

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri Duvvuru RL Reddy, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 1276/Chny/2019  
निर्धारण वर्ष/Assessment Year: 2004-05

M/s. Dishnet Wireless Ltd.,  
Spencer Plaza, 5<sup>th</sup> Floor, 769,  
Anna Salai, Chennai 600 002.  
**[PAN:AAACD5767E]**

The Income Tax Officer,  
Vs. Company Circle I(4),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Ashik Shah, C.A.  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath, CIT  
सुनवाई की तारीख/ Date of hearing : 20.01.2021  
घोषणा की तारीख /Date of Pronouncement : 19.02.2021

**आदेश /O R D E R**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 4, Chennai, dated 31.01.2019 relevant to the assessment year 2004-05. Besides raising various grounds, the assessee mainly challenged the exparte order passed by the Id. CIT(A) without affording sufficient opportunity of being heard and without addressing the grounds of appeal on merits.

2. Brief facts of the case are that the assessee has filed its return of income 29.10.2004 for the assessment year 2004-05 admitting total

income of ₹.51,46,06,480/-. Subsequently, in pursuance to the order under section 263 of the Income Tax Act, 1961 ["Act" in short], an order under section 143(3) r.w.s. 263 of the Act was passed by recomputing the assessee's book profits under section 115JB of the Act. Since the assessee has made huge payments towards international bandwidth charges to M/s. Singapore Telecommunications Ltd., Singapore during the relevant previous year without deduction of tax at source warranting disallowance, the Assessing Officer reopened the assessment under section 147 of the Act by issuing notice under section 148 of the Act. By relying on various decisions, it was the contention of the assessee that the payment for internet bandwidth would not constitute "Fees for Technical Services" so as to warrant deduction of tax at source on these payments. However, after considering the submissions of the assessee as well as case law, the Assessing Officer disallowed the above expenditure and brought to tax. On appeal, after considering the written submissions of the assessee that the Hon'ble Madras High Court issued moratorium on all IT proceedings till the disposal of the Corporate Insolvency Resolution Proceedings [CIRP], the Id. CIT(A) dismissed the appeal.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By referring to the specific ground raised in the grounds of appeal at ground No. 1.4, the Id. Counsel for the assessee has submitted that the Id. CIT(A) has not provided sufficient opportunity of being heard and without addressing the grounds of appeal on merits, which is against the principles of natural justice and prayed for suitable directions by giving an opportunity of being heard to the assessee. Per contra, the Id. DR strongly supported the order passed by the Id. CIT(A).

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against various additions made in the assessment order passed under section 143(3) r.w. section 147 of the Act for the assessment year under consideration, the assessee preferred appeal before the Id. CIT(A). On perusal of the appellate order, we find that despite giving various opportunities from 08.08.2011 to 30.01.2019, there was no proper response from assessee's side and by clubbing the appeals for other assessment years, the Id. CIT(A) dismissed all the appeals without adjudicating the issues on merits. Since the Id. Counsel for the assessee made a submission that the assessee was not provided sufficient opportunity of being heard and not addressed the grounds of appeal on merits, we remit the matter back

to the file of the Id. CIT(A) to adjudicate the issues on merits in accordance with law by affording an opportunity of being heard to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 19<sup>th</sup> February, 2021 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, 19.02.2021

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.