

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
(Virtual Court Hearing) BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.287/Kol/2020
Assessment Year: 2014-15

ITO, Ward-1(1), Kolkata..... Appellant

vs.

WYZ Games Pvt. Ltd..... Respondent
H.No.15, Basappa Road,
Shanthi Road,
Bengaluru-560027.
[PAN:AABCW3168M]

Appearances by:

None appeared on behalf of the appellant.

Shri Biswanath Das, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : January 03, 2022

Date of pronouncing the order : February 03, 2022

Hearing through Video Conferencing

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 29.11.2019 of the Commissioner of Income Tax (Appeals)-10, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. No one has put in appearance despite notice on behalf of the assessee. Therefore, we proceed to decide the appeal after hearing the Ld. DR.

3. The Revenue in this appeal has taken the following grounds of appeal:

"1. "That on the fact and circumstances of the case and law, the the Ld. CIT(A) had erred in granting relief to the assessee on account of unexplained Expenses amounting to Rs. 1,58,66,065/- disallowed by the AO during assessment.

2 "That on the fact and circumstances of the case and law, the the Ld. CIT(A) had erred in granting relief to the assessee on account of unexplained commission amounting to Rs.53,42,152/- disallowed by the AO during assessment.

3 "That on the fact and circumstances of the case and law, the the Ld. CIT(A) had erred in granting relief to the assessee on account of unexplained salary, wages & bonus amounting to 44,35,888/- disallowed by the AO during assessment.

4 That on the fact and circumstances of the case and law, the the Ld. CIT(A) had erred in admitting additional evidence during appeal proceedings in violation of the Provision of Rule 46A.

5. "The appellant craves the leave to make any addition, alteration, modification etc of the grounds either before the appellate proceedings, or in the course appellate proceedings"

4. **Ground No.1** – The brief facts relating to the issue are that during the assessment proceedings, the Assessing Officer noticed that the assessee had debited various expenses amounting to Rs.1,58,66,065/- under different heads. Despite several notices no reply was received from the assessee. In view of this, the Assessing Officer held that the assessee had failed to prove the veracity of such expenditure. He accordingly disallowed the aforesaid expenditure and added back the same to the income of the assessee.

In appeal before the CIT(A), the assessee furnished various details and evidences whereupon the remand report was called upon by the CIT(A) from the Assessing Officer. After considering the remand report and reply of the assessee to the said remand report, the Ld. CIT(A) deleted the additions so made by the Assessing Officer in this respect, observing as under:

“3. I have carefully considered the submissions of the Ld. A.O in the Remand Report as well as the submissions of the appellant countering the findings of the Ld. A.O, as made out in the said report. I observe that the assessment had been completed in this case in an ex-parte manner on account of the fact that the appellant could not comply with the various requisitions issued by the Ld. A.O, and therefore the Ld. A.O has disallowed most of the claim of expenses in the hands of the appellant-company. Based on the submissions filed by the appellant, the matter has been remanded to the Ld. A.O for verification and submissions of the Remand Report. The various additions made by the Ld. A.O. and the findings in remand as well as in the rejoinder are therefore taken up serially.

*4. **Server charges: [Rs.6,48,000/-]** The Ld. A.O, after necessary verification has confirmed that the said amount of Rs.6,48,000/- was paid by the assessee company in the relevant A.Y 2014-15 to M/s CTRLS DATA CENTRE LIMITED amount of **Rs.6,48,000/-**, and also that the payments are reflected in the bank statement of the assessee company, and as such the Ld. A.O has not made any adverse inferences in the said matter. The appellant has submitted the various specific details such as Serial Number of the Cheque, date in the relevant ledger, Date in the bank statement and the respective amounts paid to the party. As such, on facts alone, the disallowance deserved to be deleted, and the claim of expenditure of Rs.6,48,000/- **stands allowed in the hands of the appellant-company.***

5. **Software usage charges: [Rs.1,51,79,155/-]** The Ld. A.O, in the impugned assessment order had disallowed the said amount on grounds that necessary proof of payments had not been produced in the course of the scrutiny proceedings. In the Remand Report, the Ld. A.O after examining the necessary documents has stated that it was observed from the ledger copy of M/s Leisure play Pvt. Ltd, the party to whom the impugned software usage charges were paid, that the appellant company claimed software usages charges amount of **Rs. 1,51,79,155/-** during the year under consideration. Further, the Ld. A.O has stated that on verification of bank account it is seen that the assessee company paid of **Rs. 55,15,000/-** during the year and remaining amount paid to next year. In the rejoinder to the observations of the Ld. A.O, the appellant has brought on record that the claim for Software Usage Charges amounting to Rs.1,51,79,155/- during the Financial year 2013-2014, relating to the A.Y 2014- 2015, under appeal were verified by the Ld. A.O from the Bank statement of Current Financial and subsequent Financial year and the Ld. A.O has concluded that Rs.55,15,000/- have been paid during the year and balance amount paid in next year. It was therefore claimed as the appellant maintains books on a mercantile basis all the claims of payments have been taken in the subject assessment year, and that there is no dispute regarding the genuineness of the claim of expenditure, and therefore it has been pleaded that the expenditure as claimed be not disturbed. I find merit in the claim of the assessee that as the books are maintained on a mercantile basis, the payables have been recorded on a current basis; also there is no dispute that the payments have been made early in the succeeding year. Therefore, in my carefully considered view the appellant- company would be eligible for the full claim of **Rs.1,51,79,155/, as has been made**. It appears from documents presented by the appellant that the years / succeeding this A.Y 2014-15 in appeal namely 2015-16 and 2016-17 have also / been subjected to scrutiny, and the Ld. A.O has not made any adverse comments in the impugned matter. However, the Ld. A.O is directed to verify if there are l any double claims of the balance amount in the succeeding A.Ys, and act accordingly. In principle, the ground disallowance of Rs.1,51,79,155/- stands deleted, and the claim of expenditure of Rs.1,51,79,155/- stands **allowed** in the hands of the appellant-company.

6. **Bank Charges [Rs.610/-] & Printing & Stationery Charges [Rs.38,299/]:**

I observe that the Ld. A.O has not made any comments in the matter of the claim of these two expenditures. **It is the claim of the appellant that the Bank Charges** amounting to **Rs.610/-** were verified by the Ld. A.O and found to be debited in bank statement. Similarly, it has been claimed that necessary documents regarding Printing and stationery were produced before the Ld. A.O, and these expenses totaling **Rs.38,299/-** towards Printing and stationery where all payments are made by bank and are verified by the Ld. A.O. It was submitted by the Ld. A.R or the appellant-company that even small amounts were paid by cheques only and there were no cash disbursements at all. I observe from the ledgers submitted and the bank statements that there is correctness in the submissions made by the Ld. A.R, and in any case the amounts are legitimate business expenditures, and therefore allowable under the Act. In view of the foregoing, these amounts of Rs.610/- and Rs.38,299/- are allowable expenditures, and therefore the action of the Ld. A.O in making these disallowances stand deleted, and the claim of expenditures under the two heads of 'Bank Charges' and 'Printing & Stationery' stand **allowed** in the hands of the appellant-company.”

A perusal of the above order of the Ld. CIT(A) reveals that during the remand proceedings, the payment/incurrence of the aforesaid expenditure has been duly accepted as genuine by the Assessing Officer. After hearing the Ld. DR and going through the impugned order on the above issue, we do not find any reason to interfere with the same.

5. **Ground No.2** – Vide this ground, the Revenue has disputed the action of the Ld. CIT(A) in setting aside the disallowance of commission expenses. The Ld. Assessing Officer made the aforesaid disallowance on the failure of the assessee to submit necessary explanation/details for verification of the aforesaid commission payment. However in the remand proceedings, the assessee duly furnished the necessary details and after verification of the same, the Assessing Officer observed that from the documents it was established that a commission payment of Rs.52,52,238/- was made whereas, the assessee had booked the commission payment of Rs.53,42,152/-.

The assessee during the appellate proceedings explained that in fact the total payment was paid of Rs.52,52,238/- inadvertently an amount of Rs.89,914/- on account of miscellaneous expenses was wrongly included in the commission payment. The assessee furnished necessary evidences before the Ld. CIT(A) including the copy of the Profit & Loss A/c. The assessee also brought the evidences such as name of the agents, PAN number, a details of the TDS deduction on the amount of commission. The Ld. CIT(A) deleted the addition so made by the Assessing Officer on account of commission payment of Rs.52,52,238/-, observing as under:

*“7. **Commission Expenses [Rs.52,52,238/-]** [Rs.53,42,152/-, mentioned by Ld. A.O] The Ld. A.O has observed in the Remand Report that the appellant- company has submitted that they had paid commission to affiliated agents and the required TDS on the same was deducted during the year and quarterly TDS Return was filed quoting the PAN in the return of the said agents. The Ld. A.O has observed that from the documents submitted, it was seen that the appellant-company has paid commission to 5 agents amount of Rs.53,42,152/- and accordingly TDS was deducted at the time of paid/credited to the parties. The Ld. A.O has also confirmed that the appellant produced the Form 26Q and TDS amount was reflected in the TDS return. The Ld. A.O has pointed out certain discrepancies stating that in the case of three of the commission agents though TDS has been made, not all amounts were paid within the relevant financial year, and that these amounts of Rs.11,75,878/-, Rs.8,03,436/- and Rs.3,56,452/- in the hands of the three agents namely Shri Naresh Kumar Gupta and Shri Ramesh Kumar Baisiwala should have been paid in the current year itself. The Ld. A.O has stated that on verification of bank statements it is found that Rs. 6,80,458/- was paid to Naresh Kumar Gupta and*

*Rs.4,77,152/- was paid to Ramesh Kr. Baisiwal from IDBI Bank on 11.03.2014. The Ld. A.O has recorded that the accountant of the company who appeared in the Remand Proceedings could not satisfactorily explain the matter regarding from what source remaining amount was paid. Per contra, in appeal, it has been explained by the appellant-company that the appellant-company has paid commission to affiliated agents amounting to **Rs.52,52,238/-** and TDS on the same was Deducted during the year and quarterly return was filled by Quoting PAN number of respective agents. It was brought to notice that the Ld. A.O has taken the figure of commission paid as Rs.53,42,152/-, and that such difference was on account of an amount of "Miscellaneous Expenses" incorrectly included by the Ld. A.O under the, head of "Commission", due to a typographical error. It was brought to notice that the said amount is reflected In Profit and Loss Account as Albert Climent Commission instead of Miscellaneous Expenses. In submitting copies of ledger accounts for the agents, it was reiterated that that the appellant-company has paid commission to 5 Agent's Amounting to Rs 52,52,238/- and accordingly TDS was Deducted at the time of paid/ Credited to Parties and Form No 26Q and TDS Returns are duly Verified by the Ld. A.O in the Remand proceedings. The appellant has submitted the complete details of the names of the commission agents, the PAN, the total commission paid, TDS deducted, the amounts payable and the outstanding which form a part of the balance sheet. It is observed that the appellant has amply demonstrated that all payments were made through bank accounts either within the year or in the succeeding year. In the light of the factual findings, I observe that the Ld. A.O has not made any adverse observations about the genuineness of the payments, or the issue relating to services rendered by the commission agents. In any case in the nature of business carried out by the appellant-company, especially in the initial years, there would be requirement to bring business through commission agents to bolster the turnover. In view of the same, there is no reason to disallow any" portion of the claim of payments of commission, and as such these expenses are allowable in the hands of the appellant-company, and therefore the action of the Ld. A.O in making the impugned disallowance stand deleted, and the claim of expenditures under the head of "commission" of **Rs.52,52,238/-** stand **allowed** in the hands of the appellant-company."*

After hearing the Ld. DR, we do not find any reason to interfere with the order of the Ld. CIT(A) on this issue.

6. **Ground No.3-** Vide Ground No.3, the Revenue has agitated the action of the Ld. CIT(A) in deleting the disallowance made by the Assessing Officer on account of salary, wages and bonus amounting to Rs.44,35,888/-. The Assessing Officer made the impugned additions for want of necessary explanation/valid reasons of the payments by the assessee. However, during the remand proceedings, the assessee furnished the necessary details and explanation. After considering the remand report and explanation given by the assessee, the Ld. CIT(A) deleted the additions so made by the Assessing Officer, observing as under:

“8. Salary and wages: [Rs.42,47,481/-] In the course of the Remand Proceedings, the Ld. A.O has observed that the appellant-company had claimed as expenses Bonus paid to employees amounting to Rs.42,47,481/- during the subject year. The Ld. A.O has confirmed that the assessee-company the ledger, and that on verification of ledger it is seen that the assessee company made payment from M/s HDFC bank and IDBA Bank, and that on examination of the bank statements, the Ld. A.O did not find any amounts in the statements to corroborate the dates and amounts mentioned in the ledger of "Salary & Wages" account. Against such observations by the Ld. A.O., it was explained by the appellant that the assessee-company has paid salary & Wages Amounting to Rs.42,47,481/- to Employee's during the year, and that it was the Policy of the company to prepare a monthly salary payable statement and based upon that statement to pass a Journal Entry Debiting salary account and crediting salary payable account, and thereafter in the subsequent month the list of employee along with detail of salary is forwarded to bank for payment. It was explained that the Bank directly credit the Employee Individual account and debiting the Company's account for a consolidated sum. It was also submitted that in a situation where any employee doesn't hold a Employee salary Account the company directly makes the payment through bank to individual employee' In support of the contentions, the appellant filed Ledger of salary, salary payable and employee monthly salary account copies. Having observed the factual matrix and the bank entries, I find that the submissions placed by the appellant-company are correct. The bank statement contains a consolidated entry for any given month, and the sum total of such entries tally the amounts claimed by the appellant for the full year. In any case, I also observe that the quarterly TDS returns of the employees have also been filed by the appellant before the Ld. AO and the same contains the corroborative details. Therefore, in my carefully considered view of the impugned matter, the same has been explained by the appellant, and as such these expenses are allowable in the hands of the appellant-company, and therefore the action of the Ld. AO in making the impugned disallowance stand deleted, and the claim of expenditures under the head of "salary & wages" of **Rs.42,47,481/-** stand **allowed** in the hands of the appellant-company.

9. Bonus to Employee: [Rs. 1,88,407/-] In the course of the Remand Report, the Ld. A.O has submitted that the appellant-company had claimed as expenses Bonus to employee amounting to **Rs.1,88,407/-** during the year under consideration. The Ld. A.O has stated that on verification of ledger of relating to bonus, it was seen that the company claimed that an amount of **Rs.88,407/-** had been paid and the balance of Rs.1,00,000/- was outstanding, an amount which was reflected in the Balance sheet. On being required to explain, the appellant's A.R stated that the payments were made from bank to bank, and that the Ld. A.O did not locate the relevant entries in the bank account to corroborate the submissions made by the appellant. I the rejoinder filed, the appellant has explained that the company had incurred expenses towards Bonus to the Employee Amounting to Rs.1,88,407/- during the subject assessment year 2014- 15, and that the Ld. A.O had only verified the payment during the year from HDFC bank only, and that the Ld. A.O had missed to verify payment from another bank M/s IDBI. The appellant produced the statement showing the detail of Bonus paid through Bank , whether IDBI or HDFC, and also pointed out that the outstanding balance was paid to Shri Navneeth Srinivas in the subsequent year by IDBI Cheque Number 646162 on 08-08-2014. From the Bank statements submitted, I find that the matter stands verified, and all the claims of bonus have been paid before the "due date of filing" of the return, and therefore the entire claim is allowable. Therefore, in my carefully considered view of the impugned

matter, the same has been explained by the appellant, and as such the expenses relating to bonus are allowable in the hands of the appellant-company, and therefore the action of the Ld. A.O in making the impugned disallowance stand deleted, and the claim of expenditures under the head of "bonus" of Rs. 1,88,407/- stand allowed in the hands of the appellant-company."

A perusal of the above observations made by the Ld. CIT(A) reveals that the Ld. CIT(A) has given a categorical findings that the assessee has duly proved the payment of salary and wages. He has observed that the bank statement contains a consolidated entry for any given month and the sum total of such entries tally with the amounts claimed by the assessee for the full year. The quarterly TDS return of the employees has also been filed. Even the payment of bonus has also been made through the banking channel to the employees. The Ld. CIT(A) has observed that the necessary payments have been duly got verified by the assessee. In view of this, we do not find any infirmity in the order of the Ld. CIT(A) on this issue also. There is no merit in the appeal of the Revenue and the same is accordingly dismissed.

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

Kolkata, the 3rd February, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 03.02.2022.

RS

Copy of the order forwarded to:

1. ITO, Ward-35(2), Kolkata
2. WYZ Games Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Sr.PS/D.D.O, Kolkata Benches