

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3657/Del/2017

[Assessment Year : 2010-11]

DCIT, Circle-18(1), New Delhi.	vs	M/s. Net 4 India Ltd., AB-11, Community Centre, Safdarjung Enclave, New Delhi-110029. PAN-AAACT0291M
APPELLANT		RESPONDENT
Appellant by		Shri Subhra Jyoti Chakraborty, CIT DR
Respondent by		None
Date of Hearing		29.08.2024
Date of Pronouncement		09.09.2024

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue is directed against the order passed by Ld.CIT(A)-42, New Delhi dated 17.03.2017 for the assessment year 2010-11.

2. The Revenue has raised following grounds of appeal:-

1. *"Whether on facts and in circumstances of the case, the Ld. CITA) is legally justified in deleting estimated profit of Rs. 14,93,94,000/- u/s 145(3) of the Income Tax Act, 1961 (the Act) by ignoring the finding of facts recorded by the Assessing Officer (the AO) in the assessment order that the assessee had failed to produce complete books of accounts along with the supporting bills/vouchers even though sufficient opportunities were allowed to the assessee and solely by accepting self-serving claims and additional evidence of the assessee?"*

2. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in admitting additional evidence with regards to estimation of profit under Rule 46A of the Income Tax Rule, 1962 (the Rule) by ignoring finding of facts recorded by the AO in the remand by the AO in the remand report against the admission of additional evidence and without considering the fact that the case of the assessee was not covered under any exceptions as stipulated under Rule 46A of the Rule?*
3. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting estimated profit of Rs. 14,93,94,000/- u/s 145(3) of the Act by admitting additional evidence and without giving opportunity of being heard the AO with regard to nature and validity of additional evidence in violation of Rule 46A(3) of the Rule?*
4. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting addition on account of estimate of profit of Rs. 14,93,94,000/- by substituting his own estimate and by ignoring a fact that the estimate made by the AO was not arbitrary but was based on credible material and by disregarding the decision of Hon'ble Supreme Court in case of Commissioner of Sales Tax, MP vs HM Esufali HM Abdulai (1973) 90 ITR 271?*
5. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting disallowance of Rs. 79,41,003/- u/s 14 A of the Act r.w. R 8 D of the Rule without considering legislative intent of introducing section 14 A by the Finance Act 2001 as clarified by the CBDT Circular No. 5/2014 dated 10.02.2014?*
6. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in not upholding the disallowance u/s 14 A of the Act amounting to Rs. 79,41,003/- even when section 14 A of the Act stipulates mandatory computation of direct and indirect expenses relating to the income not forming part of total income under all the clauses (i), (ii) and (iii) of Rule 8D(2) of the Rule?*

7. *Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in not upholding the disallowance u/s 14 A of the Act r.w. R 8D of the Rule amounting to Rs. 8,91,305/- without considering legal principles that allowability/disallowability of expenditure under the Act is not conditional upon the earning of the Income as upheld by Hon'ble Supreme Court in case of CIT Vs. Rajendra Prasad Moody (1978) 115 ITR 519?*
8. *Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in not upholding the disallowance u/s 14 A of the Act r.w. R SD of the Rule of Rs. 79,41,003/- without considering ratio decidendi as upheld in cases of CIT Vs Walfort Share and Stock Brokers P Ltd [2010] 326 ITR 1 (SC) and Maxopp Investment Vs CIT [2012] 347 ITR 272 (Delhi) on application of provisions of section 14 A of the Act?*
9. *That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that no one has been attending the proceedings on behalf of the assessee despite various opportunities and the notice was also through Ld.Sr.DR. As per the Inspector Report, the notices were served by way of affixture in the year 2020. It was informed that the assessee has left premises without any information to the Revenue. Under these facts, the appeal is taken up for hearing in the absence of the assessee and same is being decided on the basis of material available on record.

4. Facts giving rise to the present appeal are that the assessee is a company, having business of data centre, cloud hosting and network services

provider, it filed its income tax return electronically on 27.09.2010, declaring income of INR 8,62,72,230/-. The case of the assessee was selected for scrutiny assessment and the notice u/s 143(2) of the Income Tax Act, 1961 ("the Act") was issued and served upon the assessee. In response to the statutory notices, Ld. Authorized Representative of the assessee company (Ld.AR) attended the assessment proceedings and filed the details as called for by the Assessing Authority from time to time. The Assessing Officer ("AO") after discussing the case with Ld.AR, proceeded to make disallowance u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962 amounting to INR 79,41,003/-. The AO further rejected the books of account of the assessee and estimated net profit @ 20%. Thereby, he made addition of INR 14,93,94,000/- and assessed the income of the assessee at INR 25,55,79,000/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, deleted the additions and allowed the appeal.

6. Aggrieved against the order of Ld.CIT(A), the Revenue preferred appeal before this Tribunal.

7. **Ground Nos. 1 to 4** raised by the Revenue relate to deletion of addition of INR 14,93,94,000/- by estimating a profit and **Ground Nos. 5 to 8** relate to the additions made by invoking the provision of section 14A of the Act. **Ground No.9** raised by the Revenue is general in nature hence, dismissed. Thus, the Revenue has challenged the deletion of addition made by estimating

the profit at INR 14,93,94,000/- and the addition of INR 79,41,003/- so made by invoking the provision of section 14A of the Act.

8. Apropos to the Ground Nos. 1 to 4 raised by the Revenue, Ld. CIT DR for the Revenue supported the assessment order and submitted that Ld.CIT(A) has erroneously deleted the addition purely on the basis that the AO failed to consider the past history of the assessee. Moreover, additional evidences submitted by the assessee were admitted without giving due opportunity to the assessee.

9. We have heard Ld. Sr.DR for the Revenue and perused the material available on record and gone through the orders of the authorities below. It is transpired from the record that the Ld. The National Company Law Tribunal, Principal Bench New Delhi (“NCLT”) in **Company Petition No.(IB)-409(PB)/2017** vide judgement dated **08.03.2019** in the case of **Edelweiss Asset Reconstruction Co.Ltd. vs Net 4 India Limited** had granted moratorium to the assessee in terms of section 14 of the Act. The relevant contents of the order of The National Company Law Tribunal is reproduced as under:-

54. *“We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:*

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."*

10. In the light of the above, moratorium granted by Ld. NCLT in present appeal is dismissed with a liberty to the Revenue for approaching the Tribunal for recalling of the order after moratorium is over or order granting moratorium is reversed by the Hon'ble Appellate Forum. Grounds raised by the Revenue are accordingly, dismissed.

11. In the result, the appeal of the Revenue is dismissed, in the terms indicated herein above.

Order pronounced in the open Court on 09th September, 2024.

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI