

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
ITA No.4061/Mum/2023
(A.Y. 2017-18)

Convonix Systems Private Limited, 15 th Floor, Urmi Estate, 95, Ganpatrao Kadam Marg, Delisle Road S.O. Mumbai, Maharashtra – 400013	Vs.	Assistant Commissioner of Income Tax, Circle 15(1)(2), 4 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCC5795P		
Appellant	..	Respondent

Appellant by :	Pratik Shah
Respondent by :	H.M. Bhatt

Date of Hearing	22.05.2024
Date of Pronouncement	21.06.2024

आदेश / ORDER

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the assessment order passed by the Ld. Assistant Commissioner of Income-tax (“Ld. AO”) under section 143(3) of the Income-tax Act, 1961 (“the Act”) assessing the income of the Appellant at INR 18,07,08,220/- instead of returned income of INR 17,15,15,710/- and the demand raised thereon on the Appellant is invalid and bad in law,
The Appellant prays that the addition made by the Ld. AO be deleted*
- 2. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income-tax Appeals [‘Ld. CIT(A)] erred in confirming the order of the Ld. AO in making an adhoc disallowance of 50% in relation to the shared service expenses amounting to INR 91,92,505/-.*

The Appellant prays that the disallowance of expenditure incurred in relation to shared services made by the Ld. AO, being ad-hoc and arbitrary in nature, be deleted.

3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the order of the Ld. AO in disallowing the expenditure incurred in relation to shared services without appreciating that the expenses incurred by the Appellant is genuine business expenditure incurred wholly and exclusively for the purposes of the business.*

The Appellant prays that the expenditure incurred in relation to shared services was during the course of its business and the disallowance made by the Ld. AO, be deleted.

4. *On the facts and in the circumstance of the case and in law, the Ld. CIT(A) erred in confirming the order of the Ld. AO, without providing the Appellant with an opportunity of being heard.*

The Appellant prays that the order passed by the Id. CIT(A) is in violation of the principles of natural justice and therefore the addition made by the Ld. CIT(A) is bad in law and be deleted.

5. *On the facts and circumstances of the case, the Ld. AO has erred in initiating penalty proceedings under Section 270A of the Act.*

The Appellant prays that the Ld. AO be directed to drop the penalty proceedings under section 270A of the Act.

The above grounds of appeals are independent of, and without prejudice to each other. The Appellant craves leave to add, alter, amend, rescind, modify or withdraw any ground(s) herein above or produce further documents either before or at the time of hearing of this appeal.”

2. Fact in brief is that return of income declaring total income of Rs.17,15,15,710/- was filed on 29.11.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 09.08.2018. The assessee company was engaged in the business of providing search engine optimization services social media marketing etc. to various clients. During the course of assessment proceeding the assessing officer noticed that assessee has debited cost of services by shared service centres to the amount of Rs.1,83,85,010/-. On query the assessee explained that it had shared expenses of Rs.1,83,85,010/- with another company M/s T.L.G. India P. Ltd. through its division Starcom Worldwide. The assessing officer stated that assessee has not submitted the copy of agreement for shared services and copy of leased rental agreements. The AO also pointed out that assessee has also not

submitted the details and description of services and details of employees involved in providing common services and used of common infrastructure etc. Therefore, for want of complete details the assessing officer has disallowed 50% of shared expenses to the amount of Rs.91,92,505/- and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee because of not making compliance to the notice dated 10.10.20122 issued by the ld. CIT(A).

4. During the course of appellate proceeding before us the ld. Counsel submitted that before the ld. CIT(A) the assessee has made compliance with the notice issued by the ld. CIT(A) on 25.01.2022. However, the second notice dated 10.10.2022 mentioned by the ld. CIT(A) was not received by the assessee, therefore, on compliance could be made to the second notice. The ld. Counsel further submitted that except these two notices the ld. CIT(A) has not given any further opportunity to the assessee. The ld. Counsel submitted that since assessee has not received second notice, therefore, opportunity of hearing should be provided to the assessee before the ld. CIT(A) for adjudicating its appeal on merit.

5. On the other hand, the ld. D.R is fair enough in his submission that the case may be set aside to CIT(A) for deciding on merit after providing opportunity to the assessee.

6. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above it is evident from the order of ld. CIT(A) that during the course of appellate proceedings, the first appellate authority has issued two notices to the assessee and the assessee has responded to the notice issued on 25.01.2022, however, it has not made any response to the notice issued on 10.10.2022 stating that same was not received by the assessee. It is further noticed that ld.

CIT(A) has not issued any further notice to the assessee for failing to make compliance to the notice issued on 10.10.2022. Therefore, looking to the fact that reasonable opportunity has not been provided to the assessee and the assessee has not received the second notice issued by the Id. CIT(A) during the course of appellate proceedings, we consider it appropriate to restore this case to the file of the Id. CIT(A) for deciding afresh as contemplate in Sec. 250(6) of the Act on merit after affording adequate opportunity to the assessee. The assessee is also directed to make compliance before the Id. CIT(A) without any failure. Therefore, the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.