

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 5781/Del/2017
Assessment Year: 2004-05**

DCIT, Circle 3(2),
New Delhi.

vs. AT & T Communication Services (India)
Pvt. Ltd., Mohan Dev House,
13, Tolstoy Marg, New Delhi.

PAN : AACCA8033E
(Appellant)

(Respondent)

Appellant by : Sh. Padampani Bora, Sr. DR
Respondent by: Sh. Ravi Sharma, Advocate

Date of hearing: 10/11/2021

Date of order : 10/11/2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 12.06.2017 passed by the Commissioner of Income Tax (Appeals)-I, New Delhi ("Ld. CIT(A)") for the assessment year 2004-05, in the case of AT & T Communication Services (India) Pvt. Ltd. ("the assessee"), the Revenue preferred this appeal.

2. Brief facts of the case are that the assessee company is engaged in the business of network design, management, communication, connectivity services and related products. For the assessment year 2004-05, they have filed their return of income on 30.10.2004 declaring

an income of Rs.29,30,15,180/-, but the income was assessed at Rs.32,15,72,740/- by order dated 28.12.2006. Subsequently, the matter travelled to the Id. CIT(A) and the Tribunal. The Tribunal, holding that the Id. Assessing Officer has to assess the real income of the taxpayer and since the issue had not been adjudicated either by the Id. Assessing Officer or by the Id. CIT(A), remanded the matter to the file of the Id. Assessing Officer. Case of the assessee is that even thereafter, Id. Assessing Officer failed to consider the material placed before him and made an addition.

3. In so far as this appeal is concerned, the grievance of the assessee was in respect of levy of interest u/s. 220(2) of the Income-tax Act, 1961 ("the Act" for short) to the tune of Rs.1,75,74,756/- and also not allowing the prior period expense to the tune of Rs.11,30,052/-, which according to the assessee, were incurred wholly and exclusively for the purpose of business.

4. So far as the levy of interest u/s. 220(2) is concerned, according to the Id. Assessing Officer, the interest u/s. 220(2) of the Act is attracted from the expiry of the period of 30 days from the issuance of the income tax computation form. The argument advanced on behalf of the Revenue is that inasmuch as the tax liability of the assessee remained the same, even after the matter was remanded by the Tribunal to the Id. Assessing Officer for fresh consideration and addition remained under the same head, the assessee is liable to interest in relation to the demand issued pursuant to the original assessment order. As a matter of fact this argument was advanced before the Id. CIT(A) also.

5. It could be seen from the impugned order that Id. CIT(A) referred to the provisions of section 220(2) of the Act and also to the circular No. 334 dated 03.04.1992 which says in unequivocal terms that where an assessment order is cancelled under section 146 or cancelled/set aside by an appellate/revisonal authority and the cancellation/setting aside become final, no interest U/s. 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this position will be that even when the assessment is reframed, interest can be charged only after the expiry of 30 days from the date of service of demand notice pursuant to such fresh assessment order. Learned CIT(A) also followed the decision of Mumbai Bench of Tribunal in Addl. CIT vs. Hindalco Industries Ltd., 4 SOT 757, where it was held that on set aside of assessment, operation of original assessment order stands withdrawn and the demand notice issued pursuant to such assessment order becomes inoperative and stands extinguished; and therefore, in a case where the assessment was set aside, interest u/s. 220(2) has to be charged only after expiry of 30 days from the date of service of demand notice pursuant to fresh assessment order but it shall not relate back to the date of the assessment order which was set aside.

6. On a perusal of the circular referred to by the Id. CIT(A) and also the order of the Tribunal in Hindalco Industries Ltd. (supra), we are of the considered opinion that the legal position does not admit of any doubt and the issue is no longer *res integra*. It is clear that the interest u/s. 220(2) of the Act shall be levied with reference to the order passed subsequent to remand u/s. 254, but not with reference to the assessment order that stood set aside.

7. With this view of the matter, we do not find anything illegality or irregularity in the findings of the Id. CIT(A) and therefore, uphold the same. Consequently, ground No. 1 of the Revenue's appeal stands dismissed.

8. Now, coming to the other ground in respect of prior period expenses, that were disallowed to the tune of Rs.11,30,052/-, it has been the case of the assessee that a specific direction was given by the Tribunal while allowing the same. According to the assessee, a sum of Rs.9,72,307/- pertains to the bonus paid to few employees for the period between January to March, 2004 and since the bonus relates to the services rendered in the previous year 2003-04, the claim for deduction is admissible for the assessment year 2004-05. Assessee submitted that the bonus was paid before due date of filing of return for the assessment year 2004-05.

9. Another amount of Rs.1,57,745/- pertains to the repairs and maintenance incurred by the assessee in the previous year relevant to assessment year 2004-05 and therefore, it is admissible in the assessment year 2004-05. Assessee placed reliance on the decision of Hon'ble Apex Court in the case of Kedarnath Jute Manufacturing Co. Ltd. Vs. CIT, 82 ITR 363 in support of his contention that the assessable profits of a business must be the real profits and they have to be ascertained on ordinary principles of trading and commercial accounting; and that where the assessee is under a liability or is bound to make a certain payment from the gross profits, the profits and gains can only be the net amount after the said liability or amount is deducted from the gross profits or receipts.

10. Learned CIT(A) considered the contentions of the assessee and, as a matter of fact, found that expenses on account of bonus payment for the period between January to March, 2004, relate to rendering of services and were paid before the due date of filing of return for the assessment year 2004-05 and accordingly, such expenses were wholly and exclusively for the purpose of business and should be allowed as deduction.

11. In so far as the expenditure of Rs.1,57,745/- towards repair and maintenance, Id. CIT(A) found that the assessee had imported the CPFW-FM-U-NG firewall-1 module in respect of which the bills were filed. On verification of such expenditure, Id. CIT(A) was satisfied that such expenditure was incurred wholly and exclusively for the purpose of business and allowed the same.

12. Id. CIT(A) gave a finding of fact that the expenditure of Rs.9,72,307/- on account of payment of bonus to the employees and Rs.1,57,745/- on account of repairs and maintenance were incurred wholly and exclusively for the purpose of business. Absolutely, there cannot be any dispute on this aspect because it is born out of record. To this factual position, Id. CIT(A) obviously applied the law laid down by Hon'ble Apex Court in the case of Kedarnath Jute Manufacturing Co. (supra) and reached a conclusion that such an expenditure is an allowable expenditure. We do not find anything illegality or irregularity in the conclusion reached by the Id. CIT(A) and accordingly, uphold the same. This ground of Revenue is dismissed.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 10th day of November, 2021.

Sd/-

(G.S. PANNU)
PRESIDENT

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Dated: 10/11/2021
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