

**IN THE INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCH
“SMC”, MUMBAI**

BEFORE SHRI. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

AND

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 4581/MUM/2023

Assessment Year: 2016-17

ITA No. 4582/MUM/2023

Assessment Year: 2015-16

Vinco Sales and Services Pvt. Ltd.
384/1, Bandana, 15th Road, Bandra
(West), Mumbai – 400 050.

PAN: AAACV1479R

(Appellant)

Vs. Assistance Commissioner of
Income Tax - 13(3)(2), Mumbai
Aayakar Bhavan, New Marine
Lines, Mumbai – 400 020.

(Respondent)

Assessee Represented by : Shri. Ashish Thakur Desai
Department Represented by : Shri. Himanshu Kumar - (J. CIT)

Date of conclusion of Hearing : 15.05.2024

Date of Pronouncement : 27.05.2024

ORDER

PER RENU JAUHRI (A.M.):

1. These two appeals have been filed by the assessee against the orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] with substantial delays as under :-

A. Y.	Date of filing of appeal	Date of CIT(A) orders	Delay
2015-16	14.12.2023	25.06.2019	1574 days
2016-17	14.12.2023	23.06.2023	114 days

2. Following grounds of appeal has been raised in ITA No. 4582/M/2023 for A.Y. 2015-16:

“On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of Rs. 66,76,016/- by A.O. under section 36(1)(iii) being interest paid.”

3. Following grounds of appeal has been raised in ITA No. 4581/M/2023 for A.Y. 2016-17:

“On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance of Rs. 20,43,423/- by AO under section 36(1) (iii) being interest paid.”

4. At the outset regarding the inordinate delay in following appeals, it has been submitted by the Ld. AR that the previous authorized representative of the assessee did not file the appeal for A.Y. 2016-17 in time. While preparing to file the appeal, it came to the assessee's notice that order for A.Y. 2015-16 had also been passed by the Ld. CIT(A) way back on 25.06.2019 which was not at all in knowledge of the assessee. Accordingly the assessee decided to use the services of a new chartered accountant and appeals have been filed for both the years together on 14.12.2023, and the assessee has requested for condonation of delay in filing of these appeals.
5. After hearing the Ld. AR as well as Ld. DR on the issue, delay of 1574 days for Ay 2015-15 and 144 days for Ay 2016-17 is hereby condoned subject to depositing of Rs. 11,000/- for each of the years by the assessee in the PM National Relief Fund.

FOR A.Y. 2015-16,

6. The brief facts of the case are that the assessee had filed return of income on 30.09.2015 declaring nil income. The case was selected for scrutiny and assessment u/s 143(3) of the Act was completed after making an addition of Rs. 66,67,064/- on account of the disallowance of

interest paid on funds not used for the purpose of business under section 37(1) of the Act.

7. Aggrieved with the assessment order dated 08.12.2018, an appeal was filed before the Ld. CIT(A) on 24.01.2019. However, the assessee did not appear before the Ld. CIT(A) in response to various notices issued to him. Accordingly, the appeal was dismissed ex-parte as no documentary evidences were submitted by the assessee in support of its contention during the course of appellate proceedings. Since the Ld. CIT(A) has decided the appeal exparte, the matter is restored back to Ld. CIT(A) for decision on merits after giving due opportunity to the assessee.

FOR A.Y. 2016-17

8. The brief facts of the case are that the assessee had filed return of income on 15.10.2016 declaring loss of Rs. 46,49,687/-. The assessment order was completed under section 143(3) of the Act on 08.12.2018, after making addition of Rs. 54,64,425/- on two counts i.e., u/s. 14A r.w. rule 8D (Rs. 34,20,703) and u/s. 37(1) (Rs. 20,43,723/-) of the Act.
9. Aggrieved with the order, the assessee filed appeal before CIT(A)/NFAC. Vide order dated 23.06.2023, the Ld. CIT(A) deleted the addition made u/s. 14A r.w. rule 8D of Rs. 34,20,703/- and observed that the ground

relating to disallowance u/s. 37(1) of the Act amounting to Rs. 20,43,723/- was not pressed by the appellant. Accordingly this ground was dismissed.

10. Before us, it has been submitted that the then authorized representative before the Ld. CIT(A) had committed a mistake and wrongly submitted to not press this ground of appeal. The appellant has now requested that he should be allowed to contest the disallowance of Rs. 20,43,723/- on merits.
11. The Ld. AR has also filed a request for filing additional evidence. It has been submitted that during the first appellate proceedings, the company completely relied on the advice of its chartered accountant who did not present complete facts of the case nor made any submissions on this ground before the CIT(A).
12. We have carefully considered the facts of the matter and it is seen that the conduct of the appellant has not been proper in, firstly, not contesting the grounds of appeal before Ld. CIT(A) and now pressing the same before the Tribunal by incorrectly stating that the Ld. CIT(A) had erred in confirming the disallowance of Rs. 20,43,423/-

13. We therefore deem it proper to impose a cost of Rs. 11,000/- on the assessee (to be paid to the department) and restore the matter to the Ld. CIT(A) for fresh consideration on merits after giving opportunity to the assessee.

14. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 27.5.2024

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Mumbai / Dated 27.05.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai