

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

ITA no.3800/Mum./2014
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax
Circle-7(3), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Appellant

v/s

M/s. Yahoo India Pvt. Ltd.
(Formerly known as Yahoo Web Services
India Pvt. Ltd.), Building no.12
6th Floor, Solitaire Corporate Park
Guru Hargovindji Marg
Andheri (E), Mumbai 400 093
PAN – AAACY1252B

..... Respondent

Revenue by : Shri Nitin Waghmode
Assessee by : Shri Saurabh Soparkar

Date of Hearing – 19.01.2016

Date of Order – 29.01.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal of the Department is directed against the order dated 8th March 2014, passed by the learned Commissioner (Appeals)-13, Mumbai, for the assessment year 2008-09. Department has raised following grounds:-

"1. The Learned CIT(A) has erred on facts and in law in directing the Assessing Officer to verify the issue and delete the addition

after taking indemnity bond from the assessee even though the assessee could not furnish the evidence in support of its claim even before the AO and the CIT(A), as is clear from the order of CIT(A) which says that "AO must give effect to the same after duly verifying these entries and cross checking them with AIR details to give effect, may be after obtaining an indemnity Bond from the appellant".

2. The Learned CIT(A) has erred on facts and in law in directing the Assessing Officer to allow credit of TDS and grant interest u/s 244A after making the verification without properly appreciating the legal and factual matrix as clearly brought out by the Assessing Officer."

2. As could be seen from the above grounds, the issue raised by the Department is confined to learned Commissioner (Appeals)'s direction to the Assessing Officer to verify the reconciliation of TDS and giving effect to the same.

3. Briefly stated the facts are, assessee a company filed its return of income for the assessment year under consideration on 30th September 2008, declaring total loss of ₹ 36,64,02,025 and claiming ₹ 3,32,32,085. Assessee's return of income was taken up for scrutiny and in the course of proceedings on the basis of AIR data, the Assessing Officer called upon the assessee to reconcile the payment concerning 1,479 entries as found from E-TDS return of various tax payer parties. In response to the query raised by the Assessing Officer, assessee submitted its reply reconciling the entries. However, the Assessing Officer was of the view that out of 1,479 entries, assessee could not reconcile 161 entries relating to transactions aggregating to ₹

1,94,80,915. He, therefore, added back the said amount to the income of the assessee as a result of which the loss was determined at ₹ 34,69,83,110. Being aggrieved of the assessment order so passed, assessee preferred appeal before the learned Commissioner (Appeals).

4. Before the first appellate authority, assessee submitted a list reconciling entries aggregating to ₹ 1,62,23,925, out of the amount of 1,94,18,915. The learned Commissioner (Appeals), after examining reconciliation statement submitted by the assessee found such statement to be containing details like name of parties, invoice date and amount paid, etc. In some cases, he found that invoice date is beyond F.Y. 2007-08. He also found some discrepancies in respect of certain other entries. However, considering the fact that for majority of entries assessee was able to furnish details, learned Commissioner (Appeals) directed the Assessing Officer to verify the entries as per reconciliation statement submitted by the assessee by cross checking with AIR information and given effect to them after obtaining indemnity bond from the assessee.

5. The learned Departmental Representative submitted, before the Assessing Officer, the assessee did not reconcile 161 entries by furnishing necessary details. Only before the learned Commissioner (Appeals), the assessee did submit certain details reconciling some of

the entries. However, the learned Commissioner (Appeals) has directed the Assessing Officer to give effect to all the entries by accepting indemnity bond which is not proper.

6. The learned counsel for the assessee, on the other hand, strongly supporting the order of the learned Commissioner (Appeals), submitted that on the basis of AIR data alone no addition can be made. He submitted, not only before the Assessing Officer but also before the learned Commissioner (Appeals), assessee has furnished all relevant details relating to un-reconciled entries and learned Commissioner (Appeals) being satisfied with the evidence brought on record directed, the Assessing Officer to verify and give effect. Therefore, Department should not have any grievance against such order of the learned Commissioner (Appeals). In support of his contention, learned counsel relied upon the following decision.

- i) Arati Raman v/s DCIT, ITA no.245/Bang./2012, order dated 5.10.2012;
- ii) A.F. Ferguson & Co. v/s JCIT, ITA no.5037/Mum./2012, order dated 17.10.2014
- iii) Shri G. Ganesh v/s ACIT, ITA no.527/Mum./2010, order dated 8.12.2010.

7. We have considered the submissions of the parties and perused the material available on record. Undisputedly, out of 1,479 entries as

per AIR data, only 161 entries, according to the allegation of the Assessing Officer, remained un-reconciled by the assessee. It is also not disputed that apart from AIR information, there is no other evidence or material available before the Assessing Officer to indicate that assessee has received income more than what is declared in Profit & Loss account. It is also a fact on record that in course of hearing of appeal, assessee has reconciled 161 un-reconciled entries by furnishing all necessary details. It is not the case of the Department that the information / details submitted by the assessee in respect of un-reconciled entries are not genuine or unbelievable. Therefore, when the learned Commissioner (Appeals) has directed the Assessing Officer to verify the reconciliation of entries by examining the details submitted by the assessee, there is no reason why the Department should be aggrieved. Prima-facie, as could be seen, the learned Commissioner (Appeals) has directed the Assessing Officer to give effect only to the entries reconciled by the assessee. Moreover, on a perusal of the relevant case laws cited by the learned counsel, we find that the consistent view of the Tribunal in these decisions are, only on the basis of AIR information no addition can be made when there is no other materials before the Assessing Officer to demonstrate that assessee has received income more than what is declared by him. In the present case also, a perusal of the assessment order reveals that apart from

the AIR information, there is no other material / evidence available before the Assessing Officer to establish that assessee has received more income than what is shown in the Profit & Loss account. In the aforesaid view of the matter, we do not find any infirmity in the direction of the learned Commissioner (Appeals) which is upheld. Ground no.1, is dismissed.

8. As far as ground no.2 is concerned, the same being consequential to ground no.1 decided herein above, no separate adjudication is required.

9. In the result, appeal stands dismissed.

Order pronounced in the open Court on 29.01.2016

Sd/-
ASHWANI TANEJA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.01.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai