

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.7593/MUM/2014
Assessment Year 2010-11
C.O. NO.88/MUM/2016
(Arising out of ITA No.7277/Mum/2014,A.Y.2010-11)**

Music Broadcast Private Ltd.
5th Floor, RNA Corporate Park,
Kala Nagar, Bandra (East)
Mumbai 400 051
PAN:AACCM-4036-H - Appellant

Vs.

Deputy Commissioner of Income Tax,
Range – 10(1), Aaykar Bhavan, M.K. Road,
Mumbai 400 020. - Respondent

**ITA NO.7277/MUM/2014
Assessment Year 2010-11**

Deputy Commissioner of Income Tax-14(2)(2),
Aaykar Bhavan, M.K. Road,
Mumbai 400 020. Appellant

Vs.

Music Broadcast Private Ltd.
5th Floor, RNA Corporate Park,
Kala Nagar, Bandra (East)
Mumbai 400 051
PAN:AACCM-4036-H Respondent

Assessee by : Shri Manish Malik
Revenue by : Shri Ashok Kumar Ambastha, Sr.AR

Date of Hearing : 24/04/2024
Date of Pronouncement : 04/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The cross appeal filed by the parties and the cross objection filed by the assessee are directed against the order dated 11-09-2014

passed by learned commissioner (Appeals)-21 for assessment year 2010-11.

2. The assessee is engaged in the business of operating private FM radio stations by name 'Radio city'. The assessing officer completed the assessment of assessment year 2010-11 under section 143 (3) of the Act, wherein he made various additions to the income returned by the assessee. The appeal filed by the assessee before the learned CIT(A) was partly allowed. Hence both the parties have filed this appeal before the Tribunal on the issues decided against each of them. The assessee has also filed cross objection.

3. We shall first take up the appeal filed by the revenue. The 1st issue contested by the revenue relates to disallowance of computer software license fee of Rs.1.54 crores. The assessee had claimed computer software license fees as revenue expenditure. However, the Assessing Officer treated the same as capital expenditure and allowed depreciation at the rate of 25% thereon. Accordingly the Assessing Officer made disallowance of net amount of Rs.1.15 crore. The learned CIT (A), however, restored the issue to the file of the assessing officer with the direction to verify whether the software expenses were allowed as revenue expenditure in the earlier years or not and accordingly decide the issue afresh. He also directed that the depreciation should be allowed at the rate of 60%, if the software expenses were treated as capital in nature.

4. We heard the parties on this issue and perused the record. We noticed that identical issue has been examined by the Tribunal in AY 2008-09 and 2009-10. The assessee has given copies of orders passed by the ITAT. In AY 2008-09, the Tribunal, vide its order dated

25.01.2017 passed in ITA No.3532/Mum/2013, has allowed the computer software license fee as revenue expenditure. However, in assessment year 2009-10 the ITAT, vide its order dated 10-02-2015 passed in ITA No.6763/Mum/2012, has restored the issue to the file of the Assessing Officer . We notice that the order passed by the Tribunal in AY 2009-10 was not brought to the notice of the bench, which heard the appeal relating to AY 2008-09. The Ld A.R submitted that the assessing officer has accepted that the computer software license expenses as revenue expenditure in AY 2009-10 in the set aside proceedings. In effect, in both the assessment years 2008-09 and 2009-10, the computer software license expenses have been accepted as revenue in nature by the Tribunal as well as by the assessing officer. It is stated that there is no change in facts with regard to this issue in this year. We noticed earlier that the learned CIT (A) has restored this issue to the file of the Assessing Officer and hence the Assessing Officer may decide this issue in accordance with the decision rendered by the Tribunal in AY 2008-09 and by the Assessing Officer in AY 2009-10.

5. The next issue contested by the revenue relates to the addition on account of difference between the income reported by the assessee in the books of account and that was shown in the annual information return (AIR). The difference so noticed by the Assessing Officer was Rs.7.07 crores. The assessee explained that the difference has occurred due to difference in the method of accounting followed by the customers and the assessee. It was further submitted that the aggregate amount of income reported by the assessee is more than the amount found in the Annual Information Systems and the difference occurs only when party wise one to one reconciliation is done. The

Assessing Officer did not accept the said explanations and accordingly added the difference cited above to the total income.

6. In the appellate proceedings, the Id CIT(A) directed the Assessing Officer to afford an opportunity to the assessee to reconcile the difference. He also directed that, if the income is offered in the subsequent years, then the addition should be deleted and if the income is not so offered fully, the addition should be confirmed. Both the parties are aggrieved by the decision so rendered by the Ld CIT(A).

7. The Ld A.R submitted that there are about 370 entries in the AIR covering 169 pages. Hence, it would be very difficult for the assessee to reconcile the entries to the last pie. He submitted that the assessee has reported income of Rs.84.50 crores, while the income shown in the AIR was Rs.50.11 crores only. The Ld A.R further submitted that the difference in income occurs due to following reasons:-

- (a) Difference in the method of accounting followed.
- (b) Difference in the time of recognition of expenses by the deductor and income by the assessee.
- (c) Some customers deduct tax on the amount including Service tax, while the assessee accounts for only net income.
- (d) Delayed deduction or payment of TDS by the customers.

He further submitted that the Assessing Officer did not make any addition in AY 2009-10, since he could collect ledger copies from the customers and the assessee could reconcile the majority amount of difference on the basis of those ledger accounts. He submitted that the Assessing Officer has collected ledger accounts and hence the assessee has prepared a new reconciliation statement for the year

under consideration and could reconcile majority amount of the difference. Accordingly, he submitted that the addition made by the AO should be deleted.

8. The Ld D.R submitted that the AO may be given an opportunity to examine the fresh reconciliation statement prepared by the assessee.

9. We heard the parties on this issue and perused the record. The assessee has expressed difficulty in reconciling the difference, in the absence of ledger account copies maintained by the customers. However, it is stated that the Assessing Officer has collected ledger account copies and hence, the assessee is able to prepare a new reconciliation statement and majority of difference has been reconciled. Accordingly, we restore this issue to the file of the Assessing Officer to examine this issue afresh duly considering the reconciliation statements prepared by the assessee.

10. The next issue contested by the revenue relates to the TDS credit to be given to the assessee. This issue is interconnected with the preceding issue. Accordingly, this issue is also restored to the file of the Assessing Officer .

11. The last issue contested by the revenue relates to the nature of interest income earned by the assessee. While the assessee has disclosed the same as business income, the Assessing Officer has assessed the same under the head "Income from Other Sources".

12. Both the parties agreed that an identical issue has been examined by the Tribunal in AY 2008-09 and 2009-10 (referred supra). The co-ordinate benches have accepted the contentions of the assessee that the interest income should be assessed under the head

“Income from other sources”. The decision was so taken on the reasoning that there were business compulsions in making deposits, viz., Payment of onetime entry fee for radio stations, obtaining bank guarantees, obtaining letters of credits in favour of suppliers etc. The bank had mandated making deposits as margin money before issuing the above said credit facilities. It was submitted that there is no change in facts in respect of this issue. Accordingly, we affirm the order passed by Ld CIT(A) on this issue.

13. We shall now take up the appeal filed by the assessee. The only issue contested relates to the addition on account of difference between the income reported in the books of account and Annual Information System. The revenue had also raised this issue. Accordingly, this issue has already been adjudicated in the earlier paragraphs while dealing with the appeal of the revenue.

14. The cross objection filed by the assessee relates to the rate of depreciation to be allowed, if the computer software license fees is treated as capital expenditure. This issue shall be come infructuous, since we have held that the computer software license fees is revenue in nature.

15. In the result, appeals of the assessee and revenue are treated as partly allowed. The cross objection of the assessee is dismissed.

Order pronounced in the open court on 04th June, 2024.

Sd/-

[Justice (Retd) C V Bhadang]
President

Mumbai, Date : 04th June, 2024

VM.

Sd/-

(B.R. Baskaran)
Accountant Member

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai