

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'F' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.3968/Del/2019
(Assessment Year : 2009-10)

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| ACIT, Circle -26(1), New Delhi | Vs. | M/s. Verizon India Pvt. Ltd. Radisson Commercial Plaza, A-Wing, 2 nd Floor, National Highway-8, New Delhi-110037 PAN : AACCM2423N |
| (APPELLANT) | | (RESPONDENT) |

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| Assessee by | Sh. Prabhat Lath, Ar & Sh. Ashish Garg, CA |
| Revenue by | Shri Vivek Vardhan, Sr. DR |

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| Date of hearing: | 16.10.2023 |
| Date of Pronouncement: | 22.12.2023 |

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Revenue against order dated 14.02.2019 in appeal no. 107/18-19/1135 for assessment year 2009-10 passed by Commissioner of Income Tax (Appeals)-28, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in appeal against assessment order dated 09.03.2016 u/s 154/143(3)

of the Income Tax Act, 1961 passed by DCIT, Circle-26(1), New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. Heard and perused the record.

3. The facts in brief are that the assessment in the case of the appellant was completed on 22.03.2013 u/s 143(3) of the Act determining the total income of Rs. 7,42,36,031/- after adjustment of brought forward loss for A.Y. 2008-09 of Rs. 5,04,62,408/-. However, it was noticed by AO subsequently that as per assessment order of A.Y. 2008-09, the income of assessee was assessed at Rs. 164.42 lakhs and therefore, there was no loss available for set off or carry forward in the subsequent years. Since the mistake was apparent from records, he issued notice u/s 154 of the Act on 15.09.2014 but in absence of any reply from assessee, he passed the rectification order by disallowing the aforesaid loss of Rs. 5,04,64,408/- and assessed the total income at Rs. 12,46,98,440/- against the income of Rs. 7,42,36,031/- computed u/s 143(3) of IT Act.

4. Against the aforesaid rectification order, assessee preferred appeal. Before Ld. CIT(A) and where it has been submitted by the appellant:-

" In this regard, further to our discussion with your honour on February 07, 2019 and February 11, 2019, it is submitted that on February 12, 2019, Ld AO passed an order giving effect to the directions of the Hon'ble ITAT in respect of the ad-hoc disallowance of travel and conveyance expenses and additions on account of deemed dividend. A copy of the order is attached herewith as Annexure 1.

The above order has the effect of reinstating the loss of the assessee back to INR 4,92,05,810/- of the Act.

In view of the aforesaid, it is evident that the Assessee is eligible to set off

the income of AY 2009-10 against the brought forward business losses from AY 2008-09 to the extent of loss of INR 4,92,05,810/-. In view of the above, it is humbly submitted before your Honour that the impugned rectification order passed by the Ld. AO is incorrect as the loss of AY 2008-09 has been reinstated to the extent of INR 4,92,05,810/-. Pursuant to the favourable decision of the Hon'ble IT AT and subsequent appeal effect order by Ld AO, the Appellant is now eligible to set-off the income for AY 2009-10 with the brought forward business losses for AY 2008-09. Thus, the appellant requests your honour to kindly allow relief.

In view of the above factual and legal submission, the Appellant humbly request your Honour to decide the aforesaid issues in favour of the Appellant.

We trust our request shall be acceded to. For this act of kindness, we shall be ever grateful.”

5. Ld. CIT(A) considered the copy of order u/s 254/143(3) of IT Act dated 12.12.2018, by which the AO has given the effect to the order of ITAT in ITA No. 6053/Del/2012 dated 10.09.2018 and net loss has been assessed at Rs. 4,92,05,810/-. Ld. CIT(A) concluded that as the AO himself has given the effect to the order of the ITAT and assessed the net loss at Rs. 4,92,05,810/- for A.Y. 2008-09 in the case of the appellant, the disallowance of loss vide order dated 09.03.2016 does not survive. Therefore, directed the AO to recompute the income of appellant for A.Y. 2009-10 after taking into consideration the brought forward loss of Rs. 4,92,05,810/- for A.Y. 2008-09 as determined by AO vide order dated 12.12.2018 by replacing the disallowance of loss of Rs. 5,04,62,408/-.

6. Revenue is in appeal against this order of CIT(A) raising following

grounds;

“1. On the facts and in the circumstances of the case and law whether CIT(A) erred in allowing the assessee the benefit of brought forward loss of Rs. 4,92,05,810/- for the A.Y. 2008-09.

2. The appellant craves, leave or reserving right to amend modify, alter, add of forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

4. It can be appreciated that consequent to the order of the Tribunal however, for A.Y. 2008-09 (at page no. 28 to 42 of PB) the effect giving order was passed by Ld. AO on 12.12.2018 (available at page no. 43 of PB) by which the total loss for A.Y. 2008-09 was recomputed at Rs. 4,92,05,810/- . That thus made available loss for set off or carry forward in the subsequent years. Same has been taken into consideration by Ld. CIT(A) while passing the direction in the impugned order. The appeal has no merit. **Same is dismissed.**

Order pronounced in the open court on 22nd December, 2023.

Sd/-

**(G.S.PANNU)
VICE PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-22.12.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI