

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 949/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2012-13)

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| Mobile Telecommunications Ltd. 5 th Floor, Techweb Centre, Oshiwara Link Road, Near Behram Baug, Jogeshwari West, Mumbai - 400102 | बनाम/ Vs. | D.C.I.T. Circle-2(1)(2), Aaykar Bhavan, Race Course, Baroda - 390007 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM2659J | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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|--|---------------------------|
| अपीलार्थी ओर से /Appellant by : | None |
| प्रत्यर्थी की ओर से / Respondent by : | Shri L. P. Jain, Sr. D.R. |

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| सुनवाई की तारीख / Date of Hearing | 27/01/2020 |
| घोषणा की तारीख /Date of Pronouncement | 29/01/2020 |

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-2, Vadodara ('CIT(A)' in short), dated 20.02.2017 arising in the assessment order dated 17.03.2015 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The grounds of appeal raised by the assessee read as under:

- “1. *On the facts and in the circumstances of the case, the learned C.I.T.(A) erred on law and on facts in confirming invocation of the section 43B of the income tax Act, 1961 and thereby making addition of Rs.13,95,253*

The learned A.O. failed to appreciate the facts that the said liability is mainly consisted of Service-Tax Say Rs. 13,44,743/, the A.O. also failed to appreciate the fact that the liabilities in respect of service tax arises only on receiving the payment of the impugned services and not on creating liabilities in the books of Accounts

The addition made by the A.O. being uncalled for and unwarranted your appellant therefore in the interest of justice hereby request you to kindly delete the addition made by the A.O. on this count.

2. *On the facts and in the circumstances of the case the learned C.I.T.(A) erred on law and on facts in confirming the addition of Rs. 10,00,000/ in respect of the payment made to M/s. Media Metrix worldwide ltd. towards getting the possession of the jointly shared office premises situated at Adarsh-Nagar, Andheri (West) Mumbai.*

The learned A.O. failed to appreciate the facts that the said premise was jointly possessed by your appellant with M/s. MMW LTD., from years together.

Your appellant therefore in the interest of justice hereby prays that the addition made by the A.O. be deleted.

3. *On the facts and in the circumstances of the case the learned C.I.T.(A) erred on law and on facts in confirming the addition of Rs.1,09,418/- in respect of difference between the Form 26As and P & L A/C.*

The learned A.O. failed to take in to consideration the reconciliation submitted by your appellant with reason thereof. Your appellant e in the interest of justice hereby prays that the A.O. be directed to delete the addition of Rs.1,0,418/,

4. *On the facts and in the circumstances of the case the learned C.I.T.(A) erred on law and on facts in retaining 10% disallowance out of Rs.3,33,822/ in respect of travelling expenses”*

3. When the matter was called for hearing, none appeared for the assessee. It is seen from the records that several opportunities were given to the assessee in earlier occasions also. The request for adjournment was also entertained number of times. However, the assessee/its representative has continued to remain indifferent to the repeated opportunity given by the Tribunal. Given the alarming show of negligence, we are constrained to proceed *ex parte* in the matter.

4. The learned DR, on the other hand, referred to the assessment order and first appellate order dealing with the grievances of the assessee on merits. The learned DR submitted that the conclusion drawn by the CIT(A) is reasoned one and thus should not be interfered in the absence of showing anything contrary thereto.

5. We have perused the orders of the AO and the CIT(A). In the absence of any paper book or any explanation forthcoming on behalf of the assessee before the Tribunal, we refer to the order of the CIT(A).

6. As regards Ground No.1, the CIT(A) has taken note of the written submissions filed by the assessee before him in para 3 of its order and rendered its decision in para 4 of its order which reads as under:

*“4. I have carefully considered the facts on record and submission of the Ld. AR. **Ground No.1** pertains to disallowance of Rs.13,95,253/- u/s 43B on account of outstanding liability of Professional Tax at Rs.43,550/-, Provident Fund at Rs. 6960/- and Service Tax at Rs. 13,44,743/-. Admittedly, this liability was not paid by the appellant on or before due date of filing of return. During the course of appellate proceedings, the ld.AR has not pressed addition of Rs.6960/- being the amount of unpaid Provident Fund. However, in respect of Professional Tax, it has been stated that the same was paid in the month of December 2012 and January 2013 aggregating to Rs.71,800/-. Accordingly, it has been requested that deduction should be allowed in A.Y. 2013-14. Under these circumstances, the disallowance made by the AO in the year under consideration is*

*confirmed since the payment of Professional Tax was not made upto the due date of filing of return, However, the AO may allow the deduction in A.Y. 2013-14 on the basis of actual payment after necessary verification. In respect of Service Tax payable at Rs. 13,44,743/-, the ld. AR has simply submitted that the liability of Service Tax is not covered u/s 43B. This argument of the ld.AR is not acceptable because the **provisions of section 43B are applicable in respect of any sum payable by way of tax, duty, cess or fee, by whatever name called under any law for the time being enforced.** Accordingly, I hold that the Service Tax being payable under the Service Tax Act is also covered by the provisions of section 43B. Hence the disallowance made by the AO on this account is confirmed. Thus appellant partly succeeds in respect of **Ground No.1.**”*

7. We have perused the reasoning provided by the CIT(A) for adjudication against the assessee. In the absence of any contrary explanation on behalf of the assessee, and in the absence of any perversity in the conclusion drawn by the CIT(A), we decline to interfere. Ground No.1 of the assessee’s appeal is dismissed.

8. As regards Ground No.2, the CIT(A) has dealt with issue as under:

*“4.1 **Ground No.2** pertains to addition of Rs. 10 Lacs being the payment made to M/s Media Matrix Worldwide Ltd. towards getting the possession of jointly shared office premises. It has been claimed that the appellant company has occupied an office at 1056, Adarsh Nagar, Mumbai on sharing basis with M/s Media Matrix Worldwide Ltd. and for getting the premises vacated by M/s Media Matrix Worldwide Ltd, a sum of Rs. 10 Lacs was paid. Since the premise was taken on rent, acquisition of any lease hold rights will **result in acquisition of a capital asset.** It has been also pointed out by the AO that the **appellant vide reply dated 12.03.2015 had admitted that a sum of Rs.10 Lacs was paid towards the value of furniture and fixtures.** This fact also goes to prove that the appellant has acquired a capital asset. Moreover, business use of the premises has not been proved with supporting documentary evidences. Therefore, considering the totality of facts and circumstances, I hold that a sum of Rs.10 Lacs cannot be allowed as revenue expenditure and accordingly, the addition made by the AO is confirmed. Thus appellant fails in respect of **Ground No.2.**”*

9. We have perused the reasoning provided by the CIT(A) for adjudication against the assessee. In the absence of any contrary

explanation on behalf of the assessee, and in the absence of any perversity in the conclusion drawn by the CIT(A), we decline to interfere. Ground No.2 of the assessee's appeal is dismissed.

10. As regards Ground No.3, the CIT(A) has dealt with issue as under:

*4.3 **Ground No.4** pertains to addition of Rs.1,09,418/- being the difference in the receipts on the basis of Form 26AS, The AO noticed that appellant had received a sum of Rs.51,83,218/- as per 26AS from Vantage BPO Services Pvt. Ltd., but had shown receipts of Rs. 50,73,800/- only. No reconciliation was furnished before the AO in this regard. Even at appellate stage, the Id.AR has not reconciled the difference as is evident from the written submission reproduced in this order. In fact, the appellant has tried to partly reconcile with more receipts shown from Oriental Bank of Commerce at Rs. 61,577/- and from Thermo Fisher Scientific India Pvt.Ltd at Rs. 4,647/-. The receipts from other parties cannot be considered for reconciliation of receipts generated from Vantage BPO Services Pvt.Ltd. Therefore, I hold that the appellant has suppressed receipts of Rs.1,09,418/- received from Vantage BPO Services Pvt.Ltd and accordingly, the addition made is sustained. Thus appellant fails in respect of **Ground No.4**.*

11. We have perused the reasoning provided by the CIT(A) for adjudication against the assessee. In the absence of any contrary explanation on behalf of the assessee, and in the absence of any perversity in the conclusion drawn by the CIT(A), we decline to interfere. Ground No.3 of the assessee's appeal is dismissed.

12. As regards Ground No.4, the CIT(A) has dealt with issue as under:

*“4.4 **Ground No.5** pertains to 25% disallowance out of travelling expenses of Rs.13,35,288/-. Undisputedly, these expenses were incurred through Credit Card by the employees of company for business purposes at different locations. Since the expenditure has been incurred through credit card, genuineness of the same cannot be doubted. The AO has disallowed the expenditure on adhoc basis without pointing out any item of disallowable nature. However, possibility of use of credit card for personal items cannot be ruled out. Therefore, to meet the end of justice, the AO is directed to*

disallow only 10% of the expenses resulting into addition of Rs. 1,33,529/-. Thus appellant succeeds partly on this account."

13. We have perused the reasoning provided by the CIT(A) for adjudication against the assessee. In the absence of any contrary explanation on behalf of the assessee, and in the absence of any perversity in the conclusion drawn by the CIT(A), we decline to interfere. Ground No.4 of the assessee's appeal is dismissed.

14. In the result, appeal filed by the assessee is dismissed.

This Order pronounced in Open Court on 29/01/2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 29/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।