IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM

ITA No. 525/Mum/2024
(Assessment Year:2012-13)

Music Broadcast Limited 5th Floor, RNA Corporate Park, Kalanagar, Bandra (E), Bandra, Mumbai-400 051	Vs.	Asst. CIT-14(2)(2) Room No. 432, 4th Floor, Aayakar Bhavan, Mumbai-400 020
PAN/GIR No.AACCM 4036 H		
(**Assessee**)	:	(**Revenue**)

ITA No. 590/Mum/2024
(Assessment Year: 2012-13)

DCIT-14(2)(1) Room No. 432, 4th Floor, Aayakar Bhavan, Mumbai-400 020	Vs.	Music Broadcast Limited 5th Floor, RNA Corporate Park, Kalanagar, Bandra (E), Bandra, Mumbai-400 051
PAN/GIR No. AACCM 4036 H		
(**Revenue**)	:	(**Assessee**)

Assessee by	:	Shri Manish Malik, Shri Hardik Shah
Revenue by	:	Smt. Mahita Nair

Date of Hearing	:	18.06.2024
Date of Pronouncement	:	16.09.2024

O R D E R

Per Kavitha Rajagopal, J M:

These are cross appeals filed by the assessee and the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

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2. The assessee has raised the following grounds of appeal:

> *1. Addition of INR 5,12,06,771 on account of non-reconciliation of tax deducted at source ('TDS') data as reflected in Individual Transaction Statement ('ITS')*
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> *1.1. On the Facts and in the circumstances of the case, and in law, the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre['CIT (A)'] has grossly erred in sustaining the addition of INR 5,12,06,771 made by the Learned Assessing Officer ('Ld. AO') on the basis of individua transaction Statement (ITS) data.*
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> *1.2. On the facts and in circumstances of the case, and in law, the learned CIT(A) has failed to appreciate the Appellant's explanation given by Appellant before the Ld. AO during the course of assessment proceedings as well as the explanation given by the Appellant before the Ld. AO in the remand proceedings and also the explanation given before the CIT (A).*
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> *2. Short grant of TDS credit of INR 57,122/-*
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> *2.1 On the facts and in circumstances of the case, and in law, the learned CIT(A) has grossly erred in granting TDS credit only to the extent of INR 1,43,83,292 as against INR 1,44,40,414 claimed by the Appellant in the Return of Income (ROI) filed, thus resulting into the short grant of TDS credit amounting to INR 57,122.*

3. Brief facts of the case are that the assessee is a company engaged in the business of operating private FM (Frequency Modulation) Radio Station and had filed its return of income on 28.09.2012, declaring total income at Rs. Nil and the same was processed u/s. 143(1) of the Act. The assessee's case was selected for scrutiny under CASS and notices u/s. 143(3) and 142(1) of the Act were duly issued and served upon the assessee. The learned Assessing Officer ('ld. A.O.' for short) passed the assessment order u/s. 143(3) of the Act on 16.03.2015, declaring total income at Rs.4,76,55,520/- under the normal provisions, after making various additions/disallowances.

4. The assessee was in appeal before the first appellate authority, who vide order dated 14.12.2023 had partly allowed the appeal of the assessee.

5. Both the assessee as well as the Revenue aggrieved by the impugned order, is in appeal before us.

6. Ground nos. 1 & 2 raised by the assessee pertains to the addition on account of 'non reconciliation of tax deducted at source' as per the Individual Transaction Statements (ITS for short) amounting to Rs.5,12,06,771/- and TDS credit of Rs.57,122/-. It is observed that during the assessment proceeding, the assessee was sought for details of the discrepancy in the entries reflecting in the AIR information and its books of accounts, which the assessee had failed to match the entries pertaining to the expenditure on the impugned amount and the same was added back to the income of the assessee as 'unexplained expenditure' by the ld. A.O.

7. Before the first appellate authority, the assessee had filed details of the amounts reflected in the AIR but was unable to reconcile the difference in respect of some entities along with the documentary evidences. The assessee contended that as the details were voluminous, the assessee was unable to explain as to why the gross revenue in its P & L account is more than its ITS for each assessment year.

8. The learned Authorised Representative (ld. AR for short) for the assessee contended that though all the details were furnished before the ld. CIT(A), the same was not considered by the first appellate authority. The ld. AR further stated that the income received by the assessee is received only by cheque and has been duly accounted in the books of accounts. Further the ld. AR said that the assessee was unable to reconcile the discrepancy due to the voluminous data and prayed that the assessee may be given one more opportunity to furnish the details for reconciling the difference in the amount.

9. The learned Departmental Representative (ld. DR for short), on the other hand, controverted the said fact and stated that the assessee had failed to reconcile the

discrepancy arising in the ITS and with that of the P & L account of the assessee. The ld. DR relied on the orders of the lower authorities.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has entered into 39 transactions as per the AIR with 576 parties with respect to Form 26AS. Though the assessee tried its best to reconcile its ITS details with its accounting record, the same became futile for various reason such as the difference in the method of accounting followed by its customers, delayed deduction or payment of TDS, the date when the customer has deducted tax did not match with the books of accounts of the assessee company, variation in time of recognition of expenses by the deductor and the income by the assessee and the tax deducted on amount whether including/excluding service tax. It is further observed that as per the ITS, the income reflected is Rs.75.06 crores, whereas the total income offered by the company is Rs.127.10 crores which exceeds the total as per 26AS by Rs.52.04 crores.

11. On the above factual matrix of the case, we deem it fit to restore these issues back to the file of the ld. CIT(A) for verification of the details and for reconciliation of the tax deducted at source by giving sufficient opportunity to the assessee to furnish all documentary evidences, pertaining to its claim. The ld. CIT(A) is directed to verify the income with TDS data and also to verify whether the assessee has offered the same to tax during the year or subsequently in its return of income and accordingly to delete the addition to that extent in accordance with the law. Hence, ground nos. 1 & 2 are allowed for statistical purpose.

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12. The Revenue has raised the following grounds of appeal:

> *1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition on account of software licence fee of Rs. 1,70,67,431/- without taking into consideration the fact that the software licence fee give enduring benefits and hence are capital expenses and only depreciation is allowable on the same".*
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> *2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the interest income amounting Rs. 1,59,32,000/- on bank FDs is a business income and not income from other sources as considered by the AO during the assessment".*
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> *3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in restricting disallowance u/s.14A at 0.5% of the investment ignoring the fact that the AO had made disallowance as per the formula prescribed in Rule 8D of Income Tax Rules".*
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> *4. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored".*

13. Ground no. 1 of the Revenue's appeal pertains to the deletion of the addition on account of software license fee of Rs.1,70,67,431/- which the Revenue claims it to be of 'enduring benefit' and are capital expenses in nature where only depreciation is to be allowed.

14. The brief facts are that the assessee had incurred computer software expenses of Rs.1,70,67,431/-, which the assessee has treated it to be 'revenue in nature' for the reason that the said expenses was incurred towards annual maintenance charges, support service, updation charges, content distribution charges, internet charges, charges paid for back up data, etc. which are not in the nature of enduring benefit. The assessee further contended that the said expenses are incurred periodically and the impugned expenses relates to only the year under consideration.

15. On the contrary, the ld. A.O. observed that the assessee is not the owner of the software but had merely procured only the license to use the software which are in the

nature of 'intangible assets' as per clause (ii) of section 32(1) of the I. T. Act which according to the ld. A.O. had enduring benefit to the assessee which are in the nature of capital expenditure. The ld. A.O. further held that the assessee is entitled to claim only depreciation on the same @ 25%.

16. The first appellate authority allowed the assessee's claim for the reason that the co-ordinate bench for A.Y. 2009-10 have dealt with the said issue and has held the same to be a 'revenue expenses' which are allowable deduction.

17. Upon considering the rival contentions, it is observed that this issue is no longer *res integra* and the same has been dealt with by the co-ordinate bench and decided in favour of the assessee. The relevant extract of the said decision is cited herein under for ease of reference:

> *ITA No. 3532/Mum/2013 dt. 25.01.2017*
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> *"5.1 I have considered the facts of the case. This issue has come into consideration in CIT(A) order for A. Y.2009- 10 wherein in para 2.3 it is held as under-*
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> > *2.3 I have Considered the facts of the case. The appellant has satisfactorily explained that the charge paid to Netmagic Quantumlink CommunicationspLtd. Rs.3,56,870/-, Indialinks Web Ltd Rs.2,11,618/-, license fees paid to Government of India Rs.20, 24, 936/- are recurring business expenses payable every year and therefore, the same are revenue in nature. Since the appellant has to pay these amounts every year, therefore, the appellant has not derived any benefit of enduring nature by incurring these expenses. These expenses were revenue in nature. The A.0. is directed to allow these expenses u/s.37(1) of the Act.*
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> > *In respect of payment of Rs.1,07, 24, 394/- paid to Radio Computing Services (1) Ltd. (RCS), these expenses were also annual maintenance charges for radio software. Being annual maintenance charges, these expenses were also recurring expenses and revenue in nature. In the appeal order of A.Y.2006-07 the undersigned in para 5.3 of the appeal order has made detailed discussion on this issue as under:-*
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> *"5.3 I have considered the facts of the case. The nature of EDP software expenses, as mentioned above, shows that the expenditure incurred were revenue expenses. The expenses incurred supported the existing asset (i.e. computer) and allowed the benefit of efficiency to the appellant in terms of use of existing asset.*

> *The expenses incurred included annual charges and also for software for protecting the existing computer asset. Out of the total expenses of Rs.35,44,156/- expenditure of Rs.30,41,372/- was in respect of support service and updation charges of basic software purchased from RCS. This RCS system had already been capitalized by the appellant. Therefore, this expenditure of Rs.30,41,372/- incurred on the existing asset, will not added to the actual cost of that asset In the facts and circumstances, by incurring such expenses no new asset came into existence. In the facts and circumstances the A.O. was not justified in treating the aforesaid expenses as capital in nature. The A.O. is directed to allow deduction of such expenses treating the same as business expenses.*
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> *The AO. is also directed to allow expenditure of Rs.1,07,24,395/- as revenue expenditure.*
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> *In the result, this ground of appeal is allowed.*

18. From the above, it is observed that the Tribunal for A.Y. 2008-09 had followed the order of the ld. CIT(A) for A.Y. 2009-10 where on identical issue, the same has been treated as 'revenue expenditure' and not 'capital in nature' having enduring benefit to the assessee. On no change in the facts and circumstances, we deem it fit to take a consistent view as that taken by the Tribunal in assessee's own case for A.Y. 2008-09. Hence, ground no. 1 raised by the Revenue is dismissed.

19. Ground no. 2 raised by the Revenue pertains to the interest received by the assessee on bank FDs amounting to Rs.1,59,32,000/- as per the P & L account of the assessee which the ld. A.O. treated as 'income from other sources'. The assessee contended that the assessee was in an obligation to provide bank guarantee to the Ministry of Information and Broadcasting, pertaining to the license granted to the assessee for which the assessee had maintained a fixed deposit as 'marging money'. The assessee claims the FD to be a business requirement where the resultant income earned from the said deposit ought to be treated as 'income from business and profession'. The assessee relied on the decision of the Hon'ble High Court of Karnataka in the case of *CIT vs. Chinna Nachimuthu Constructions* [2008]297ITR70(KAR), [2008]297ITR70(KARN)

which held that the investment made in fixed deposits for bank guarantee and the interest arised out of it, is to betreated as 'business income' and not 'income from other sources'. The ld. A.O., on other hand, had relied on the decision of the Hon'ble Apex Court in the case of *Tuticorin Alkali Chemical & Fertilizers Ltd. vs. CIT* [1997] 227 ITR 172 (SC) and various other decisions. The first appellate authority had deleted the impugned addition by placing reliance on the decision of the coordinate bench in assessee's case for A.Y. 2008-09 in ITA No. 3532/Mum/2013 which has relied on the order of the ld. CIT(A) in assessee's case for A.Y. 2009-10 where on identical facts, the interest income on bank FD was treated as 'business income' and not 'income from other sources'.

20. By respectfully following the said decisions, where in no change in the facts and circumstances being highlighted by the Revenue, we deem it fit to dismiss the ground no. 2 raised by the Revenue.

21. Ground no. 3 raised by the Revenue pertains to the disallowance made u/s. 14A at 0.5% of the investment, amounting to Rs.6,01,493/-. It is observed that the assessee had earned dividend income of Rs.4,65,000/- which was claimed as 'exempt'. The ld. A.O. by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of *Godrej & Boycee Mfg. Co. Ltd.* 234 CTR Bom 1 [2010] which held that Rule 8D of the I. T. Rules, 1962 is applicable for apportionment of expenditure in case where the assessee has earned 'exempt income'. The ld. A.O. made a disallowance of Rs.6,01,493/-. The first appellate authority has restricted the disallowance to 0.5% of the average investment made by the assessee during the year under consideration and had directed the ld. A.O. to verify the *suo moto* disallowance made by the assessee by following the co-ordinate

bench decision in assessee's case for A.Y. 2008-09 in ITA No.3532/Mum/2013. It is observed that the assessee had made investment in LIC Mutual Fund/Kotak Mutual Fund out of which the assessee has earned dividend of Rs.4,65,782/- and had claimed 'exempt' u/s. 10(35) of the Act. The assessee contends that it has not incurred any direct or indirect expenses on earning the said exempt income and had *suo moto* disallowed Rs.83,858/- in its return of income.

22. In the above factual matrix of the case, it is observed that the ld. CIT(A) has rightly restricted the disallowance u/s. 14A r.w. Rule 8D to 0.5% of the average investment of the assessee and we find no infirmity in the order of the ld. CIT(A) in directing the ld. A.O. to compute the disallowance to 0.5% of the average investment after considering the *suo moto* disallowance made by the assessee. Hence, ground no. 3 raised by the Revenue is dismissed.

23. Ground nos. 4 & 5 raised by the Revenue are general in nature and requires no separate adjudication.

24. In the result, the appeal filed by the assessee is allowed for statistical purpose and the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 16.09.2024

Sd/-	Sd/-
(Girish Agrawal) Accountant Member	(Kavitha Rajagopal) Judicial Member

Mumbai; Dated :16.09.2024
Roshani, Sr. PS

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai