

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3633/Mum/2017
(Assessment Year : 2011-12)**

DCIT-14(2)(1), Mumbai 432, 4 th Floor Aaykar Bhavan Mumbai – 400 020	Vs.	M/s. IDFC Capital Ltd., (Now merged with IDFC Securities Ltd.,) C-32, G Block, Naman Chambers Bandra Kurla Complex, Bandra East Mumbai – 400 051
PAN/GIR No.AAACS8752N		
(Appellant)	..	(Respondent)

Revenue by	Dr. Pallavi Darade
Assessee by	Shri Hiro Rai
Date of Hearing	21/12/2021
Date of Pronouncement	23/12/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3633/Mum/2017 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-22, Mumbai in appeal No.CIT(A)22/IT/103/2015-16 dated 27/02/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015

by the Id. Asst. Commissioner of Income Tax (hereinafter referred to as Id. AO).

2. The first ground raised by the Revenue is challenging the action of the Id. CIT(A) in deleting the non-apportionment of expenses in respect of its share with holding company.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a public limited company engaged in the business of merchant banking. During the year, the assessee company paid sharing fees to IDFC Securities Ltd., holding company of the assessee, amounting to Rs.23,62,37,605/-. The holding company was a SEBI registered Member of BSE and NSE. The holding company was engaged in the business of broking serving various Foreign Institutional Investors (FIIs) and domestic institutional investors and it also provides research of Indian companies, economy and sectors to its institutional clients. The assessee company share fee received by it with the holding company and availed services of research, financial advisory and other institutional services. As per para 8 of Memorandum of Understanding (MOU) dated 01/10/2007 between the assessee and IDFC Securities Ltd., (holding company), the assessee had to share the success fee received from the client in equal ratio towards availing of various services provided by the holding company. This is more of a profit sharing arrangement entered into by the assessee with the holding company. The assessee had to bring and manage client and the holding company had to render services of research, financial advisory and other distribution services. The assessee was sharing revenue as well as expenses in equal ratio with the holding company. The assessee booked sales of Rs.54,13,23,772/- in its books where it had collaborated with IDFC Securities Ltd., (holding

company). The assessee had debited expenses of Rs.6,88,48,564/- in its books in respect of collaboration project. Out of the net income of Rs.47,24,75,209/- which is termed as success fee, the assessee had paid 50% thereon amounting to Rs.23,62,37,605/- to its holding company. Hence, it could be seen that the assessee had only parted the net profit from the collaboration project with its holding company. We find that the Id. AO had wrongly misunderstood the fact by stating that assessee had only shared the gross revenue and had claimed the entire expenses as deduction in its books. This is factually incorrect. Accordingly, the disallowance of Rs.3,44,24,282/- (being 50% of expenses incurred on collaboration project of Rs.6,88,48,564/-) on account of non-apportionment of expenses is hereby directed to be deleted as the Id. CIT(A) had rightly understood the fact and modus operandi adopted by the assessee. Accordingly, the ground No.1 raised by the Revenue is dismissed.

4. The ground No.2 raised by the Revenue is challenging the action of the Id. CIT(A) in deleting the disallowance on account of apportionment of bad debts to holding company.

4.1. We have heard rival submissions and perused the materials available on record. We find that assessee had written off a sum of Rs.1,79,66,908/- being fee receivable from Sterlite Technologies Ltd. According to the Id. AO, this fee was to be shared between assessee and the holding company as per MOU dated 01/10/2007. The Id. AO assumed that since fee was shared by the assessee with its holding company, the bad debt arising out of non-realisation of the said fee should also be shared in equal proportion with the holding company. Accordingly, the Id. AO proceeded to disallow 50% of bad debts claimed by the assessee and

made disallowance of Rs.89,83,454/- in the assessment. In this regard, we find that assessee had explained before the lower authorities that assessee company had completed the project for M/s. Sterlite Technologies Ltd., and raised an invoice of Rs.4,96,35,000/- towards fees and Rs.3,79,031/- towards out of pocket expenses. As against the same, assessee company had received Rs.1 Crore on 31/03/2010. For the balance amount receivable, the assessee and M/s. Sterlite Technologies Ltd., agreed to settle the claim at Rs.1,51,95,128/- which was received by the assessee on 01/10/2010 and balance amount of Rs.1,79,66,908/- was written off as bad debts in A.Y.2011-12 (i.e. year under consideration). It was pointed out that assessee had not availed any service of IDFC Securities Ltd., (holding company) in the project of Sterlite Technologies Ltd., and accordingly had not shared any fees in respect of the same with the holding company. Hence, the presumption of the Id. AO that fee had been shared with holding company is factually incorrect and hence, there is no question of sharing of bad debts written off with the holding company. We find that the Id. CIT(A) had rightly appreciated the contention of the assessee that it had availed services of holding company only in respect of some assignments and not for all the assignments carried out by the assessee.

4.2. The assessee had furnished the ledger account of Sterlite Technologies Ltd., for F.Yrs. 2009-10 and 2010-11 and also the details of fee shared with the holding company in F.Yrs. 2009-10 and 2010-11. From the same, the Id. CIT(A) observed that fee receivable from Sterlite Technologies Ltd., was not to be shared at all with the holding company and that the assessee company had not shared the same with the holding company, as no services had been availed by the assessee company from holding company in respect of Sterlite Technologies Ltd project. This

categorical factual finding of the Id. CIT(A) has not been controverted by the Revenue before us. Hence, we hold that there is no question of sharing of bad debts written off with the holding company. Once, it is found that assessee had indeed offered the fee income in earlier years in its entirety, any non-realisation of the said fee which resulted in bad debt would be eligible for deduction if the same is written off in the books of accounts. In the instant case a sum of Rs.1,79,66,908/- remain irrecoverable and the same was duly written off by the assessee in its books in A.Y.2011-12, which becomes squarely eligible for deduction in the hands of the assessee company. There is no question of sharing the same with the holding company. This fact has been duly appreciated by the Id. CIT(A). Accordingly, the ground No.2 raised by the Revenue is dismissed.

5. The ground No.3 raised by the Revenue is challenging the action of the Id. CIT(A) in deleting the disallowance of bonus paid to employees including the key management persons.

5.1. We have heard rival submissions and perused the materials available on record. The Id. AO observed during the year that assessee had paid bonus of Rs.25,75,76,919/- to its employees including the key management persons. Considering the huge expenditure on bonus, the assessee was asked to justify the reasons for giving bonus to employees, further giving specific reasons for performance achieved by the company, specific work done by them, copy of Board Resolution in this regard, copy of Form 16/16A, terms and conditions of employment, total cost of the company per annum. The assessee vide letter dated 27/03/2015 furnished the copy of TDS certificates in case of some of the employees. The Id. AO observed that some of the employees were paid bonus in

Crores of rupees and they were all in top managerial position which demonstrates the conflict of interest. The Id. AO also observed that in some of the cases, bonus given was more than salary of the concerned person. The Id. AO observed that assessee could not substantiate the performance on the basis of which bonus was paid. The Id. AO also observed that some of the persons to whom bonus was paid are covered u/s.40A(2)(b) of the Act, being Directors. He also observed that assessee had not justified whether the said bonus payments were made at fair market value. Accordingly, he proceeded to disallow 25% of bonus payment on adhoc basis and made disallowance of Rs.6,43,94,230/- in the assessment.

5.2. We find that assessee vide letter dated 12/03/2015 filed before the Id. AO had indeed furnished the details of bonus paid to various employees which are in excess of Rs.10 lakhs together with their PAN and their respective employment number. The assessee also pointed out that similar payments made in earlier years. It was pointed out that assessee company had got a bonus policy pursuant to which it calculates regular pay, variable pay under strict professional compensation process to all the employees. The company's compensation programme is market focussed and that the individual bonus payments are made on the personal rating and overall ability to pay of the company. Performance in this context is profitability of the company and contribution of key personnel for the same. The company is in service industry and employees are driving business force. The bonus is allocated on the basis of profit earned by the company and for retention of key talent. The assessee also pointed out that similar bonus payments were made in earlier year to the tune of Rs.22,72,40,000/- which worked out to 28% of net investment banking companies of Rs.81,39,57,873/-. Whereas during the year under

consideration, the assessee has paid bonus of Rs.25,75,76,919/- which works out to 25% of net investment banking fees of Rs.103,05,99,770/- since the persons to whom the bonus was paid had significantly contributed to the growth in the performance of the company. The assessee company has chosen to pay bonus for retaining their talent and to encourage them. It was also pointed out that similar payments made in the A.Y. 2010-11 were duly allowed by the Id.AO as an expenditure incurred in the ordinary course of business. It was also pointed out that bonus payments were duly made by account payee cheques after due deduction of tax at source as per applicable laws. It was specifically brought to the attention that none of the persons to whom payments made were related parties as specified u/s.40A(2)(b) of the Act. It was argued before the Id. CIT(A) that the Id. AO got misunderstood by the term "Director or Managing Director" considering the same as Directors of the company, whereas they are merely designations given to certain employees who have been made Director or Managing Director of specific department inside the company. They are not the Directors of the assessee company as per the Companies Act. The assessee also furnished the list of Directors of the assessee company to justify this contention. Hence, the entire reliance placed on the provisions of Section 40A(2)(b) of the Act was totally unjustified. The Id. CIT(A) also observed that on perusal of the tax audit report, only one person namely Shri Tapasije Mishra, Group CEO, to whom bonus was paid figures in the list of related party transactions, specified u/s.40A(2)(b) of the Act. The Id. CIT(A) also observed that there is no tax arbitrage involved in the same as the said employee also suffers tax at the maximum marginal rate of 30%. In any case, the disallowance was made by the Id. AO only on an adhoc basis at the rate of 25% without rejection of books of accounts by pointing out some defects thereof. None of these factual observations controverted by

the Revenue before us. We hold that the bonus was paid to the employees including the key management personnel only in the ordinary course of business and the same are squarely allowable as deduction u/s. 37 of the Act. Hence, no disallowance could be made thereon. Accordingly, the ground No.3 raised by the Revenue is dismissed.

6. The ground Nos. 4 & 5 raised by the Revenue are general in nature and does not require any specific adjudication.

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

Order pronounced on 23/12/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 23/12/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai