



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

BEFORE SHRI ABY T VARKEY, JM
AND
SHRI PRASHANT MAHARISHI, AM

ITA No.2384/MUM/2023
Assessment Year: 2014-15

The DCIT 14(1)(1) Aykar Bhavan M K Road Mumbai 20 (Appellant)	v.	L&T Infrastructure Finance Company Limited Plot No.177, 5 th Floor, City-2 Vidyanagri Marg, Kalina Santacruz East, Mumbai (Respondent)
--	----	---

PAN No.AABCL2293L

Assessee by: None
Revenue by: Shri Manoj Kumar Sinha, D.R.

Date of hearing : 11.10.2023

Date of pronouncement : 30.10.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the DCIT-14(1) (1), Mumbai (Learned Assessing Officer) against the appellate order passed by the National Faceless Appeal Centre, Delhi (Learned CIT-A) for assessment year 2014-15, dated 3/5/2023, wherein the appeal of the assessee against the assessment order passed under section 143(3) of the Income Tax Act, 1961(the Act) dated 1/12/2016, was allowed.
02. The Learned Assessing Officer is aggrieved and has raised the following grounds of appeal:

1. Whether in facts and in the circumstances of the case, the Ld. CIT(A) erred by directing to give credit of all TDS reflecting in Form 26AS amounting to Rs.1,74,05,48,105/- when assessee in revised return has offered income of Rs.412,48,94,156/- corresponding to TDS of Rs.168,45,14,220/- only.

 2. Whether in facts and circumstances of the case and in law, the Ld.CIT(A) erred by directing to give credit for TDS of Rs.5,60,33,885/- reflecting in Form 26AS without verifying if assessee has offered corresponding income to tax or not considering the fact that TDS amount was not claimed by the assessee in revised return filed.

 3. Whether in facts and circumstances of the case and in law, the Ld.CIT(A) erred by directing to allow ESOP expenses when same are contingent in nature as liabilities towards payment was not crystallized.

 4. The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored.
03. The brief facts of the case shows that the assessee, an infrastructure finance company, filed its return of income on 30/11/2014 declaring a total income of Rs.398,84,40,420/-. This return was revised on 13/12/2014 at Rs.412,48,94,160/-. The return was picked up for scrutiny

by issuing notice under section 143(2) of the Act on 28/8/2015.

04. Ld AO noted that during the year, the assessee has debited Rs.28.47 lakhs in the profit & loss account as Employees' Stock Option Plan expenses (ESOP). The Learned Assessing Officer issued show cause notice that why it should not be treated as capital expenditure. The assessee submitted that as per Employees' Stock Option Scheme of the holding company, these stock options have been granted to the employees of the company. Accordingly, the employees were granted an option to subscribe the equity shares of the holding company. The cost incurred by the holding company with respect to the employees of the assessee, were debited to the profit & loss account and the amount is reimbursed to the holding company. It was submitted that the expenditure is purely revenue in nature as the cost of employees' remuneration.
05. The Learned Assessing Officer disallowed the same, holding that it is a capital expenditure. The Learned Assessing Officer also stated that this expenditure is notional in nature and contingent. Accordingly, the same was disallowed.
06. Assessment order was passed under section 143(3) of the Act on 1/12/2016, determining the total income of the assessee at Rs.412,77,41,160/-.
07. The assessee, aggrieved with that order, has preferred an appeal before the Learned CIT-A. The assessee has, over and above, raised a ground of disallowance of reimbursement of ESOP expenses also that the TDS credit of Rs.174,05,48,105/- has not been granted.

08. The Learned CIT-A, with respect to ESOP expenditure, held that the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in CIT vs. Biocon Ltd., 276 Taxman 1, wherein the Court held that ESOP expenditure is revenue expenditure and not contingent expenditure. The Learned CIT-A also followed the decision of the Hon'ble Madras High Court in CIT vs. PVP Ventures Ltd., 211 Taxman 554. Several other decisions of coordinate bench were cited and discussed by him. Accordingly, the above disallowance was deleted.
09. The assessee was also aggrieved about the short granting of tax deducted at source of Rs.37,99,088,415/-. The assessee submitted that it has claimed total TDS credit of Rs.168,45,14,220/- and additional tax credit of Rs.5,60,33,885/-. The Assessing Officer granted TDS credit of Rs.136,06,39,619/-, resulting into short credit of Rs.37,99,08,415/-. The Learned CIT-A held that the assessee should be granted TDS credit available as per the latest Form No.26AS and therefore, held that the assessee should be granted credit of Rs.174,05,48,105/-.
10. The Learned Assessing Officer is aggrieved.
11. The Learned DR supported the order of the Learned Assessing Officer.
12. Despite notice, none appeared on behalf of the assessee and therefore, the issue is decided on merit of the case as per the information available on record.

13. Ground Nos. 1 and 2 relate to the short granting of the credit. From the facts, we find that as per the revised return of income, the assessee has claimed TDS credit of Rs.168,45,14,220/-. However, the Learned Assessing Officer granted the credit of only Rs.136,06,39,690/-. In Form No.26AS, later on, because of late deposit of TDS by some of the customers, a further incremental TDS credit of Rs.5,60,33,885/- was reflected. The Learned CIT-A held that the credit available in Form No.26As should have been granted by the Learned Assessing Officer. We do not find any infirmity in the order of the Learned CIT-A in granting the total credit of TDS of Rs.174,05,48,105/-. It is not the case of the Revenue that the income comprising the TDS has not been offered by the assessee in its income in the impugned assessment year. Accordingly, we confirm the order of the Learned CIT-A on this issue and dismiss ground Nos.1 and 2 of the appeal of the Revenue.
14. With respect to ground No.2 on account of disallowance of ESOP expenditure, the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Karnataka High Court in CIT vs. Biocon Ltd. (supra), wherein it has been held that the above deduction is allowable to the assessee under section 37(1) of the Act. The Learned CIT-A has further referred to the decision of the Hon'ble Madras High Court in the case of CIT vs. PVP Ventures Ltd. (supra), holding similar view. The Learned CIT-A has also relied upon several decisions of the Co-ordinate Benches of the Tribunal. The Employees' Stock Option Scheme expenditure incurred by the

assessee is reimbursed to the holding company with respect to the employees employed by the assessee. This is equivalent to the emoluments paid to the employees of the assessee company. Therefore, it is part of employees' remuneration. The Hon'ble High Court has also held that this is a crystallised expenditure and not notional or contingent. In the result, we do not find any infirmity in the order of the Learned CIT-A in directing deletion of disallowance of Rs.28.47 lakhs on account of ESOP expenses. Accordingly, ground No.3 of the appeal of the Revenue is dismissed.

15. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 30.10.2023.

Sd/-
[ABY T VARKEY]
JUDICIAL MEMBER

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

DATED:30.10.2023

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR

By order

Assistant Registrar