आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.170/Ind/2019
Assessment Year: 2013-14

DCIT 1(1)
Bhopal : Appellant

V/s
M/s. Ashkom Media India Pvt. Ltd.
Bhopal
PAN:AAACO4374Q : Respondent

Revenue by	Shri Harshit Bari, Sr. DR
Respondent by	Shri S.S. Deshpande, AR
Date of Hearing	05.08.2021
Date of Pronouncement	01.09.2021

O R D E R

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2013-14 is directed against the order of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT],-1 Bhopal dated 24.12.2018 which is arising out of the

order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 31.03.2016 framed by ITO-1(2), Bhopal.

The Revenue has raised following grounds of appeal in ITANo.170/Ind/2019:

> *"1.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.33,00,000/- by holding that forfeiture of security deposit was capital in nature and as the amount was never claimed as revenue expenditure in the past, whereas such security deposit forfeited is in the nature of benefit arisen in the hands of the assessee and is liable to tax as business income of the assessee.*
> *2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,33,59,716/- towards the payments made on behalf of M/s. EION Telecom by holding that TDS arises in the hands of the principal and the agent who is making the payment/expense on half of the principal is not liable to TDS?"*

2. Brief facts of the case as culled out from the records are that the assessee is a Private Limited Company. E-return of income filed on 29.09.2013 declaring income of Rs. 26,77,090/-. Case selected for scrutiny followed by serving of notices u/s 143(2) and 142(1) of the Act. The assessee company is into the business of Manpower Outsourcing. Net profit shown during the year was 2.69% as against 2.70% in the immediately preceding year. Turnover of the Company is Rs.15.95 cr. The assessee was asked to explain the reasonableness and genuineness of expenses and

other details filed during the course of assessment proceedings. Submissions made by the assessee were considered. Ld. AO completed the addition after making following two additions assessing income at Rs.2,93,36,806/-:

a. Security deposit forfeited of Rs.33,00,000/-

b. Disallowance u/s 40a(ia) for non-deduction of TDS of Rs.2,33,69,716/-.

3. Aggrieved assessee preferred an appeal before the Ld. CIT(A) and succeeded. Now revenue is in appeal before this Tribunal.

4. Ld. DR vehemently argued supporting the order of the Ld. AO.

5. Per contra Ld. counsel for the assessee apart from placing reliance on the finding of Ld. CIT(A) also made submission referring to the written submissions filed before First Appellate Authority and the paper book dated 15.07.2020 page no. 1 to 168 .

6. We have heard rival contentions and perused the records placed before us. As regards the first issue of deletion of addition for security forfeited, we observe that sum of Rs.33,00,000/- was credited in P & L account under the head of “other income”. The assessee while furnishing return of income reduced this sum

from profit as per P & L Account in the computation of income. When the assessee was asked to justify the basis for not offering income of Rs.33,00,000/- to tax it was submitted that the forfeited security deposit is a capital receipts and not liable to be taxed. But Ld. AO was not satisfied and he made the addition against which the assessee preferred an appeal before the Ld. CIT(A) who after considering the assessee's submissions mentioned in para 7.2 of the impugned order deleted the addition observing as follows:-

> *"7.3 It is observed that assesse was rendering certain services to M/s Waveset INC for which purpose it had taken a property situated at Bangalore on lease for which a security deposit of Rs.33,00,000/- was given by the assessee to the land lord of the property. The assessee took an equivalent amount as security deposit from Waveset INC. Subsequently the said company went into liquidation and the said amount was not refunded and retained by the assesse. The said liability was credited to the profit & loss account as the company to which amount was payable had ceased to exist and the same was not offered to tax as it did not relate to any trading liability and was on capital account. It is undisputed that the liability under consideration was not on account of any deduction claimed by the assessee and it is also a accepted facts that the liability was on account of a deposit which as received for giving rent deposit which was a capital asset and accordingly the write off of the said deposit will also constitute a capital receipt. The case laws cited by the appellant do support its case.*
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> *7.4 In view of the overall facts and circumstances of the case and relying upon Hon'ble Supreme Court decision in the case of CIT v. Mahindra & Mahindra and Hon'ble Delhi High Court decision in the case of Logitronics P. Ltd. vs. CIT(ITANo.1623 of 2010), it is held that the impugned forfeiture of security deposit was capital receipt in nature as the amount was never claimed as revenue expenditure in past. The addition is, therefore, unjustified and is deleted.*

7. From perusal of the above finding of Ld. CIT(A) and judicial precedents referred therein we find that the liability under consideration was not on account of any deduction claimed by the assessee against income/gross revenue. It was a write off of capital receipts being security deposit taken from a company for the purpose of giving security for taking a property on lease on its behalf. The company namely M/s Waveset INC from which the security deposits was received, went into liquidation and the said amount was not liable to be refunded. In our view this security deposit is a capital receipt not chargeable to tax. Thus, no interference is called for in the finding of Ld. CIT(A). Ground no.1 raised by the revenue is dismissed.

8. As regards ground no.2 relating to deletion of disallowance of Rs.2,33,59,716/- made for non-deduction of tax at source on payments made on behalf of EION Telecom charged to profit and loss account for which reimbursement was received and credited to income, we find that the assessee used to provide fund management services to a customer namely EION Telecom P. Ltd. Under the arrangement with this client all payments of that company were first paid by the assessee and thereafter got

reimbursed. In addition service charges were received for rendering these services. The assessee is consistently following accounting system under which all payments made for and on behalf of the said company are charged to expenses under the head "Direct Expenses EION".

