

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3124/Del/2018 : Asstt. Year : 2014-15

Addl. CIT, Special Range-9, New Delhi	Vs	M/s Times Internet Ltd., 10, Daryaganj, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AABCT1559M		

ITA No. 2210/Del/2018 : Asstt. Year : 2014-15

M/s Times Internet Ltd., 5 th Floor, Ecstasy IT Park, Plot No. 391, Udyog Vihar, Phase- III, Gurgaon-122016	Vs	Addl. CIT, Special Range-9, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCT1559M		

Assessee by : Sh. Mukesh Gupta, CA &

Ms. Neha Gupta, CA

Revenue by : Sh. Ajay Kumar, Sr. DR

Date of Hearing: 02.08.2021

Date of Pronouncement: 06.08.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue and the assessee against the orders of Id. CIT(A)-16, New Delhi dated 29.01.2018.

2. In ITA No. 3124/Del/2018, following grounds have been raised by the revenue:

"1. The Ld. CIT (A) has erred on the facts and circumstances of the case in not appreciating the fact that AO made the disallowance in accordance with sec. 14A r.w.r 8D of the I.T Act only.

2. The Ld. CIT (A) has erred on the facts and circumstances of the case by deleting the addition made by the AO on account of disallowance of expenses on account of sale of content.

3. The Ld. CIT (A) has erred on the facts and circumstances of the case by deleting the addition made by the AO on account of software expenses.

4. The Ld. CIT (A) has erred on the facts and circumstances of the case by deleting the addition made by the AO on account of depreciation claim of software.

5. The Ld. CIT (A) has erred on the facts and circumstances of the case by partly allowing the addition made by the AO on account of consultancy expenses of legal and professional expenses."

3. In ITA No. 2210/Del/2018, following grounds have been raised by the assessee:

"1. That the learned Commissioner of Income Tax (Appeals)-16 has erred both in law and on facts in upholding disallowance of entire sum of Rs. 600000/- towards consultancy charges for valuation of shares upon merger of another group company, claimed by the appellant company as revenue expenses.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the expenses on merger are allowed @20% in five consecutive years u/s 35DD. Accordingly, Rs 120000/- should have been allowed in this AY and balance in next 4 years.

2. That the learned Commissioner of Income Tax (Appeals)-16 has erred both in law and on facts in upholding disallowance of sum of Rs.5,50,000/- towards consultancy charges for consultancy related to the ongoing website magicbricks.com of the appellant in regular course of business.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the total expenses paid to consultant Rs 61,60,754 are pursuant to the agreement specifying various business related services, on account of which a sum of Rs5610754/- was allowed by AO as revenue in nature, thus there is no justification of a different# inference for the remaining Rs 5,50,000/-."

ITA No. 3124/Del/2018 A.Y. 2014-15: (Revenue)

Disallowance u/s 14A:

4. During the year, the assessee earned dividend from mutual fund of Rs.1,03,60,745/- and *suo moto* disallowed an amount of Rs.5,57,215/- u/s 14A. The AO by resorting the provisions of Rule 8D(2)(ii) computed disallowance to Rs.96,28,052/-.

5. The Id. CIT (A) directed the AO to recompute the disallowance u/s 14A by considering the investments from which dividend has been earned by the appellant company and relying on the order of the Special Bench of ITAT in the case of CIT Vs Vireet Investments Pvt. Ltd. 82 Taxman 415, we hereby direct that only the investments which yielded the exempt income be considered for computation of disallowance u/s 14A r.w. Rule 8D.

Disallowance of Expenses on account of sale of content:

6. This issue pertaining to disallowance of expenses on a presumption basis with regard to the income received on syndication services has been a repetitive issue from the years 2006-07 to 2014-15. This issue has been decided by the Hon'ble Delhi High Court in assessee's own case in assessment years 2004-05 and 2005-06 in ITA Nos. 178 & 188/2016 dated 14.03.2016 further in assessment year 2006-07, 2007-08 and

2008-09 in ITA No. 716, 724 & 753/2017 dated 06.09.2017, the issue has been adjudicated in favour of the assessee. Since, the issue has been repetitively held in favour of the assessee and since the Id. CIT (A) has followed the earlier orders of the Tribunal, we decline to interfere with the order of the Id. CIT(A).

Software Expenses and Depreciation claim of software:

7. The assessee incurred an expenditure of Rs.35.59 Crores on account of software, content and web hosting. The AO disallowed an amount of Rs.75.55 lacs out of the expenditure holding that the software utilized is capital in nature. The depreciation on software claimed @ 60% by the assessee has been scaled down to 25% by the Assessing Officer.

8. The Id. CIT (A) deleted the addition based on the decision of the Hon'ble Delhi High Court in assessee's own case in assessment years 2004-05 and 2005-06 also in subsequent years 2006-07, 2007-08, 2008-09. Since, the matter of software utilized in content production, the software embedded with hardware is an integral part of the computer equipment, the issue has been repetitively held in favour of the assessee and since the Id. CIT (A) has followed the earlier orders of the Tribunal, we decline to interfere with the order of the Id. CIT(A).

Legal & Professional expenses:

9. The assessee claim an expenses of consultancy charges of Rs.12,94,46,194/- and 10,67,61,340/- under the head legal and

professional expenses. The details of the expenses are as under:

Consultancy charges

Date	Name	Narration	Amount	Remarks
31/03/2014	RAJU & PRASAD CHARTERED ACCOUNTANTS	FINANCE PROVISION 2012-13_TDS RETURN,CERTIFICATES	120,752	Prior period expenses
31/03/2014	ERNST & YOUNG LLP	FINAL MILESTONE_FINAL HEARING_HIGH COURTJVIERGER	522,362	Merger Expenses, capital expenses
31/03/2014	S.B.G. & CO	VALUATION AND SHARE SWAP RATIO_MERGER WITH TBSL PR	600,000	Merger Expenses, capital expenses
31/03/2014	ERNST & YOUNG LLP	FINANCE PROVISION 2012-13_VARIOUS SERVICES	621,825	Prior period expenses
31/03/2014	DIPTI TANDON	CONSULTATION FEE FOR SPECIFIC PROJECT	550,000	capital expenses
	Total		2,414,940	

Legal and professional expenses

Date	Name	Narration	Amount
19/12/2013	ASP ADVOCATES	LEGAL CHRGS_MERGER OF TWL AND TML WITH TIL LEGAL S	150,000
19/12/2013	ASP ADVOCATES	LEGAL CHRGSJV1ERGER OF TWL AND TML WITH TIL LEGAL S	150,000
31/01/2014	ASP ADVOCATES	FILLING THE 2ND MOTION PETITION WITH HCJV1ERGER LEG	150,000
31/01/2014	ASP ADVOCATES	ISSUANCE OF NOTICE TO RD,ROC,OL BY DLH HC_MERGER L	100,000
31/03/2014	ASP ADVOCATES	PROV 13-14_LEGAL CHRGS TWRDS MERGER_REPLY TO RD/OL	106,750
	TOTAL		656,750

10. The AO held that some of the expenses relating to shares subscription, making to due diligence report are not allowable as revenue expenses and they have to be capitalized or amortized. The AO disallowed an amount of Rs.24,14,940/- out of consultancy charges and Rs.6,56,750/- out of professional expenses. The Id. CIT (A) has gone through each and every item of expenditure and also the computation of income wherein

an amount of Rs.21,39,865/- spent on account of merger expenses have been *suo moto* disallowed by the assessee.

11. On going through the entire facts, the Id. CIT (A) held that an amount of Rs.6,00,000/- spent towards valuation of shares for the purpose of merger of the company and Rs.5,50,000/- paid to independent consultant are in the nature of capital expenditure.

12. Since, the Id. CIT (A) has gone through the details of expenditure and since the assessee has already disallowed an amount of Rs.21,39,865/-, we hereby hold that the grounds of appeal of the revenue on this issue cannot be sustained.

ITA No. 2210/Del/2018 A.Y. 2014-15: (Assessee)

13. With regard to the amount of Rs.6,00,000/- confirmed by the Id. CIT (A), the Id. AR relied on the judgment in the case of CIT Vs Monnet Industries 332 ITR 627(Del.) and CIT Vs Prithvi Insurance Company Ltd. 63 ITR 632.

14. Section 35DD of the Income Tax Act states as under:

"Amortization of expenditure in case of amalgamation or demerger.

35DD (1) Where an assessee, being an Indian company, incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.

(2) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of this Act."

15. We find that the Section 35DD clearly specifies amortization of expenditure in case of amalgamation and demerger. Since, the expenditure is in connection with the valuation of shares relating to merger, the same needs to be treated in accordance with the provisions of Section 35DD.

16. With regard to the consultancy charges paid of Rs.5,50,000/-, the revenue swayed away by the mention of "specific project" expenses and treated them as capital expenditure in nature whereas the fact remains that the consultant has been paid for providing services in development of new products and enhancement of existing features on the website which cannot be treated as a new arena of the business operations. Hence, the amount paid should be treated as revenue expenditure.

17. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is allowed for statistical purposes.

Order Pronounced in the Open Court on 06/08/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 06/08/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR