

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 2218/MUM/2017

(Assessment Year 2012-13)

Nimbus Communication Ltd
Nimbus Centre, Oberioa
Complex,
Andheri(W), Mumbai - 400
053

Vs.

ACIT RG16(1)
Mumbai

(Appellant)

(Respondent)

PAN No. AAACN3947L

Assessee by : None

Revenue by : Shri. Shyam Prasad. (CIT DR)

Date of hearing: 11.10.2022.

Date of pronouncement : 28.10.2022.

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Nimbus Communication Limited against the assessment order dated 31st March, 2011 passed under section 143 read with 144C (3) of the Income Tax Act, 1961 (the Act) by the Deputy Commissioner of Income Tax, Range-16(1) Mumbai, in pursuance of direction issued under section 144C (5) of the Act by the learned Dispute Resolution Panel 2, Mumbai. The assessee has raised following grounds of appeals :-

"The appellant objects to the order dated 31st January, 2017 passed under Section 143(3) r.w.s. 144C (13) of the Income Tax Act, 1961 (Act) by the



learned Assistant/Deputy Commissioner of Income Tax, Range 16 (1), Mumbai [Assessing Officer] in pursuance of the direction issued under Section 144C of the Act by the learned Dispute Resolution Panel - 2, Mumbai (DRP) on the following amongst other grounds:-

- 1. The transfer Pricing proceedings initiated by the Assessing Officer under Section 92CA (1) of the Act are without any jurisdiction and ought to be quashed.*
- 2. On the basis of the facts and in the circumstances of the case and in law, the learned Assessing Officer in pursuance of the direction given by the learned DRP erred in assessing income of the Appellant at ₹ 41,42,51,970/-.*
- 3. The learned DRP erred in not directing the Assessing Officer to delete the transfer pricing adjustments proposed by the Transfer Pricing Officer(TPO), as he failed to follow the provisions of section 92A (3) of the Act, hence, the Transfer Pricing Adjustments are bad in law and the appellant's international transactions should be accepted at arm's length as per Section 92 of the Act.*

3.1 International License Revenue received from AE

The learned Dispute Resolution Panel (DRP) has erred in law and facts upholding TPO for making addition of ₹ 20,49,81,541/- on

account of International license revenue receivable from the A.E, Nimbus Sports International Pte, Singapore (NSI) and Neo Broadcast America Inc (Neo USA).

3.2 Cost of Media Rights and Signage Fees

The learned DRP has erred in law and facts upholding TPO for making adjustment of ₹ 98,23,199/- on account of Cost of media rights and signage fees.

3.3 Interest on Loan and Advances

The learned DRP and erred in law and facts upholding TPO for transfer Pricing adjustment on account of notional interest charged for the loans and advances given to the associated enterprise.

3.4 Commission in Corporate Guarantee

The learned DRP has erred in law and facts holding and directing to Assessing Officer that corporate guarantee commission should be charged at 1.5% though the Hon'ble ITAT in assessee own case for A.Y. 2005-06, 2006-07 and 2007-08 has settled that issued at 0.5%.

3.5 Interest on Receivable

The learned DRP has erred in law and facts upholding TPO for transfer pricing adjustments made on receivables.



4. *On the basis of the facts and in the circumstances of the case and in law, the learned DRP has erred in not allowing the differential claim of ₹ 2,27,73,070/- under Section 14A of the Act, r.w. rule 8D which was disallowed suo-moto in the return of the income.*
 5. *Each of the above grounds of appeal are independent and without prejudice to each other.*
 6. *The appellant reserves the right to add, alter or amend the above grounds of appeal.”*
02. However, at the time of hearing of the appeal, the learned Departmental Representative submitted that this assessee has been ordered for winding up by the Hon'ble Bombay High Court and therefore, now only official liquidator can file this appeal. At present, the appeal is filed by some Director of Nimbus Communication Limited (Assessee). Hence it deserves to be dismissed.
03. Despite notice none appeared on behalf of the assessee. It is also found that this appeal was filed in 2017. However, after that the appeals are listed for hearing on more than 10 occasions. None appeared on behalf of the assessee. The notices are also not responded by the assessee by filing any communication. The learned DR has also filed a newspaper report in Mint dated 12th March, 2018 wherein it is reported that Hon'ble Bombay High Court has ordered winding up against the company for the reason that the company is unable to pay its debts. As the appeal presently is filed by the Directors of the company, same is



not maintainable. As the company has been ordered for winding up, now the appeal can be prosecuted only by official liquidator. Therefore, this appeal is now not maintainable hence, dismissed.

04. However, we give liberty to the official liquidator that if, this appeal is required to be pursued he may file necessary application for the recall of this order.
05. In the result, appeal is dismissed for above reasons.

Order pronounced in the open court on 28.10.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.10.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai