

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'C', MUMBAI

**BEFORE SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER
AND SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER**

**ITA No.2404/Mum/2024
Assessment Year: 2010-11**

Iss Facility Services India Pvt. Ltd. (Merged entity erstwhile ISS Integrated Services Pvt. Ltd.)		DCIT Circle 10(2), Mumbai
Ground Floor, East Wing, Leela Business Park, Near Airport Road Metro Station, Andheri East, Mumbai-400059.	vs	
PAN: AABCI 3815 M		
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Piyush Chhajed & Shri Ayush Chhajed
Revenue by : Shri Raj Singh Meel, Sr. DR

Date of Hearing : 27.08.2024

Date of Pronouncement : 21.10.2024

ORDER

PER AMARJIT SINGH, AM:

This appeal of the assessee for the assessment year 2010-11 is directed against the order dated 04.03.2024 passed by the ld. Commissioner of Income-tax (Appeal), NFAC, Delhi. The assessee has raised the following grounds of appeal:

"1. The Learned Commissioner of Income Tax (Appeals) erred in confirming the Assessment Order w/s 143(3) on 08.03.2014 passed by the learned Assessing Officer in the name of ISS Integrated Facility Services Private Limited which is bad in law since the company was non-existent and already merged with ISS Facility Services India Private Limited with effect from 1.04.2012 under the Bombay High Court order dated 16.08.2013.

2. The Learned Commissioner of Income Tax (Appeals) erred in passing the order and disposing off the appeal without discussing or rebutting

the detailed submissions made during the course of appellate proceedings.

3. The Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 31,23,656/- u/s 14A without considering the submissions made by the appellant.

4. The Learned Commissioner off Income Tax (Appeals) erred in confirming the disallowance of Rs. 1,12,74,887/- claimed as bad debts even when complete details regarding party-wise amounts written off out of opening debtors, for which income was already offered were submitted, and therefore the claim was appropriately made under the provisions of section 36(2).

5 The Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs. 17,90,171/- towards advances written off without appreciating that the said advance was business advance and appropriately claimed under the provisions of Income Tax Act.

6. The Learned Commissioner of Income Tax (Appeals) erred in setting aside the addition of Rs. 74,09,078/- for verification without appreciating that complete details were filed and that the said receipts were regarding profit from the sale of capital asset and not interest as assessed by the Income Tax Officer.

7. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 36,59,249/- towards the excessive claim of remuneration without appreciating that complete details were filed regarding approval from the Registrar of Companies for payment of director's remuneration during appellate proceedings.

8. The Learned Commissioner of Income Tax (Appeals) erred in restricting the disallowance to the extent of 10% of the entire traveling expense on an ad-hoc basis without appreciating the complete details filed in this regard.

9. The Appellant craves the leave to add, amend, alter, and /or delete any of the above grounds of appeal at/or before the time of hearing.”

2 Fact in brief is that return of income declaring total income of Rs. 3,31,20,974/- was filed on 06.10.2010. The case was subject to

scrutiny assessment and notice u/s 143(2) of the Act was issued on 24.08.2011. The assessment u/s 143(3) r.w.s. 92CA(4) of the Act was finalized on 08.03.2024 and the total income was assessed after making various additions and disallowances to the extent of Rs. 6,54,24,540/-. Further fact of the case is discussed while adjudicating the ground of appeal filed by the assessee.

3. Ground no. 1 & 2 of the appeal were not dismissed therefore, same stand dismissed.

Ground no. 3 confirming disallowance of Rs. 31,23,656/- u/s 14A of the Act:-

4. During the course of assessment, the assessing officer noticed that assessee has shown dividend income of Rs. 4,81,371/- claimed as exempt. However, the assessee has not disallowed any expenditure incurred for earning the said exempt income. On query, the assessee submitted working of disallowance u/s 14A r.w.r. 8D to Rs. 8,36,491/-. Disagreeing with the assessee's working, the assessing officer has computed expenditure of Rs. 31,23,656/- as per Rule 8D of the I.T. Rules 1962.

5. In appeal, the ld. CIT(A) has dismissed the ground of appeal filed by the assessee.

6. Before us, the ld. Counsel filed paper book comprising copies of document and detail submitted before the lower authorities. The ld. Counsel submitted that assessee has not excluded the exempt income from the taxable income as per the statement of computation of income and the same was included as part of taxable income. He referred copies of P & L A/c placed in the paper book as per which the

assessee has included the amount of dividend income of Rs. 4,81,371/- in the other income. He also referred copy of computation of income showing that assessee has not claimed dividend income as exempt income. We consider that assessee has not claimed the amount of dividend as exempt income as discussed, therefore, we find no justification in the finding of ld. CIT(A) in sustaining the impugned disallowance. Accordingly, this ground of appeal of assessee is allowed.

Ground no. 4 disallowance of Rs. 112,74,887/- claimed as bad debt:-

7. During the course of assessment, the assessing officer observed that assessee has debited total amount of Rs. 112,74,887/- on account of bad debt written off and assessee has not submitted supporting details in respect of bad debt written off and also not provided details of efforts made to recover the outstanding amount from the parties therefore deduction of Rs. 112,74,887/- claimed as bad debt was disallowed and added to the total income of the assessee.

8. In the appeal, the ld. CIT(A) has sustained the disallowance made by the assessing officer.

9. During the course of appellate proceedings before us, the ld. Counsel submitted that during the course of assessment proceedings, the assessee has submitted the complete details of bad debt written off during the year i.e. bad debt offered for tax in previous years, summary of year-wise and customer-wise bad debt offered for tax, details of bad debts against invoice raised etc. along with Financial Year in which the amount was offered for tax with name of the

customer and the amount outstanding. He particularly referred this detail placed in the paper book no. 1 from page no. 32 to 46. He also referred schedule of sundry debtor showing provision for doubtful along with detail of debtors.

10. Heard both the sides and perused the material on record. We find that the assessee company is engaged in the business of facility management services in the area of house-keeping, security services maintenance and management of buildings, gardening and landscaping, pest control services, garbage disposal and catering and transport services etc. to the number of corporate clients showing turnover of Rs. 1,34,67,11,175/-. After perusal of material on record it is evident that assessee has submitted the various details of bad debt vide submission dated 21.11.2013 for further verification before the assessing officer however, the assessing officer has neither controverted the detail filed of various transactions claimed as bad debt written off nor brought any material on record to prove that claim of bad debt made by the assessee was not genuine. In view of the above facts and considering the nature of services and large number of clients covered by the assessee supported with relevant details of default in making the due payment by some of the clients against the services rendered by the assessee, we find that ld. CIT(A) is not justified in sustaining the disallowance of bad debt made by the assessing officer, therefore, this ground of appeal of the assessee is allowed.

Disallowance of Rs. 17,90,171/- towards advance written off:-

11. This ground of appeal was not discussed before us therefore, the same stand dismissed.

Addition of Rs. 7,40,978/- for verification without considering that details were already filed in support of claim of profit from sale of capital asset and not interest income as assessed by the assessing officer.

12. During the course of assessment, the assessing officer noticed that assessee-company has received interest income of Rs. 74,09,078/- credited to profit and loss account however in the computation of income it has reduced such interest income with reason that the same has been considered under the other head of income. The AO observed that said interest income has not been offered to tax by the assessee therefore, the AO has added the same to the total income of the assessee as interest of Rs. 74,09,078/- received by the assessee during the year under consideration.

13. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) directed the assessing officer to verify the nature of income in accordance with law.

14. During the course of appellate proceedings before us, the ld. Counsel submitted that in the return of income filed in Form No. ITR-6 the assessee has shown Rs. 74,09,078/- as deduction under schedule BP as income. He further submitted that said amount was in the nature of gain on sale of tangible asset and the same was to be assessed under the head capital gain in ITR-6, therefore, the same was removed from schedule BP and was declared under Schedule CG in ITR-6 but the assessing officer had treated the same as interest income without looking to the facts submitted during the assessment that the same has already been reflected in the computation of total income submitted to the AO during the assessment proceeding.

15. Heard both the sides and perused the material on record. We find that all the facts and explanation submitted by the ld. Counsel as referred above has not been considered by the assessing officer while treating the amount of Rs. 74,09,078/- as interest income instead of capital gain on sale of tangible asset as claimed by the assessee, therefore, we restore this issue to the file of the assessing officer to decide the same as per law after verification of the relevant supporting submission submitted by the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

Addition of Rs. 36,59,249/- towards excess claim of remuneration:-

16. At the time of assessment proceeding, the assessing officer noticed that in the audit report the auditor reported that assessee has made payment to relative of a director towards salary aggregating to Rs. 36,59,249/- during F.Y. 2009-10 relevant to the year under consideration and the assessee has not obtained prior approval from the Central Government as required u/s IB of section 349 of the Company Act for making payment of an amount higher than limit prescribed. Therefore, the assessing officer treated the same as excess salary of Rs. 36,59,249/- paid to the relative of the director and disallowed the same.

17. In the appeal, the ld. CIT(A) has dismissed this ground of appeal reiterating the fact stated by the assessing officer.

18. Before us, the ld. Counsel submitted that assessee was not able to obtain the said approval from Central Government before the end of the said F.Y. However, the assessee has made application for approval

of the same to the Central Government after the end of the said financial year and the same was mentioned as part of notes no. 14 under notes to the accounts. The ld. Counsel further submitted that AO had made the impugned disallowance without providing opportunity to the assessee.

19. Heard both the sides and perused the material on record. In respect of payment of salary of Rs. 36,59,249/- to the relative of the director the assessee has filed copy of approval from Ministry of Corporate Affairs vide e-mail received from Ministry of Corporate Affairs dated 23.06.2011 which the assessee stated that was also filed before the lower authorities. We find that all these facts and relevant supporting material has not been verified by the assessing officer before declining the claim of deduction of payment of salary to the two employees as mentioned at page 91 of the paper book. In view of the above facts and circumstances, we restore this issue to the file of assessing officer for deciding afresh as per law on the basis of supporting documents submitted by the assessee. Accordingly, this ground of appeal of the assessee is allowed for statistical purposes.

Disallowance of travelling expenses to the extent of 10% on adhoc basis:-

20. The assessing officer has disallowed 20% of travelling expenses for want of supporting documentary evidences. In appeal, the ld. CIT(A) has restricted the disallowance to the extent of 10% of the travelling expenses claimed by the assessee.

21. Before us, the ld. Counsel submitted that the travelling expenses were incurred mainly on the travelling / local conveyance of its

employees and managerial person during the year under consideration. The assessee has submitted comparative analysis of travelling expenses vide submission dated 25.11.2013 and 07.10.2013 during the course of assessment. He submitted that the AO has not raised any further query and also not issued any show cause notice for making disallowance of such expenses on adhoc basis. The ld. Counsel has also referred the detail of branch-wise travelling and conveyance expenses submitted before the assessing officer during the course of assessment proceeding. On the other hand, ld. DR supported the order of lower authority.

22. Heard both the sides and perused the material on record. The assessee company is in the business of providing management services including cleaning house keeping and technical services etc. As a result travelling and conveyance expenses are incurred to travel the places of the client by the staff personnel of different branches of assessee company. Even before the ld. CIT(A), the assessee has particularly submitted copies of statement vide letter dated 23.02.2021 showing that travelling and conveyance expenses have been incurred on year to year basis and also submitted the ledger account of travelling and conveyance expenses along with name of the client / branch / side of visit etc. Because of nature of services rendered by the assessee to a large number of clients it was having more than 12900 employees across India under its payroll during A.Y. 2010-11. The services were rendered to the clients of the assessee by its own payroll staff. After considering the above facts and circumstances we find that assessing officer has neither issued any specific show cause notice to the assessee nor brought any material on record to demonstrate that the claim of the travelling expenses of the

assessee company was not supported with relevant documentary evidences. Therefore, we find that decision of ld. CIT(A) in sustaining such disallowance on adhoc basis is not justified and this ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 21.10.2024

Sd/-

Sd/-

(RAHUL CHAUDHARY)
JUDICIAL MEMBER

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai: 21.10.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai