

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1427/Bang/2013
(Assessment Year : 2008-09)

UTN Cable Communications Pvt. Ltd,
No.288, II floor, Chinnappa Layout,
Kammanahalli, Bengaluru 560 084 .. Appellant
PAN : AAACU4903H

v.

Joint Commissioner of Income-tax,
Circle -7(2), Bangalore .. Respondent

Assessee by : Ms. Tanmayee Rajkumar, Advocate
Revenue by : Shri. Chandrasekar, JCIT

Heard on : 17.12.2015
Pronounced on : 06.01.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee it has taken altogether seven grounds of which grounds 6 and 7 are general needing no adjudication. Ground 4 is relief sought by the assessee. Vide grounds 1 to 3 it assails the disallowance made by the AO on account of difference between confirmation received from certain creditors and the balance as appearing

in the books of the assessee. These were disallowance of Rs.14,343/- being the difference relating to M/s. Channel Plus appearing at ground.1. Disallowance of Rs.11,77,732/- in respect of Zee Turner Ltd appearing at ground 2 and disallowance of Rs.15,05,912/- in respect of M/s. Ushodaya Enterprises (ETV) appearing at ground.3.

02. Ld. Counsel for the Assessee at the outset submitted that he was not pressing ground 1 considering insignificant amount involved. Accordingly, ground 1 is treated as not pressed.

03. Facts relating to grounds 2 and 3 can be extracted together. Assessee, a distributor of channels for cable net work operators is a subsidiary of an M/s. Hathway Cable & Datacom Ltd ('HCDL' in short). As a cable system operator it transmitted signals to local cable operators. Various pay channels had contracted with HCDL for distribution of their channels. Assessee had billed the local cable operators and was in turn paying the various channel companies. HCDL, assessee's parent company was being billed by the channels. HCDL was a distributor of these signals to various concerns coming under it of which assessee was one. Some of the channel companies directly billed HCDL whereas some others billed both assessee as well as HCDL. As per the books of account of the

assessee a sum of Rs.45,69,463/- was shown as outstanding against one M/s. Channel Plus; Rs.13,00,164/- was shown as due to M/s Zee Turner and Rs.15,05,912/- was shown as due to M/s. Ushodaya Enterprises. AO issued notice u/s.133(6) of the Act to these pay channels. Zee Turner replied that the balance outstanding as due from the assessee as on 31.03.2008 in their books was only Rs.1,22,432/-. M/s. Ushodaya Enterprises replied that nothing whatsoever was due from the assessee to it. When explanations from the assessee were sought assessee submitted a letter from HCDL. In the said letter HCDL stated that a sum of Rs.13,00,164/- was due from them to M/s. Zee Turner on account of signals received by them and distributed through the assessee. Assessee also produced a letter from HCDL mentioning the amount due to Ushodaya Enterprises as Rs.15,05,912/-. However, AO refused to accept these letters. According to him in respect of amounts shown as due to Zee Turner, the creditor had shown the balance as Rs.1,22,432/-, whereas HCDL had confirmed a balance of Rs.13,00,164/-. According to him there was a difference of Rs.11,77,732 /-. In so far as M/s. Usodaya Enterprises was concerned, AO noted that the confirmation from HCDL could not be believed. He considered the whole of the amount as unexplained cash

credit. Addition were made of both amounts of Rs.11,77,732/- and Rs.15,05,912/-.

04. Aggrieved assessee moved in appeal before the CIT (A). Submission of the assessee was that it was a subsidiary of HCDL and it had entered into agreement along with other subsidiaries of HCDL. As per the assessee, Zee Turner had raised a part of the bill on HCDL and part of the bill on the assessee. According to the assessee, it was obliged to pay Zee Turnover for the signals received from them. Contention of the assessee was that the amounts were due on bills routed through its holding companies. However the CIT(A) did not accept these contentions. He confirmed the addition.

05. Now before me, Ld. AR strongly assailing the orders of lower authorities submitted that the bills raised by Zee Turnover on HCDL totalled to Rs.13,00,164/-. Zee Turner had confirmed Rs.1,22,432/-. The difference was considered for addition by the AO. Thus the methodology followed of routing the transactions through its principal were never doubted. As per the Ld. AR AO had himself taken the difference between the balance as appearing in the books of HCDL and the balance as confirmed by Zee Turner for addition. Ld. AR submitted that assessee was

following an accepted business practice where a basket of channels were supplied to a single company who in turn distributed to various areas through their subsidiaries or through their sister concerns. Contracts were entered by HCDL with various channels so that economies scale could be achieved.

06. In so far M/s. Ushodaya Enterprises was concerned, Ld. AR submitted that they were supplying all ETV channels and the bills considered by the CIT (A) only related to ETV non-Kannada channel. April to August bills considered only ETV Telugu channels whereas the bills for other months considered both ETV Telugu as well as ETV Kannada channels. According to the Ld. AR there were about 75,000/- subscribers for ETV Kannada channels alone. Assessee, as per the Ld. AR could not produce the bills raised by M/s. Ushodaya Enterprises in respect of ETV Kannada channel due to various difficulties faced by it. This was the reason for reconciliation difference. According to her, these were genuine business expenditure disallowed without any rhyme and reason.

07. Per contra, Ld. DR submitted that assessee could not prove the credits appearing in the books to the satisfaction of the lower authorities. Assessee could not adduce evidence in support of its contentions. Thus

according to him additions were rightly done by the AO and confirmed by the CIT (A).

08. I have perused the orders and heard the rival contentions. Addition made by the AO in respect of Zee Turner is difference between the credit as appearing in the books of HCDL and what was confirmed by Zee Turner. Confirmation obtained by the assessee for the dues shown by them against Zee Turner was that of HCDL. Since only the difference was added by the AO it is clear that the methodology of billing and payment of the bills followed by the assessee, where some bills were routed through its principal has been accepted by necessary implication. Nevertheless what we find is that assessee could not show before the lower authorities on what basis the bills raised on HCDL were bifurcated by them between their various subsidiary concerns servicing the cable network of different areas. Question whether apportionment of expenditure done by HCDL was based on an acceptable criteria has not been addressed by any of the lower authorities. In the case of M/s. Ushodaya Enterprises the contention of the assessee is that the difference in reconciliation was due to non-consideration of payments effected by it for subscribers of ETV Kannada channels. In my opinion the whole issue requires a fresh look by the AO.

Assessee shall produce necessary records before the AO through which it can prove that apportionment of expenses done by HCDL between its various cable network subsidiaries for various areas have been done in a fair and equitable manner. Assessee shall also show that the balances appearing in its books and in the books of HCDL are properly reconciled with that of the balances reflected in the books of Zee Turner and Ushodaya Enterprises. I, therefore, set aside the orders of authorities below and remit the question of addition u/s.69 of the Act, back to the file of the AO for consideration afresh in accordance with law. Grounds 2 and 3 are treated as allowed for statistical purpose.

09. In the result, appeal of the assessee is treated as partly allowed for statistical purpose.

Order pronounced in the open court on 6th day of January, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax

4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar