



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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM

ITA No. 1656/MUM/2024

A.Y.2014-15

Media.Net Software
Services India P. Ltd.,
B-Wing, Acme I Tech Park,
Diectiiplex Mogra Village, Vs.
Old Nagardas Road,
Andheri East,
Mumbai 400069

DCIT-10(2(2),
Mumbai

(Appellant)

(Respondent)

PAN

AAHCM 5070A

Assessee by

Ms Chandni Shah/Hinal Shah
& Shri Amol Mahajan

Revenue by

Shri Ashok Kumar Ambastha,
Sr. (DR),

Date of hearing

31st July, 2024

Date of pronouncement

08th October 2024

ORDER

PER PRASHANT MAHARISHI, AM:

1. ITA No. 1656/M/2024 is filed by Media.Net Software Services India Private Limited for Assessment Year 2014 – 2015 against the appellate order passed by National Faceless Appeal Centre (NFAC), Delhi (the learned CIT – A) on 20/2/2024 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3



of the income Tax Act, 1961 (the Act) dated 22/1/2016 passed by the Deputy Commissioner of Income Tax, Circle 10 (2) (2), Mumbai (the learned AO) was partly allowed.

2. Assessee is aggrieved with the appellate order has raised several grounds of appeal as under: –

"1. On the facts and in the circumstances of the case at in tow the Lit Commissioner of com Appeals or CIT(A) erred in confirming the additions made by the Ld Assessing Officer (AO) of INR 3,82,04,3944 to the returned income of the Appellant

The Appellant humbly prays that the additions made by the LS CIT(A)/AD be deleted

2. On the facts and in the circumstances of the case and in law, the Ld CIT(A)/Ld. AD armed in denying deduction of INR 90,33,777 under section 10AA of the Income-tax Act, 1961 (The Act)

The Appellant humbly prays that the deduction under section 10AA of the Act be allowed

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)/Ld AG erred in disallowing the interest paid of INR 1,53,711 on delayed payment of Tax Deducted at Source (TDS) under section 37 of the Act

The Appellant humbly prays that the expenditure in relation to interest on delayed payment of TDS be allowed

4. On the facts and in the circumstances of the case and in law, the Ld CIT(A)/Ld. AD erred in restricting the setoff of the business loss to INR 1,59,56,392 as against the business loss of INR 440,63,298 claimed by the Appellant in its Return of Income.

The Appellant prays that the business ices as claimed by the Appellant for the year under consideration be allowed.

5. On the facts and in the circumstances of the case and in law, without prejudice to the Appellant's claim for AY 2013-14, that the expenditure incurred on



Leasehold improvements amounting to INR 2,17,55,379 during that year is revenue and not capital in nature, the Ld. CIT(A)/ Ld. AD erred in not granting the consequential depreciation for AY 2014-15.

Without prejudice, the Appellant prays that the consequential depreciation on the leasehold improvement expenditure incurred in AY 2013-14 be granted for AY 2014-15.

The above grounds of appeals are without prejudice to and independent of one another."

3. Facts of the case as seen from the assessment and appellate order shows that assessee is a company engaged in the business of information technology and IT enabled services, filed its return of income on 25/11/2014 at a total income of Rs. 30,599,429/- after setting off of brought forward business losses of Rs. 44,963,298/- and claim of deduction under section 10 AA of the act of Rs. 9,033,777/-. The return of income was picked up for scrutiny and notice under section 143 (2) was issued on 28/8/2015. The claim of the assessee of deduction under section 10 AA of the act was verified the fact mentioned shows that claim of the deduction under section 10 AA of the act of Rs. 9,033,777 is made by the assessee without setting of the brought forward business loss of Rs. 15,956,392/- against the eligible profits of the undertaking. Therefore, the claim of the assessing officer is that if the brought forward business loss of Rs. 15,956,392/- is set of against the business income, no profit derived from the industrial undertaking was left



eligible for deduction under section 10 AA of the act and therefore such deduction was disallowed. The assessee's claim that circular number 279 dated 16/7/2013 does not apply to the facts of the case. The tax audit report also shows that assessee has debited interest on late payment of tax deduction at source of Rs. 163,711/- and interest on delay in filing of companies return of Rs. 5063/- and penalty for renewal of custom license of Rs. 21,000/- aggregating to Rs. 189,774/- the learned assessing officer found that above expenditure is hit by explanation to section 37 (1) of the income tax act. Thus, same was disallowed. The AO further notice that in the computation of total income assessee has claimed set off of brought forward business loss of Rs. 44,963,298/- however as per the assessment records for earlier year the business loss available for carried forward and set off is only Rs. 15,956,392/-. Accordingly set off was reduced to that extent. The income of the assessee was computed at Rs. 68,829,880 against the returned income of Rs. 30,599,429/- as per order of assessment passed under section 143 (3) of the act on 22/1/2016.

4. The assessee preferred appeal before the learned CIT - A. With respect to the deduction under section 10 AA of the act to be allowed to the assessee before setting off of the brought forward business losses of the earlier years, the claim of the assessee was dismissed in view of the decision of the honourable Karnataka High Court in 286 ITR 255 and of the Kerala High Court in 245 CTR 97



wherein it was held that the business profits are to be computed after setting of unabsorbed depreciation and thereafter deduction of section 10 B is to be computed further the circular number 7/2013 dated 16 July 2013 was also against the assessee. Therefore, deduction under section 10 AA of Rs. 9,033,777/- claimed by the assessee was denied. With respect of the disallowance of interest and penalty in view of explanation to section 37 (1) of the act the learned CIT appeal noted that out of the total disallowance made by the learned assessing officer of Rs. 189,774/- the interest on delay in filing of the return of the registrar of companies amounting to Rs. 5063 and penalty for renewal of custom license amounting to Rs. 21,000/- are not nearly nature. Therefore, the disallowance was restricted to Rs. 163,711/- on account of interest on late payment of TDS. The claim for set off of brought forward business losses of Rs. 15,956,392/- against the claim of the assessee of Rs. 44,963,298/- was also confirmed. Accordingly appeal of the assessee was partly allowed.

5. Assessee is aggrieved with the above and is in appeal before us. On the issue of deduction under section 10 AA of the income tax act, it was submitted that issue is now squarely covered in favour of the assessee by the decision of the honourable Supreme Court in case of CIT versus Yokogawa India Ltd (2017) (77 taxmann.com 41) wherein it has been held that after amendment of section 10 A by the finance act 2000 with effect from 1/4/2001 the said



section has become a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under the income tax act and not at the stage of computation of total income under chapter VI of the act. Series of the decision of the honourable High Court and coordinate benches were referred to. On this proposition the assessee submitted a paper book containing 70 precedents including the judicial precedents of honourable Bombay High Court and Honourable Supreme Court along with the coordinate benches. The learned authorized representative relied on the same.

6. The learned Departmental Representative vehemently supported the order of the learned lower authorities and decision cited therein.
7. We have carefully considered the rival contention and perused the orders of the learned lower authorities.
8. Ground number 1 of the appeal is general in nature, no arguments were advanced, therefore, same is dismissed.
9. Ground number 2 of the appeal is with respect to the deduction under section 10 AA of the act. In this case the issue that arises is that assessee has derived the profit of SEZ unit before depreciation of Rs. 1,32,05,014 and depreciation of that assessee unit was Rs. 4,171,237/-. Therefore, the profit and loss of the assessee unit eligible for deduction under section 10 A of the act was Rs. 9,033,777 as claimed by the assessee. However, the fact shows that assessee has a business loss of Rs. 44,963,298 as claimed by the assessee in the computation



of income. The Assessing Officer has held that this business loss is available to the assessee to the extent of only Rs. 15,956,392/- therefore the carried forward business loss of earlier years of Rs. 15,956,392/- should have been reduced out of the profit eligible for deduction under section 10AA of the act amounting to Rs. 9,033,777/- and therefore the resultant profit eligible for deduction under that section is rupees nil. The claim of the assessee is that for the purpose of claim of deduction under section 10 AA of the act, the business losses of the earlier year should not be reduced from the eligible profit. We find that now the honourable Supreme Court has decided this issue in 77 taxmann.com 41 in case of Commissioner of income tax versus Yokogawa India Ltd wherein it has been held that the deduction under section 10 A of the act is provision for deduction and the sale of deduction would be while computing the gross total income of the eligible undertaking and chapter IV of the act and not at the stage of computation of total income under chapter VI of the act. Honourable Bombay High Court in case of black & Veatch consulting private limited in 20 taxmann.com 727 has also held that deduction under section 10 A in respect of eligible unit has to be allowed before setting off of brought forward depreciation and losses of non eligible units. Same is the view expressed in case of the Commissioner of Income Tax versus Techno Tarp and Polymers Private Limited in Income Tax Appeal No. 2134 of 2013 dated 5 December



2015. We find that this issue is squarely covered in favour of the assessee by the decision of the honourable Supreme Court in case of 77 taxmann.com 41 and accordingly Ground No. 2 of the appeal of the assessee is allowed.
10. Ground number 3 of the appeal is with respect to the disallowance of Rs. 163,711/- on delayed payment of tax deducted at source under section 37 of the Act. We find that this amount of expenditure is incurred by the assessee being interest on late payment of tax deduction at source. We find that interest on late payment of tax deduction at source by the assessee is not shown before the lower authorities that how it has been incurred wholly and exclusively for the purposes of the business of the assessee. In fact, such interest is in infraction of the law of the provisions of the income tax act when tax deducted at source required to be deposited after collecting from third parties to the credit of Central Government is deposited late. It is penal in nature.
11. In the case of CIT v. Chennai Properties & Investment Ltd. the Madras High Court declared that the assessee's payment of interest under Section 201(1A) does not qualify as a business expense and cannot be seen as a compensatory payment. This decision of Hon'ble Madras High Court has also been followed by various benches of ITAT, specifically in Velankani Information Systems Limited v. DCIT as under: -



“Regarding the delay in remitting TDS under Section 201(1A) of the Act, we discover that the Honourable Madras High Court has come to the conclusion that interest under Section 201(1A) is also of the nature of tax and, despite the fact that it is not the assessee's tax liability, the same cannot be allowed as deduction.”

12. The payment of interest on late deposits of TDS assessed under Section 201(1A) is not an expense solely and exclusively expended for business purposes; hence it is not deductible under Section 37(1) of the Act. Even if the deduction and remittance of TDS to the government are essential components of business operations, the assessee is nonetheless liable for this interest amount. This suggests that the assessee does not have the right to spend the money on the government's behalf. The character of the interest payment is determined by the sort of tax utilised to pay it. The several decisions of the coordinate benches cited before the learned CIT – A does not hold water in view of the decision of the honourable Madras High Court specifically saying that such interest does not qualify as deductible expenditure.
13. In the result ground number 3 of the appeal of the assessee stands dismissed.
14. Ground number 4 is with respect to the computation of setting off of the business loss of the correct some. The claim of the assessee is that the business loss of Rs. 44,963,298 claimed by the assessee in its return of



income should be allowed whereas the claim of the AO is that as per the past record only the claim of business loss to the extent of Rs. 15,956,392/- is available. As the amount of claim of the business loss is dependent on the adjudication process of the appeal of the assessee for earlier years, we restore this issue back to the file of the learned assessing officer to determine the available set off of brought forward business losses and then grant it to the assessee in accordance with the law. Ground number 4 is allowed with above direction.

15. Ground number 5 is with respect to the claim of the assessee that assessee has claimed the expenditure incurred on leasehold improvements amounting to Rs. 21,755,379 during assessment year 2013 - 14 as revenue expenditure. This ground of appeal is in consequence to the assessment and appellate proceedings arising out of the assessment year 2013 - 14 and not this impugned assessment year. In that year the claim of the assessee is that assessee has incurred total leasehold improvements expenditure of Rs. 46,827,355/- out of which assessee considered Rs. 22,900,399 as revenue expenditure spent on fixtures and the balance sum is capital expenditure. The learned assessing officer for that assessment year has considered the whole of the sum is capital expenditure and allowed depreciation at the rate of 5%. As this issue pertained to that year, the appeal of which pending before the learned CIT - A. Therefore, the learned assessing officer is directed to consider the claim of the assessee if it



is already decided in favour of the assessee by the appellate authority in accordance with the law. Accordingly ground number 5 of the appeal of the assessee is allowed with above direction.

16. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 08/10/2024.

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.10.2024
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Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai