

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1061/Del/2017 : Asstt. Year : 2009-10

M/s Times Internet Ltd., 5 th Floor, Ecstasy IT Park, Plot No. 391, Udyog Vihar, Phase-III, Gurgaon-122016	Vs	Addl. CIT, Special Range-9, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCT1559M		

Assessee by : Sh. Mukesh Gupta, CA

Revenue by : Sh. H. K. Choudhary, CIT DR

Date of Hearing: 15.03.2022

Date of Pronouncement: 18.05.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order Id. CIT(A)-33, New Delhi dated 29.12.2016.

2. Following grounds have been raised by the assessee:

"1 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding disallowance of a sum of Rs. 14,98,610/- u/s 14A read with rule 8D (2) (iii) by the appellant company.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since appellant company had earned dividend income only of Rs 7,62,771/- but AO made a disallowance of Rs 14,98,610/-. Upholding such disallowance in excess of the amount of income earned, is against the intent and spirit of the law.

1.2 That the learned Commissioner of Income Tax (Appeals) did not appreciate that, AO ignoring submission of appellant that it has suo motto added back related expenses of Rs 44643/-, still proceeded with the addition without discharging his burden to establish that, the claim of expenses incurred by appellant is not correct and further expenditure had been incurred and claimed for earning exempted income.

1.3 The entire investment of the appellant company is in unquoted subsidiary companies partly in India and partly abroad and other unquoted investment in companies for strategic business reasons and not to earn dividend, however, AO had considered entire investment for computing disallowance as such disallowance so made and upheld by learned Commissioner of (Appeals) u/s 14A is otherwise not in accordance with rule 8D.

2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the disallowance of Rs 65,89,624/- by upholding the depreciation claim on various software valuing at Rs 1,88,27,498/- as technical knowhow, thereby upholding depreciation claim @ 25% as against claim made by appellant @ 60%, by holding that such softwares are utility softwares which are not integral to the running of computers.

2.1. That no valid basis has been stated by the Ld. Commissioner (Appeals) in support of such conclusion, learned Commissioner (Appeals) failed to appreciate that the expenditure incurred by the appellant was for the purchase of software which is an integral part of the computer for appellant's business application and rate of eligible depreciation was 60% and not 25%.

3. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding disallowance of Rs. 1,53,048/- towards interest on late deposit of TDS (Rs.64/-) FBT (Rs.14,433/-) Service tax (Rs.138551/-). That disallowance so upheld by learned Commissioner of

Income Tax (Appeals) is based on misinterpretation of statutory provisions of law and hence unsustainable.

3.1 That findings of Commissioner of Income Tax (Appeals) for upholding the disallowance is reliance upon Madras High Court judgment of 1998, ignoring the subsequent judgment of Karnataka High Court of 2008 cited by appellant, in disregard the norm of following the latter decision. Learned Commissioner (Appeals) did not appreciate the settled legal position that interest on late deposit of TDS/ SERVICE TAX /FBT is mandatory provision in law which is compensatory in nature as such not in nature of penalty, hence such expenditure is eligible business expenditure u/s 37(1) of the Act."

3. The assessee company is engaged in the business of publishing its weekly financial newspaper viz. Financial Times, as well as distribution of newspapers and other publications of Bennett, Coleman & Co. Ltd. and has also earned rental income from subletting of premises. The assessee company is also providing manpower services and has also earned capital gains arising from sale of investment.

Disallowance u/s 14A:

4. The assessee company has made certain investments in shares/mutual funds/bonds etc. out of the funds either borrowed by the assessee or from company own sources. Since, these investments have yielded or may yield income in the form of dividend, long term capital gain, tax free interest etc. which does not form part of income of the assessee. The expenditures are required to be disallowed under the provisions of Section 14A of the Income Tax Act, 1961. During the course of assessment proceedings, the Id. AR of the assessee vide order sheet entry dated 10.10.2011 was specifically asked to show

cause as to why expenses should not be disallowed following the provisions of Section 14A r.w. Rule 8D of the Income Tax Rules, 1962. The AO finally disallowed an amount of Rs.15,43,253/- against the expenditure disallowed by the assessee of Rs.44,643/-. This issue has been dealt by the Coordinate Bench of ITAT in assessee's own case in ITA No. 3124/Del/2018 for A.Y. 2014-15 wherein it was held as under:

"4. During the year, the assessee earned dividend from mutual fund of Rs.1,03,60,745/- and suo moto disallowed an amount of Rs.5,57,215/- u/s 14A. The AO by resorting the provisions of Rule 8D(2)(ii) computed disallowance to Rs.96,28,052/-.

5. The Id. CIT (A) directed the AO to recompute the disallowance u/s 14A by considering the investments from which dividend has been earned by the appellant company and relying on the order of the Special Bench of ITAT in the case of CIT Vs Vireet Investments Pvt. Ltd. 82 Taxman 415, we hereby direct that only the investments which yielded the exempt income be considered for computation of disallowance u/s 14A r.w. Rule 8D."

5. In the absence of any material change and legal proposition, we hereby direct that only the investments which yielded the exempt income be considered for disallowance u/s 14A.

Claim of Depreciation:

6. During the year, the assessee company has claimed Rs.7,88,18,254/- as depreciation. In the scrutiny assessment for the A.Y. 2007-08 and A.Y. 2008-09, the Assessing Officer has held that the software as intangible assets since the same are in the form of licenses. Accordingly, it was subjected to

depreciation @ 25% instead of @ 60% as claimed by the assessee company. This issue has been dealt by the Co-ordinate Bench of ITAT in assessee's own case in ITA No. 3124/Del/2018 for A.Y. 2014-15 wherein it was held as under:

"7. The assessee incurred an expenditure of Rs.35.59 Crores on account of software, content and web hosting. The AO disallowed an amount of Rs.75.55 lacs out of the expenditure holding that the software utilized is capital in nature. The depreciation on software claimed @ 60% by the assessee has been scaled down to 25% by the Assessing Officer.

8. The Id. CIT (A) deleted the addition based on the decision of the Hon'ble Delhi High Court in assessee's own case in assessment years 2004-05 and 2005-06 also in subsequent years 2006-07, 2007-08, 2008-09. Since, the matter of software utilized in content production, the software embedded with hardware is an integral part of the computer equipment, the issue has been repetitively held in favour of the assessee and since the Id. CIT (A) has followed the earlier orders of the Tribunal, we decline to interfere with the order of the Id. CIT(A)."

7. In the absence of any material change and legal proposition, we affirm the order of the Id. CIT(A).

Interest on Late Deposit:

8. During the year, the assessee paid interest and debited the same to P&L account with regard to interest on late deposit of FBT of Rs.14,433/-, penalty on service tax of Rs.2,000/- and interest on late deposit of service tax of Rs.1,38,551/-.

9. The Id. CIT(A) confirmed the disallowance relying on the judgment of Hon'ble Chennai High Court in the case of CIT Vs. Chennai Properties & Investments Ltd. 239 ITR 435 (Mad.) (1998).

10. The Hon'ble Apex Court observations in this regard in the case of Lachmandas Mathura Vs. CIT reported in 254 ITR 799 are as follows:

"The High Court has proceeded on the basis that the interest on arrears of sales tax is penal in nature and has rejected the contention of the assessee that it is compensatory in nature. In taking the said view the High Court has placed reliance on its Full Bench's decision in Saraya Sugar Mills (P.) Ltd. v. CIT [1979] 116 ITR 387 (All.) The learned counsel appearing for the appellant-assessee states that the said judgment of the Full Bench has been reversed by the larger Bench of the High Court in Triveni Engg. Works Ltd. v. CIT [1983] 144 ITR 732 (All.) (FB), wherein it has been held that interest on arrears of tax is compensatory in nature and not penal. This question has also been considered by this Court in Civil Appeal No. 830 of 1979 titled Saraya Sugar Mills (P.) Ltd. v. CIT decided on 29-2-1996. In that view of the matter, the appeal is allowed and question Nos. 1 and 2 are answered in favour of the assessee and against the revenue."

Hence we hereby hold that interest on late deposit of FBT of Rs.14,433/-, penalty on service tax of Rs.2,000/- and interest on late deposit of service tax of Rs.1,38,551/- is allowable .

14. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 18/05/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 18/05/2022

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR