

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 4419/Del/2017
Asstt. Year 2011-12

Addl. CIT, Special Range-9 New Delhi.	Vs.	TV Today Network Ltd. F-26, First Floor, Connaught Circus, N New Delhi – 110 001.
(Appellant)		(Respondent)

Department by:	Shri Saras Kumar, Sr. DR
Assessee by :	Shri Salil Agarwal, Advocate, Shri Shailesh Gupta, Advocate
Date of Hearing	28/05/2020
Date of pronouncement	09/06/2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal has been preferred by the department against order dated 28.2.2017 passed by the Ld. Commissioner of Income Tax (Appeals) – 15, Delhi {CIT (A)} for the assessment year 2011-12.

2.0 The brief facts of the case are that during the year under consideration, the assessee company was engaged in the business of broadcasting, telecasting, relaying transmitting, distributing audio, video and other programmes of software for television, radio and other media. The return of income was filed declaring total income at Rs. 149,643,236/-. Subsequently, after taking the case under scrutiny, the assessment was completed at an income of Rs. 179,037,810/- after making the following additions/disallowances:-

1. Provision for interest payable to <i>Prasar Bharti</i>	Rs. 19,53,159/-
2. Claim of software expenses	Rs. 1,32,960/-
3. Consumption Debtors	Rs. 1,70,86,924/-
4. Leave Encashment	Rs. 1,02,21,533/-

2.1 Aggrieved, the assessee approached the Ld. First appellate Authority who gave partial relief to the assessee by deleting the additions pertaining to consumption debtors amounting to Rs. 1,70,86,924/- and software expenses amounting to Rs. 1,32,960/-. Now aggrieved, the department is in appeal before the ITAT and has raised the following grounds of appeal:-

1. *That the Ld. CIT (A) has erred on facts and law on relying the order of his predecessors and by treating the liability as ascertained liability without appreciating the fact that the assessee has itself shown the amount as provision for discount not debited to accounts of respective parties*
2. *That the Ld. CIT (A) has erred on facts and in laws by treating software expenses as revenue in nature without appreciating the fact that their benefits/utility extends beyond a year and provides enduring benefits to the assessee company.*

3.0 At the outset, the Ld. AR submitted that both these issues decided by the Ld. CIT (A) in favour of the assessee now stood covered in favour of the assessee by the order of the ITAT in assessee's own case in ITA No. 6080/Del/2012 for assessment year 2008-09 vide order dated 28.3.2019. The Ld. AR drew our attention to the relevant paragraphs of the Tribunal and submitted that in view of the adjudication by the Tribunal in favour of the assessee, the department's appeal was liable to be dismissed.

4.0 In response, the Ld. Sr. DR fairly accepted that the issues had been decided in favour of the assessee by the order of the Tribunal as aforesaid.

5.0 At this point, the Bench raised a specific query to both the parties as to whether they were satisfied with the virtual hearing and whether the hearing should be closed. In response to the query, both the parties submitted that they were satisfied with the virtual hearing and that the case may be taken as heard.

6.0 Having heard both the parties and after having gone through the order of the Tribunal in ITA No. 6080/Del/2012 for assessment year 2008-09, we agree with the contention of the Ld. AR that the ITAT has decided both the issues in assessee's favour by dismissing the grounds raised by the department.

6.1 As far as ground No. 1 of the captioned department's appeal is concerned, it is seen that the relevant observations of the ITAT are contained in Para 30 of the order and the same is being reproduced hereunder for ready reference:-

“30. We have carefully considered the rival contention and found that the claim of the assessee is that company has given discount to its debtors based on consumption of Airtime during the current year. It filed its detail of the credit balance of the debt. From the details of credit balance of debtors, the learned assessing officer enquired about the details of the consumption debtor of Rs. 34,000,000/- which was explained by the assessee, that this is a discount account which is credited by the company by passing an accounting entry by crediting one control account having details of all the parties separately. S the assessee is in the business of the media the main source of income of the assessee company is broadcasting of

advertisement in its channel. The assessee company sale space in its channels to advertiser usually a unit of sale of space is 10 seconds. The assessee company gave various schemes to its advertiser like consumption incentive, series discount etc. In case of consumption incentive, the advertisers are given an offer that in case if it consumes particular amount of time during the given period for broadcasting and advertising then it will be entitled to the consumption incentive. During the year, assessee has passed on this consumption incentive of Rs. 34059992/-. Learned CIT (A) has held that this is the expenditure in the nature of incentive to the advertiser and the assessee has also shown income against this expenditure. Before the Learned CIT-A the assessee demonstrated by producing the copies of the deals of some of the parties and shown that it is not an asset or liability but actual expenditure. In view of this, he held that assessee is eligible for deduction of the above expenditure. The learned departmental representative could not point out any infirmity in the order of the learned CIT (A). Therefore, we confirm the order of the learned CIT (A) and dismiss ground number-4 of the appeal of the AO.”

6.2 Accordingly, in view of the order of the coordinate bench of the Tribunal, as aforesaid, in assessee’s own case, we dismiss ground No. 1 of the department’s appeal.

6.3 As far as ground No. 2 is concerned, this issue has been adjudicated by the ITAT in paragraph 27 of the ITAT’s order as aforementioned. The same is reproduced hereunder for ready reference:-

“27. Ground number 3 of the appeal is with respect to the disallowance deleted of Rs. 427172/- on account of software expenses by treating it as a capital expenditure. During the year, assessee has claimed the software expenses of Rs.

1067931/- and debited is to profit and loss account as expenditure, however, the learned Assessing Officer was of the view that the software expenses are capital in nature he disallowed it. The assessee explained that these are the upgradation or purchase of the application software and revenue expenditure in nature because there is no enduring benefit available to the assessee. The learned assessing officer rejected the explanation of the assessee and granted assessee 60% of the depreciation holding that software expenditure is a capital expenditure in nature. The assessee challenged the same before the learned CIT-A who held that software expenditure incurred by the assessee is an application software for upgradation. The assessee has not incurred any expenditure on acquiring any asset of enduring nature. He further relied upon the decision of the Hon'ble Delhi High Court in case of Ashahi Glass Works Limited. In view of this we do not find any infirmity in the order of the Ldarned CIT-A in deleting the above disallowance.”

6.4 Accordingly, in view of the observations and findings of the Tribunal in assessee's own case as aforesaid, we dismiss the department's ground No. 2 in this appeal.

7.0 In the final result, the appeal of the department stands dismissed

Order pronounced on 9th June,2020.

**sd/-
(G.S. PANNU)
VICE PRESIDENT**

**sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 09/06/2020

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi