

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 4418/DEL/2017
[Assessment Year: 2012-13]

The Addl. C.I.T.
Special Range
New Delhi

Vs.

M/s Times Internet Ltd
10, Darya Ganj, New Delhi

PAN: AABCT 1559M

[Appellant]

[Respondent]

Date of Hearing : 30.03.2021

Date of Pronouncement : 30.03.2021

Assessee by : Shri Mukesh Gupta, CA
Ms. Neha, CA

Revenue by : Shri Prakash Dubey, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 9, New Delhi dated 24.03.2017 pertaining to A.Y 2012-13.

2. The grievances of the Revenue read as under:

"1. That the Ld. CIT (A) has erred on facts and law in ignoring the legislative intention brought forward by circular no. 5/2014 that the disallowance u/s 14A are allowed even if no exempt income is earned.

2. On the facts and circumstances of the case the Ld.CIT(A) has erred in deleting disallowances of expenses of Rs. 1,89,45,379/- by not adjudicating entirely on merits on the cogent reasons brought on record by the AO in the assessment order justifying the disallowances.

3. On the facts and circumstances of the case the Ld.CIT(A) has erred in deleting disallowance made on account of depreciation on software licences @ 25% by relying on the order of his predecessor and without assigning any specific reasons.

4. On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting disallowance made on account of depreciation on software licences by categorizing between software as integral and utility on arbitrary assumptions."

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of conducting its business of rendering various activities and sale of web space for advertisement through its web portals in the name of Indiatimes.com. The assessee is also providing e-commerce i.e. sale of goods through web portal. The assessee company is a wholly owned subsidiary of M/s Bennett Coleman & Co. Ltd, Times of India Group [BCCL].

4. The original return of income was e-filed on 17.09.2012 declaring total loss of Rs 40.33 crores, which was revised on 22.04.2013. Revised income/loss was the same, but the figure of TDS claim as per 26AS was revised. The return was selected for scrutiny and, accordingly, statutory notice was issued and served upon the assessee company.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned dividend income of Rs. 3,67,35,594/- which was claimed as exempt. The assessee was asked to show cause as to why disallowance u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] read with Rule 8D of the Income tax Rules, 1962 should not be made.

6. In its reply, the assessee stated it has not made any investment for the purpose of earning dividend. The investment is mainly for strategic business reasons and, therefore, no disallowance u/s 14A of the Act r.w.r. 8D of the Rules is called for.

7. Reply of the assessee was considered but was not accepted by the Assessing Officer who was of the firm belief that for earning exempt income, certain expenses need to be disallowed as per provisions of sec. 14A of the Act r.w.r. 8D of the Rules. The Assessing Officer, accordingly, computed the disallowance at Rs. 20,84,878/-.

8. Proceeding further, the Assessing Officer noticed that the assessee has claimed expenses of Rs. 1,89,45,379/- out of total expenses claimed.

9. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has carried on the activity of sale of contents on behalf of BCCL from A.Ys 2001-02 to 2005-06. According to the Assessing Officer, under the head "Income from business and profession" claim of only those expenses can be allowed which have been incurred wholly and exclusively for the purposes of

business. The Assessing Officer was of the firm belief that the alleged expenses were partly incurred for the business of BCCL and accordingly, disallowed 62.8% of the receipt and made addition of Rs. 1,89,45,379/-.

10. Proceeding further, the Assessing Officer noticed that the assessee has claimed depreciation @ 60% on software. The Assessing Officer was of the firm belief that the eligible rate of depreciation was 25% and, accordingly, restricted the claim of depreciation on software @ 25% and made addition of Rs. 32,12,253/-.

11. The Assessing Officer further noticed that the assessee has claimed software expenses of Rs. 1,79,30,749/- as revenue in nature. The Assessing Officer was of the firm belief that such expenses were of capital in nature and allowing depreciation @ 25% made addition of Rs. 1,34,48,062/-.

12. The assessee strongly assailed the assessment order before the Id. CIT(A).

13. The ld. CIT(A), though convinced that the disallowance needs to be made u/s 14A of the Act r.w.r. 8D of the Rules, however, since the assessee has received dividend income from only one company, namely, Times of Money Ltd, directed the Assessing Officer to recompute the disallowance u/r 8D of the Rules considering only that investment which has yielded exempt income.

14. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

15. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

16. We have given thoughtful consideration to the orders of the authorities below. It is true that the assessee has earned dividend income which has been claimed as exempt. It is equally true that certain expenses need to be disallowed u/s 14A of the Act r.w.r. 8D of the Rules. There is no dispute that the assessee has received dividend income only from one company, namely, Times of Money Ltd. We are of the considered view that the Assessing Officer should have considered only those investments which yielded exempt income. We

find that the directions of the ld. CIT(A) are in consonance with the provisions of the law. We, therefore, do not find any reason to interfere with the same.

17. In so far as the disallowance of Rs. 1,89,45,379/- is concerned, the ld. CIT(A) noticed that similar issues were considered by the Tribunal in assessee's own case in A.Ys 2006-07 to 2008-09 and following the findings of the Tribunal, the ld. CIT(A) deleted the same.

18. The ld. DR could not bring any distinguishing decision in favour of the Revenue.

19. We find that the Tribunal, in ITA No.2986, 4130 & 4132/DEL/2011, vide a consolidated order for A.Ys 2006-607 to 2008-09 has deleted the disallowance. The relevant findings of the Tribunal read as under:

"Ground no.1 of the Revenue's appeal is against the deletion of disallowance of Rs. 16,12,31,000/-. The facts apropos this ground are that the AO observed that the assessee declared revenue receipts of Rs.112.97 crore for the current year as against the

revenue receipts of Rs. 124.67 crore for the immediately preceding year. The assessee was found to have incurred expenditure during the instant year at Rs. 1230.02 crore as against the expenditure of Rs. 94.80 crore in the preceding year. On the perusal of details it was observed that the assessee had not shown any income during the year in respect of (i) Medianet; (ii) content selling; and (iii) sale of standalone publication. On being called upon to explain the reasons for not shown income from these sources, the assessee stated that the Medianet business consisted of a PR brand which was managed by the assessee company on behalf of its holding company, Bennett Coleman and Co. Ltd till 30.09.2004. The holding company withdrew this right from the assessee company from 30.09.2004 and handed over this business to a new group company called Optimal Media solutions Ltd. After the termination of this line of business in the immediately preceding year, the assessee claimed not to have been engaged in rendering any services relating to Medianet Business. The assessee also furnished particulars of income earned by new company, M/s Optimal Media Solutions Lt., from the business. Similarly, regarding the sale of contents, the assessee submitted that this business hitherto entrusted to the assessee by its holding company was withdrawn w.e.f 1.10.2004.

Necessary communications withdrawing the above business from the assessee were also furnished to the AO. In this backdrop of the facts, the AO noticed that albeit such businesses were not carried on by the assessee during the year, the overall expenses of the assessee were still on northwards sojourn. This was held on the strength of the percentage of the expenses to revenue at 62.85 for the AY 2004-05 when the assessee was having these business: during the assessment year 2005-06 when these businesses remained with the assessee for a part of the year, the percentage of expenses went up to 73.5%; and during the year under consideration when these businesses were not at all carried on by the assessee, the percentage of expenses increased to 107.8%. The AO inferred that though: "there is no income on the account of these two businesses to the assessee, but, still, it is incurring expenses for these two businesses." Applying the percentage of expenses at 62.8% as relevant for the AY 2004-05, the AO made disallowance for the remaining expenses of Rs. 16,12,31,000/-. This disallowance was deleted in the first appeal. The revenue is aggrieved against such deletion. Having heard the rival submissions in the light of the material placed on record, it is observed that the AO made the disallowance by retaining the percentage of

expenses to the revenue at 62.8%>. This was done in accordance with the percentage of expenses incurred by the assessee for the A Y 2004-05 when the assessee was having these business from its holding company. Such businesses were withdrawn by the holding company from the assessee w.e.f 1.10.2004. The opinion of the AO that though there was no income to the assessee from these businesses, still it was incurring expenses for them, is unfounded. On a specific query, the Id. DR failed to draw our attention towards any specific expenditure incurred by the assessee qua these businesses withdrawn by the holding company. The AO made disallowance of Rs.16.12 crore simply by means of a mathematical exercise carried out by him. If he found the expenditure incurred by the assessee to be on higher side, it was incumbent upon him to specifically point out as to *which expenses were not incurred for the purposes of business. No such exercises worth the name has been carried out. In our considered opinion, the Ld. CIT(A) was fully justified in deleting this addition made by the AO on ad hoc basis. This ground is therefore, not allowed.*"

20. Respectfully following the findings of the co-ordinate bench, we decline to interfere.

21. The next grievance of the Revenue relates to deletion of disallowance of Rs. 32,12,253/-.

22. The Assessing Officer has taken a view that the expenditure towards software is eligible for depreciation @ 25% instead of 60%.

23. The ld. CIT(A) found that similar issue was decided by his predecessor in A.Y 2009-10 in favour of the assessee. Following the findings, the ld. CIT(A) deleted the disallowance.

24. The ld. DR strongly supported the findings of the Assessing Officer.

25. The ld. counsel for the assessee reiterated what has been stated before the lower authorities.

26. We find that an identical issue was considered by the Tribunal in assessee's own case in the order for A.Y 2006-07 to 2008-09 [supra]. Since the first appellate authority has followed the binding decision of the co-ordinate bench, we decline to interfere.

27. Similar would be the fate of the disallowance made on account of depreciation on software licenses.

28. We find that the same was deleted by the Id. CIT(A) following the findings of the Tribunal in A.Ys 2006-07 to 2008-09 wherein the co-ordinate bench has followed the order of the Hon'ble Delhi High Court in assessee's own case for A.Ys 2004-05 and 2005-06. Since the deletion has been made following his predecessor, we do not find any error or infirmity in the findings of the Id. CIT(A).

29. In the result, the appeal filed by the Revenue in ITA No. 4418/DEL/2017 is dismissed.

The order is pronounced in the open court in the presence of both the representatives on 30.03.2021.

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 30th March, 2021.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

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