

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6225/Mum/2019
(A.Y: 2012-13)

Internet Data Services (India) Pvt Ltd C-124, 12 th Floor, Mittal Court, C Wing, Nariman Point, Mumbai -400021.	Vs.	DCIT, Circle-1(2)(1), Aayakar Bhavan, M.K. Road, Churchgate, Mumbai -400020.
PAN/GIR No. : AAACI2698P		
Appellant	..	Respondent

Appellant by :	Mr. Madhur Agrawal.AR
Respondent by :	Mr. V.K Chaturvedi.DR

Date of Hearing	09.02.2023
Date of Pronouncement	20.02.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) -6, Mumbai passed u/s 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The learned CIT(A) erred in partly confirming the adhoc disallowances (tabulated below) made by the learned assessing officer and restricting the same to 10%, without providing any basis or reason for sustaining the adhoc disallowances.*

Sr. No	Nature of Expenditure	Amount of adhoc disallowance made by the learned tax officer (being 25% of the expenditure)	Amount of adhoc disallowance restricted by the CIT(A) (being 10% of the expenditure)
1	Salary, wages and staff welfare	82,21,916	32,88,766
2	Miscellaneous Expenses	4,33,625	1,73,450
3	Travel and conveyance	6,85,610	2,74,244
4	Repairs and maintenance	4,55,658	1,82,263

2. The learned CIT(A) erred in confirming the disallowance made by the learned AO on account of foreign exchange fluctuation loss of Rs. 55,98,904, without appreciating the supporting documents submitted during the course of appellate proceedings.

3. The learned CIT(A) erred in confirming the disallowance made by the learned AO on account of Legal and Professional expenses of Rs. 44,52,796, without appreciating the supporting documents and the contentions made during the course of appellate proceedings.

4. Each one of the above grounds of appeal is without prejudice to the other. The appellant reserves the right to add, alter or amend to the above grounds of appeal.

2. The brief facts of the case are that, the assessee company is engaged in the business of providing on line information on emerging market. The assessee has

filed the return of income for the A.Y 2012-13 on 03.12.2012 disclosing a total income of Rs. 1,43,86,350/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The Assessing Officer (AO) on perusal of the financial statements and in particular in the Audited Balance sheet found that (i) the assessee has made additions to fixed asset and no evidence was filed in support of purchase of assets and Rs. 9,68,432/- was added to the total income. (ii) the assessee has claimed the expenditure of staff welfare, salary and wages and the AO found that the assessee has not produced the supporting bills and vouchers, in respect of claim of expenses and the AO for the want of details has made ad-hoc disallowance @25% which worked out to Rs. 82,21,976/-.

3.(iii) the A.O. found that the assessee has claimed miscellaneous expenditure in the profit and loss account of Rs. 17,34,503/-, since no bills and information were submitted/ produced, therefore the AO made disallowance of 25% of the total expenses which worked out to Rs. 4,33,625/-.(iv) the AO on perusal of the Profit and Loss account find that the assessee has debited bad debts and other receivable loans and advances written off of Rs. 28,38,853/-. Since the assessee has failed to produce the ledger account copy, sales bills, invoices etc, the AO relied on the provisions of Sec. 36(2) of the Act and made disallowance of Rs.28,39,893/-.(v) The A.O found that the assessee has debited loss on foreign exchange currency transactions of Rs. 55,98,904/- in the profit & loss account and the assessee has failed to produce the details and the claim was disallowed (vi) the AO found that the assessee has claimed service tax expenses of Rs.2,43,04,755/- since there no bills and vouchers were produced and the assessee has failed to establish genuineness therefore made disallowance@25% of claim which worked to Rs.7,76,188/-.

4.(vii) The assessee has claimed travelling and conveyance expenses of Rs 27,82,443/- since the assessee has failed to establish the genuineness of the transactions, the AO has made disallowance @ 25% of claim which worked out to Rs. 6,85,610/-.

(viii) The assessee could not submit the details of repairs and maintenance of Rs.18,22,633/- and hence the AO has estimated @25% disallowance of the expenses which worked out to Rs. 4,55,658/-.

(ix) The assessee has claimed the interest on delay and deferment of income tax of Rs. 27,89,450/-, since the assessee has not complied with the information in the proceedings, the A.O. has disallowed the claim and

(x) The assessee has claimed legal and professional expenses of Rs.44,52,796/- and was called to produce the details with supporting bills, vouchers and TDS details. Since there was no compliance, the AO has made the disallowance. Finally the A.O. has assessed the total income of Rs.4,79,08,780/- and passed the order u/s 143(3) of the Act dated 02.02.2015.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings the CIT(A) has considered the grounds of appeal,

submissions of the assessee, findings of the AO, remand report and the additional evidence in respect of the claim of expenses. Whereas, the CIT(A) has relied on the facts and submissions and has restricted the addition to the extent @ 10% in respect of salaries and wages, staff welfare, miscellaneous expenses, travelling conveyance expenses, repairs and maintenance expenses as against 25% ad-hoc addition made by the AO. But the CIT(A) has confirmed the addition of foreign exchange loss and disallowance of professional and legal expenses claimed and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in restricting the addition @ 10% overlooking the submissions that the assessee company books of accounts are audited and the assessee has substantiated with the evidences and information filed in the course of remand proceedings. In respect of second disputed issue, the Ld.AR submitted that the evidences in respect of the foreign

exchange loss has been submitted before the AO and the claim is genuine and cannot be disputed. On the last disputed issue, the Ld. AR submitted that the legal and professional fees were paid for the purpose of business and the assessee has substantiated before the lower authorities with all the details including TDS. Further the revenue has accepted the claims in the earlier and subsequent assessment years. The Ld.AR substantiated the submissions with voluminous paper books and judicial decisions and prayed for allowing the assessee appeal. Per Contra, the Ld. DR submitted that no books of accounts and details were produced for verification and examination in the assessment proceedings and the Ld.DR supported the order of the CIT(A).

7. We heard the rival submissions and perused the material on record. The contentions of the Ld. AR are that the CIT(A) has erred in restricting the disallowance @10% in respect of expenses of salary, wages, staff welfare, miscellaneous expenses, travelling expenses and repairs and maintenance though the assessee has substantiated the information before the lower authorities and the

claim is genuine and there could be various reasons for non production of books of accounts at the time of hearing proceedings but in the remand proceedings the information was filed. Further the Ld.AR highlighted the findings at Para 8.3 of the CIT(A) order, where the details and documents were filed on the sample basis and the assessee has made submissions/ filed details in the remand proceedings and demonstrated letter dated 8-2-2018 at Page 857 of the paper book-II. Considering the facts, submissions, details and remand report, we find that the assessee is in the business of data entry services and the expense are to be supported with proper bills and vouchers. Accordingly, to meet the ends of justice, we restrict the disallowance @2% as against @10% by the CIT(A) and partly allowed the ground of appeal of the assessee.

8. On the second disputed issue, where the assessee has claimed foreign exchange loss, the AO has made disallowance as no details were submitted, whereas the Ld.AR demonstrated letter dated 08.02.2018 at page 1205 of the paper book in particular at 1208 explaining the nature of the foreign exchange

transactions and the details of parties and the assessee has been claiming such transactions loss in the earlier year and subsequent year and the revenue has accepted the same. We find that the A.O. has not disputed the genuineness and disallowance was made for non submissions of details, which were filed subsequently and is not disputed and accordingly we direct the Assessing officer to delete the addition and allow the ground of appeal.

9. The last disputed issue being disallowance of Legal and Professional fees. The Ld.AR has explained the nature of professional services/ works availed by the assessee company for the purpose of business operations and substantiated with the supporting bills, invoices and TDS details. The Ld.AR has demonstrated the ledger accounts of the claims and TDS details at Page 1323 & 1325 of the paper book-III and the details are filed in the course of hearing proceedings before the lower authorities. We find the submissions of the Ld.AR are realistic and cannot be ignored. Therefore, considering the facts, details and the material information filed are of the view that the AO was not justified in making the disallowance

overlooking the details and the genuineness of expenses are not doubted. Accordingly, we set aside the order of the CIT(A) on this ground of appeal and direct the Assessing officer to delete the disallowance and allow the ground of appeal in favour of the assessee .

10. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 20.02.2023.

Sd/-

(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.02.2023

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//()

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai