pannu, AM

The captioned appeals pertaining to the same assessee are filed against the respective orders of CIT(A)-47, Mumbai dated 30.07.2015 and 26.08.2014 and they pertain to assessment years 2007-07 to 2009-10. Since common issues are involved in these appeals, they are heard together and disposed off by the common order for the same convenience and brevity.

2. Firstly we may take up the appeal for A.Y. 2006-07 filed by the assessee against the order of the CIT(A)-47, Mumbai dated 30.07.2015. In this appeal the assessee has raised the following two grounds: -

- “1) On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in restricting the claim of deduction u/s 10A to Rs.4,62,52,101/- without considering the facts and circumstances of the case.*
- 2) On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in not allowing the claim of the appellant of deduction u/s.43B and 36(1)(va) of the Income Tax Act, 1961 to the tune of Rs. 9,46,424/-, without considering the facts and circumstances of the case.”*

3. In order to appreciate the controversy the relevant facts are that the assessee is in the business of information technology solutions and for A.Y. 2006-07 it filed the return of income on 29-11-2006 declaring total income of ₹11,06,93,595/- which was subject to scrutiny assessment under Section 143(3) of the Income Tax Act (hereinafter “the Act”) dated 27.05.2008 whereby the total income was determined at ₹11,99,98,540/-. Thereafter a search and seizure action under Section 132(1) of the Act was carried out on 04.02.2011. Consequent to the search, a notice under Section 153A of the Act was issued on 03.02.2012. In response the assessee filed a return of income declaring total income at ₹11,03,49,455/-. In the ensuing assessment passed under Section 143(3) r.w.s. 153A of the Act dated 28.03.2013 the total income has been assessed at ₹12,06,43,600/-. The assessee carried the matter in appeal before the CIT(A) who has allowed part relief. Against sustenance of some of the additions made in the assessment, assessee is in appeal before us on the aforesaid grounds of appeal.

4. By way of Ground No. 1 the grievance of the assessee is against the action of the income-tax authorities in restricting the claim of deduction under Section 10A of the Act to ₹4,62,52,101/-. In this context the relevant facts are that in the original return filed by the assessee on 29.11.2006 deduction under Section 10A of the Act was claimed at

₹5,52,37,000/- which was restricted to ₹4,59,32,058/- in the assessment dated 27.05.2008 (supra). In the impugned assessment the AO restricted the claim under Section 10A of the Act to ₹4,56,12,309/-, which has since been increased by the CIT(A) to ₹4,62,51,807/- (an aspect which is not challenged by Revenue), but assessee reiterates the claim of deduction under Section 10A at ₹5,49,60,026/-, which was made in the return filed under Section 153A of the Act. The CIT(A) in para 4.1.1 of her order has disagreed with assessee's enhanced claim for deduction made in the return filed under Section 153A of the Act and in coming to such decision reliance has been, inter alia, placed on the judgement of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing 374 ITR 645 (Bom). Against this decision assessee is in appeal before us.

5. At the time of hearing the learned A.R. quite fairly pointed out that considering the date of search the original assessment for the year under consideration did not abate in terms of the second proviso to section 153A(1) of the Act. As a consequence of such fact-situation the corollary of the ratio of the judgement of the Hon'ble Bombay High Court in the case of Continental Warehousing (supra) is clearly attracted. Quite clearly, as has been rightly brought out by the CIT(A), the provisions of Section 153A of the Act cannot be used as a tool for reviewing the issues already finalised in the original return of income in the absence of any incriminating material. In the instant case the issue of determination of allowable deduction under Section 10A of the Act had reached finality in the original assessment proceedings and to that extent, the attempt of the assessee to upwardly revised its claim under Section 10A of the Act in the return of income filed in response to the notice under Section 153A of the Act is beyond the jurisdiction of the impugned assessment proceedings. Thus, we find no error on the part of the CIT(A) in dismissing the claim of the assessee for deduction under Section 10A of the Act over and above the amount of ₹4,62,52,101/- allowed by her. Thus, on this aspect, the assessee fails.

6. The second ground is with regard to assessee's claim for deduction of ₹9,64,424/- representing payment of Provident Fund dues in terms of section 43B r.w.s. 36(1)(va) of the Act. In this context also, the CIT(A) noted that in the original return of income filed by the assessee the said amount of ₹9,64,424/- has been added back while computing the taxable income. Apart from noticing that there was no proof of payment made by the assessee the CIT(A) held that the said issue stood finalised in the original assessment proceedings and therefore the same cannot be now revised in the return of income filed under Section 153A of the Act following the ratio of reasoning laid down by the Hon'ble Bombay High Court in the case of Continental Warehousing (supra).

7. Though the learned A.R. has reiterated the Ground of appeal raised before us but factually speaking no error has been demonstrated in the findings recorded by the CIT(A), which are based on the understanding of the scope and ambit of an assessment under Section 153A of the Act, as explained by the Hon'ble Bombay High Court in the case of Continental Warehousing (supra). Thus, we confirm the order of the CIT(A) on this aspect also and accordingly the assessee fails in the said ground also.

8. In the result, appeal of the assessee for A.Y. 2006-07 is dismissed.

9. In so far as the appeals of the assessee for assessment years 2007-08 and 2008-09 are concerned, the issues raised by the assessee are similar to that of the issues raised in A.Y. 2006-07; therefore our finding and decision in the appeal for A.Y. 2006-07 would apply mutatis mutandis to assessment years 2007-08 and 2008-09 also. Thus, the appeals of the assessee for these two assessment years are also dismissed.

10. Now we may take up the appeal of the Revenue for A.Y. 2009-10, wherein Revenue has raised the following Grounds of appeal: -

- “i) On the facts and in the circumstances of the case and in Law, the learned CIT(A) erred in deleting the disallowance u/s 14A, holding that the same is not based on any incriminating material yielded by the search, without appreciating the facts that the*

assessment was made in accordance with provisions of section 153 A of IT Act and decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. relied on by the learned CIT(A), is not accepted and SLP has been filed before Hon'ble Supreme Court.

- ii) *On the facts arid in the circumstances of the case and in Law, the learned CIT(A) erred in not deciding the issue of disallowance u/s 14A on merits, whereas she has decided on merits the issue of disallowance u/s 43B r.w.s. 36(1)(va), which was not related to material found during the search."*

11. The short controversy in this appeal revolves around the efficacy of disallowance made by the AO under Section 14A of the Act of an amount of ₹67,51,725/- in the impugned assessment made under Section 143(3) r.w.s. 153A of the Act over and above a sum of ₹18,50,700/- suo moto disallowed by the assessee in the revised return of income. A perusal of the assessment order reveals that the AO applied Rule 8D of the I.T. Rules, 1963 to compute the disallowance under Section 14A of the Act at ₹86,02,425/- and noticing that the assessee has suo moto disallowed ₹18,50,700/-, the balance of ₹67,51,725/- was added to the returned income.

12. Notably, in this case the return was filed by the assessee in response to notice under Section 153A of the Act at an income of ₹42,15,89,053/- which was subsequently revised to ₹42,91,29,446/- on 10.01.2013. In the original return of income filed under Section 139(1) of the Act on 27.10.2009 the total income declared by the assessee was ₹42,88,66,230/-. In the impugned assessment the AO has taken cognizance of the revised computation of income of ₹42,91,29,446/- and the total income has been assessed at ₹43,96,52,479/-. One of the elements of disallowance was of ₹67,51,725/- under Section 14A of the Act, as noted by us in earlier paragraph. The CIT(A) deleted the said disallowance on the ground that the same was not based on any incriminating material yielded by the search and as the original assessment did not abate for the year under consideration, the said addition was beyond the scope and jurisdiction of the impugned assessment under Section 153A of the Act, following the ratio of the judgement of Hon'ble Bombay High Court in the case of Continental Warehousing (supra).

13. In this background, the CIT-DR has reiterated the ground of appeal raised but has not contested any of the factual finding arrived at by the CIT(A). Notably, it is not disputed that enhancement of disallowance under Section 14A of the Act made by the AO to the extent of ₹67,51,725/- is not based on any incriminating material yielded by the search. It is also not in dispute that on the date of search, i.e. 04.02.2011 the original assessment was not pending and therefore in view of second proviso to section 153A(1) of the Act the original assessment did not abate. In such fact situation the ratio of the judgement of Hon'ble Bombay High Court in the case of Continental Warehousing (supra) is clearly attracted in as much as in the absence of any incriminating material found in the course of search, the impugned disallowance could not be made by the AO. Thus, following the ratio of the judgement of the Hon'ble Bombay High Court, the decision of the CIT(A) is hereby affirmed and Revenue fails in its appeal.

14. In the result, all the captioned appeals are dismissed

Order pronounced in the open court on 25th April, 2018 at the conclusion of the hearing in the presence of both the parties.

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(G.S. Pannu)
Accountant Member

Mumbai, Dated: 25th April, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -47, Mumbai*
4. *The Pr. CIT, Central-1, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.