



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"B" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**

**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA no.4536/Mum./2019  
(Assessment Year : 2014-15)

Businessmatch Services India P. Ltd.  
Shop no.2, Neptune-II  
Smt. Nargis Dutt Road, Bandra (W)  
Mumbai 400 050 PAN-AAACB6129N

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-12(1)(2), Mumbai

..... Respondent

Assessee by : Shri Ravikant Pathak  
Revenue by : Shri Rahul Raman

Date of Hearing - 26.04.2021

Date of Order - 13.05.2021

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 25<sup>th</sup> March 2019, passed by the learned Commissioner (Appeals)-20, Mumbai, pertaining to the assessment year 2014-15.

2. The grounds of appeal raised by the assessee are reproduced below:-

*"1. (a) The Commissioner of Income Tax(Appeals) - 20, Mumbai [hereinafter referred to as CIT(A)] erred in dismissing the appeal holding that the Form No.35 has been verified by Appellant 'M/s Business Match Services (India) Private Limited' and has neither*

*been verified by the Managing Director nor any other Director and hence the appeal is not valid.*

*The Appellant submit that Form No.35 has duly been verified and digitally signed by the Director of the Appellant 'Darshansingh Balbirsingh Sandhu' and the name of the Appellant "MIs Business Match Services (India) Private Limited" typed in Form of verification mistakenly; hence, the appeal filed by the Appellant is a valid appeal and CIT(A) ought to have decided the appeal on merit.*

*(b) The CIT(A) erred in passing the order, without providing any opportunity of being heard to the Appellant to represent its case.*

*The Appellant submit that the CIT(A) ought to have given an opportunity of being heard to the Appellant. Thus, on the facts and circumstances of the case the appeal shall be set aside to the file of CIT(A) for fresh adjudication.*

*2.(a) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in making addition aggregating to Rs.9,00,00,000/- being unsecured loan taken from nine parties, as unexplained cash credit u/s 68 of the Act holding the same as accommodation entries.*

*The Appellant submit that on the facts and circumstances of the case, the identity and creditworthiness of the lenders and genuineness of transaction has been duly established; hence, transactions cannot be termed as accommodation entries. Thus, the addition made u/s 68 of the Act by the AO shall be deleted.*

*(b) The CIT(A) erred in not adjudicating the ground taken by the Appellant against action of the AO in making addition on bare allegation that the transactions have been accepted as accommodation transaction by one Shri Bhanwarlal Jain without providing any such alleged statement /details /information to the Appellant for verification and related parties for cross examination.*

*The Appellant submit that the order passed without any contrary material on record and without allowing verification of such alleged statement/details etc. and cross verification of related parties is in gross violation of principle of natural justice; thus, void in law and needs to be quashed.*

*(c) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in making the addition merely on the basis of assumption , surmises and conjecture*

*without there being any material available on record that the transaction undertaken by the Appellant is an accommodation entry.*

*(d) The CIT (A) erred in not adjudicating the ground of the Appellant against the action of the AO in misconstruing the facts, without considering the Appellants submissions and affording an opportunity of being heard , in as much as observing that the complete set of financial statements of the lending concerns are not submitted and that they are not in any genuine business activity but are only namesake lenders.*

*The Appellant submits that the above observation of the AO is factually incorrect; hence, the entire disallowance made shall be deleted.*

*3. The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in disallowing interest amounting to Rs. 56,29,040/- on the ground that the same relates to unsecured loans which are added to the total income of the Appellant , as unexplained cash credit u/s 68 of the Act.*

*The Appellant submit that on the facts and circumstances of the case of the Appellant and in law, the interest expenses of Rs. 56,29,040/- shall be allowed as deductible revenue expense.*

*4. The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in disallowing interest expense of Rs. 1,43,09,262/- u/s 37(1) of the Act on the ground that same relates to unsecured loans taken during the preceding year and which were treated as non-genuine in the assessment order of preceding year.*

*The Appellant submit that on the facts and circumstances of the case and in law, the CIT (A) ought to have allowed the interest expense of Rs. 1,43,09,262/- as deductible revenue expense.*

*5.(a) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in making disallowance of Rs.3,93,53,012/- u/s 14A of the I.T. Act r.w.r. 8D of the I.T. Rules being expenses incurred in relation to income which does not forms part of total income as against disallowance of Rs.960,000/- made by the Appellant.*

*The Appellant submits that it has disallowed the expenses to the extent of Rs.960,000/- incurred in relation to earning of exempted income and hence no further disallowance was called for.*

*(b) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in making disallowance u/s 14A r.w. Rule 8D of the I.T./Rules without recording his dissatisfaction with respect to books of accounts of the Appellant and without affording the Appellant an opportunity of being heard.*

*The Appellant submits that it has not incurred any expenses exceeding Rs. 960,000/-; hence, the further disallowances shall be deleted.*

*(c) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in disallowing proportionate interest out of Rs.6,96,62,098/- as incurred for earning exempt income out of investments without appreciating the fact that the interest bearing funds are used for the purpose of business and not for making investments in shares and securities.*

*(d) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in making disallowance u/s 14A r.w. rule 8D at Rs.3,93,53,012/- which exceeds the total exempt dividend income earned by the Appellant.*

*The Appellant submit that disallowance u/s 14A r.w. rule 8D cannot exceed the total exempt dividend income of Rs.4,60,006/- earned by the Appellant and at the most disallowance can be restricted to the extent of exempt dividend income earned by the Appellant.*

*(e) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in considering investment in Property of Rs.6,60,56,192/- on 31.03.2013 and Rs.6,21,43,261/- on 31.03.2014 while computing average investment under rule 8D of I.T. Rule.*

*The Appellant submit that investment in property does not give rise to an exempt income and same shall be excluded from computation of average investment under rule 8D of I.T. Rule.*

*(f) The CIT(A) erred in not adjudicating the ground of the Appellant against the action of the AO in considering strategic investment of Rs.5,95,81,000/- on 31.03.2013 and Rs.5,95,80,000/- made in subsidiary on 31.03.2014 while computing disallowance u/s 14A r.w. rule 8D.*

*The Appellant submits that the CIT(A) ought to have excluded strategic investment made in subsidiary while computing disallowance u/s 14A r.w. rule 8D.*

*6. The learned CIT(A) erred in not adjudicating the ground of the Appellant against the section of the AO in not allowing carry forward of long term capital loss of ₹ 16,89,86,412 (wrongly stated as ₹ 13,05,66,158 in the assessment order) while assessing the income, without assigning any reason."*

3. During the course of hearing, the learned Counsel appearing for the assessee submitted that the learned Commissioner (Appeals) has dismissed the appeal filed by the assessee without adjudicating any of the grounds of appeal on merit raised by the assessee holding that Form no.35, has been verified by the assessee and has not been verified by the Managing Director or the other Director. It is also submitted by the learned Counsel that the learned Commissioner (Appeals) has grossly erred in not providing any opportunity of hearing enable the assessee to contest the grounds of appeal on merit. He submitted that the assessee deserves an opportunity of hearing before the first appellate authority so that the grounds of appeal raised can be contested on merit. Accordingly, the leaned Counsel for the assessee prayed that necessary directions may be issued to the learned Commissioner (Appeals) for adjudication of the issues raised before him on merit after providing opportunity of being heard to the assessee.

4. The learned Departmental Representative has not made any objection to the submissions made by the leaned Counsel for the

assessee and in restoring the entire issues raised in the appeal to the file of the first appellate authority for adjudication on merit.

5. Considered the submissions of the learned Counsel for both the parties and perused the material on record. As could be seen from the grounds of appeal raised by the assessee reproduced above, the learned Commissioner (Appeals) has dismissed the assessee's appeal without adjudicating the grounds of appeal raised on merit merely on technical deficiencies / irregularities in filing the appeal before the first appellate authority holding that although Form no.35, has been verified by the assessee, but has not been verified by the Managing Director or the other Director. In our view, even if there was a technical discrepancies / irregularities found in filing Form no.35, the learned Commissioner (Appeals) ought to have given an opportunity directing the assessee to rectify the discrepancies / irregularities in filing Form no.35, and ought to have adjudicated the grounds of appeal on merit by providing proper opportunity to the assessee to contest its case. Consequently, we are of the considered view that the assessee deserves an opportunity of hearing before the first appellate authority for contesting its case on merit. Accordingly, we set aside the impugned order passed by the learned Commissioner (Appeals) and restore the entire appeal to his file and direct him to adjudicate the issues raised by the assessee on merits and pass speaking order

by providing adequate opportunity of hearing to the assessee. All the grounds raised by the assessee are restored to the file of the learned Commissioner (Appeals). Thus, the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, appeal is allowed for statistical purposes.  
Order pronounced in the open court on 13.05.2021

**Sd/-  
MAHAVIR SINGH  
VICE PRESIDENT**

**Sd/-  
S. RIFAUZ RAHMAN  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 13.05.2021**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai