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

BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3088/M/2019
Assessment Year: 2014-15

DCIT-12(2)(2), Room No.145, 1st Floor, Aayakar Bhawan, Churchgate, Mumbai-400020	Vs.	M/s. Group M Media India Pvt. Ltd., 8th Floor, Gommerz International Bus, Park Oberoi Garden City, Western Express Highway, Goregaon (East), Mumbai – 400 063 **PAN: AACCM7365H**
(Appellant)		(Respondent)

CO No.138/M/2021
(Arising out of ITA No.3088/M/2019)
Assessment Year: 2014-15

M/s. Group M Media India Pvt. Ltd., 7th & 8th Floor, The Orb, Village Maril, Andheri East, Mumbai – 400 059 **PAN: AACCM7365H**	Vs.	Deputy Commissioner of Income Tax, Circle 1(3)(1), Mumbai
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Nikhil Tiwari, A.R.
Revenue by : Shri Nihar Ranjan Samal, D.R.

Date of Hearing : 18 . 05 . 2023
Date of Pronouncement : 31 . 05 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid appeal and cross objections emanated from same impugned order passed by Ld. Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] are being taken up for disposal by way of composite order.

2. Appellant DCIT-12(2)(2), Mumbai (hereinafter referred to as the Revenue) and the cross objector M/s. Group M Media India Pvt. Ltd. (hereinafter referred to as the assessee) by filing the present appeal and cross objections respectively sought to set aside the impugned order dated 28.02.2019 passed by the Ld. CIT(A) on the grounds inter-alia that:

ITA No.3088/M/2019 (Grounds of Revenue's appeal)

"1. Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the disallowance of Rs.1,08,74,843/- by holding that such expenses were revenue in nature?

2. Whether on the facts and circumstances of the case and in law, the ld.CIT(A) erred in deleting the notional interest disalloweds 36(1)(ii) of the Act ignoring the fact that the assessee has defited the rest on loans and not carged any interest on loans given?

3. The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing officer be restored.

4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

Cross objections by the assessee to the appeal filed by the Revenue:

"Based on the facts and circumstances of the case, Group M Media India Private Limited (hereinafter referred to as 'Group M India') craves leave to prefer cross objections to the appeal filed by the Department (ITA No.3088/M/19) against the order passed by the Hon'ble Commissioner of Income Tax [Learned CIT(A)'), Mumbai under Section 250 of the Income-tax Act, 1961. (hereinafter referred to as the "Act').

Deduction in respect of education cess and secondary and higher education cess paid under Section 37(1) of the Act

Cross Objection 1-*On the facts and in the circumstances of the case and in law, the Appellant prays that the deduction in respect of education cess and secondary and higher education cess on income-tax paid during the year ought to be allowed as a deduction while computing the total income.*

Cross Objection 2 *- On the facts and in the circumstances of the case and in law, the Appellant prays that the Assessing Officer be directed to allow deduction under section 37(1) of the Income-tax Act, 1961 ('Act') in respect of education cess paid on the amount of dividend distribution tax as per section 115-0 of the Act during the year, while computing the total income.*

Refund of excess Dividend Distribution Tax ('DDT') paid

Cross Objection 3 *- The Learned AO and CIT(A) ought to have appreciated that dividend paid by Group M India to its Singapore shareholder, Group M Asia Pacific Holdings Pte Limited, is liable to tax as per the beneficial tax rate of 10% under Article 10(2) of the India - Singapore Tax Treaty, and thereby, ought to have held that the DDT paid by Group M India in excess of the 10% tax rate should be refunded to Group M India.*

Group M India craves leave to add, alter, vary, omit, amend or delete the above grounds of appeal/cross objections at any time before, or at the time of, hearing of the appeal, so as to enable the Appellate Tribunal to decide this response according to law."

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is into the business of media planning, buying and implementing activities. Assessee's return of income declaring total income of Rs.1095664010/- was subjected to scrutiny. The assessee appeared and filed necessary details. The Assessing Officer (AO) noticed that the assessee during the year under consideration has claimed software expenses to the tune of Rs.2.99 crore as revenue expenditure on the payments made to foreign countries. However, TDS applicable was not deducted while making such payment. Declining the contentions raised by the assessee that out of total expenses of Rs.2.99 crore Rs.1.86 crore is provision which has

been disallowed in the computation of income under section 40(a)(i) of the Income Tax Act, 1961 (for short 'the Act') and balance amount has been incurred in respect of annual maintenance cost and license fee which is payable annually, the AO proceeded to disallow the expenses under section 37(1) of the Act by treating the same as capital in nature and thereby added the same to the total income of the assessee. The AO also observed that the assessee has taken secured and unsecured loan by paying average interest @10.19% on the same. The AO also observed that the assessee has advanced loan to the supplier to the tune of Rs.49,68,47,605/- and received the advances from clients to the tune of Rs.18,35,23,580/- (total advance given to supplier comes to Rs.31,33,24,026/-) on which no interest is charged by the assessee). The AO called upon the assessee to justify as to why the interest may not be disallowed on such advances/interest free loans given to suppliers since the assessee was paying interest on loans taken. Declining the contentions raised by the assessee the AO proceeded to hold that the assessee has used interest bearing funds for giving loans and deposits to the associated concerns without interest and for giving advances to its suppliers which resulted in excess interest burden on the assessee and thereby disallowed the interest expenditure of Rs.3,19,18,958/- under section 36(1)(iii) of the Act out of interest expenses claimed by the assessee. The AO accordingly framed the assessment under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) both the Revenue as well as the assessee have come up before the

Tribunal by way of filing present appeal and cross objections respectively.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

Ground No.1 of Revenue's appeal

6. The AO disallowed the software expenses claimed by the assessee by observing that the software expenses are license cost and as such the same are in the nature of capital expenditure. The Ld. D.R. for the Revenue challenging the impugned deletion of disallowance made by the AO relied upon the order passed by the AO. However, on the other hand, the Ld. A.R. for the assessee relied upon the order passed by the Ld. CIT(A) and contended that the assessee has used AMC and paid the license fees and has never owned the license and further contended that the identical issue has already been decided by the Tribunal in favour of the assessee.

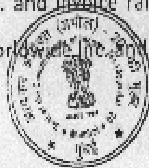
7. The Ld. CIT(A) after duly thrashing the facts deleted the expenditure of Rs.1,08,74,843/- out of Rs.2.99 crore by treating the same as revenue expenditure by returning the following findings:

> *4.4 Decision relating to Ground of Appeal No.1:*
>
> *4.4.1 I have considered the rival contentions. The appellant has submitted statement showing the details of software expenses for the year ended 2013-14. The details of same are reproduced as under:*

...oup M. Media (India) Pvt. Ltd.
...2014-15/IT-10633/2016-17

Sr No	Party Name	Particulars	Invoice No.	Invoice Amount	Amount debited to P&L
1	Group M Worldwide INC	MS Office Recharge 2013 and Cisco Renewal	DN C-3B-0571	4,43,967	
		Micro Strategy Technical Support Renewal	DN C-38-0380	9,162	
		Nokia Live License	DN C-3A-0282	5,29,873	
		Oracle Renewal	DN C-3A-0283	9,02,968	
		Landesk Renewal Charge	DN C-3B-0550	10,18,782	
		Namescape Rdirectory/Jabber Webex/VPN User Enablementfor remote access	C37-0307	34,09,931	
		MS Office Recharge	C37-0348	69,27,737	
		Tableau Maintenance Renewal/Trusted Data Solution 2012	C-35-0125	77,028	
		Total of all Invoices		1,33,19,448	
		Less: Amount Charged to Group Companies		30,61,673	1,02,57,775
2	WPP 2005 Ltd	Oracle Support Renewal	DN SI00009070	12,92,744	
		Less: Amount Charged to Group Companies		2,98,855	9,93,889
				Total Software expenses claimed (1+2)	1,12,51,664
3	Provision (Already disallowed in Computing the income)				1,86,89,923
	Total Amount debited to P&L				2,99,41,587

4.4.2 The appellant has also furnished the copies of debit notes raised by Group M Worldwide Inc. and invoice raised by WPP 2005 LTT. The AR of the appellant submitted that Group M Worldwide Inc. and WPP 2005 LTT are associate concerns.



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4.4.3 From the invoice raised by WPP 2005 LTT was for a sum of Rs.9,93,889/- (net). The period covered by the invoice is 13 months

from May, 2013 to May, 2014. Therefore, the expenditure relatable to the period April, 2014 and May, 2014 are not allowable. The expenditure relatable to those two months works out to Rs. 1,52,906/- (Rs.9,93,889 x), Accordingly, I confirm disallowance Rs. 1,52,906/- out of the expenditure relatable to the invoice raised by WPP 2005 LTT.

4.4.4 The debit notes raised by Group M Worldwide Inc includes one debit note of Rs.34,09,931/- for enablement of remote access. The period covered by the debit note is 24.04.2013 to 24.04.2014. Therefore, the expenditure relatable to the period from 01.04.2014 to 24.04.2014 is not allowable. The expenditure relatable to the period 01.04.2014 to 24 24.04.2014 works out to Rs.2,24,215/- (Rs.34,09,931 x). Accordingly, I confirm 365 disallowance Rs.2,24,215/- out of the expenditure relatable to the debit note raised by Group M Worldwide Inc for enablement of remote access.

4.4.5 As regards the other expenses, I find that they are in the nature of annual maintenance charges and other expenditure of periodic nature. Therefore, I hold that those expenses are allowable as revenue expenditure. Accordingly, I direct the AO to delete the disallowance of remaining expenditure of Rs.1,08,74,843 / (Rs.1,12,51,964/ minus Rs.1,52,906/- minus Rs.2,24,215/-).”

8. We have perused the order passed by the Ld. CIT(A). It is undisputed fact on record that the assessee has got license to use software in question for one year and was not owning the same. It is also not in dispute that the assessee company used the software and paid for the same on yearly basis.

9. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee’s own case in ITA No.561/M/2012 for A.Y. 2008-09 order dated 06.11.2015 wherein identical issue has been decided in favour of the assessee by returning following findings:

“5. After hearing the parties and on perusal of the impugned order, we find that these software license costs which has been paid by the assessee is for using of software for its day-to-day business requirements, as stated by the assessee before the AO. These softwares keep are ever changing from time to time and did not have a useful life for very long period and at one point of time it becomes obsolete. Thus, it cannot be held that they are capital in nature on account of enduring benefit. Moreover, the Hon’ble Delhi High Court in the case of CIT vs

> *Asahi India Safety Glass Ltd, 346 ITR 329 and Hon'ble Bombay High Court in the case of CIT vs Raychem RPG Ltd, reported in 346 ITR 138 (Bom) have held that, these softwares do not form part of the profit making apparatus and merely facilitate the assessee's trading operation or enabled the management to conduct the assessee's business more efficiently and more profitable. Thus, they have to be treated as revenue expenditure. Moreover, as pointed out by the Ld. Counsel in the earlier years, the Tribunal in ITA No. 1306/Mum/2011 for the assessment year 2006-07 has allowed this issue in favour of the assessee. Accordingly, respectfully following the same, we hold that software expenses aggregating to Rs.11,47,520/- is allowable as revenue expenditure. Accordingly, ground no. 1.1 is allowed."*

10. The Ld. D.R. for the Revenue has failed to controvert the fact that the assessee has merely got the license to use the software for its daily business requirement and has never owned the same and the assessee has paid on yearly basis. When the expenses for taking software was used for business purpose on yearly rent basis it has not given any enduring benefit to the assessee nor any capital has been created, the Ld. CIT(A) has rightly treated these expenses as revenue expenditure as such we find no scope to interfere into the impugned findings returned by the Ld. CIT(A). So ground No.1 is determined against the Revenue.

Ground No.2

11. The AO has computed the notional interest of Rs.3,19,18,958/- @ 10.19% being average cost of borrowing of Rs.31,33,24,026/- under section 36(10(iii) of the Act on the ground that the assessee has used interest bearing fund for giving loans and deposits to the associated concerns without interest and for giving advances to its supplier which resulted in excess interest burden on the assessee.

12. The Ld. CIT(A) however, deleted the disallowance made by the AO which is under challenge before the Tribunal.

13. The Ld. D.R. for the Revenue challenging the impugned deletion relied upon the order passed by the AO, however, on the other hand, the Ld. A.R. for the assessee relied upon the order passed by the Ld. CIT(A) and contended that the assessee was having sufficient interest free funds at its disposal and further relied upon Reliance Utilities and Power Ltd. 313 ITR 340 by returning following findings:

> "*5.4.1 I have considered the rival contentions. I find from the balance sheet that the total interest free funds in the form of share capital and reserves and surplus was Rs.144,08,27,594/- The appellant also received interest free advances from clients amounting to Rs.18,35,23,580/- Against this, the appellant given advance of Rs.49,68,47,605/- to its suppliers. The AO observed that the net advance given to supplier was Rs.31,33,24,025/- (Rs.49,68,47,605/- minus Rs.18,35,23,580/-).*
>
> *5.4.2 Thus, the interest free advance given by the appellant to its suppliers was less than the interest free funds available with the appellant in the form of share capital and reserves and surplus. Therefore, no disallowance of interest was called for in view of the decision of the Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd. 313 ITR 340 wherein the Hon'ble Bombay High Court held as under:*
>
> > *"The principle therefore would be that if there are funds available both interest- free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments."*
>
> *5.4.3 I also find that the AO has not been able to establish that the advances were given to the suppliers for non business consideration. The appellant's contention that the advances were given in the ordinary course of the business is in my view acceptable. Therefore, in my view, the interest expenditure incurred in respect of the advances were allowable u/s. 36(1)() of The Act. 1, therefore, direct the AO to delete the interest of Rs.3,19,18.958/- disallowed in the assessment order. In the result, ground of appeal No.3 is allowed."*

14. We have perused the order passed by the Ld. CIT(A) who has deleted the addition by thrashing the facts in the light of the decision rendered by the Hon'ble Bombay High Court in case of

Reliance Utilities and Power Ltd. (supra). In para 5.3.5 of the impugned order the Ld. CIT(A) after perusing the audited financials of the assessee company returned the findings that the assessee was having sufficient interest free own funds to the tune of Rs.144.08 crore and interest free creditors and liabilities to the extent of Rs.970.30 crore as against the interest free advances received from the clients to the tune of Rs.18,35,23,580/-. When the interest free advances given by the assessee to its suppliers were far less than interest free funds available with the assessee in the form of share capital reserves and surplus, by applying the decision rendered by the Hon'ble Bombay High Court in case of Reliance Utilities and Power Ltd. (supra) made by the AO is not sustainable in the eyes of law. So the Ld. CIT(A) has rightly deleted the disallowance. Hence, ground No.2 raised by the Revenue is hereby dismissed.

Cross objections No.1 & 2 of Assessee

15. During the course of argument the Ld. A.R. for the assessee has not pressed these cross objections, hence the same are dismissed.

Cross objections No.3 of Assessee

16. The assessee by filing application for raising additional ground in its cross objection that "Refund of excess Dividend Distribution Tax ('DDT') paid - The Learned AO and CIT(A) ought to have appreciated that dividend paid by Group M India to its Singapore shareholder, Group M Asia Pacific Holdings Pte Limited, is liable to tax as per the beneficial tax rate of 10% under Article 10(2) of the India - Singapore Tax Treaty, and thereby, ought to have held that the DDT paid by Group M India in excess

of the 10% tax rate should be refunded to Group M India" on the ground that the same is a legal ground raised on the basis of decision rendered by Co-ordinate Bench of Delhi Tribunal in case of Giesecke & Devrient (India) Pvt. Ltd. (TS-522-Tribunal-2020) wherein it was held that DDT rate should be restricted to the tax rate on dividend under the relevant tax treaty and DDT paid in excess of the tax treaty rate should be refunded to the tax payer.

17. Since it is a legal ground the assessee is entitled to raise the same at any stage of the proceedings in view of the law laid down by the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. vs. CIT 229 ITR 383 (SC). However, during the course of argument the Ld. A.R. for the assessee has fairly conceded that the issue raised vide this ground has already been decided against the assessee by the Special Bench of the Tribunal passed in case of Total Oil India Pvt. Ltd. vs. CIT & ors. in ITA No.6997/M/2019 & ors. order dated 19.04.2023 that *"where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder(s), which attracts Additional Income Tax (Tax on Distributed Profits) referred to in Sec.115-O of the Act, such additional income tax payable by the domestic company shall be at the rate mentioned in Section 115 O of the Act and not at the rate of tax applicable to the non-resident shareholder(s) as specified in the relevant DTAA with reference to such dividend income."*

18. In view of the matter cross objection No.3 raised by the assessee is also dismissed.

19. In view of what has been discussed above, the appeal filed by the Revenue as well as cross objection filed by the assessee are hereby dismissed.

Order pronounced in the open court on 31.05.2023.

Sd/-	**Sd/-**
(BR BASKARAN)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 31.05 2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.