

IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "H" NEW DELHI ]

BEFORE SHRI G. S. PANNU, PRESIDENT

A N D

SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.7149/Del/2019  
निर्धारणवर्ष/Assessment Year: 2016-17

M/s. Times Internet Ltd., Ecstasy I T Park, Plot : 391, Phase - III, Udyog Vihar, Gurugram [Haryana] - 122 016.	<b>बनाम Vs.</b>	Addl. CIT, Special Range : 9, New Delhi.
<b>PAN : AABCT1559M</b>		
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारितकीओरसे /Assessee by :	Shri Mukesh Gupta, C. A.; & Ms. Neha Gupta, C. A.
राजस्वकीओरसे /Revenue by :	Shri Anuj Garg, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	19/09/2022
उद्घोषणाकीतारीख/Pronouncement on :	19/09/2022

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-9, New Delhi [CIT (Appeals)] dated 28.06.2019 for the assessment year 2016-17.

2. The assessee in its appeal has raised the following substantive grounds of appeal:-

“1. That learned Commissioner of Income Tax (Appeals) has erred on facts and in law in upholding the disallowance of Rs 14,65,5011- made by Assessing Officer in respect of consultancy charges paid to Advocate Anand Kumar by merely holding the same to be capital in Nature;

1.1 The learned Commissioner of Income Tax (Appeals) erred in failing to appreciate that the professional fee was paid by the appellant for seeking legal advice and documentation in regular course of business.

1.2 The learned Commissioner of Income Tax (Appeals) while upholding the disallowance failed to appreciate that the appellant had sought services of the advocate in the business of the appellant and therefore the charges were wholly revenue in nature.”

3. Briefly stated the facts are that the assessee is engaged in the business of hosting of various website and is one of the largest host of websites in India, assessee Company hosts, run and operates various website including toi.com, et.com. Indiatimes.com, etc. It is providing various web based online services like sale of advertisement space on its websites, other subscription-based services, news and other information's and e commerce activities on its websites. Revenue of web site is linked to the number of visitors on the website called traffic on website.

4. The assessee filed its return of income on 27.03.2018 declaring Nil income. In assessment order passed under section 143(3) of the Act the Assessing Officer disallowed consultancy fee of Rs.14,65,5011- paid to Advocate Anand Kumar claimed towards professional services. On appeal the ld. CIT (Appeals) upheld the disallowance of Rs.14,65,501/- paid to

Advocate Anand Kumar against which the assessee has filed the present appeal before the Tribunal.

5. The Id. Counsel for the assessee submits that consultancy expenses though incurred towards legal consultancy, advice, preparation and review of legal documents with respect to the strategic investment made by the assessee including meetings, discussions and closure of deal. Such strategic investments in various online business is a business growth tool for the assessee and not an investment as investor, as assessee is a loss making company being in internet business, assessee had a business loss of Rs.71.93 crore during the year. Such strategic investments are essential to increase revenue and reduce losses to get visitors on assessee's website from different sources online. Such steps are required and related expenses were incurred to reduce existing losses, prevent any future liability of business and broadening the current business base hoping for better efficiency and profitability. The legal work was in the nature of due diligence to protect the assessee from any future liability as assessee was already incurring huge losses. Such expenses per se do not give any enduring benefit or lead to creation of any new assets or line of revenue. It is submitted that making strategic investment in online business is ongoing as new players emerge in market, in the previous assessment year 2015-16 assessee had made payment of Rs.35,00,000/- to Advocate Anand Kumar for similar nature of consultancy for strategic investment in online business by assessee wherein the Assessing Officer had disallowed such expenses and the Id. CIT (Appeals) had upheld the disallowance holding that the advantage of consultancy touched the assessee's fixed capital and, therefore, were capital in nature. On appeal before the Hon'ble ITAT, ITAT deleted impugned addition vide order dated 26.06.2022.

6. The Id. Counsel for the assessee further submits that in the immediately preceding assessment year i.e. assessment year 2015-16 the Tribunal by order dated 27.06.2022 in ITA. No. 3347/Del/2019 held that these expenses are intricably connected with ongoing business to enhance the profitability and are allowable expenses. Copy of the order of the Tribunal is placed on record. We observe from the order of the Tribunal in consolidated order in cross appeals in ITA. Nos. 3226 and 3347/Del/2019 dated 27.06.2022 in assessee's own case for assessment year 2015-16 that identical issue came up before adjudication and the Tribunal held that the consultancy charges paid to advocate is allowable expenditure. While holding so the Tribunal observed as under:-

“3. The Id. CIT(A) confirmed the disallowance made by the AO in respect of consultancy charges paid by the assessee to the Advocate holding it to be capital in nature. The Id. CIT(A) further confirmed the disallowance made by the AO in respect of consultancy charges to paid to E&Y holding that the services were not in relation to regular business of the assessee. During the year, the assessee claimed an amount of Rs.10.55 crores on account of consultancy fee, out of which an amount of Rs.98.37 lacs has been disallowed by the AO pertaining to the amount paid for legal and professional services. The AO held that since the expenses were incurred for various projects and share acquisition which shall result in enduring benefit to the assessee and hence not allowable as revenue expenditure. The Id. CIT(A) deleted the additions except the amount paid for professional services for project ADONIS. The Id. CIT(A) while upholding the addition opined that the fee has been paid towards review of project ADONIS transaction document, legal & intellectual property right, due diligence, negotiation and such other services taken up in connection with acquisition of strategic investment in a company by the name of "Coupon Duniya" which is hosting a website that is strategically important for the assessee to grow its business and increase traffic and profits. The Id. CIT(A) held that in effect the consultancy charges have been paid towards documentation and advice on acquisition of shares in

the said company. Before us, the Id. AR submitted that the assessee has paid professional fee for various composite services including drafting of various documentations, meetings, consultations, discussion, legal and IPR due diligence and closure of deal for acquisition of strategic investment in a company by the name of Coupon Dunia which is hosting a website that is strategically important for assessee to grow its business and increase traffic, copies of engagement letter, invoice and copy of voucher showing deduction of TDS and deposit of service tax on reverse charge basis is enclosed. It is further submitted that assessee company is engaged in the business of hosting of the website and is one of the largest website in India, with a view to continue to grow its revenue as also to protect company from various liabilities, it is business compulsion of the assessee to make strategic investments in other businesses with a view to control their policies which shall be beneficial for the existing business of the assessee. Such expenses have been incurred by assessee to seek the advice from the best professionals, this on account of business considerations', such expenses should not be viewed as having an enduring benefit and capital in nature. That the amount spent on the consultancy in seeking advice, drafting of documentation, and related search work is revenue in nature as no enduring benefit has been driven out of this nor any new asset has been created out of such expenses Incurring such sums is necessary to continue to do the business in efficient and profitable manner as such, such expenses incurred are revenue in nature.

4. The Id. DR relied on the order of the Id. CIT (Appeals).

5. We find that the expenses are intricately connected with the ongoing business of the assessee and to enhance the profitability. The expenses do not pertain to any creation of new business entity or its operation. Hence, we hold that the expenses on account of consultancy charges are allowable.

6. With regard to the expenses paid to E&Y, we find that the amount has been incurred in course of regular business activity in seeking advice with respect to the website Zigwheel in relation to the project walk. Since, the nature of advice sought is in relation to the

conduct of regular business, we hold that the amounts are allowable as revenue expenses.”

7. On the other hand, the ld. DR supported the order of authorities below and could not bring on record any change in facts.

8. Heard rival submissions perused the orders of the authorities below and the record placed before us. We observe from the order of the Tribunal in consolidated order in cross appeals in ITA. Nos. 3226 and 3347/Del/2019 dated 27.06.2022 in assessee’s own case for assessment year 2015-16 that identical issue came up before adjudication and the Tribunal held that the consultancy charges paid to advocate is allowable expenditure.

9. As the facts being identical, following the above said decision of the co-ordinate bench of the Tribunal, we allow the grounds raised by the assessee.

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

Order pronounced in the open court on : 19/09/2022.

Sd/-  
( G. S. PANNU )  
PRESIDENT

Sd/-  
( C. N. PRASAD )  
JUDICIAL MEMBER

Dated : 19/09/2022.

\*MEHTA\*

Copy forwarded to :

1. Appellant;
2. Respondent;

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	19.09.2022
Date on which the typed draft is placed before the dictating member	19.09.2022
Date on which the typed draft is placed before the other member	19.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	19.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	19.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	19.09.2022
Date on which the final order is uploaded on the website of ITAT	19.09.2022
Date on which the file goes to the Bench Clerk	19.09.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	