

**IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH,
MUMBAI**
**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2173/MUM/2024
(A.Y. 2017-18)**

Vmobi Solutions Pvt. Ltd. Directiplex, Acme-I Tech Park, Old Nagardas Road, Next To Andheri Subway, Andheri (E), Mumbai-400069	v/s. बनाम	PCIT (Central), Mumbai-4 Aaykar Bhavan, M.K. Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR NO: AAFC2024F		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Yogesh Thar
Respondent by :	Shri Ankush Kapoor

Date of Hearing	22.08.2024
Date of Pronouncement	.10.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Principal Commissioner of Income-tax (Central), Mumbai-4/National Faceless Appeal Centre, Delhi [hereinafter referred to as “PCIT”] dated 26.02.2024 passed u/s. 263 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2017-18.

2. The assessee has raised following grounds of appeal:

“ON JURISDICTION OF PCIT IN REVISION BASED ON AUDIT OBJECTION

1. *On the facts and circumstances of the case and in law, revision by the commissioner is liable to be quashed since the PCIT did not exercise his own discretion and judgement. As revision is based on the audit objection, fundamentally PCIT has no jurisdiction to pass the revision order under section 263 of the Income Tax Act, 1961 ('the Act')*
2. *On the facts and circumstances of the case and in law, the revision initiated is prima facie bad and unsustainable since revision is based on audit objection and hence bad in law.*
3. *On the facts and circumstances of the case and in law, the revision cannot be sustained as the PCIT exercised power of revision based on suggestion made by audit department and therefore the SCN and Order of revision under section 263 of the Act deserve to be quashed.*

ON INCREASE IN AUTHORISED SHARE CAPITAL FOR MEETING WORKING CAPITAL NEEDS

4. *On the facts and circumstances of the case and in law, the PCIT has erred in invoking revision under section 263 for allowability of expenses related to increase in authorized share capital which an issue of capital or revenue expenditure where two views are possible and hence based on the settled decisions revision cannot be made.*
 5. *On the facts and circumstances of the case and in law, the PCIT ought to have appreciated that expansion of capital was to meet the needs for more working capital and hence the same is in the nature of revenue expenditure and the learned AO had taken a correct plausible view, hence provisions of Section 263 of the Act are not attracted at all.*
 6. *The above grounds of appeal are without prejudice to each other. The Appellant craves leave to add, alter, amend or withdraw all or any of the Grounds of Appeals herein or to submit such statements documents, compilations and papers as may be considered necessary either before or during the hearing of the appeal as they may be admitted to do so.”*
3. Further, the assessee had filed an additional ground vide letter dated 18.08.2024.

ADDITIONAL GROUND NO. 7:

- 7.1 *On the facts and in the circumstances of the case and in law, the ld. PCIT failed to appreciate and ought to have held that the expenditure inadvertently disallowed by the Appellant was allowable as deduction u/s. 35ABB of the Act.*
- 7.2 *The Appellant prays that the deduction u/s. 35ABB be held to be allowable.*

4. The brief facts of the case are that the assessee had filed return declaring nil income on 30.10.2017 and the assessment was completed u/s 143(3) of the



Act at assessed income of Rs. 14,371/- under normal provisions and tax was levied at total income of Rs. 18,88,457/- computed u/s 115JB of the Act. Subsequently, PCIT issued an order u/s 263 of the Act dated 26.02.2024 on the ground that the order of the AO was erroneous and prejudicial to the interest of the revenue as an amount of Rs. 22,10,336/- claimed as filing fee in respect of increased in share capital was wrongly allowed as revenue expenditure. Further, during the course of assessment proceedings the assessee had submitted a revised computation declaring total income of Rs. 31,24,660/-, whereas the assessment was completed on 23.09.2021 without considering the revised computation. Accordingly, the PCIT was of the view that the amount of Rs. 31,10,290/- (31,24,660-14,370) remained to be added to the returned income rendering the order passed by the AO as erroneous and prejudicial to the interest to the revenue. In response to the notice u/s 264, the assessee submitted that the AO had examined the entire issue relating to the claim of Rs. 31,24,660/- u/s 35ABB of the Act and rightly allowed the same, even though the assessee had filed a revised computation as well as return of income under mistaken belief that the amount is not allowable.

5.1 Regarding the expenditure of Rs. 22,10,336/- also the assessee submitted that the same is filing fee incurred in relation to increase in the authorized share capital during the year. The authorized capital was raised to meet the working capital requirement of the business and the same is revenue in nature, hence



allowable as a revenue expenditure. However, PCIT proceeded to pass an order u/s 263 setting aside the assessment order passed by the AO u/s 143(3) of the Act with the direction to pass afresh assessment order on above two issues.

5. Before us, Ld. AR has made detailed arguments pointing out that the order of the AO was not erroneous, on a debatable issue two views are possible and the AO has taken one of the views then action u/s 263 is not permissible. He has further pointed out that revision was based on audit objection only.

6. The Ld. DR, on the other hand, strongly relied on the order of the PCIT. He has also pointed out that vide CBDT circular dated 16.02.2023 the remedial action in respect of audit objection was very much permissible rather it was required to be taken as has rightly been done by the PCIT. He further pointed out that since the return has been revised to show an income of Rs. 31,24,660/- as against the original return of Rs. 14,370/-, and therefore, AO's order assessing the income at Rs. 14,370/- was erroneous as well as prejudicial to the revenue.

7. We have heard the rival submissions and perused material available before us. It is seen that during the course of assessment proceedings, the AO vide notice u/s 143(2) dated 21.08.2018 has intimated the assessee that the case had been selected for limited scrutiny on the issue "share capital/capital". Filing fee of Rs. 22,10,336/- had been shown under "the head operation and



other expenses in the profit and loss account”. Subsequently, vide notice u/s 142(1) dated 16.10.2019, relevant queries were vide point No. 4 as under:

“4) Kindly provide your email ID on which assessment related communication could be sent

1. Please submit Copy of Traces/26AS. Also, please furnish a reconciliation of receipts as per TDS certificates and Profit & Loss account, if any.

2. Furnish details in respect of shareholders viz; copy of application form & allotment letter with name, address & PAN, copy of ITR of the relevant parties.

3. Please provide the details of the parties from whom Share capital was received during the year under consideration alongwith Name of the parties, PAN, Present postal address, Amount (In Rs.) of transactions, etc., alongwith copy of relevant bank statements highlighting the said transactions.

4. You are also required to furnish the copy of ITR, Balance-sheet/capital account, copy of bank statement of the parties from who the share capital is received.

5. You are also required to provide the details of any premium charged on the shares, if so, the copy of third party valuation report is required. Also explain the applicability of the provisions of section 56(vilb) of the Income Tax Act, 1961, and if not, why?”

8. The assessee furnished its reply in respect of these queries vide letters dated 06.11.2019 and 13.11.2019. Thus, complete details relating to the issue of filing fee of Rs. 2,10,336/- were furnished and examined by the AO during the course of assessment proceedings.

9. During the course of 263 proceedings before the PCIT also, the assessee, vide letter dated 08.02.2024, explained that the issue had been examined by the AO and therefore it cannot be said that the order was erroneous and prejudicial to the revenue.

10. During the course of proceedings before us, the assessee has also furnished audited financial statement for AY 2016-17 during which share capital



of Rs. 10,00,00,000/- was raised and the expenses of Rs. 18,18,066/- in respect of share capital had been debited to the P&L account under the caption 'filing fees'. During the scrutiny assessment proceedings for AY 2016-17, the said expenses had been allowed as revenue expenditure.

11. Further, in support of the contention that expenditure incurred in raising share capital is revenue in nature, the assessee has placed reliance inter alia on the decision of the co-ordinate bench in the case of **Navi Mumbai SEZ Private Ltd. v/s Assistant Commissioner of Income-tax, Range-7(1), Mumbai (2015) 54 taxmann.com 259**. While discussing the relevant issue, the co-ordinate bench has held as under:

“It was noted from record that the entire incremental share capital has been absorbed in the inventories. There is not an iota of doubt that the increase in the share capital has been fully utilized only in the purchase of trading stock.

In the present day scenario, the authorized/paid up capital is not static and can also be reduced as per provisions of the Companies Act. In the light of the factual matrix of the balance sheet, plea raised by the assessee is allowed and the Assessing Officer is directed to treat the expenditure in question as revenue expenditure.

In the result, the appeal filed by the assessee is allowed.”

12. In view of the various other decisions on the issue including the above cited decision of the co-ordinate bench, it is held that the expenditure of filing fee of Rs. 22,07,836/- was allowed by the AO after requisite examination and , therefore, it cannot be said that the order of the AO was erroneous and/or prejudicial to the interest of the revenue.



13. The other ground on which the Ld. PCIT has treated the assessment as erroneous is that during the course of assessment proceedings, the assessee had submitted a revised computation showing income of Rs. 31,24,660/- (as against the original return of income at 14,370/-) which was not examined by the AO. Subsequently, the assessee had also filed a revised return on 13.03.2019 showing total income of Rs. 31,24,660/-. However, the assessment was completed by the AO on 23.09.2021 assessing the total income at Rs. 14,370/- without considering the revised computation and the revised return filed by the assessee. Ld. AR, in this regard, has pointed out that the revised return was very much in the knowledge of the AO who had raised query in this regard vide notice dated 16.10.2019. Reply of the assessee was filed on this issue was filed on 05.11.2019. After making requisite inquiry and due application of mind, the AO passed the assessment order at income of Rs. 14,370/- (same as the original returned income). During the course of hearing, Ld. AR has further submitted following clarification in this regard:

“Whilst preparing for the captioned appeal, the counsel of the Appellant came across the suo-moto disallowance made by the Appellant in the revised computation of income filed in the course of assessment proceedings. The suo-moto disallowance made by the Appellant was in respect of the expenditure incurred by the Appellant for obtaining the license to operate telecommunication services which is allowable as deduction as per section 35ABB of the Act.

However, the Appellant was under a mistaken belief that the said expenditure cannot be allowed unless business is commenced. Despite such mistake, the Id. Assessing officer ("AO") rightly allowed the said deduction in course of assessment proceedings. However, the Id. PCIT held the assessment order to be erroneous and prejudicial to the interest of revenue without evaluating the deductibility of the said expenditure or correctness of stand taken by the Id. AO.”



Accordingly, it is seen that issue regarding claim of deduction of Rs. 31,24,660/- u/s 35ABB, which was the reason for filing revised return by the assessee, has also been duly examined during the course of assessment proceedings by the AO.

14. In view of the above facts and judicial pronouncements, we are of the view that the AO had already allowed the claim of the assessee regarding filing expenses of Rs. 22,07,836/- being revenue expenditure and the deduction u/s 35ABB after due examination during the assessment proceedings. As such the order of the PCIT u/s 263 holding that order of the AO was erroneous and prejudicial to the revenue is not justified, the same is accordingly quashed.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17.10.2024.

Sd/-

PAVAN KUMAR GADALE

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 17.10.2024

अनिकेत सिंह राजपूत/ स्टेनो

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.

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आदेशानुसार/ BY ORDER,

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

