

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI
BEFORE MS. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3945/MUM/2025

Assessment Year: 2020-21

Asst. Commissioner of Income Tax Central Circle 2(3), Mumbai Room No. 803, Old CGO Annex building, Churchgate, Mumbai 400020	vs	Indusind Media and Communication Ltd. 49/50, In Centre 12 Road MIDC, Andheri East, Mumbai 400093 PAN: (AAACI1198L)
Appellant		Respondent

Present for:

Appellant by : Shri Mihir Naniwadekar and
Shri R.H. Gurjar, Advocates

Respondent by : Shri Satya Pal Kumar, CIT DR

Date of Hearing : 18.09.2025

Date of Pronouncement : 16.12.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Id. CIT(A) 48, Mumbai vide Order No. ITBA/APL/S/250/2024-25/1075334814(1) dated 31.03.2025 passed against the u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.05.2022 for AY 2020-21.

2. Grounds taken by the revenue are reproduced as under which we will deal with seriatim:

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of * 34,04,27,023/- made on account of disallowance of bad debts under section 36(1)(vii) of the Act, without appreciating that the assessee failed to furnish basic and verifiable details such*

as PAN, address, and identity of the debtors, which are essential to establish the genuineness of the debt and compliance with the conditions laid down under section 36(2) of the Act?"

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that mere write-off in the books of accounts is sufficient to allow bad debts under section 36(1)(vii), without considering that the assessee failed to discharge the initial burden of proving that the debt was previously taken into account as income and that recovery steps were undertaken, thereby rendering the claim unverified and non-genuine?"

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of 4,16,89,000/- made by the Assessing Officer on account of advances written off by the assessee to its subsidiary company, treating the same as business loss/expenditure, without appreciating that such advances were in the nature of capital investment and not revenue expenditure?"

4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of 12,94,00,000/- made under section 40(a)(i) of the Income Tax Act, without properly appreciating that the payment made to Thaicom Public Co. Ltd. for transponder services constituted "royalty" within the meaning of section 9(1)(vi) of the Act as well as Article 12(3)(b) of the India-Thailand DTAA, being consideration for the use of industrial, commercial or scientific equipment?"

5. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that no tax was deductible under section 195 on payments made for transponder services, despite the Assessing Officer finding that such payments fell within the ambit of "royalty" or "fees for technical services" as defined under the Act?"

2. The appellant craves leave to add, delete, alter, modify, rectify, substitute or otherwise any or all of the grounds of appeal at or before the time of hearing of the appeal.

3. The appellant, therefore, prays that on the ground(s) stated above, the order of the Ld. CIT (A), Mumbai, may be set aside and that of the Assessing Officer to be restored.

4. The order of the Ld. CIT (A) was received by the Pr. CIT, Central-1, Mumbai, having jurisdiction over the case on 02.04.2025. However, the CIT(A)'s order dated 31.03.2025 and the limitation for filing appeal starts from 01.04.2025 and last date for filing appeal is 30.05.2025."

3. Brief facts of the case are that assessee filed its return of income on 14.02.2021, reporting total income at Rs. 3,66,15,010/-. Assessee is a registered Multi System Operator (MSO) in terms of the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations, 2012 ("Telecommunication Interconnection Regulations 2012"). As MSO, assessee provides cable TV services through cable in two ways i.e.

through its linked local cable operators and directly to the end subscribers. In addition to operating as MSO, assessee has also acquired head in the sky business of Grant Investrade Limited in earlier years (AY 2017-18) pursuant to which assessee also operates as head end in the sky operator (HITS Operator). As a HITS Operator, assessee provides cable TV services using satellite to other multi system operators and to local cable operators. During the year under consideration, assessee had approx. 9,000 local operators, operating under CATV and HITS services and through these cable operators it was providing services to approx. 40,00,000 subscribers as direct customers. Summarily, assessee is in the business of media and communication which is a company in which public are substantially interested. During the year under consideration, assessee underwent a restructuring by way of a demerger scheme dated 21.08.2020, approved by the Id. NCLT on 21.08.2020. Assessee demerged its business of Media & Communication into NXT Digital Ltd. w.e.f. 01.10.2019. The demerger being fully compliant u/s.2(19AA) of the Act, it filed its return of income considering the provisions of section 72A(4).

4. As against the returned income, assessment was completed u/s. 143 (3) at total income of Rs.54,81,31,033/- by making the following additions/disallowances tabulated below:

Sr. No.	Particulars	Amount (Rs.)
1	Bad debts	34,04,27,023
2	Advance Written Off	4,16,89,000
3	Transponder charges	12,94,00,000
4	Total	51,15,16,023

5. In ground nos. 1 and 2, revenue is contesting on the relief granted by the Id. CIT(A) towards claim of bad debts written off, amounting to

Rs. 34,04,27,023/-. Assessee had claimed deduction u/s. 36(1)(vii) towards bad debts which is on account of -

- i. Subscription- Direct
- ii. Subscription Franchisee- HITS/CATV
- iii. Carriage Fee/ Advertisement Revenue
- iv. OFC debtors

5.1. According to the assessee, revenue from all these were offered to tax as income in the earlier years. Assessee had furnished detailed explanation regarding the circumstances under which the bad debts arose, corroborated by documentary evidence for substantiating the claim. Assessee explained that the bad debts written off during the year pertain to numerous small parties, exceeding 60,000 in number, as the nature of business involves dealings with end-user TV subscribers and local cable operators. Based on its past experience of over a decade, it observed that recoverability from customers becomes zero after six months, However, as a consistent policy, all debts older than 365 days are considered bad debts. The amounts written off in the year under consideration pertain to revenue that had already been offered for taxation in AY 2019-20 and earlier years. The decision to write off these debts was taken after conducting a due diligence process, keeping in view the peculiar nature of the business.

5.2. Assessee also highlighted that a majority of its customers are on a prepaid model, but for select retail subscribers such as direct points and franchisees, a post-paid billing methodology was followed. It operates in the cable TV industry, which is governed by the Telecom Regulatory Authority of India (TRAI), and is required to comply with its rules and regulations. Effective from February 2019, TRAI introduced the New Tariff Order, 2019, which significantly altered the industry's

billing system. Despite consumer education initiatives, some subscribers refused to pay, resulting in non-recoverable billing amounts. In support of its claim for deduction of bad debts, the assessee relied on the provisions of section 36(1)(vii) of the Act which allows deduction for bad debts written off in the books, subject to compliance with section 36(2).

5.3. Assessee submitted that the decision to treat a debt as "bad" is a commercial decision of the assessee, based on material available in its possession. Once a debt is recorded as bad in the books, it is prima facie evidence of its irrecoverability unless Assessing Officer demonstrates, with valid reasons, that the write-off is not bona fide. Assessee placed reliance on the decision of Hon'ble Supreme Court in T.R.F. Limited v. CIT [2010] 323 ITR 397 (SC) which had categorically held that an assessee is not required to establish that the debt has become irrecoverable; the mere act of writing off the debt in the books is sufficient to claim a deduction. This position was reiterated by the Hon'ble jurisdictional High Court Bombay in CIT v. Star Chemicals (Bombay) P. Ltd. [2009] 313 ITR 126 (Bom) which referred to CBDT Circular No. 551 dated 23.1.1990, clarifying that bad debt claims shall be allowed in the year in which they are written off as irrecoverable in the accounts of the assessee. Also, assessee placed reliance on another judgment of the Hon'ble jurisdictional High Court in Hinduja Ventures Ltd. v. DCIT, (a sister concern of the assessee) in Income tax Appeal no. 270 of 2008, dated 02.08.2018 which followed the same legal principles as mentioned in case of TRF Ltd. and Star Chemicals (Bombay) Pvt Ltd (supra). Assessee also contended that, in the alternative, the amounts written off are fully allowable as a business loss, relying on the decisions of Hon'ble Supreme Court in Indian Molasses Co. P. Ltd., J.K. Cotton Mills Ltd., and Sasson J. David & Co. Pvt. Ltd. v. CIT.

6. We have heard both the parties and perused the material on record. We have also gone through the orders of the authorities below along with compilation of judgments furnished by the assessee, placed on record. Admittedly, it is a fact on record that assessee has substantiated its claim of bad debts by furnishing documentary evidence including ledger accounts, demonstrating that the amount written off were earlier recognized as taxable income, thereby satisfying the conditions stipulated u/s. 36(1)(vii) r.w.s. 36(2). Case of the assessee is also duly supported by the CBDT circular no. 551 dated 23.01.1990 which clarified the amended provisions regarding bad debts, a position that has been upheld by the Hon'ble Supreme Court in the case of TRF Ltd (supra). We find that requirement by the ld. AO of furnishing PAN details in respect of the debtors for which the claim has been made as bad debts is uncalled for in view of the judicial precedents and CBDT circular referred above. Thus, non furnishing of PAN details as required by the ld. AO does not render the claim of the assessee as not allowable. Moreover, alternate claim made by the assessee that the amount written off is allowable as a business loss u/s. 28 or a deductible expense 37(1) is also fortified by the judicial precedents relied upon by the assessee which affirms that loss incidental to business is an allowable deduction. Importantly, fact of the matter is that assessee has fulfilled the statutory conditions for claiming bad debts written off as a deduction. We note from para 11 of the decision of Hon'ble High Court of Bombay in the case of DIT vs. Oman International Bank SOAG [2009] 313 ITR 128 (Bom) which emphasizes that the decision to treat a debt as bad debt in the books has to be a business and commercial decision. All that the assessee must do is to be prima facie satisfied based on the information available that the debt is bad. In the present case before us, assessee had

evidently demonstrated its prima facie case explaining the circumstances corroborated by documentary evidence for the claim made by it. Accordingly, considering the entire factual matrix and the long line of the judicial precedents, we do not find any reason to interfere with the findings arrived at by ld. CIT(A). Accordingly, ground no. 1 and 2 raised by the revenue are dismissed.

7. Ground No. 3 relates to relief granted by ld. CIT(A) towards disallowance of Rs. 4,16,89,000/- on account of advances written off by the assessee given to its subsidiary company, treating it as business loss/expenditure. Before us, ld. Counsel for the assessee pointed out that on the query raised by the ld. AO on this issue, detailed submissions were made which are reproduced in the impugned assessment order. However, ld. AO inadvertently missed to give his conclusive finding on its treatment except for making an addition while computing the assessed total income. There is no whisper about the acceptance or rejection of the claim of the assessee vis-à-vis submissions made by it, even though reproduced in the assessment order. Thus, there is no substantive evaluation of facts, legal provisions or judicial precedents on this issue by the ld. AO. Ld. CIT(A) by exercising his co-terminus powers, responsibly took up this task of examining the claim of the assessee towards writing of advances by making a substantive evaluation which has been perused.

7.1. Assessee had extended advances to its subsidiary, viz. Sainath In Entertainment Private Limited, wherein it holds 51% controlling stake, spread over the period from AY 2012-13 to AY 2020-21. This subsidiary is also engaged in the same line of business as that of the assessee. Assessee gave advances for financing working capital requirements as it was strategically important for its operations since subsidiary served

the Kalwa region which is one of the key operational areas of the assessee for cable TV distribution. Assessee furnished financial data demonstrating that despite continued financial support, net worth of this subsidiary had been completely eroded over time as it had been incurring losses continuously. It was also submitted that advances given by the assessee included unrecovered technical fee and link charges which had been duly offered to tax by the assessee in earlier years. Details of advance given and amount written off is tabulated below:

Sr No	Name	PAN	Opening balance as on 01.04.2019	Net Transactions during the year	Amount written off	Closing balance as on 31.03.2020
1	Sainath In Entertainment Pvt. Ltd.	AANCS4864N	3,98,98,733	17,87,354	4,16,86,087	--

7.2. Financial data given by the assessee in respect of erosion of net worth of the subsidiary and the continual losses sustained by it is also tabulated below:

F.Y.	Share capital	Reserves	Advances Payable	Turnover	Net Profit
2011 - 12	50,00,000	-2,52,379	47,26,666	2,16,32,135	8,00,983
2012 - 13	50,00,000	-34,91,139	73,71,338	1,87,19,659	-32,38,759
2013 - 14	50,00,000	-1,63,21,366	1,41,31,195	2,67,000	-1,28,30,228
2014 - 15	50,00,000	-2,06,81,483	2,37,73,021	4,02,740	-43,35,679
2015 - 16	50,00,000	-2,20,04,130	2,89,35,157	2,03,85,031	-13,22,647
2016 - 17	50,00,000	-3,54,80,296	3,48,92,607	1,54,73,119	-1,34,76,166
2017 - 18	50,00,000	-3,46,61,536	3,53,10,858	2,31,96,682	8,18,758
2018 - 19	50,00,000	-3,41,90,230	3,98,98,733	2,58,72,613	4,71,306
2019 - 20	50,00,000	-3,46,70,218	Written Off	2,77,41,764	-4,79,988

8. Assessee evidentially established that the advances given to its subsidiary were extended for legitimated business purposes and the write off is a prudent commercial decision necessitated by deterioration of financial health of the subsidiary. It is well settled position that business decisions taken on commercial consideration must be evaluated from the perspective of the assessee and not substituted with the subjective views of the authority. Claim of the assessee for the write off as an allowable business loss u/s. 28 or an expenditure u/s. 37 is rightfully justified, since conditions for allowance under the said section stand satisfied. We find force from the decision Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Colgate Palmolive (India) Limited [2015] 370 ITR 728 (Bom), wherein it held that investment made by the assessee in its subsidiary is nothing but measure of commercial expediency to further business objective and primarily related to the business operation of the assessee. At no point of time, the investment in subsidiary was made with an intention to realize any enhancement value thereof or to earn dividend income. Thus, the loss was on business loss in the hands of the assessee. Similar view was taken by the Hon'ble High Court of Karnataka in the case of ACAS Designer Limited vs ACIT [2020] 120 taxmann.com 321 (Kar), which in turn relied upon the decision of Colgate Palmolive (supra). In the give set of facts and circumstances and judicial precedents referred above, we take note of well examined findings arrived at by ld. CIT(A) and are in agreement with the same. Accordingly, ground no. 3 raised by the revenue is dismissed.

8. Ground no. 4 deals with relief granted by ld. CIT(A) towards disallowance of Rs. 12,94,00,000/- made u/s. 40(a)(i) on account of payment made to Thaicom Public Company Limited (TPCL) for transponder services which according to the ld. AO constituted "royalty"

within the meaning of section 9(1)(vi) of the Act, as well as Article 12(3)(b) of India-Thailand Double Taxation Avoidance Agreement (DTAA) as it amounts to consideration for use of industrial, commercial or scientific equipment. Ld. AO issued a show cause notice asking the assessee to provide details in respect of transponder charges paid by it.

8.1. Fact of the matter is that assessee had entered into an agreement with Thaicom Public Co. Ltd. for availing transponder services. Under this agreement, assessee was assigned the capacity of six transponders on the Thaicom 5 satellite for the purpose of signal transmission. The agreement specified that the satellite and transponders were owned and controlled solely by TPCL, with assessee merely utilizing the assigned transponder bandwidth for transmitting signals. The payment of transponder charges was contractually required to be made without deduction of any taxes in India. Ld. Assessing Officer disallowed the payment on the grounds that these charges constituted "royalty" under section 9(1)(vi) of the Act and as well as under Article 12(3)(b) of the India-Thailand DTAA. The AO also noted that assessee had not deducted tax at source on the said payments and, consequently, invoked Section 40(a)(i) of the Act to disallow these expenses.

8.2. Assessee has contended that payments for transponder services does not qualify as "royalty" under Article 12 of the relevant DTAA and should instead be classified as business income under Article 7. In support of its claim, it placed reliance on the OECD Commentary on Model Tax Conventions, which clarifies that payments made under transponder leasing agreements do not constitute "royalty" as they are not made for the use of or right to use any industrial, commercial, or scientific equipment. The OECD specifically states that such payments

are in the nature of payments for services and should be taxed under Article 7 as business income, provided the service provider does not have a Permanent Establishment (PE) in the recipient country. Assessee relied on the decision of Hon'ble High Court of Delhi in New Skies Satellite BV & Shin Satellite Public Co. Ltd. 328 ITR 114 (Del) which held that payments for transponder services do not amount to "royalty" and should be assessed as business income. Additionally, the Hon'ble jurisdictional High Court of Bombay in CIT v. Reliance Infocom Ltd. (IT Appeal No. 1395 of 2016, dated 05.02.2019), reaffirmed this principle. Coordinate Bench of ITAT Mumbai in Disney Broadcasting (India) Ltd. (ITA No. 262, 263, 265, 267, 268 & 271/Mum/2017) followed the said view, holding that transponder charges do not fall within the ambit of "royalty" under the tax treaties.

8.3. From the impugned assessment order, we note that ld. AO has observed that assessee is in default as transponder charges paid by it were taxable as royalty u/s. 9(1)(vi) of the Act, as well as corresponding provision of Article 12(3) in the DTAA between India and Thailand. He referred to article 12(3) which defined the term 'royalty' under the said DTAA. From this, he noted that since the term "process" is not defined by the DTAA, Explanation 6 inserted in section 9(1)(vi) of the Act was resorted to by him to bring to charge this payment as royalty falling within the ambit of the Act. Thus, according to him, assessee had not deducted tax at source on these payments made to TPCL and thus, made the disallowance u/s. 40(a)(i). He concluded that payments are made in the nature of royalty and are paid outside India without deduction of tax at source, hence disallowed. We note that he incorrectly observed that transponders were under the control of the assessee to constitute "equipment royalty". In the submission made by the assessee as reproduced in the impugned assessment order, it is stated that in

the agreement, the satellite and its transponders were owned, operated and controlled by TPCL. Assesses had no physical possession or control over the same. Mere allocation of transmission capacity does not amount to granting right to use or control the equipment itself.

8.4. It is also noted that definition of royalty under the India Thailand DTAA does not define or does not refer to “process” for which ld. AO resorted to Explanation 6 to section 9(1)(vi) of the Act. It is a settled position in law that in cases of conflict between domestic tax law and the tax treaty, provisions of treaty shall prevail. Ld. AO expanded the scope of the Article in the DTAA by including the definition of “process” by resorting to the domestic law in order to apply the treaty provision contained in Article 12. In this respect, ld. Counsel for the assessee referred to the decision of Hon’ble High Court of Delhi in the case of DIT vs. New Skies Satellite BV [2016] 68 taxmann.com 8 (Del) which has dealt with such as situation. It was held by the Hon’ble Court that unless DTAA is amended jointly by both parties to incorporate income from data transmission services as partaking nature of royalty, or amend definition in a manner so that such income automatically becomes royalty. Finance Act, 2012 which inserted Explanations 4, 5 and 6 to section 9(1)(vi) of the Act by itself would not affect meaning of the term 'royalties' as mentioned in Article 12 of India - Thailand DTAA.

9. In the given factual matrix and judicial precedents discussed above, payments made by the assessee to TPCL towards transponder charges does not constitute royalty under the India-Thailand DTAA and therefore, is not subjected to deduction of tax in India. Accordingly, disallowance made by ld. AO u/s. 40(a)(i) is not tenable. Further, it is an undisputed fact that TPCL does not have a PE in India in terms of provisions of Article 7 of India Thailand DTAA. Accordingly, even on this

account, it is not taxable in India and therefore, there is no obligation on the assessee to deduct tax at source u/s. 195 on the said payments towards transponder charges to TPCL. Considering the entire discussion made above, we uphold the findings arrived at by Id. CIT(A). Accordingly, ground no. 4 raised by the revenue is dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 16.12.2025.

Sd/-
[Suchitra Raghunath Kamble]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 16.12.2025.

Divya Ramesh Nandgaonkar
Stenographer

Copy to:

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2. The Respondent
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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai