

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1850/Del/2020
Assessment Year: 2017-18

4D Telecom Solution Pvt. Ltd.,
555, Aggarwal Chamber-3,
26, Veer Savarkar Block,
Shakarpur,
Delhi ó 110 092.

Vs. ITO,
Ward-9(4),
New Delhi.

PAN: AAACZ8662J

(Appellant)

(Respondent)

Assessee by	:	Shri Ajay Bhagwani, CA
Revenue by	:	Shri Om Prakash, Sr.DR
Date of Hearing	:	03.11.2021
Date of Pronouncement	:	16.11.2021

ORDER

This appeal filed by the assessee is directed against the order dated 09.09.2020 of the CIT(A), Delhi-3, relating to Assessment Year 2017-18.

2. Facts of the case, in brief, are that the assessee is a company incorporated on 12th August, 2015 and is working in the field of telecom under the following verticals:-

- Optical Fiber Maintenance
- Optical Fiber Projects

- Infrastructure Provider
- Internet Service Provider.

3. It filed its return of income on 06.11.2017 declaring the total income at Rs.29,58,070/-. The case was picked for complete scrutiny under CASS for the following reasons:-

- i. Tax credit claimed in ITR is less than tax credit available in 26AS.
- ii. Receipts u/s 194C and 194J are more than the receipts shown in ITR 3/5/6.
- iii. Higher turnover reported in Service Tax Return as compared to ITR.
- iv. Excess contribution to Provident Fund or Superannuation fund by employer.

4. The AO completed the assessment u/s 143(3) of the Act on 27th December, 2019 wherein he made disallowance of Rs.8,46,488/- on account of interest on loan. The relevant observation of the AO while disallowing the said interest read as under:-

“Considering that the submissions of the assessee and the facts and circumstances of the case, it is not clear as to why the money travelled through so many accounts and why payment was made directly to PNB when the loan was actually sanctioned in the names of Sh. Nitin Mendiratta, Sh. Chandan Mendiratta and Ms. Ambika Mendiratta. It is to be understood that the company is a separate legal entity and whose identity is separate from the directors of the company. Therefore, the loan should have been shown as loan from Directors/Brother of Director and not from PNB Housing and the payment of interest alongwith TDS liability should have been in the name of the Directors/Brother of Director. Further, no proof or documentary evidence has been submitted as to what use has been made of the loan amount and whether it was actually for business purpose. Therefore, addition of Rs. 7,98,711/- and Rs. 47,777/- is made to the income of the assessee on account of disallowance of interest on loan and processing fee.”

5. In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

5.3. I have considered the submission of the assessee, the assessment order of the AO and the material available on record. In the assessment order, the AO has noted that if loan was taken by Shri Chandan Mendiratta then the loan should have been shown in the assessee account as loan from Sh Chandan Mendiratta and the payment of interest along with TDS liability should have been in the name of Sh. Chandan Mendiratta. It is not clear how assessee company is paying interest on behalf of Sh. Chandan Mendiratta. During the assessment proceedings as well as during the appellate proceedings, the assessee has not produced any proof or documentary evidence as to what use had been made of the loan amount and whether it was actually for business purposes. The loan was taken by an individual and assessee company contended that it was taken from him because there was requirement of plant and machinery. During the appellate proceedings, no evidence was produced related to purchase any plant and machinery. In such circumstances, in the overall consideration, the expenses of interest made by the company is not allowable as the assessee has failed to substantiate what was the use of such fund and if the loan was taken by an individual, obviously he has to pay the interest on loan and not the company. The case laws on which the assessee has relied upon are clearly distinguishable on facts and circumstances of the case. Therefore, the addition made by the AO is confirmed and the ground of appeal is dismissed.ö

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. That on the facts and circumstances of the case, the assessment order passed by the Assessing Officer and order passed by Commissioner of Income Tax -Appeal, 3, New Delhi is bad in law and void ab initio.

2. That the Commissioner of Income Tax-Appeals, 3, New Delhi erred in confirming the disallowance of interest paid made by the assessing officer.

2.1 That on the facts and circumstances of the case, Commissioner of Income Tax - Appeals, 3, New Delhi erred in making disallowance of interest paid on the contention that no evidence was produced related to purchase of any plant & machinery despite the fact that complete details alongwith copies of bank statement for use of funds

for the purposes of business was filed before the assessing officer and no such plea was taken by the assessing officer for making disallowance of interest paid.

2.2 That on the facts and circumstances of the case, Commissioner of Income Tax - Appeals, 3, New Delhi erred in making disallowance of interest paid of non-deduction of TDS despite the fact that payment of interest was made to Public sector bank which as per provisions of law does not require deduction of TDS.

3. That the appellant craves permission to add, amend, alter or vary all or any grounds of appeal on or before the conclusion of the hearing of appeal.ö

7. The Id. Counsel for the assessee submitted that an amount of Rs.80 lakhs was borrowed by the brother of the Director by mortgaging his residential property which was utilized for repayment of principal amount of loan, interest and all other expenses related to the loan. He submitted that the bank sanctioned the loan and transferred the loan in the account of Mr. Chandan Mendiratta, who immediately transferred the amount to the account of the assessee. Copies of the sanction letter of loan and the bank statement were submitted before the AO. He submitted that it was a commercial transaction between the assessee and Mr. Chandan Mendiratta and Mr. Nitin Mendiratta which was exclusively utilized for the purpose of business and has not been utilized for any other purpose. Since the loan was directly repaid to the bank, there was no necessity for deduction of any tax at source. The Id. Counsel submitted that the Id.CIT(A) dismissed the appeal filed by the assessee on the ground that no evidence was produced related to purchase of plant & machinery. The Id. Counsel, referring to the balance sheet of the assessee company, submitted that there is increase in the cost of plant &

machinery and given an opportunity, the assessee is in a position to substantiate its case before either of the lower authorities. He accordingly submitted that the issue may be restored to the file of the AO for verification.

8. The ld. DR, on the other hand, while supporting the order of the CIT(A) has no objection for setting aside the issue to the file of the AO for fresh adjudication.

9. I have heard both the sides and perused the record. Considering the totality of the facts of the case and in view of the above submissions by both the sides that given an opportunity, the assessee is in a position to substantiate its case before the AO that the amount borrowed was exclusively used for business purposes and has not been diverted for any other purpose, I deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue afresh in accordance with the law, after giving due opportunity of being heard to the assessee. The assessee hereby directed to appear before the AO and produce the relevant details to substantiate its case. The grounds raised by the assessee is allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.11.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 16th November, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi