

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “B”, MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 162/MUM/2019
Assessment Year: 2012-13**

Nectar Loyalty Management India Limited, Birla Aurora, Level 14 th , Dr. Annie Besant Road, Worli, Mumbai - 400018 PAN: AADCN7378J	Vs.	The Deputy Commissioner of Income Tax, Circle – 3(2) (2), Mumbai
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Shri Oommen Tharian (DR)

Date of Hearing: 19/11/2020
Date of Pronouncement: 26/11/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 24.10.2018 passed by the Commissioner of Income Tax (Appeals)-9 (for short ‘the CIT(A), Mumbai, for the assessment year 2012-13, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the ‘Act’).

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

1. “Disallowance of payment towards database license
 - 1.1 *On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [the CIT (A)] erred in law and on facts in upholding the action of the Deputy Commissioner of Income Tax Circle 3(2)(2), Mumbai (the learned DCIT) in disallowing expense towards purchase*

of database license amounting to INR 11,11,51,405 by considering it to have enduring benefit and directing it to be transferred to WIP account and be amortised as and when revenue is generated.

- 1.2 *The Appellant prays that the learned AO be directed to delete the disallowance of payment of INR 11,11,51,405 towards database license made in the assessment order.*
- 1.3 *Without prejudice to the above, the Appellant submits that in case if the aforesaid expense towards purchase of database license is not allowed as revenue in nature, then depreciation on the same ought to be allowed on the same under section 32 of the Act.*
2. *Disallowance of brokerage expenses.*
 - 2.1 *On the facts and circumstances of the case and in law, the learned CIT (A) erred in not adjudicating the action of the learned DCIT in treating the brokerage fees of INR 20,60,825 as being connected to the purchase of database license and disallowing the same by transferring to WIP account and be amortised as and when revenue is generated.*
 - 2.2 *The Appellant prays that the learned AO be directed to delete disallowance of brokerage fees of INR 20,60,825 made in the assessment order.*
 - 2.3 *Without prejudice to the above, the Appellant submits that in case if case the aforesaid expense towards brokerage fees is not allowed as revenue in nature, then depreciation on the same ought to be allowed on the same under section 32 of the Act.*
3. *Initiation of penalty proceedings under section 271 (1) (c) of the Act.*
 - 3.1 *On the facts and circumstances of the case, and in law, the learned CIT (A) erred in not adjudicating the action of the learned DCIT in initiating penalty proceedings under section 271 (1) (c) of the Act.*
 - 3.2 *the Appellant prays that the learned AO be directed to drop the penalty proceedings initiated under section 271 (1) (c) of the Act.*
3. This case was fixed for hearing on 19.11.2020. However, when the case was called out for hearing, none appeared on behalf of the assessee. The Ld. Departmental Representative (DR) informed that in this case the department

has received the declaration and undertaking in Form-1 and 2 filed by the assessee under Direct Tax Vivad se Vishwas Act, 2020.

4. In the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT, TCA No 372 of 2020*, the Hon'ble Madras High Court has dismissed the appeal of the assessee as withdrawn in which the counsel had made the submissions before the Hon'ble Court that the assessee has opted to settle its dispute in accordance with the provisions of Direct Tax Vivad se Vishwas Act, 2020. The observations of the Hon'ble High Court are as under:-

- “3. The learned counsel for the appellant / assessee, on instructions, submitted that the appellant / assessee intends to avail the benefit of Vivad Se Vishwas Scheme ('VVS Scheme' for brevity) and in this regard, the assessee is taking steps to file the application / declaration in Form No. I.*
- 4. It may not be necessary for this Court to decide the Substantial Questions of Law framed for consideration on account of certain subsequent developments. The Government of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) to provide for resolution of disputed tax and for matters connected therewith or incidental thereto. The Act of the Parliament received the assent of the President on 17th March 2020 and published in the Gazette of India on 17th March 2020.*
- 5. In terms of the said Act, the assessee has been given an option to put an end to the tax disputes, which may be pending at different levels either before the First Appellate Authority or before the Tribunal or before the High Court or before the Hon'ble Supreme Court of India. Under Section 2(j) “disputed tax” has been defined. In terms of Section 3, where a declarant means a person, who files a declaration under Section 4 on or before the last date files a declaration to the designated authority in accordance with the provisions of Section 4 in respect of tax arrears, then, notwithstanding anything contained in the Income Tax Act or any other law for the time being in force, the amount payable by the declarant shall be determined in terms of Section 3(a-c) thereunder.*
- 6. The First Proviso to Section 3 states that in case, where an Appeal or Writ Petition or Special Leave Petition is filed by the Income Tax authority on any issue before the Appellate Forum, the amount payable shall be one-half of the amount in the table stipulated in Section 3 calculated on such issue, in such a manner as may be prescribed. The second proviso deals with the cases, where the matter is before the Commissioner (Appeals) or before the Dispute Resolution Panel. The third proviso deals with cases, where the issue is pending before the Income Tax Appellate Tribunal. The filing of the declaration is as per Section 4 of the Act and the particulars to be furnished are also*

mentioned in the Sub Sections of Section 4. Section 5 of the Act deals with the time and manner of the payment and Section 6 deals with Immunity from initiation of proceedings in respect of offence and imposition of penalty in certain cases. Section 9 of the Act deals with cases, where the Act 3 of 2020 will not be applicable.

7. As observed, the assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration to be filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders.
8. In the light of the above, We direct the appellant / assessee to file the Form No.I on or before 20.11.2020 and the competent authority shall process the application / declaration in accordance with the Act and pass appropriate orders as expeditiously as possible preferably within a period of six (6) weeks from the date on which the declaration is filed in the proper form.”
5. Since, the assessee has filed declaration and undertaking in Form-1 and 2 under Direct Tax Vivad se Vishwas Act, 2020, we respectfully following the decision of the Hon’ble Madras High Court in the case of *M/s. Nannusamy Mohan (HUF) vs. ACIT (supra)*, dismiss the present appeal as withdrawn. However, the appellant/assessee is at liberty to file miscellaneous application for restoration of appeal as discussed by the Hon’ble Madras High Court in paragraph 7 of the judgment.

In the result, appeal filed by the assessee for assessment year 2012-2013 is dismissed.

Order pronounced on 26th November, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 26/11/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**