

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**Before Shri Saktijit Dey, Hon'ble Vice President
&
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 5185/Del/2019 : Asstt. Year: 2013-14

The DCIT, Circle 12(1), New Delhi	Vs	M/s. Info Edge India Ltd., GF-12A, 94, Meghdoot Building, Nehru Place, New Delhi 110019.
(APPELLANT)		(RESPONDENT)
PAN No. AAACI 1838 D		

**Assessee by : Sh. S.K Aggarwal, CA
Revenue by : Sh. Amit Katoch, Sr. DR**

Date of Hearing: 10.10.2023

Date of Pronouncement: 21.12.2023

ORDER

Per Dr. B. R. R. Kumar:-

The present appeal has been filed by the Revenue against the order of Ld. CIT(A)-4, New Delhi dated 27.03.2019 for the A.Y. 2013-14.

2. The Revenue has raised the following grounds of appeal are as under:-

1. *Whether on the facts & circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 1,46,80,000/- made by Assessing Officer on a/c of Employee Stock Option Scheme compensation, holding that the expenditure is eligible for deduction u/s 37 (1) of the I T Act, being revenue in nature?*

2. *Whether on the facts & circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 65,99,444/- made by the AO on account of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) read with the provisions of Rule 8D of the Income Tax Rules, 1962 ("the Rules).*

3. Whether on the facts & circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs, 30,05,853/- made by Assessing Officer being ROC fee incurred, for increase in the authorized share capital and not for the issuance of bonus share?

4. Whether on the facts & circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 6,86,326/- made by Assessing Officer on a/c of expenditure us 37(1) for purchase of trademark.

5. Whether on the facts & circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs. 21,87,126/- made by Assessing Officer on a/c of write off of sundry creditors holding that the liability is recognized as payable in the books of account of the assessee.

3. The assessee is a public limited company and was incorporated on 01st May 1995. Its shares are listed on two stock exchanges of India. The Company is primarily engaged in providing online and offline services through its portals like Naukri.com, Jeevansathi.com, 99 acres.com, Shiksha.com etc.

4. For the AY 2013-14, the DCIT, Circle 12(1) New Delhi the AO passed order under section 143(3) of the Income-tax, Act 1961 dated 29 February 2016 with the following adjustments: -

S.No	Particulars	Amount (INR)
1	Disallowance on account of employee stock option plan (ESOP') compensation	1,46,80,000
2	Addition u/s 14A in relation to investments with no exempt income	65,99,444
3	Disallowance of registrar of companies (ROC') fee for increase authorized share capital to issue of bonus shares	30,05,853
4	Disallowance of legal and professional expenses in relation trademark fee	6,86,326
5	Addition out of creditors shown as stale cheques	21,87,126

5. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted all additions and allowed the appeal of the assessee.
6. Aggrieved, the assessee filed appeal before the ITAT.
7. Heard the arguments of both the parties and perused the material available on record.

ESOP:

8. The assessee booked INR 1,46,80,000 as ESOP compensation basis grant which were exercised. The Assessing Officer had disallowed the compensation by holding that ESOP compensation is not a revenue expenditure, amount of expenditure is not an actual expenditure, and SEBI guideline are not prerogative for determining the allowability of expense.
9. The Ld. CIT(A) deleted the said addition of INR 1,46,80,000 vide para 6.11 on page 132 of the Paper book Vol 1 entirely. Relevant extract of the same is as below:

"6.11 Since, appellate authorities in the appellant's own case for preceding assessment years including Hon'ble ITAT, on this issue, has followed the decision of Biocon Lid. (supra) while deciding the issue, the AO is directed to verify the quantum of deduction based on guidelines laid down by the Hon 'ble Spl. Bench in the said decision. Needless to say, the deduction would be restricted to and would not exceed the claim made by

the appellant in its P&L account i.e. Rs 1,46,80,000/-. Subject to above observation, the ground of appeal is allowed."

10. Since the matter stand adjudicated in the case of the assessee for the AY 2007-08 to AY 2012-13 by the coordinate bench of the Tribunal relying on the judgment of Hon'ble Karnataka High Court ('HC') vide its order dated November 11, 2020] and Bangalore ITAT (special bench) wherein it was that ESOP compensation is revenue in nature and hence, allowable as a deduction.

11. Since the matter stands adjudicated in the case of the assessee from the earlier years, in the absence of any change in the factual matrix and legal preposition, we affirm the order of the Id. CIT(A) on this issue.

