

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.2977 & 2978/DEL/2015
Assessment Years: 2005-06 & 2007-08

M/s. T. V. Today Network Limited F-26, Connaught Place, New Delhi PAN No. AABCT0424B	Vs	Add. CIT Range- 16 New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.3933 & 3934/DEL/2015
Assessment Years: 2005-06 & 2007-08

DCIT Circle – 25 (2), C. R. Building, I. P. Estate, New Delhi	Vs	M/s. T. V. Today Network Limited F-26, Connaught Place, New Delhi PAN No. AABCT0424B
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Salil Aggarwal, Advocate Sh. Shailesh Gupta, Advocate
Respondent by	Sh. N. K. Bansal, Sr. DR

Date of hearing:	08/08/2019
Date of Pronouncement:	16/08/2019

ORDER**PER N. K. BILLAIYA, AM:**

ITA No.2977/Del/2015 and 3933/Del/2015 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A) -17, New Delhi dated 19.03.2015 pertaining to A. Y.2005-06.

2. ITA No.2978/Del/2015 and 3934/Del/2015 are cross appeals by the assessee and the revenue preferred against the order of the CIT(A)-17, New Delhi dated 19.03.2015 pertaining to A. Y.2007-08. Since common issues are involved in all these appeals they were heard together and are disposed of by this common order for the sake of convenience.

3. We will first take up revenue's appeal for the captioned assessment years. The common grievance relates to the deletion of the disallowance made by Assessing Officer on account of accrued incentive to staff though the quantum may differ in the captioned assessment years.

4. At the very outset the counsel for the assessee stated that the disputed issue has been settled by the Tribunal in subsequent assessment years in favour of the assessee and against the revenue.

5. The DR fairly conceded.

6. We have carefully considered the orders of the authorities below. We find force in the contention of the Ld. Counsel. We find that similar issue was considered by the Tribunal in assessee's own case in ITA No.2452/Del/2013 and others. The relevant findings of the coordinate bench read as under :-

“6. The 1st disallowance contested by the assessee is with respect to the disallowance of Rs. 20569764/- on account of accrued incentive. The assessee explained that these expenses have been incurred in respect of the payments to be made to the employees for encouraging them to promote business of the assessee. Assessee also submitted that the incentive is meant for the employees which is pertaining to the financial year 2003-04. It is based on the performance of the employees and it has become due and payable to them based on certain criteria such a collection of sales, determination of profits after audit of annual account etc. The learned assessing officer noted that assessee has failed to discharge the onus cast upon him to prove that these expenses which have been claimed under section 37 of the Income Tax Act by furnishing relevant specific details as well as the name of employees. He also noted that assessee has failed to prove that these expenses were incurred wholly and exclusively relief for the purposes of business. The learned AO further noted that assessee also could not prove that the alleged payees have included respective amount into their corresponding income in addition to the salary. The learned Assessing Officer therefore noted that these expenses are neither ascertained during the previous year and not incurred during the financial ear. Therefore, he disallowed the above sum.

The assessee challenged the same before the learned CIT - A who confirmed the disallowance for the reason that the assessee could not prove before him that the provision has been made on scientific basis.

Therefore the same has been challenged before us by the learned authorised representative. He submitted that above sum is incentive meant for employees

which is pertaining for the financial year 2003 - 04. He further stated that incentives which are based on the performance of the employees become due and payable to them based on certain criteria such as collection on sales, determination of profits after audit of the annual account. He further stated that the tax could have been deducted at source only at the time of payment as the above amount is chargeable to tax under the head salaries in the hands of the employees. He therefore submitted that above amount of expenditure is ascertained and accrued during the year therefore same should have been allowed.

9. *The learned departmental representative vehemently supported the order of the lower authorities and submitted that when assessee could not furnish details of the expenditure before the lower authorities and also could not show that how above expenditure has been incurred by assessee during the year, therefore same has been correctly disallowed.*

10. *We have carefully considered the rival contention and find that the assessee has made a provision for the performance based incentive of the employees. The assessee has given a complete detail of these expenditure of the provisions made for the year. The assessee has also stated that no tax is required to be deducted u/s 192 of the income tax act unless the salaries are paid to those employees. The assessee has also stated that the performance is with respect to the sales, collection of sales etc. On perusal of page Nos. 1 to 7 of the details furnished by assessee before the learned CIT(A) which shows that the assessee has submitted the complete detail of the employee wise accrued incentive as well as the closing balance as on 31-3-2004, amount debited during the year and actual payment made by the assessee in the subsequent year. The above provision has been made by the assessee on year-to-year basis on the basis of the performance of the employees. The excess provision is always written back to the profit and loss account in the subsequent year, if it is found to be short, further provision is made. This accounting practice is carried on by the assessee consistently. As the expenditure has been incurred for the incentive of the employees of the company raised on their performance for the same year for which the actual services have*

been rendered by the employees, above expenditure has been incurred by the assessee during the year only and exclusively for the purposes of the business. As the above expenditure has been made on the basis of the performance of the employees and allocated to each of the employees it is an ascertained provision. According to us it is a definite and accrued liability of the assessee for the year for which the services have been rendered by the employees. It is nothing but additional variable salaries payable to the employees. Same partakes character of salary.

Accordingly we reverse the finding of the lower authorities and allow the ground number 2 of the appeal of the assessee directing the learned assessing officer to delete the disallowance of Rs. 20569764/- on account of accrued incentive of the staff. Accordingly, ground No. 2 of the appeal of the assessee is allowed.”

7. As no distinguishing facts have been brought to our notice, respectfully following the findings of the coordinate bench. The appeals by the revenue for both the assessment years are dismissed.

8. Coming to the appeals of the assessee the common grievance relates to the addition made u/s.14A of the Act though the amount of disallowance may differ in the impugned assessment years.

9. During the course of the scrutiny assessment proceedings the Assessing Officer noticed that the assessee has earned dividend income and claimed the same as exempt from tax. The Assessing Officer was of the opinion that since the assessee has not made any disallowance of expenditure incurred for earning

the exempt income, he invoked the provisions of section 14A and assumed that the 15% of the exempt income as expenditure towards earning the interest free income. Rs.1649367/- was disallowed in A. Y. 2005-06.

10. However, in A.Y.2007-08 the Assessing Officer computed the disallowance by invoking rule 8D and computed the disallowance u/s. 14A at Rs.23,75,000/-.

11. The assessee carried the matter before the CIT(A) but without any success.

12. Before us the counsel for the assessee vehemently stated that in both the assessment years the Assessing Officer has not recorded any satisfaction and without recording any satisfaction the Assessing Officer made disallowance u/s. 14A of the Act. The counsel further stated that in A. Y.2007-08 the Assessing Officer has erroneously invoked rule 8D which is not applicable for the relevant assessment year.

13. Per contra the DR strongly supported the findings of the Assessing Officer. It is the say of the DR that even if rule 8D is not applicable some reasonable disallowance has to be made for the expenditure incurred for earning the exempt income.

14. We have carefully considered the orders of the authorities below. The perusal of the balancesheet of the assessee as at

31.03.05 shows that investment of Rs.309045238/- was made during the year itself. It is true that the Assessing Officer has not recorded any satisfaction as regards to the accounts of the assessee. It is equally true that the assessee has also not disallowed any expenditure for earning the exempt income. Though the entire investment as per schedule of the balance sheet is towards mutual funds of various companies but in our considered opinion the assessee must have incurred some expenditure in making these investments. Some employees must have been engaged for selecting the mutual funds for making the investments. In our considered view some element of expenditure cannot be ruled out. We are of the considered view that a disallowance of Rs.1,00,000/- should meet the ends of justice. We accordingly direct the Assessing Officer to restrict the disallowance to Rs.1,00,000/- in A.Y.2005-06.

15. It is now well settled that rule 8D is applicable from A.Y.2008-09 and, therefore, the Assessing Officer has grossly erred in applying rule 8D in A. Y.2007-08. A perusal of the balancesheet as at 31.03.07 show that the investments have increased during the year from the immediately preceding financial year.

16. As discussed here in above some element of expenditure cannot be ruled out for this year also. We accordingly direct the Assessing Officer to restrict the disallowance of Rs.1,00,000/- for

this year also. We direct accordingly. In the result the common grievance of the assessee is partly allowed.

ITA No.2977/Del/2015

17. The other grievance relates to the disallowance of Rs.24084750/- on account of expenditure incurred for the purpose of giving new look to the channel Aaj Tak.

18. Facts on record show that during the course of the assessment proceedings the Assessing Officer noticed that an expense of Rs.2.66 crores has been incurred by the assessee for giving new look to Aaj Tak. The Assessing Officer was of the firm belief that such expenditure gave enduring benefit to the assessee and cannot be allowed as revenue expenditure.

19. The Assessing Officer accordingly treated the expenditure as capital expenditure and after allowing depreciation @15%, Rs.24084750/- was disallowed.

20. The assessee carried the matter before the CIT(A) but without any success.

21. Before us the counsel for the assessee stated that the expenditure is a routine expenditure to uplift the presentation of Aaj Tak channel and, therefore, the expenditure cannot be treated as capital expenditure.

22. Per contra the DR strongly relied upon the findings of the CIT(A). It is the say of the DR that the CIT(A) while dismissing the appeal of the assessee has considered various judgments of the Hon'ble High Court and Hon'ble Supreme Court and came to the conclusion that the expenses incurred for new look of the TV channel are not routine expenses and, therefore, cannot be treated as revenue expenditure.

23. We have given a thoughtful consideration to the orders of the authorities below. The Aaj Tak channel which started from 1999 with a logo needed fresh look because of the passage of time and cut throat competition and for improving the viewership the logo was given a fresh look for which the assessee had incurred impugned expenditure. In our considered opinion the Aaj Tak logo was already there and by incurring the impugned expenditure the assessee has only enhanced its look by giving fresh and improved technical face.

24. We are of the considered view that such expenditure is a routine expenditure. No doubt some enduring benefit will accrue to the assessee but giving a fresh look to the existing logo, no new asset was created and there was no addition to or expansion of the profit making apparatus of the assessee. The Hon'ble Supreme Court in the case of Empire Jute Co. Ltd 124 ITR 1 has held as under :-

(ii) There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue he test of enduring benefit may break down. It is not every advantage nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in a field that the expenditure would be disallowable on an application. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business on more efficiently or more profitably while leaving the fixed capital the expenditure would be on revenue account, even though the advantage endures for an indefinite future. The test of enduring benefit is, a certain or conclusive test and it cannot be applied blindly and without regard to the particular facts and circumstances of a given case.

(iii) What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a particular and business point of view rather than upon the juristic classification of the legal rights, if any, secured employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency

25. Considering the facts of the case in the light of the ratio laid down by Hon'ble Supreme Court (supra) we direct the Assessing Officer to treat the impugned expenditure as a revenue expenditure and allow the same after withdrawing the depreciation. The second grievance in A.Y.2005-06 is allowed.

26. The second grievance in A. Y.2007-08 relates to the disallowance of Rs.109210/- on account of bad debt and advances written off.

27. Facts on record show that during the course of assessment proceedings the Assessing Officer noticed that the assessee has written off advances of Rs.109210/-. The assessee was asked to

explain as to why the quantum of these advances written off should not be disallowed.

28. The assessee filed the relevant details and further relied upon certain judicial decisions. The Assessing Officer was not convinced with the reply of the assessee and was of the firm belief that write off of advances cannot be treated as bad debts and made addition of Rs.109210/-.

29. The assessee agitated the matter before the CIT(A) but without any success.

30. Before us the counsel for the assessee stated that the Assessing Officer has not appreciated the facts in their true perspective. It is the say of the counsel that both the lower authorities have considered the write off of the advance as claim of bad debts though the advances were given in the ordinary course of business and since the assessee could not recover the advances or the services for which the advances were given, the advances were write off and claimed as business loss.

31. Per contra the DR strongly supported the findings of the Assessing Officer.

32. We have carefully considered the orders of the authorities below. It is true that the write off of advances do not fulfill the conditions laid down for claiming the bad debts but it is equally

true that the said write off should not be considered as bad debts but has to be considered as business loss. Considering the facts of the case in their true perspective we are of the considered view that the write off should be allowed as business loss u/s. 28 of the Act. We accordingly direct the Assessing Officer to delete the addition made.

33. The ground No.2 in A. Y.2007-08 is allowed.

34. In the result, the appeals of the assessee are partly allowed and those of revenue's are dismissed.

Order pronounced in the open court on 16.08.2019.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

NEHA

Date:- 16.08.2019

Copy forwarded to:

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

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	09.08.2019
Date on which the typed draft is placed before the dictating Member	14.08.2019
Date on which the typed draft is placed before the Other member	16.08.2019
Date on which the approved draft comes to the Sr.PS/PS	16.08.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	16.08.2019
Date on which the fair order comes back to the Sr. PS/ PS	16.08.2019
Date on which the final order is uploaded on the website of ITAT	16.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	