

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 9106/DEL/2019 (A.Y 2015-16)
a/w STAY NO. 319/DEL/2020 (A.Y 2015-16)**

(THROUGH VIDEO CONFERENCING)

Alcatel-Lucent India Limited. DLF Cyber Greens, 14 th and 15 th Floor, Tower C, Phase III DLF City, Gurgaon, Haryana (APPELLANT)	Vs	ACIT Circle-2(2), C. R. Building, I. P. Estate New Delhi (RESPONDENT)
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Appellant by	Sh. Deepak Chopra, Adv & Sh Ankul Goyal, Adv
Respondent by	Sh Prabha Kant, CIT(DR)

Date of Hearing	04.01.2021
Date of Pronouncement	04.01.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 25/10/2019 passed by the Assistant Commissioner of Income Tax, Circle 2(2), New Delhi u/s 143(3) read with Section 144C (13) of the Income Tax Act, 1961 for Assessment Year 2015-16.

2. The grounds of appeal are as under:-

“Appeal against the order under section 143(3) read with Section 144C(13) of the Income-tax Act, 1961 (“the Act”) dated 25 October 2019 for the

Assessment Year 2015-16 passed by the Assistant Commissioner of Income Tax, Circle 2(2), New Delhi ("Ld. AO").

1. That on the facts and circumstances of the cases and in law, the Ld. A.O has erred in determining the taxable income of the appellant for the subject assessment year at INR 105, 96, 25, 016/- as against the returned income of INR 50,35,04,751/-.

1.1 That on the facts and circumstances of the case and in law, the Ld. AO has erred in making several additions based on mere conjunctures and surmises, ignoring the factual matrix of the appellant as well as the nature of the transactions undertaken by the appellant.

1.2 That the Ld. AO failed to appreciate the submissions made/ contentions raised by the appellant and further erred in making several observations and inferences in the impugned assessment order which are factually incorrect and legally untenable.

2. That on the facts and circumstances of the case and in law, the Ld. AO has erred in disallowing an amount of Rs. 18,74,290/- under Section 37(1) of the Act on account of prior period expenditure.

2.1 That on the facts and circumstances of the case and in law, the Ld. AO has erred in summarily rejecting the appellant's contentions and not considering the binding judicial precedents which squarely applies to the facts of the appellant's case.

3. That on the facts and circumstances of the case and in law, the Ld. AO has erred in disallowing a amount of INR 34,77,87,979/- on account of accrued expenses by alleging that the same amount to contingent liability created on a non-scientific estimate basis.

3.1 That on the facts and circumstances of the case and in law, the Ld. AO has erred in summarily rejecting the appellant's arguments, factual

submissions and not considering the binding judicial precedents applicable to the case of the appellant.

4. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in disallowing interest on foreign term loan amounting to INR 12,33,802/- under the provisions of section 40(a)(i)*

5. *That on the facts and circumstances of the case and in law, the Ld. AO has erred in making an addition of INR 20,52,24,194/- to the income of the appellant alleging that the said amount has not been recognized as revenue in the books of accounts.*

5.1 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in drawing an adverse inference by holding that the purported excess amount as per Form 26AS over books of accounts by itself amounts to underreporting of income.*

5.2 *That on the facts and circumstances of the case and in law, the Ld. AO has erred in rejecting the appellant's contention that difference appearing in the amount of revenue recognized as per books of accounts of the appellant and as per Form 26AS is on account of different accounting policies being followed by the payer/customer and the appellant.*

6. *That on the facts in the circumstances of the case and in law, the Ld. AO has erred in levying interest under section 234A and 234B of the Act.*

7. *That on facts in the circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings under section 271(1)(c) of the Act mechanically and without recording any adequate satisfaction for its initiation.*

3. The assessee company is engaged in the business of marketing, supply and installation of digital switching equipments and related software, cellular exchange/transmission equipment and provided related services. The assessee

company also provide software development services and technical support services. Return of income declaring total income at Rs. 31,49,17,630/- was filed electronically on 24/11/2015. The assessee company filed revised return of income on 31/3/2017 declaring income of Rs. 50,35,04,750/-. During the year under consideration, the assessee entered into international transactions with associated enterprises within the meaning of Section 92B of the Act. The case was referred to the Transfer Pricing Officer as per the provisions of Section 92CA (1) of the Income Tax Act. Subsequently, the Transfer Pricing Officer vide order dated 30/10/2018 proposed an adjustment of Rs. 103, 1,38, 500/- The draft assessment order was passed on 24/ 2/2018, against the draft assessment order, the assessee filed objection before the DRP. The DRP vide its direction dated 23/9/2019 directed the Assessing Officer /TPO to incorporate its finding in respect of TPO additions. In pursuance of the DRP order, the TPO has passed an appeal effect order dated 23/10/2019 and thus made 'NIL' adjustment relating to international transaction. In respect of corporate tax, the Assessing Officer made addition on account of prior period expenses, accrued expenses, interest payment and non recognition of revenue. Thus, the Assessing Officer vide order dated 25/10/2019 assessed the total income at Rs. 105,96,25,016/-.

4. Being aggrieved by the assessment order, the assessee filed present appeal before us.

5. The Ld. AR submitted that Ground No. 1, 1.1 and 1.2 are general grounds. Hence, we are not adjudicating these grounds.

6. As regards Grounds No. 2 & 2.1 relating to disallowance of Rs. 18,74,290/- u/s 37(1) of the Income Tax Act on account of prior period expenditure, the Ld. AR submitted that the assessee has given the details before the Assessing Officer. The Ld. AR pointed out paper book 2 page 23 specifically Column 27B relating to power and fuel and other fees which was in

relation to Assessment Year 2013-14 and submitted that these expenses were crystallized in this year. Therefore, the same should have been taken into account by the Assessing Officer as well as DRP. The Ld. AR further submitted that in Assessment Year 2012-13 & 2013-14, the Tribunal has remanded back the matter to the file of the Assessing Officer for taking into account the additional evidence.

7. The Ld. DR submitted that the Assessing Officer as well as the DRP has clearly mentioned in the respective orders that no proper evidence was filed by the assessee during the assessment proceedings as well as the proceedings before the DRP. Therefore, the assessment order should be confirmed.

8. We have heard both the parties and perused the material available on record. From the perusal of the paper book it can be seen that the expenditure debited in relation to power and fuel as well as other fees was not properly demonstrated by the assessee before the Assessing Officer. Whether these expenditure were crystallized in this year was also not explained before the Assessing Officer as well as before the DRP. Therefore, we direct the assessee to demonstrate these expenditure and explain to the Assessing Officer regarding the crystallizing the same in this year or not and thereafter the Assessing Officer will take appropriate cognizance of the same and will pass necessary order. Thus, we are remanding back this issue to the file of the Assessing Officer with the specific directions given to the assessee. Ground No. 2 and 2.1 are partly allowed for statistical purpose.

9. As regards to Ground No. 3 and 3.1, relating to disallowance of Rs. 34,77,87,979/- on account of accrued expenses, the Ld. AR submitted that the details were given by the assessee but the same was not verified by the Assessing Officer. Thus, the matter may be remanded back to the file of the Assessing Officer for verification of these cost/expenses incurred by the assessee.

10. The Ld. DR submitted that the assessee has not demonstrated that the evidence before the Assessing Officer as well as DRP related to accrued expenses. Therefore, the addition may be sustained.

11. We have heard both the parties and perused the material available on record. From the perusal of the records, it can be seen that the details given by the assessee in paper book 1 at page No. 954 relating to cost incurred on services/telecom has not been considered by the Assessing Officer. Therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer for verification of these specific expenses and consider the same accordingly. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Ground No. 3 & 3.1 are partly allowed for statistical purpose.

12. As regards Ground No. 4, relating to disallowance of interest on foreign term loan amounting to Rs.12,33,802/- under the provisions of Section 40(a)(i) of the Act, the Ld. AR submitted that this issue also needs verification as the DRP as well as the Assessing Officer have not taken the cognizance of the evidence produced before them.

13. The Ld. DR relied upon the order of the Assessing Officer as well as DRP, further submitted that the assessee has not given details and merely after two years when the AE waved the interest, the assessee is coming to verify the same. The Ld. DR submitted that interest on TDS is compulsory.

14. We have heard both the parties and perused the material available on record. It will be appropriate to remand back this issue to the file of the Assessing Officer to verify whether the interest payment is not coming under the purview of total addition and the same needs to be verified as per the evidences produced before the Assessing Officer. Needless to say, the assessee

be given opportunity of hearing by following principles of natural justice. Ground No. 4 is partly allowed for statistical purposes.

15. As related to Ground No. 5 relating to the addition of Rs. 20,52,24,194/- to the income of the assessee alleging that the said amount has not been recognized as revenue in the books of accounts. The Ld. AR pointed out from paper book 2 at page no. 74 and submitted that the details were given to the Assessing Officer only the reconciliation was not properly demonstrated before the Assessing Officer as well as the DRP. Therefore, the matter may be examined by the Assessing Officer.

16. The Ld. DR submitted that no details were given before the DRP as well as the Assessing Officer. Hence, the Ld. DR submitted that the order of the Assessing Officer as well as DRP be sustained.

17. We have heard both the parties and perused the material available on record. From the perusal of the records the Assessing Officer has pointed out certain difference between 26AS and the revenue recognized in books of accounts, but after hearing the Ld. AR it appears that the Assessing Officer has not taken the entire explanation given by the assessee along with the evidences and the same needs to be considered. Therefore, in the interest of justice it will be appropriate to allow the assessee to give the proper explanation relating to reconciliation and demonstrate before the Assessing Officer how the same should not be added to the income of the assessee. Therefore, the issue is remanded back to the file of the Assessing Officer for examining the same. Ground No. 5 is partly allowed for statistical purpose.

18. Since the appeal is decided the Stay Application filed by the assessee becomes infructuous, hence dismissed.

19. In result, the appeal of the assessee is partly allowed for statistical purpose and Stay Application is dismissed.

20. Order is pronounced in the open court in presence of both the parties on 04th January, 2021.

Order pronounced in the Open Court on this 04th Day of JANUARY, 2021

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 04/01/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.01.2020
Date on which the typed draft is placed before the dictating Member	04.01.2020
Date on which the typed draft is placed before the Other Member	05.01.2020
Date on which the approved draft comes to the Sr. PS/PS	05.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	05.01.2020
Date on which the fair order comes back to the Sr. PS/PS	05.01.2020
Date on which the final order is uploaded on the website of ITAT	05.01.2020
Date on which the file goes to the Bench Clerk	05.01.2020
Date on which the file goes to the Head Clerk	