Disallowance u/s 14A:

12. During the year under consideration, the assessee had following investments in mutual funds and made disallowance under section 14A as follows:

Particulars	Investment as on 31.03.2013	Investment as on 31.03.2013	Dividend income	Considered for Section 14A disallowance
Mutual Growth: Gain plan Fund-Capital	1,16,42,05,068	1,47,55,72,688	NIL	Not considered since exempt income was not earned. Further Respondent is not eligible earn dividend income

				on capital gain plan type of mutual fund
Mutual Fund Dividend plan	42,88,75,169	94,21,90,930	8,72,80,782	Disallowance of INR 35,08,429 made u/s 14A of the Act read with rule 8D. Working enclosed on page no 285 of the Paper Book-Vol. 1.)
Total	1,59,30,80,237	2,41,77,63,618	8,72,80,782	

13. The Assessing Officer disallowed additional INR 65,99,444 under section 14A read with Rule 8D after considering the investment in all investments including the investments from which no exempt income was earned which is as under:

Particulars	Mutual Fund-Growth Plan (I)	Mutual Fund-Dividend Plan (II) (Respondent 14A Computation)	Total (I+II) (A.O.'s computation)
Investment as on 31.03.2013 (A)	1,16,42,05,068	42,88,75,169	1,59,30,80,237
Investment as on 31.03.2012 (B)	1,47,55,72,688	94,21,90,930	2,41,77,63,618
Average Value (C) = {(A+B)/2}		68,55,33,050	2,00,54,21,928
Disallowance u/s 14A (D) = (C*.5%)		34,27,665	1,00,27,110
Expenses incurred on exempt income		80,763	80,763
Total 14A Disallowance		35,08,428	1,01,07,873
Net of disallowance			65,99,444

already done by Respondent (1,01,07,872- 35,08,428)			
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14. We find that the Ld. CIT(A) deleted the addition of INR 65,99,444 (para 7.4 on page 133 of the Paper book Vol.1)

15. Relevant extract of the same is as below:

"7.4 I find that the method so adopted by the appellant company is in accordance with the binding decision of jurisdictional High Court in the case of ACB India Ltd. (2015) 62 taxmann.com 71 (Delhi) in which it has been held that disallowance needs to be worked out by taking 0.5% of average value of only those investments which have yielded exempt income during the year."

16. The coordinate bench ITAT Delhi in assessee's own case for AY 2012-13 held that the disallowance under section 14A is to be restricted to only those investments which have actually yielded tax exempt income during the year. In this regard, the relevant extracts of the order passed by the ITAT for AY 2012-13 is reproduced below for ready reference:

"13. We have carefully considered the rival contention and perused the orders of the lower authorities. On careful consideration of the order of the learned CIT(A), it is noted that he has held that only those investments on which dividend income is received during the year should be considered for the purpose of working out average investment for computation of disallowance under rule 8D in accordance with section 14A of the act. The above view has been upheld by the honourable

Delhi High Court in case of ACB India Ltd versus a CIT 374 ITR 108 (Delhi) (2015). In view of this we do not find any infirmity in the order of the learned CIT - A accordingly, ground number two of the appeal is dismissed."

17. Since the matter stands adjudicated in the case of the assessee from the earlier years, in the absence of any change in the factual matrix and legal proposition, we affirm the order of the Id. CIT(A) on this issue.

ROC Fee:

18. During the year under consideration the authorized share capital of the company was increased from INR 60 crores to INR 120 crores to issue of bonus shares (5,45,90,512 equity shares of INR 10/- each issued as bonus shares in the ratio of 1:1). The Respondent incurred an expenditure of INR 30,05,853/- for increase in authorized share capital, out of which INR 270,658 was disallowed which was not related to issue of bonus shares:

Normal ROC Expenses (A)	3,813
Expenses related to increase in authorized share capital (B)	30,02,040
Total (A+B)	30,05,853
Increase in authorized capital (C)	6,00,00,000
Issue of bonus shares (D)	5,45,90,512
Expense proportionate for Bonus share (B/C) *D	27,31,382
Expense disallowed in computation (3002040-2731382)	2,70,658

19. The AO had disallowed the aforesaid ROC fee expenditure INR 30,05,853 vide para 5 of the assessment order by considering that it this expenditure directly related to expansion of capital base is capital expenditure. The Ld. CIT(A) deleted the addition holding as under:

"8.3 On perusal of the computation of income, it is noticed that the appellant company has itself made a disallowance of proportionate amount of Rs 2,70,812/- pertaining to the proportionate ROC fees incurred for increase in authorised capital which is not used for the purpose of issue of bonus shares. Thus, no disallowance beyond Rs 2,70,812/- is justified in this case in view of the above judicial pronouncements.

8.4 Thus, in totality of the facts and circumstances the case and in law, disallowance of Rs 30,05,853/-made by AO is deleted. The ground of appeal is allowed."

20. The assessee submitted that expenditure incurred for issue of bonus shares should be allowable expense since there was no flow of fresh funds or increase in the capital employed. It could not, therefore, be said that the company had acquired benefit or advantage of enduring nature. Hon ble Supreme Court in the case of CIT vs General Insurance Corporation 286 ITR 232 vide para 19 held that the expenditure incurred in connection with issuance of bonus shares is revenue expenditure. Hence, we direct the AO to re-compute the allowable expenditure. Appeal of the Revenue on this ground is dismissed.

Disallowance of legal & professional expenses:

21. The assessee had incurred legal and professional expenses of INR 7,84,372 towards professionals Shri Lall Lahiri & Salhotra, Advocates Patent and Trade Mark Attorneys, who look after the trademark matters/issues before various authorities as per the business requirement of the company. These expenses have not resulted in benefit of any enduring nature to the Respondent therefore it is revenue in nature expenditure and fully allowable to the Respondent. The Assessing Officer treated the same as intangible assets and disallowed the expenditure of INR 7,84,372/- but allowed the depreciation INR 98,046/- (para 6 of the AO).

22. The Ld. CIT(A) deleted the addition holding that from the invoices, it is clear that such expenses have been incurred as professional and legal charges on matters relating to trademark advertisement, reporting and reviewing of registration of trademark and preparation of report, documentation. Such expenditure does not create an asset or an advantage which makes it capital in nature.

23. Relevant extract of the order of Ld. CIT(A) is as below :

"9.2 I have examined the issue. From the invoices, it is clear that such expenses have been incurred as professional and legal charges on matters relating to trademark advertisement, reporting and reviewing of registration of trademark and

preparation of report, documentation and representing the case relating to use of brand name. On careful consideration of the decision in the case of DCIT vs USV ITA No. 453/Mum/2009 on which the appellant has placed reliance and other materials placed before me, I am of the view that such expenses incurred by the appellant company do not result into creation of new / additional assets or new sources of income but has been incurred to safeguard its business interest by protecting it against any infringement claim by or against it in respect of use of brand name. Restraining the piracy of its trade mark is prudent business decision and so is the payment for its registration which saves cost in future in the event of a suit. Such expenditure, in my opinion, does not create an asset or an advantage which makes it capital in nature. Accordingly, addition of Rs.6,86,326/- made by the AO is deleted. The ground of appeal is allowed."

24. In the case of DCIT vs USV Ltd (ITA No.453/Mum/2009), wherein, in similar facts and circumstances as in the case of the assessee, it was held that the expenses paid to trademark attorney is a revenue expenditure.

25. In view of the facts and circumstances of the case and judicial pronouncements relied upon the fee paid to legal professionals in relation to trademark matters is revenue in nature expenditure and allowable as business expenditure. Hence, we affirm the order of the Id. CIT(A) on this issue.

Creditors - stale cheques:

26. During the year under consideration an amount of INR 21,87,126/- included as Stale Cheque under Sundry Creditors in relation to payments made through cheques to the various parties but not credited to the account reasons known to the payee.

27. As per the policy of the company with respect to stale cheques which are not presented/demanded for more than 3 years are recognised as income. During the year under consideration an amount of INR 2,43,397 was credited to profit and loss account under the head miscellaneous income on account of unclaimed cheque and outstanding more than 3 years.

28. The Assessing Officer held that liability amounting to INR 21,87,126 shown under stale cheques is no more payable and hence added back to the total income for the year under consideration vide para 7 of the assessment order. However Id. CIT(A) appreciated the policy of company to recognise the income three years deleted such addition vide para 10.7 of the order on page 136 of the Paperbook-Vol 1. Relevant extract of order of Ld.CIT(A) is as below:

"10.7I have considered the submissions made by the appellant. I find force in the arguments put forward by the appellant in this regard. On examination, I find that such liability exists for

the appellant and the A.O. was not right in holding that the said amount represents the unclaimed liability and hence, represents income of the appellant. The appellant is following a consistent policy under which such liability is being settled/adjusted either by offering the same as income after three years or repayment to the creditors if demanded in between. In any case, as long as the liability is recognized as payable in the books of appellant and there is nothing to prove that such liability has actually ceased to exist, 40 is not justified in holding that such liability is no more payable and hence represents income of the appellant for the year under consideration. Accordingly addition of Rs 21,87, 126/- is deleted. The ground of appeal is allowed."

29. The assessee has produced the subsequent utilization details of stale cheques before the AO owing that the assessee has already been settled / adjusted a sum of INR 16,74,834 out of the above amount of INR 21,87,126. We find that the assessee is following a regular method of recognition of revenue on accounts of stale cheques/un-claimed liabilities after the period of three years. The assessee has also credited an amount of Rs 2,43,397/- during the year in its premature of the Assessing Officer to right of the amounts on account sundry creditors. Hence, we decline to interfere with the order of the Id. CIT(A). Appeal of the Revenue on this ground is dismissed.

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

Order Pronounced in the Open Court on 21/12/2023.

**Sd/
(Saktijit Dey)
Vice President**

**Sd/-
(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 21/12/2023

NV, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, DELHI**