9. We also note that during the year assessee has made payments of Rs.6,01,84,004/- (Rs.2,33,59,716/- towards other expenses and Rs.3,68,24,288/- towards salary of EION (appearing as such in "Details of other administrative Expenses" given in Schedule 34) on behalf of M/s EION Telecom P. Ltd. and the assessee received reimbursement of Rs.6,01,84,004/- from the said company which was credited to its income account in Schedule 27 "Revenue from operation" under the account head "Business Auxiliary services(reimbursement)". The above position was clearly brought to the notice of the AO during the Assessment proceedings and the submission/ annexure were filed with the AO during the course of assessment proceedings.

10. Thereafter the matter came up before the Ld. CIT(A) who after considering the submissions deleted the disallowance u/s 40a(ia) of the Act observing as follows:-

> *8.3 The assessee has explained that it provided fund management services to "Eion Telecom P Ltd". Under the arrangement with that client all payments of that company were first paid by the assessee and thereafter were got reimbursed. In addition service charges were received for these services rendered. As per the accounting system consistently followed by the assessee since its inception all payments made for and on behalf of the said company were charged to expenses under the head "Direct Expenses EION". These payments along with the agreed service charges were billed to "EION Telecom P Ltd" and are credited to income account. Thus no part of these payments was effectively charged to expenses and got set off through its corresponding credit in the income side. M/s EION Telecom P Ltd deducted TDS, wherever required, on the gross payments made by it to the assessee towards reimbursement and services charges paid and such TDS has been claimed by the assessee in its return. The TDS so deducted and the corresponding receipts do appear in form 26AS of the assessee. The details/summary of TDS made and deposited by EION telecom p ltd during the relevant period was submitted to the A.O. It has also been informed by AR that the assessment of EION Telecom P Ltd was also completed u/s 143(3) simultaneously and the said party was not found to have defaulted in making compliance of its TDS liability in any manner. The AO of the said company in the assessment order has specifically confirmed that the said company has made TDS on all expenses as per law. A copy of the assessment order has been submitted.*
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> *8.4 It is observed that the TDS on all such payments was duly made by M/s EION Telecom on whose behalf the payments were made by the assessee and as such the assessee did not have any liability to deduct TDS. It is a well settled principle of law that the liability to TDS arises in the hands of the principle and the agent who is making the payment expense on behalf of the principle is not liable to TDS. It is, therefore, concluded that in this case, the assessee was acting as an agent and had got all the payments made, reimbursed from the client. Therefore, qua the assessee, the payments were only reimbursements not liable for TDS deduction at the end of the assessee.*
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> *8.5 Regarding, the observation of the AO that various payments are not in the nature of business expenses it is observed that the appellant had provided the services to the said client and all*

payments made on behalf of the client were got reimbursed from the client along with applicable services charges. Therefore, the nature of expenses and its allowability is to be seen in the hands of M/s EION Telecom P Ltd. As the appellant had merely acted as an agent and had got all the payments made reimbursed from the client, the nature of expenses was not relevant in the case of assessee.

8.6 It has also been pointed out by the appellant that similar transactions- were undertaken by the assessee with the same concern in previous year (A.Y 2012-13) & in subsequent year (A.Y 2014-15). Assessment of both these years was completed ujs 143(3) and no addition was made on this account. Copies of assessment orders have been filed. Therefore, clearly the A.O. was inconsistent in his approach in treating the reimbursements as expenditures in the hands of the appellant.

8.7 In view of the overall discussion made above and also considering that no disallowance in this regard on identical facts has been made, in earlier and subsequent assessments, finalized u/s 143(3), the addition made by the Assessing Officer is found to be incorrect and unjustified. The addition is, therefore, deleted.

11. From perusal of the above finding of Ld. CIT(A) which stands uncontroverted by the Ld. DR, we find that the M/s. EION Telecom P. Ltd. has deducted the income tax at source as applicable on all the expenses farming part of the alleged disallowance. The details/summary of TDS deducted and deposited by EION Telecom Pvt. Ltd. during the relevant period stands submitted before the Ld. AO. M/s EION Telecom Pvt. Ltd. was assessed u/s 143(3) of the Act for A.Y. 2013-14 and same was not found to have made any default in making compliance to the TDS provisions. Also in assessee's own case for A.Y. 2012-13 and 2013-14 under the similar set of facts no disallowance have

been made in the assessment framed u/s 143(3) of the Act. We, therefore, under the given facts and circumstances of the case and factual matrix find no infirmity in the finding of Ld. CIT(A) deleting disallowance of Rs. 2,33,59,716/- u/s 40a(ia) of the Act. Accordingly ground no.2 of the Revenue's appeal is also dismissed.

12. In the result, Revenue's appeal in ITANo.170/Ind/2019 is dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 01.09.2021.

Sd/-	Sd/-
(RAJPAL YADAV)	(MANISH BORAD)
VICE PRESIDENT	ACCOUNTANT MEMBER

दिनांक /Dated : 01.09.2021
Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt. Registrar, I.T.A.T., Indore