

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No. 3840/Mum/2019
(Assessment Year: 2014-15)

Hathway Cable and Datacom Limited Rahejas, 1 st Floor, Corners of Main Avenue & V. P. Road, Santa Cruz (W), Mumbai-400 054	Vs.	Dy. CIT-9(2) Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAACC 6814 B		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Nimesh Vora
Respondent by	:	Shri Jeetendra Kumar
Date of Hearing	:	26.10.2020
Date of Pronouncement	:	05.01.2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-20, Mumbai ('Id.CIT(A) for short) dated 29.03.2019 and pertains to the assessment year (A.Y.) 2014-15.

2. The grounds of appeal read as under:

1 (a) The learned Commissioner of Income tax (Appeals) erred in enhancing disallowance of the expenses incurred amounting to Rs.51,35,105/- under section 37(1) of the Act.

(b) The appellant submit that it had provided a without prejudice working on rational and scientific basis for disallowance to be made under section 14A of the Act during the course of the assessment proceedings. The appellant submits that it had inadvertently mentioned in the Statement of Facts that the said amount was added to the computation of total income. The learned Commissioner of Income-tax (Appeals) failed to appreciate that in the Grounds of appeal (No.3) it had specifically mentioned that without prejudice to its claim that no disallowance was called for under section 14A of the Act, the disallowance be restricted to Rs.51,35,105/-.

(c) The appellant submits that it is engaged in the business of Cable Network Services and Internet Service Provider and various expenses were incurred for such

businesses and not for earning any income from investments and hence the learned Commissioner of Income-tax (Appeals) erred in enhancing the assessment by disallowing a sum of Rs.51,35,105/- under section 37(1) of the Act.

(d) Without prejudice to what is stated above, the appellant submits that the order of the learned Commissioner of Income-tax (Appeals) enhancing the disallowance by a sum of Rs.51,35,105/- was passed without affording proper opportunity to the appellant and is contrary to the principles of natural justice.

2. The appellant submits that the Assessing Officer be directed:

(i) to delete the disallowance of expenses amounting to a sum of Rs.51,35,105/-; and to modify the assessment in accordance with the provisions of the Act.

3. Brief facts of the case are that in the course of the assessment proceedings, the AO found from the assessee's balance sheet that the assessee was holding investments income from which does not or shall not form part of the total income (hereinafter in this order such investments shall be referred to as "specified assets"). The AO also found that assessee's investments in "specified assets" were Rs.312,82 crores as at 31.03.2013 and Rs.371.61 crores as at 31.03.2014; that the assessee had debited interest & finance charges of Rs.76.97 crores in the P&L account. In the course of the assessment proceedings, the assessee was asked to show cause why the expenditure relating to the exempt income should not be disallowed as per the provisions of Section 14A read with Rule 8D(2). The AO specifically asked the assessee whether it was maintaining separate books of accounts in respect of the exempt income. In response, the assessee made submissions before the AO. The AO rejected the assessee's submissions and invoked the provisions of Section 14A read with Rule 8D(2). In the assessment order, the AO disallowed a sum of Rs.1,69,35,716/- under clause (iii) of Rule 8D(2) as expenditure relating to the exempt income.

4. Upon the assessee's appeal, the Id. CIT(A) deleted the addition upon a finding that no exempt income was earned. He placed reliance upon the Hon'ble Bombay High Court decision. He held as under:

4.3.1 In the course of the appellate proceedings, the AR of the appellant, inter alia, submitted that it did not earn any exempt income during the relevant previous year. On going through the profit and loss account, I found that the appellant's claim is correct. Therefore, I hold that the provisions of section 14A read with Rule 8D was not applicable in appellant's case. Reliance is placed in this regard on the decision of the Hon'ble Bombay High Court in the case of Delite Enterprises (ITA No. 110 of 2009).

4.3.2 I, therefore, hold that the disallowance made u/s. 14A read with Rule 8D is not sustainable. Accordingly, I direct the A.O. to delete the disallowance made u/s.14A read with Rule 8D(2).

5. Thereafter, he proposed an enhancement on the ground that the assessee has *suo motto* disallowance of Rs.51,35,104/-. In this regard, he observed as under:

5.4.1 I find from Para 2 of the statements of facts filed along with Form No. 35 that the appellant had itself admitted that it had incurred expenses which consisted of Salary of Mat department of Rs.51,35,105/- which worked out on rational and scientific basis for earning tax free dividend income and the same had already been added to the total income.

6. Thereafter, he made the addition by holding that no response from the assessee was there. He held as under:

5.4.4 However, no reply has been received on the said date Further, the case has been fixed for hearing on 22.03.2019, however, there was no response from the appellant. Again, the hearing was fixed on 28.03.2019. however, the appellant neither attended hearing on the said date nor made any written submissions. Therefore, it is presumed that the appellant has nothing to say in this regard. Accordingly, the sum of Rs.51,35,105/- is added to the appellant's total income u/s. 37(1) of the Act.

7. Against this order, the assessee is in appeal before us.

8. Upon careful consideration we find that Id. CIT(A) has deleted the addition made by the assessing officer u/s.14A by giving a finding that there is no exempt income earned, and accordingly on the touchstone of honourable jurisdictional High Court decision as referred above the disallowance is not sustainable.

9. Thereafter, the Id CIT(A) has held that since assessee has himself made a disallowance of Rs.51,35,104/- for earning the exempt income u/s.14A he is going to sustain the aforesaid disallowance and hence he has made an enhancement of the said amount.

10. We find that there is no estoppel as to law. If an addition or disallowance is not permissible in law the same cannot be fastened upon the assessee on his concession. Moreover, the Id. CIT(A) is relying upon the jurisdictional High Court decision in deleting the addition made by the assessing officer then again making an enhancement on a different pretext of estoppel or offering concession by the assessee. This is on the cusp of contempt of the Hon'ble Jurisdictional High Court, and not at all sustainable.

Accordingly, we set aside the orders of Id. CIT(A) and delete the addition.

11. In the result, the appeal filed by the assessee stands allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 05.01.2021

Sd/-

(Ram Lal Negi)
Judicial Member

Mumbai; Dated : 05.01.2021

Roshani, Sr. PS

Sd/-

(Shamim Yahya)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai