

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 20/Srt/2022 (Assessment Year: 2014-15)
(Physical hearing)

M/s Airlink Communications Pvt. Ltd., 1 st Floor, 1,2 Annapurna Shopping Centre, Adajan Patia, Surat-395009. PAN No. AAICA 9078 P	Vs.	D.C.I.T., Circle-1(1)(1), Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Sapnesh Sheth, CA
Department represented by	Shri Vinod Kumar, Sr.DR
Date of hearing	19/12/2022
Date of pronouncement	19/12/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/ Commissioner of Income Tax (Appeals), Surat (in short, the Id. CIT(A)) dated 15/11/2021 for the Assessment year (AY) 2014-15 wherein the assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case as well as law on the subject, the Id. CIT(A), National Faceless Appeal Centre has erred in passing ex parte order although assessee filed adjournment application.*
- 2. On the facts and circumstances of the case as well as law on the subject, Id. CIT(A), National Faceless Appeal Centre has erred in confirming the action of assessing officer in disallowing expenses of Rs. 2,19,96,779/- u/s 40(a)(ia) of IT Act.*
- 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

2. At the outset of hearing, the learned Authorised Representative of the assessee submits that the impugned order was passed by the Id. CIT(A) on

15/11/2021 and the assessee was required to file appeal on or before 14/01/2021, however, the appeal was filed on 28/01/2022, thus, there is delay of 14 days in filing appeal before the Tribunal. The period of delay is covered by the decision of Hon'ble Supreme Court in Suo Moto Writ Petition No. 3/2020 in order dated 10/01/2022, wherein the period of limitation for taking recourse of law between the period starting 15/03/2020 was extended till 28/02/2022 and further allowed 90 days' time from 01/3/2022 to take recourse of law if the time period for filing appeal is such period. The Id. AR submits that though the limitation period is substantially covered and keeping in view the decision of Hon'ble Apex Court.

3. The learned Senior Departmental Representative (Id. Sr. DR) has not objected about the condonation of delay.
4. Considering the submissions of both the parties and the fact that the period during which the present appeal was filed is covered by the decision of Hon'ble Supreme Court in Suo Moto Writ Petition No. 3/2020 dated 10/01/2022, therefore, the delay in filing the appeal is condoned.
5. On merit, the Id. AR of the assessee submits that the additions made in the assessment order dated 30/08/2019 passed under Section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short, the Act) does not survive at present as the additions made in pursuance of order dated 27/03/2019 passed by the Id. Pr.CIT under section 263, will not survive as the said revision order has already been set aside/quashed by the Tribunal in ITA No. 328/Srt/2019 dated 06/10/2022. The Id. AR submits that once the

revision order passed under Section 263 has been set aside, any order passed in pursuance of direction of such order has become *void ab initio*. The Assessing Officer in the assessment order dated 30/08/2019 made addition of Rs. 2.19 crores on account of disallowance under Section 40(a)(ia) of the Act. The assessee filed appeal before the Id. CIT(A) wherein the additions were sustained/ upheld. The Id. CIT(A) sustained the order in ex parte proceedings. As the order under Section 263 dated 27/03/2019 has already been set aside in order dated 06/10/2022, therefore, the present appeal is liable to be allowed.

6. On the other hand, the Id. Sr. DR for the revenue submits that the assessee has not attended the hearing before the Id. CIT(A) as well as before the Assessing Officer. Since the assessee failed to appear before the lower authorities, therefore, matter may be restored to Id. CIT(A) for fresh adjudication with direction to assessee to appear and file requisite details therein, including the order passed by Tribunal in ITA No.328/Srt/2019 dated 06/10/2022.
7. We have considered the submissions of both the parties and perused the orders of lower authorities carefully. It is an admitted fact that the order passed by the Id. Pr.CIT under Section 263 dated 27/03/2019 has been quashed/set aside by the Tribunal in ITA No. 232/Srt/2019. Once the revision order is set aside/quashed, the subsequent action initiated in pursuance of such order would not survive, therefore, the addition made in assessment order dated 30/08/2019 passed under Section 143(3) r.w.s.

263 will not be survive. Therefore, the appeal filed by the assessee is allowed.

8. So far as objection of Id Sr DR for the revenue is concerned that the matter may be restored to the file of assessing officer or Id CIT(A) with the direction to the assessee to appeal and file is details, we are not agreeing with such contention, as once, the basis of the addition in the assessment itself is set aside, therefore no purpose would serve in restoring the matter back to their officer, which will be a futile exercise and wastage of time of public authorities.
9. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 19th December, 2022.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 19/12/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat