

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरोड, लेखा सदस्य

के समक्ष

Before

SRI RAJPAL YADAV, VICE PRESIDENT

&

DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No.: 208/KOL/2023

Assessment Year: 2020-21

Great Media Technologies Pvt. Ltd.....Appellant
[PAN: AABCG 9430 G]

Vs.

ACIT, Circle-11(1), Kolkata.....Respondent

Appearances by:

Sh. Sunil Surana, FCA, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT (D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : May 9th, 2023

Date of pronouncing the order : July 4th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2020-21 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the

“Act”) by Id. Commissioner of Income-tax (Appeals), NFAC, Delhi [in short Id. “CIT(A)”] dated 14.02.2023 arising out of the assessment order framed u/s u/s 143(1) of the Act dated 23.12.2021.

2. At the outset, Id. Counsel for the assessee submitted that the issues raised in the instant appeal is squarely covered in favour of the assessee by the decision of this Tribunal in the case of *A.R. Overseas Tradecom (P) Ltd. vs. DCIT* in *ITA No. 651/KOL/2022* order dated 06.02.2023 and further stated that since the turnover of the assessee company is less than Rs. 400 Cr in the AY 2017-18, the income of the assessee is liable to be taxed @ 25%.

3. On the other hand, Id. D/R vehemently argued supporting the orders of both the lower authorities.

4. We have heard rival contentions and perused the records placed before us. We notice that the assessee is a private limited company and filed the return of income for AY 2020-21 on 28.01.2021 [extended due date is 15.02.2021] declaring total income of Rs. 6,08,45,670/-. In the return of income, the assessee claimed the option u/s 115BA of the Act for coming under the tax slab of 25%. The said claim was denied by CPC.

5. Aggrieved, the assessee preferred appeal before Id. CIT(A) but failed to succeed as Id. CIT(A) observed that the claim of the assessee to fall u/s 115BA(2)(a) of the Act is not correct because the same is applicable to the companies which have been registered on or after 01.03.2016 whereas the assessee company

was incorporated on 19.05.2003. So far as this observation of Id. CIT(A) is concerned, we fail to find any infirmity. However, before us, Id. Counsel for the assessee claimed that the turnover of the assessee company is less than 400 Cr and therefore, as per the tax slab rate for domestic companies applicable for AY 2020-21, the assessee is liable to be taxed @ 25% only for the year under consideration. In support, reliance was placed on the decision of this Tribunal in the case of *A.R. Overseas Tradecom (P) Ltd. (supra)* wherein this Tribunal has observed as follows:

“7. We have heard the rival contentions, perused the records placed before us. We notice that the assessee is private limited company which filed its return of income on 22.03.2021 for assessment year 2020-21. The assessee opted for a lower tax rate of 22% u/s 115BAA of the Act but failed to file the declaration of Form 10-IC before the due date of filing the return of income. However, since the assessee claimed the said relief u/s 115BAA of the Act in the income tax return, the Central Processing Centre (CPC) denied and calculated the tax @30%. A rectification application was filed on 06.01.2022 by the assessee stating that its turnover is less than 400 crores as stated in Finance Act 2020, assessee is liable to tax @25% and the same should have been applied by the CPC while processing the income-tax return. But CPC failed to give relief to the assessee. Aggrieved, assessee preferred appeal before the Id. CIT(A). But the Id. CIT(A) only focused on the issue regarding exercising of the option u/s 115BAA of the Act and dismissed the ground raised by the assessee. Before us, the Id. counsel for the assessee has contended that tax rate of 25% is applicable in its case and suitable direction may be given to the Assessing Officer.

8. We find that so far as applicability of section 115BAA of the Act is concerned, the assessee does not fall in this category as it failed to file the option on Form 10-IC before the due date of filing the return of income u/s 139(1) of the Act and therefore, tax rate of 22% is not applicable. However, as regards the application of tax rate of 25% is concerned, we find force in the contentions of the assessee. On perusal of the extracted provision of Finance Act 2020 placed in the

paper-book at pages 41 to 43, we notice that in Paragraph E, under the head rate of income tax, it states that where the total turnover or the gross receipt of a domestic company does not exceed four hundred crore then for such domestic company, Income Tax rate of 25% is applicable. On perusal of the audited financial statement, we find that for F.Y 2019-20, total turnover/gross receipt is 103.57 crores which is less than 400 crores, therefore, Income Tax rate applicable to assessee domestic company is 25%. We, therefore, reverse the findings of Id. CIT(A) and direct the Assessing Officer to apply the tax rate of 25% as against 30% applied by CPC while processing the Income Tax return and re-compute the tax liability. Accordingly, the sole ground raised by the assessee is allowed.”

6. On due consideration of the facts and examining the same in light of the above decision, we are inclined to hold that if the turnover of the assessee company is less than Rs. 400 Cr then for the year under consideration the income of the assessee is liable to be taxed under the normal provisions @ 25%. However, since the information about the total turnover of the assessee company has not been placed in the form of Audited financial statement, we direct Id. AO to examine the same and if the assessee is able to prove that its turnover for FY 2017-18 is less than Rs. 400 Cr then tax the income of the assessee company under the normal provisions of the Income Tax Act @ 25%. Needless to mention that proper opportunity of being heard should be provided to the assessee. The assessee is also directed to remain vigilant and file necessary documents, if considered, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance by the

assessee, then ld. AO can adjudicate the issue in accordance with law.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Kolkata, the 4th July, 2023

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 04.07.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Great Media Technologies Pvt. Ltd., AE-665, Salt Lake, Sector-1, Kolkata-700 064.**
- 2. ACIT, Circle-11(1), Kolkata.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata