

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 7115 & 7116/Mum/2019
(Assessment Years: 2014-15 & 2015-16)

M/s. Harmony Media Pvt. Ltd. 21/23, Gazdar Building, Underia Street, Mumbai-400 008	Vs.	ITO-5(1)(4), Mumbai
PAN/GIR No. AABCH 5952 Q		
(Appellant)	:	(Respondent)
Appellant by	:	None
Respondent by	:	Smt. Usha Gaikwad
Date of Hearing	:	20.09.2022
Date of Pronouncement	:	15.12.2022

ORDER

Per Kavitha Rajagopal, J. M.:

These appeals are filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short), passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. As there was no representation on behalf of the assessee inspite of several opportunities, we proceed to decide the appeal by hearing the ld. Departmental Representative (ld. DR for short) and on perusal of the available materials on record.

3. As the facts are identical in both these appeals, we pass a consolidated order for the same.

4. The grounds of appeal raised by the assessee are as under:

1. *The CIT (A) erred in confirming the order of the A.O in disallowing a sum of Rs.13,94,716/- being Prior Period Expenditure (A. M.C) by considering the same as an expense pertaining to F. Y. 2012-13.*
2. *The CIT (A) erred in confirming the order of the A.O in erred in disallowing a sum of Rs.1,90,302/- being Property Tax for Dock Yard Godown on the ground that the assessee has failed to prove the business utilization of the said dockyard godown.*
3. *The CIT (A) erred in restricting the depreciation claimed on addition of new assets to Rs.37,61,496/- at 15% flat rate and disallowing balance depreciation of Rs.1,22,31,226/-.*
4. *The CIT (A) erred in confirming the order of the A.O. in restricting the rate of depreciation on software to 25% instead of 60%.*
5. *CIT (A) erred in not considering the written submissions of the assessee Company in its proper perspective*
6. *The CIT (A) erred in projecting proportionate expenses on the basis of turnover of F.Y. 2012-13 and disallowing following expenses:*
 - a. *Increasing disallowance on account of Travelling and Conveyance from Rs.7,52,820/- to Rs.35,64,977/-,*
 - b. *Rs.11,33,350/- on account of Electricity Charges,*
 - c. *Increasing disallowance on account of Miscellaneous Expenses to Rs.14,42,274/-*
 - d. *Rs.1,31,837/- on account of Security charges,*
 - e. *Increasing disallowance on account of Manpower Deputation Charges from Rs.3,42,870/- to Rs.4,88,584/-,*
7. *CIT (A) erred in applying the decision in the case of Umakant B. Agarwal vs. Deputy CIT (2014) and in the case of CIT & Ors. Vs. Saravana Constuctions (p.) Ltd. (2012). When the assessee had clearly informed the A.O. that the books of accounts were seized by the NIA and could not provide proof of expenses.*
8. *The CIT(A) erred in not giving proper opportunity of hearing before passing the Assessment Order.*

ITA No. 7115 /Mum/2019

5. The brief facts of the case are that the assessee is engaged in the business of creation, production and development of programs and other software media which can be broadcasted through the audio visual medium vide television. The assessee filed its return of income dated 30.09.2014, declaring total income of Rs.20,03,880/-. The assessee's case was selected for scrutiny and assessment order u/s. 143(3) dated

26.12.2016 was passed, determining total income of Rs.2,41,71,180/-, by making the several additions/disallowances.

6. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A) who confirmed the impugned addition.

7. Aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

8. We have heard the Id. DR and perused the material available on record. In the first ground of appeal, the assessee has challenged the disallowance of Rs.13,94,716/- being prior period expenses (AMC) by considering the same as 'expenses', pertaining to F.Y. 2012-13. It is observed that the A.O. has disallowed the said sum pertaining to annual maintenance purpose (AMC) as 'expenses' pertaining to A.Y. 2012-13 and not to the impugned year. The assessee contended that the impugned amount though was paid in F.Y. 2012-13, it was not claimed as 'expenditure' in that year and has been shown as 'current asset' in the balance sheet of the company as on 31.03.2013. The assessee further contended that the impugned amount is reflected under the head 'prior period expenses' under Schedule 13, short term allowance and advance of Rs.16,23,225/- and, hence, the same was claimed as 'expenditure' during the impugned year. The Id. CIT(A) has confirmed the said addition on the ground that the assessee has not furnished the ledger account and has also not furnished the breakup of Rs.16,23,225/- under the head 'prepaid expenses' under Schedule 13 as short term loans and advances. Even before us, the assessee has failed to furnish the required details to establish the claim that the impugned amount pertains to prepaid expenses (AMC) during the year under consideration. In view

of the same, we find no infirmity in the order of the Id. CIT(A). Thus, ground no. 1 raised by the assessee is dismissed.

9. Ground no. 2 pertaining to disallowance of Rs.1,90,302/- being Property Tax for Dock Yard Godown on the ground that the assessee has failed to prove the business utilization of the said Dock Yard Godown. The assessee has submitted that the said amount was paid to MCGM towards property tax for the period from 01.04.2013 to 31.03.2014 as the said godown was used for the purpose of stocking and occupied for the business purpose only. The assessee further submitted that the MCGM property was in the name of the previous owner and that the assessee was in the process of changing it to its name and due to seizer it could not be completed. The assessee has furnished copy of receipt of the property tax paid. The A.O. has disallowed the impugned amount on the ground that the assessee has failed to prove that the Dock Yard Godown was used for the purpose of business.

10. Before the first appellate authority, the assessee had filed additional evidences in support of its claim. The copies of the agreement for purchase of Dock Yard plot from Shri Ladhu Devraj & Co. (occupants) purchased in the year 2006, the assessee has furnished two receipts of municipal taxes which stand in the name of Shri Ladhu Devraj as additional evidences. Considering this, it is observed that the assessee has not furnished the copies of bank statement from which the payment was made to the said taxes before the lower authorities. As the copies of agreement for purchase of the said dockyard had the description that the said plot, the license for the said plot was issued for

storing of grains and pulses and the assessee was unable to justify that the same was used for the assessee's business which is creation, production and development of programs and other software media which can be broadcasted through the audio visual medium vide television. The assessee has failed to substantiate that the said plot was not used for the purpose mentioned in the license. On this observation, the lower authorities has disallowed Rs.1,90,302/- alleged to be paid by the assessee towards property tax for the Dock Yard Godown. It is observed that the assessee has neither produced evidences before the lower authorities nor before us to substantiate its claim of expenses paid towards property taxes.

11. From the above observation, we find no infirmity in the order of the ld. CIT(A) and, therefore, ground no.2 raised by the assessee is dismissed.

12. Ground Nos. 3 and 4 pertains to the depreciation claimed on addition of new assets to Rs.37,61,496/- @ 15% flat and disallowing balance depreciation of Rs.1,22,31,226/- and depreciation on software restricted to 25% instead of 60%. It is observed that the assessee has made addition on fixed assets namely computer and software, furniture and plant and machinery, amounting to Rs.4,98,91,039/- and had claimed depreciation, amounting to Rs.3,35,21,991/-. The assessee during the assessment proceeding has only furnished a ledger copies of the said addition on fixed assets and had claimed deprecation @ 60% which according to the A.O. should have been only @ 25%. The A.O. stated that there was contradictory opinion in claiming the said rate, which was 15% for one product namely Sony Video Recorder and 60% for the LT Recorder. The

A.O. has allowed 15% of the depreciation and disallowed the balance, amounting to RS.1,22,31,226/- on the ground that the assessee has failed to submit the bills to substantiate its claim, pertaining to the additional assets. The Id. CIT(A) has directed the A.O. to recompute the depreciation @ 25% on the ground that the A.O. himself has acknowledged the rate of depreciation on software to be @ 25%. The Id. CIT(A) also held that the assessee was entitled to depreciation @ 60% on IMAC 21.5 Quad Core which was valued at Rs.76,500/-

13. It is also observed that the assessee had claimed depreciation on addition of Rs.1,99,83,359/- for more than 180 days @ 60% and that the assessee has furnished bills for the addition of assets only to the tune of Rs.10,56,500/- and has furnished bills for depreciation claimed on addition of Rs.2,50,76,640/- which was less than 180 days @ 60%, amounting to Rs.46,06,684/-. It is also observed that the assessee has claimed depreciation on Sony 26 no. Monitors valued at Rs.30,37,108/- and it was found that the said monitors were not received during the year as per the details furnished by the assessee. As the assessee failed to substantiate that the said monitors were received during the assessment year in dispute, the Id. CIT(A) disallowed the claim of depreciation on the said monitors and added the same to the income of the assessee. Even before us, the assessee has failed to furnish the documents pertaining to its claim and in the absence of which, we find no infirmity in the order of the Id. CIT(A) and we hereby uphold the order of the Id. CIT(A). Hence, ground nos. 3 & 4 raised by the assessee are dismissed.

14. Ground no. 5 is general in nature and requires no adjudication.

15. Ground no. 6 pertains to disallowance of the following expenses on the ground that the assessee has failed to substantiate its claim:

- a) *Increasing disallowance on account of Travelling and Conveyance from Rs.7,52,820/- to Rs.35,54,977/-*
- b) *Rs.11,33,350/- on account of Electricity Charges.*
- c) *Increasing disallowance on account of Miscellaneous Expenses to Rs.14,42,274/-*
- d) *Rs.1,31,837/- on account of Security charges*
- e) *Increasing disallowance on account of Manpower Deputation Charges from Rs.3,42,870/- to Rs.4,88,584/-.*

16. The A.O. has disallowed the above mentioned expenses on the ground that the assessee has failed to furnish documentary evidences in supports of its claim that the above mentioned expenses were incurred wholly and exclusively for the purpose of business.

17. The Id. CIT(A) confirmed the addition made by the assessee.

18. Aggrieved by this, the assessee is in appeal before us, challenging the disallowance of the impugned expenses. It is observed that the assessee has neither filed any evidences either by way of documentary evidence or otherwise neither before the lower authorities nor before us. On this observation, we find no reason to interfere with the order of the lower authorities. Hence, ground no. 6 raised by the assessee is dismissed.

19. Ground nos. 7, 8 & 9 being general grounds, requires no adjudication.

20. In the result, the appeal filed by the assessee in ITA No. 7115/Mum/2019 is dismissed.

ITA No. 7116/Mum/2019

21. In ground no.1, the assessee has challenged the addition of Rs.25,25,976/- being the import transaction from the Export Import Summary Data CBSE by considering the same as an 'unrecorded expenditure' by inferring that there is no purchase as per the return of income filed by the assessee. The A.O. had made the impugned addition on the ground that the assessee was unable to furnish any explanation pertaining to the import transaction for the impugned amount, which was appearing in Export Import Summary Data CBSE. It is observed that the assessee has claimed the impugned amounts on account of capital assets by way of computers purchased during the year in the total expenditure of Rs.2,32,25,323/- in foreign currency as per the note in the impugned assessment year. The A.O. has disallowed the said expenditure in Note 26 foreign currency transactions, pertaining to purchase of shooting equipment. As the assessee was unable to furnish any documents or breakup of the said expenses, the A.O. rejected the assessee's submission that the import transaction has been disclosed in the books of accounts of the assessee and was, therefore, treated as 'unexplained expenditure'. The assessee has failed to substantiate its claim, neither before the first appellate authority nor before us, there was no evidence produced by the assessee, pertaining to the breakup of the impugned expenses and also the transactions, amounting to Rs.25,25,977/-.

22. From the above observation, we find no infirmity in the order of the Id. CIT(A). Hence, this ground of appeal raised by the assessee are dismissed.

23. The other grounds raised in this appeal are on identical facts as that in ITA No. 7115/Mum/2019 and the observation made in the said appeal applies *mutatis mutandis* to these grounds also.

24. In the result, the appeal filed by the assessee in ITA No. 7116/Mum/2019 is also dismissed.

Order pronounced in the open court on 15.12.2022

Sd/-

Sd/-

(Om Prakash Kant)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 15.12.2022

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai