

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं सुश्री पद्मावती एस, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
MS PADMAVATHY S, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 283/CHNY/2020
निर्धारण वर्ष/Assessment Year: 2009-10

M/s. Dishnet Wireless Ltd.,
Spencer Plaza, 5th Floor,
769, Anna Salai,
Chennai – 600 002.

The Deputy Commissioner
Vs. **of Income Tax,**
Corporate Circle 1(4),
Chennai

PAN: AAACD 5767E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None
प्रत्यर्थी की ओर से/Respondent by : Ms.E. Pavuna Sundari, CIT

सुनवाई की तारीख/Date of Hearing : 23.07.2025
घोषणा की तारीख/Date of Pronouncement : 01.08.2025

आदेश/ ORDER

PER GEORGE GEORGE K, VICE PRESIDENT:

This appeal filed by the resolution professional on behalf of the assessee company is directed against the order of Commissioner of Income Tax (Appeals)-1, Chennai dated 01.11.2019, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2009-10.

2. The assessee company has raised the following grounds:-

1. *That on the facts and circumstances of the case and in law, the order passed by Learned Commissioner of Income-tax (Appeals)-4, Chennai [“Ld.CIT(A)”] is bad in law.*

2.*At the outset, it is submitted that the Appellant had approached Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT) under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and corporate insolvency resolution process ("CIRP") had been initiated pursuant to the order of the NCLT dated March 19, 2018, and the Appellant is currently undergoing such CIRP, and a resolution professional has been appointed for managing the affairs of the Appellant. Further, during the CIRP, a moratorium is prevalent on the Appellant under Section 14 of the IBC which inter alia prohibits the following:*

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

Therefore, no order, judgement or decree of any court, tribunal or any other authority (including the order passed by the CIT(A)) can be executed during the CIRP in light of the ongoing moratorium.

2.1 *It is also pertinent to note that the aforesaid tax period pertains to the period prior to the insolvency commencement date. As per the provisions of the Code, all creditors of the Company were required to submit claims in respect of dues against the Company for the period prior to the insolvency commencement date. Pursuant to the meeting of the committee of creditors of the Company dated May 13, 2019, resolution plan submitted by a resolution applicant for the Company has been approved by the committee of creditors of the Company and the same is pending the order of the NCLT. As per the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (as applicable to the Company), creditors who fail to submit claims within the timeline stipulated under the public announcement issued for submission of claims may submit the resolution plan by the committee of creditors. Accordingly, claims or revisions in respect thereof submitted until the approval of the resolution plan by the committee of creditors have been accepted and verified by the RP, and the claim verification process has been concluded in light thereof. Further, the Code also does not permit payment of dues to any creditors for the period prior to the insolvency commencement date in a preferential*

manner. All claims submitted by the creditors shall be dealt with in accordance with the provisions of the Code under a resolution plan or under liquidation, as the case may be.

2.2 Further, as per Section 238 of the IBC, the IBC shall have an overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. In the judgment in the matter of PR Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd dated August 10, 2018, the Supreme Court of India has held that having regard to Section 238 of the Code, the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961. A similar view was also adopted by the Supreme Court in the judgement in Innoventive Industries Ltd. vs. ICICI Bank and Ors. dated August 31, 2017, where it had held that the Code would prevail against a Maharashtra statute in view of the non obstante clause in Section 238 of the Code.

Without prejudice to the above, our grounds of appeal on merits are as under:

3. Addition of deferred income on prepaid services

3.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in adding the deferred income amounting to INR 1,04,93,54,196 as income accrued to the Appellant during the AY 2009-10.

3.2 That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in holding that the said amount has accrued to the Appellant during the year of receipt without considering the fact that the income on prepaid services are to be recognized over the period in which the Appellant has the obligation to render the concerned services.

3.3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated the fact that the Appellant follows mercantile system of accounting wherein income is recognised only when the same is accrued upon rendering of services and not upon mere receipt of money.

3.4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in not following the orders of various Hon'ble Courts on this matter including that of Hon'ble Jurisdictional Madras High Court in the case of Coral Electronics P. Ltd. (274 ITR 236) on a similar issue. The said act of the Ld. CIT(A) as well as Ld. AO is against the principles of judicial discipline.

3.5. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in not following the judgement of the Hon'ble Supreme Court in the case of M/s Glaxo Smithkline Asia (P) Ltd.

(SLP No. 18121 /2007) wherein the Hon'ble Court dismissed the SLP since it was revenue neutral exercise.

4. Depreciation on Indefeasible right to use bandwidth capacity

4.1 That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in disallowing depreciation amounting to INR 6,20,70,740 claimed in the return of income by the appellant on Indefeasible right to use bandwidth capacity being an intangible asset on the ground that the appellant has not acquired any asset whether tangible or intangible and that the payment is made for use of a facility.

4.2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated that the IRU is an intangible asset falling within the ambit of any other business or commercial rights of similar nature as per Explanation 3 to section 32(1)(i) of the Act eligible for depreciation at the rate of 25 percent under the provisions of the Act.

4.3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO erred in not appreciating that the appellant owns the IRU as explained by the Hon'ble Supreme Court in the case of CIT vs Podar Cement (P) Ltd (226 ITR 625) that anyone in possession of the property exercising such dominion over the property and or enjoying its usufructs in his own right will be treated as owner of the asset.

4.4. That on the facts and circumstances of the case and in law, the Ld. CITA) as well as Ld. AO erred in not appreciating that the appellant has full right to transfer assign and sell its rights and obligations and as the asset is being used in the appellants business the appellant was entitled to claim depreciation on the same.

4.5. That, without prejudice, on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO erred in not allowing the deduction of claim as revenue expenditure under provision of the Act.

5. Provisions for roll-out obligation

5.1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO erred in holding that the amount of INR 36,70,00,000 claimed by the appellant as provision towards roll out obligations payable to the Department of Telecommunications (DOT) is penal in nature and therefore not a deductible expenditure in computing total income under the provisions of the Act.

5.2 That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated that the liability to make payment for failure to rollout as per the obligations is necessarily arising on account of breach of conditions mentioned in the license

agreement and a contractual obligation and allowable as deduction under section 37(1) of the Act.

6. Disallowance under section 40(a) (ia) for alleged non-deduction of tax at source on alleged payments to distributors

6.1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in disallowing an amount of INR 30,57,387 being discount to distributors on prepaid cards etc. characterizing it as commission paid to distributors and disallowing it under section 40(a) (ia) of the Act, on the ground that tax has not been deducted under section 194H of the Act.

6.2 That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated the fact that an interim stay on all notices that relates to section 194H of the Act and all proceedings pursuant thereto has been granted by Hon'ble Madras High Court in the appellant's own case and therefore, the appellate proceedings should have been kept in abeyance till the disposal of WRIT by Hon'ble Madras High Court.

6.3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated that the relationship of the Appellant and its distributors is that of principal to principal and not of principal to agent.

6.4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated that discount to dealers cannot be regarded as commission paid by the Appellant since no such payment or credit was made by the Appellant and hence, provision of Chapter XVII B of the Act are not attracted on such amounts.

6.5. That on the facts and circumstances of the case and in law, the Ld. CITA) has erred in not appreciating the principle as laid down by the Hon'ble Supreme Court in the matter of CIT v. Vegetable Products Ltd. 19721 (88 ITR 192), wherein it was held that if two reasonable possible, the construction which favours the Appellant constructions of a taxing provisions are must be adopted.

6.6. That, without prejudice, on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in not appreciating the fact that the payee in respect of these payments would have discharged their tax obligation (if any) and therefore, there cannot be any disallowance in respect of these payments under section 40(a)(ia) of the Act.

7. Disallowance of site restoration expenses

7.1 That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as Ld. AO has erred in not allowing the deduction of INR 92,60,00,000 claimed toward site restoration as a revenue expense.

7.2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO has erred in not appreciating that the Site Restoration Costs / Asset Retirement Obligation are not included in the asset block for the purpose computing depreciation nor are the sum amortized in the books of accounts claimed as a deduction under the Income Tax Act, accordingly, the provision for asset retirement obligation should be allowed as tax deductible in the year of claim as the same has been made on a scientific basis, for future losses to be incurred.

7.3. That, without prejudice, on the facts and circumstances of the case and in law, the Ld. CIT(A) as well as Ld. AO ought to have appreciated that the expenditure on site restoration shall be eligible for depreciation amortization under section 32 of the Act.

8. Disallowance of year - end provisions

8.1. That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as Ld. AO has erred in not allowing INR 1,10,11,48,082 claimed by the Appellant towards year end provisions.

8.2. That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as Ld. AO has erred in not appreciating that since the provisions are made on estimate basis as the payee is not identified and the amount to be paid is also not ascertainable, the Appellant is not liable to deduct tax in respect of provision made for year-end expenditure.

8.3. That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as Ld. AO has erred in not appreciating that as and when the service providers raise an invoice, the Appellant duly deducts the TDS at source and discharges the obligation cast upon it.

9. Disallowance of foreign exchange loss

9.1. That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as Ld. AO has erred in disallowing realised foreign exchange loss amounting to INR 1,04,42,102.

9.2. That on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in holding that the loss disallowed by Ld. AO was 'unrealised' foreign exchange capital loss when the Ld. AO has clearly specified in the assessment order that the said loss is realised in nature.

9.3. That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as the Ld. AO has erred in not appreciating that realised foreign exchange loss is allowable irrespective of the same being capital in nature.

9.4. That, without prejudice to the above, on the facts and circumstances of the case and in law the Ld. CIT(A) as well as the Ld. AO has erred in not adding the amount of realised capital foreign exchange loss to the cost/W.D.V, of the asset.

10. That on the facts and circumstances of the case and in law the Ld. CIT(A) as well as Ld. AO has erred in granting short credit for tax deducted at source as per law as due to the Appellant.

3. The above case has been pending before the Tribunal since 03.02.2020. On 31.07.2023, when case was called for hearing, none was present on behalf of the assessee company. The Tribunal on 31.07.2023 passed an order sheet entry which reads as follows:-

“When this appeal was called for hearing, none is present from assessee’s side. On perusal of order sheet entries, since 02.07.2020, it is noticed that one Shri Venkatesh Prabhu, FCA appears sometime but on majority of occasions, he is not representing. This matter was fixed for hearing 27 times. Further, on perusal of grounds of appeal raised by assessee i.e., ground No.2, it is noticed that the assessee is before National Company Law Tribunal (NCLT), Mumbai Bench under Insolvency and Bankruptcy Code, 2016 and in the process of Corporate Insolvency Resolution process. Qua this, assessee has raised following Ground No.2:-

2. At the outset, it is submitted that the Appellant had approached Hon'ble National Company Law Tribunal, Mumbai Bench (NCLT) under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("IBC") and corporate insolvency resolution process ("CIRP") had been initiated pursuant to the order of the NCLT dated March 19, 2018, and the Appellant is currently undergoing such CIRP, and a resolution professional has been appointed for managing the affairs of the Appellant. Further, during the CIRP, a moratorium is prevalent on the Appellant under Section 14 of the IBC which inter alia prohibits the following:

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

Therefore, no order, judgement or decree of any court, tribunal or any other authority (including the order passed by the CIT(A)) can be executed during the CIRP in light of the ongoing moratorium.

2.1 It is also pertinent to note that the aforesaid tax period pertains to the period prior to the insolvency commencement date. As per the provisions of the Code, all creditors of the Company were required to submit claims in respect of dues against the Company for the period prior to the insolvency commencement date. Pursuant to the meeting of the committee of creditors of the Company dated May 13, 2019, resolution plan submitted by a resolution applicant for the Company has been approved by the committee of creditors of the Company and the same is pending the order of the NCLT. As per the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Process for Corporate Persons) Regulations, 2016 (as applicable to the Company), creditors who fail to submit claims within the timeline stipulated under the public announcement issued for submission of claims may submit the resolution plan by the committee of creditors. Accordingly, claims or revisions in respect thereof submitted until the approval of the resolution plan by the committee of creditors have been accepted and verified by the RP, and the claim verification process has been concluded in light thereof. Further, the Code also does not permit payment of dues to any creditors for the period prior to the insolvency commencement date in a preferential manner. All claims submitted by the creditors shall be dealt with in accordance with the provisions of the Code under a resolution plan or under liquidation, as the case may be.

2.2 Further, as per Section 238 of the IBC, the IBC shall have an over-riding effect notwithstanding anything inconsistent contained in any other law for the time being in force. In the judgment in the matter of PR Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd dated August 10, 2018, the Supreme Court of India has held that having regard to Section 238 of the Code, the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961. A similar view was also adopted by the Supreme Court in the judgement in Innoventive Industries Ltd. vs. ICICI Bank and Ors. dated August 31, 2017, where it had held that the Code would prevail against a Maharashtra statute in view of the non obstante clause in Section 238 of the Code.

When a query was put to ld.CIT-DR, he requested that matter can be blocked till the disposal of Corporate Insolvency petition filed by assessee before NCLT, Mumbai Bench. After hearing the Revenue's view, we block this appeal from hearing and further direct the ld.CIT-DR to inform the AO

that he will find out the stage of the proceedings before NCLT in regard to Corporate Insolvency of the assessee and inform the Tribunal. The AO will also inform the Tribunal as and when the insolvency process is completed by NCLT, Mumbai Bench in the case of assessee. Registry is directed to give copy of this order sheet to the Revenue. In term of the above, this appeal is blocked for the time being.”

4. After the above order sheet entry being passed by the Tribunal, case was fixed for hearing on number of dates. None was present on behalf of the assessee company inspite of notice being served to the assessee company by RPAD. The Ld.DR has not been able to obtain the relevant information which the Tribunal had sought in the order sheet entry dated 31.07.2023 (*supra*).

5. The tax demand for the relevant year pertains to period prior to the insolvency commencement date. As per the provisions of the code, all creditors of the company were required to submit the claims in respect of dues against the assessee company for the period prior to the insolvency commencement date. There is no information from the Ld.DR that tax arrears for the relevant assessment year has been submitted by the Department in respect of dues against the company and is forming part of the list of creditors of the assessee company. We see no reason to keep this appeal pending since this appeal has been filed on

05.02.2020 and there is no information / material available on record as regards whether the moratorium is still in force and whether the tax arrears is part of dues against the company in the list of creditors before the NCLT. Section 156A of the Act introduced by Finance Act, 2022 w.e.f. 01.04.2022 states about the modification / revision of demand notice in respect of final orders passed by the adjudicating authority under the Insolvency and Bankruptcy Code, 2016. The relevant section reads as follows:-

156A. (1) Where any tax, interest, penalty, fine or any other sum in respect of which a notice of demand has been issued under section 156, is reduced as a result of an order of the Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, the Assessing Officer shall modify the demand payable in conformity with such order and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall accordingly, apply in relation to such notice.

(2) Where the order referred to in sub-section (1) is modified by the National Company Law Appellate Tribunal or the Supreme Court, as the case may be, the modified notice of demand as referred to in sub-section (1), issued by the Assessing Officer shall be revised accordingly.

6. In light of the aforesaid facts mentioned and subsequent developments, we are inclined to restore the entire matter to the file of the AO with a direction to ascertain the outcome of NCLT proceedings and to proceed in accordance with law, after giving

due opportunity of hearing to the assessee. With the above observations, the appeal filed by the assessee is disposed off. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 1st August, 2025 at Chennai.

Sd/-

(पद्मावती एस)

(PADMAVATHY S)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जॉर्ज जॉर्ज के)

(GEORGE GEORGE K)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 1st August, 2025

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.