

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No.2724/Del/2017  
(Assessment Year :2010-11)**

M/s. Grapecity India Pvt. Ltd.,  
E – 326, Nirman Vihar,  
Delhi – 110 092.

vs.

DCIT, Circle 12 (1),  
New Delhi.

**(PAN : AABCG6585G)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ashish Mendiratta, CA  
Shri Rajat Jain, CA

REVENUE BY : Shri Sandeep Kr. Mishra, Sr. DR

Date of Hearing : 12.12.2023

Date of Order : 14.12.2023

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal filed by the assessee is directed against the order of Id.

CIT (Appeals)-16, New Delhi dated 28.03.2017 for the AY 2010-11.

2. Grounds of appeal taken by the assessee read as under :-

“1. On the facts and circumstances of the case and in law the Ld. CIT (A) has erred in confirming the addition of Rs.2,09,15,950/- to the income of the assessee, on account of waiver of loan under section 41 (1) of the Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law the Ld. CIT (A) has erred in confirming the addition of Rs.58,551/-

to the income of the assessee, on account of advance written off under section 36/37 of the Income Tax Act, 1961.

3. On the facts and circumstances of the case and in law the Ld. CIT (A) has erred in confirming addition of Rs.10,48,311/- to the income of the assessee, on account of ad-hoc disallowance of travelling expenses.

4. On the facts and circumstances of the case and in law the Ld. CIT (A) has erred in confirming the initiation of penalty proceedings by the Ld. AO under section 271(1)(c) of the Income Tax Act, 1961.”

3. At the outset, in this case, ld. Counsel of the assessee sought to file additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 with regard to ground no.1. The submission in brief are as under :-

“With respect to the captioned matter, we humbly submit bills/vouchers in respect of utilization of loan of \$4,67,000 (Rs.2,09,15,950/-) taken by the Assessee Company from Botech International Inc., British West Indies during the FY 2004-05 for the purpose of acquiring capital assets. This loan was waived of during the FY 2009-10. In the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (“Act”), the Ld. Assessing Officer (“the Ld. AO”) made disallowance of Rs.2,09,15,950/- to the returned income of the assessee company. The Ld. Commissioner of Income Tax (Appeals) [“the Ld. CIT (A)”] in his order stated that Assessee company has not been able to establish that the loan was utilized for the purpose of acquisition of assets. The money received by the appellant company is held to be on revenue account, therefore, the waiver of loan by Botech International Inc. has resulted in cessation of liability for the assessee company u/s 41 (1) of the Act.”

4. Furthermore, in respect of the above submission, ld. Counsel of the assessee has submitted copies of bills/vouchers in respect of utilization of

loan for capital purpose as additional evidence from pages 1 to 914 of the separate paper book.

5. We find that the additional evidences are crucial for proper adjudication of ground no.1 which is main ground here. Hence, in the interest of justice, we admit this additional evidence and remit the issue to the file of AO. The AO shall consider the issue afresh after taking into account the additional evidences being submitted by the assessee. Since the main ground is remitted to the AO, other grounds may also be considered by the AO, if considered necessary. Needless to add, assessee should be given adequate opportunity of being heard. Both the counsels have agreed to the above proposition.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on this 14<sup>th</sup> day of December, 2023.**

**Sd/-  
(CHALLA NAGENDRA PRASAD)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 14<sup>th</sup> day of December, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**