

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.62/Viz/2021

(निर्धारण वर्ष / Assessment Year :2017-18)

Dy. Commissioner of Income Tax, Vs. M/s. Fluentgrid Limited,
Circle-3(1), Visakhapatnam. Visakhapatnam.
PAN: AABCP 9099 C
(अपीलार्थी/ Appellant) (प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by : Sri GVN Hari, AR
प्रत्यर्थी की ओर से / Revenue by : Sri ON Hari Prasada Rao,
Sr. AR

सुनवाई की तारीख / Date of Hearing : 31/05/2023

घोषणा की तारीख/Date of Pronouncement : 15/06/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax (Appeals)-1, Visakhapatnam [Ld. CIT(A)] in ITA No. 10500/2019-20/CIT(A)-1/VSP/2020-21, dated 15/09/2020 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 [the Act] vide DIN & Order No.

ITBA/AST/S/143(3)/2019-20/1022980796(1), dated 24/12/2019 for the AY 2017-18.

2. Brief facts of the case are that the assessee is a company engaged in software products filed its return of income for the AY 2017-18 on 30/11/2017 admitting a total income of Rs. 3,58,43,420/-. Subsequently, the case was selected for complete scrutiny under CASS and notice U/s. 143(2) was issued and served on the assessee. Due to change in the incumbency, a fresh opportunity of being heard was accorded to the assessee vide letter dated 06/08/2019. Subsequently, notice U/s. 142(1) was issued on 30/08/2019 along with the detailed questionnaire. Further, certain information was called for vide letter dated 28/11/2019 and show cause notice dated 22/12/2019. The Ld. AO after examining the information furnished by the assessee noticed that the assessee made non-current (Long Term) investments in associate companies and other companies to the extent of Rs. 12,17,41,913/-. The Ld. AO observed that the assessee has term loans from banks and short term borrowings from banks. On perusal of the computation of total income, the Ld. AO found that the assessee has not attributed any portion of the interest expenditure towards investment yielding exempt

income. The Ld. AO ignored the submissions of the assessee that no dividend income has been received during the impugned assessment year. The Ld. AO therefore proceeded to compute the interest expenditure to be disallowed U/s. 14A r.w.r 8D of the Act and disallowed a sum of Rs. 53,51,121/-. Further, the Ld. AO noticed from the ITR and Form 3CD filed for the AY 2017-18 that there is a opening balance of intangible assets at Rs. 12,85,10,250/- whereas the ITR and Form 3CD for AY 2016-17, the closing balance of intangible assets was shown at NIL. In response to the letter dated 28/11/2019 of the Ld. AO, the assessee explained that the difference in reporting the WDV for the FY 2015-16 and opening balance for the FY 2016-17 is due to change in the accounting policy whereby the expenditure of intangible assets has been re-classified as intangible as per the provisions of the IT Act, 1961. Further, the assessee also submitted that it has erroneously considered Rs. 12.85 Crs as opening WDV instead of Rs. 6.94 Crs. The assessee therefore requested the Ld. AO to consider this fact and has submitted the revised calculation of depreciation accepting the disallowance to the extent of Rs. 1,47,66,708/- arising out of the adoption of wring WDV. The Ld. AO not convinced with the replies of the assessee concluded that the assessee did not report the change

in the accounting policy in Form 3CD or through filing the revised return of income and therefore disallowed the claim of depreciation for Rs. 3,66,34,569/- claimed by the assessee. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

3. Before the Ld. CIT(A), the Ld. AR of the assessee argued that in the absence of exempt income, the provisions of section 14A cannot be invoked. Further, he also submitted before the Ld. CIT(A) that the assets have been re-classified as intangible from the impugned assessment year and accordingly depreciation calculation has been reworked. The Ld. AR also accepted the fact that there is a bonafide mistake in Form 3CD while adopting the WDV. Considering the submissions made by the Ld. AR, the Ld. CIT(A) partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A)-1, Visakhapatnam is partly erroneous both on facts and in law.*
- 2. The Ld. CIT(A) has erred in allowing disallowances U/s. 14A of the Act one common P & L A/c was filed for all the activities of the assessee and the expenses incurred for all the activities are debited to the common P & L account and the assessee has not incurred any expenditure at all in deploying huge funds to make tax free investments in associate concern is not tenable.*

3. *The Ld. CIT(A) has erred in partly allowing depreciation. There was no change in the accounting method adopted by the assessee as related to the previous year. Even if there is regrouping of assets, the assessee should have reported the same either in Form No. 3CD or through filing revised return of income/*
4. *The appellant craves leave to add or delete or amend or substitute any ground of appeal before and / or at the time of hearing of appeal. For these and other grounds that may be urged at the time of appeal hearing, it is prayed that these above addition made on relevant disallowances be restored."*

4. Grounds No. 1 & 4 are general in nature and need no adjudication.

5. Ground No.2 is with respect to disallowance U/s. 14A of the Act. At the outset, the Ld. AR argued that the matter has been settled with the decision of the Hon'ble Madras High Court in the case of Redington (India) Ltd vs. Additional Commissioner of Income Tax [2017] 392 ITR 633 (Madras). He therefore pleaded that as per the proposition laid down by the Hon'ble Madras High Court in the case of Redington (India) Ltd (supra) if there is no exempt income during the impugned assessment year, disallowance U/s. 14A r.w.r 8D of the IT Rules, 1962 cannot be made.

Per contra, the Ld. DR relied on the order of the Ld. AO.

6. We have heard both the parties and perused the material available on record and the orders of the Ld. Revenue Authorities on this issue. Admittedly, from the submissions of the Ld. AR, we find that the assessee has not earned any exempt income during the impugned assessment year. In the absence of any exempt income which does not form part of the total income of the assessee, various judicial pronouncements have held that disallowance U/s. 14A r.w.r 8D cannot be made. The reliance placed by the Ld. AR in the case of Redington (India) Ltd (supra) wherein the Hon'ble Madras High Court has held as follows:

"15. The exemption extended to dividend income would relate only to the previous year when the income was earned and none other and consequently the expenditure incurred in connection therewith should also be dealt with in the same previous year. Thus, by application of the matching concept, in a year where there is no exempt income, there cannot be a disallowance of expenditure in relation to such assumed income. Madras Industrial Investment Corpn. Ltd. v. CIT [1997] 225 ITR 802/91 Taxman 340 (SC). The language of s.14A (1) should be read in that context and such that it advances the scheme of the Act rather than distort it.

16. In conclusion, we are of the view that the provisions of s. 14A read with Rule 8D of the Rules cannot be made applicable in a vacuum i.e. in the absence of exempt income. The questions of law are answered in favour of the assessee and against the department and the appeal allowed."

7. Similar views have also been held by the Coordinate Benches of the Tribunal in the case of DCIT vs. M/s. Radhakrishna Automobiles Pvt Ltd (ITA No. 511/Viz/2017, AY 2013-14), dated 22/11/2017 and ITAT, Hyderabad Bench

decision in the case of ACIT vs. Nekkanti Sea Foods Ltd., (ITA No. 1738/Hyd/2017 and CO. No. 4/Hyd/2018, AY 2013-14), dated 15/11/2018. Respectfully following the judicial pronouncements, we hereby find no reason to interfere in the order of the Ld. CIT(A) on this issue and hence the Ground No.2 raised by the Revenue is dismissed.

8. With respect to Ground No.3, regarding allowance of depreciation, the Ld. DR argued that the assessee has taken opening WDV for intangible assets at Rs. 12.85 Crs instead of Rs. 6.94 Crs. Further, the Ld. DR argued that the closing WDV was shown as NIL in the previous year. The Ld. DR also submitted that the assessee has not mentioned the fact of re-grouping of assets while filing Form 3CD for the impugned assessment year. The Ld. DR further submitted that the assessee has also not filed revised return of income for re-grouping of the assets.

Per contra, the Ld. AR submitted that the assessee has changed the accounting policy and treated the software as intangible asset. However, the Ld. AR also accepted that the assessee has wrongly taken the opening WDV at Rs. 12.85 Crs instead of Rs. 6.94 Crs. The Ld. AR further argued that the assessee has been granted trademarks as per the Trademarks

Act, 1999 which is available in page 157 to 164 of the paper book. The Ld. AR submitted that earlier these were grouped as miscellaneous assets and were claimed as a deferred revenue expenditure. Consequent to the granting of trademark, the assessee re-grouped its assets as intangible and has reworked the depreciation w.e.f 2011. We also find that the assessee has worked out depreciation w.e.f 2011 only to arrive at the opening WDV for the impugned AY. The Ld. AR further submitted that as per the definition of intangible assets as per AS-26 issued by the Institute of Chartered Accountants of India [ICAI], the re-grouping of miscellaneous assets as intangible assets is correct in law. The Ld. AR further submitted that the assessee has recalculated the depreciation from 2011 onwards and arrived at the opening WDV for the impugned assessment year. However, while filing the ITR, the assessee has inadvertently made an error in adopting the opening WDV at Rs. 12.85 Crs instead of Rs. 6.94 Crs. The Ld. AR also conceded that this is a bonafide mistake resulting of the reduction in claim of depreciation for an amount of Rs. 1.47 Crs and pleaded to allow the balance of Rs. 2,18,67,861/-. The Ld. AR further also submitted that the Ld. AO has allowed depreciation on the same intangible assets in the subsequent assessment years.

9. We have heard both the sides and perused the material available on record and the orders of the Ld. Revenue Authorities on this issue. It is the case of the Ld. AO that the assessee has changed the method of accounting but has not mentioned the same while filing Form 3CD for the impugned assessment year. The Ld. AO erred in understanding the difference between the method of accounting which is reported in Form 3CD and changes in the accounting policies. Admittedly, the assessee has re-grouped its assets during the AY 2017-18 and has arrived at the opening WDV for the FY 2016-17 after computing the same from the year 2010 onwards. However, as accepted by the Ld. AR, the assessee has wrongly reported the opening WDV at Rs. 12.85 Crs instead of Rs. 6.94 Crs. The assessee has mentioned this fact in its reply before the Ld. AO on 10/12/2019 and has accepted the reduction in claim of depreciation to the extent of Rs. 1,47,66,708/- arising out of the wrong WDV taken by the assessee while filing the ITR. While considering these submissions, the Ld. CIT(A) relied on the Board Circular No. 14/1955 and also the decision of the Coordinate Bench of Mumbai Tribunal in the case of Sonata Reality (7591/MB/2013) which is reproduced below:

"The taxes can only be collected as per the authority of law and if any mistake has crept in the tax audit report and the assessee comes forward with a bonafide reply it is the burden duty of the amounts to consider such reply on merits so that taxes can be collected assessee."

10. We also find merit in the argument of the Ld. AR that the assessee has rightly re-worked the WDV from the year 2010 onwards and has arrived at the opening WDV for the FY 2016-17 for the purpose of calculation of depreciation for the FY 2016-17. The assessee has also filed in page 66 of the paper book the revised computation as per the Income Tax Act, 1961 for the purpose of arriving at the opening balance at Rs. 6.94 Crs. Further, at page 76 of the paper book, the Ld. AR also submitted the excess amount reported as WDV by the assessee at Rs. 12.85 Crs and the difference depreciation arising out of the excess opening WDV. These facts have already been submitted before the Ld. AO who has failed to consider the same. However, the Ld. CIT(A), in our opinion, has rightly considered these facts and held as follows:

"4.2.4. Regarding AS-26, the AO is of the opinion that expenditure on an intangible item that was initially recognized as an expenses should not be recognized as part of cost of an eligible asset at a later date. The appellants submission that the current intangible asset as on 31/3/2016 as per companies Act was at Rs. 7.76 Crs as against the asset of Rs. 6.94 Crs as per IT Act. This closing balance was never recognized as an expense in the previous year and recognized in balance sheet item. It was further explained that the appellant is constantly following the method of initially capitalizing the expenditure incurred as its

products year after year and writing off of a fixed percentage to P & L A/c from the year in which the first was raised during the year. The write off was not recognized as expenditure in the P & L Account on the particular product. It is claimed that such expenditure was capitalized and classified as intangible asset from 2014-15 onwards. In the impugned assessment year, the appellant had regrouped the asset to correct portion. Thus the appellant has claimed 25% as against 20% which was earlier claimed under the head "miscellaneous asset". Thus, the balance of assets as on 31/3/2016 stood at Rs. 7.76 Crs as per books of account. After reclassifying the assets, as per IT, the balance as per block was only Rs. 6.94 Crs after writing off 25% retrospectively from 2011-12. In fact, in the process, the appellant had foregone some part of the claim in order to correct the portion as per IT provisions. In view of the facts of the case, the disallowance of depreciation at Rs. 3.36 Crs is not correct. The Assessing Officer is directed to restrict the disallowance at Rs. 1,47,66,708/- and also allow the claim of Rs. 2,18,67,861/- as it is mandatory claim."

11. Considering these facts and circumstances of the case we therefore find no infirmity in the order of the Ld. CIT(A) on this issue and are inclined to dismiss the ground raised by the Revenue.

12. In the result, appeal of the Revenue is dismissed.

Pronounced in the open Court on the 15th June, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :15.06.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s. Fluentgrid Limited, 9-29-19/A, Level-5, Waltair Heights, Balaji Nagar, Visakhapatnam, Andhra Pradesh – 530003.
2. राजस्व/The Revenue – Dy. Commissioner of Income Tax, Circle-3(1), Income Tax Office, Infinity Tower, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam