

**THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI****BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER****ITA No. 3499/Mum/2019
(A.Y.2013-14)**

M/s Qyuki Digital Media Private Limited 2 nd Floor, Hari Niwas, 30 th Cross Road, Off. S.V. Road, Bandra (West) Mumbai – 400 050	Vs.	Dy. CIT-3(3)(2) Aayakar Bhavan, Maharishi Karve Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAOCS4185R		
Appellant	..	Respondent

Appellant by :	Prateek Jha & Prayag Jha
Respondent by :	Riddhi Mishra

Date of Hearing	24.11.2022
Date of Pronouncement	09.01.2022

आदेश / O R D E R**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-21, Mumbai, dated 28.02.2019 for A.Y. 2013-14. The assessee has raised the following grounds before us:

1. *The Ld. CIT(A) erred in upholding the disallowance of business loss of Rs.13,04,62,517/- without appreciating that the assessee had already commenced its business and the Ld. AO had wrongly denied to compute and allow carry forward of such business loss.*
2. *The Ld. CIT(A) erred in sustaining the disallowance of depreciation of Rs.95,13,602/- on intangible assets.*

3. *The Ld. CIT(A) erred in confirming the disallowance of Rs.32,92,445/- claimed as depreciation on tangible assets which were used for business purpose.*
4. *The Ld. CIT(A) erred in sustaining the order of the Ld. Assessing Officer who subjected to tax the interest income of Rs.1,16,20,005/- as income from other sources without adjusting it against the loss of business of the current year.*
5. *The craves leave to amend or alter any of the above Grounds of Appeal or to add new Grounds of Appeal during the course of appeal proceedings.”*

2. Fact in brief is that return of income declaring loss of Rs.13,04,62,517/- was filed 30.09.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 04.09.2014. During the course of assessment the A.O observed that assessee has not carried out its regular business activities during the F.Y. 2012-13 relevant to the year under consideration and no income has been credited to the P & L account except interest earned on bank deposit of Rs.1,16,20,005/- and noticed that assessee has debited various expenses totaling to Rs.13,59,72,075/- to the profit and loss account. After adjusting interest income the assessee has computed loss for the year under consideration at Rs.13,04,62,517/-. On query the assessee explained that it was in the business of production and development of internet programs, products, content, services and applications for creating and providing independent interactive platform for various purposes including for business, social group, entertainment, education and knowledge networking and other information etc. During the year the assessee company has started development of online platform for the purpose of creating network for creditors. It was also explained that assessee was neither a trader nor manufacturer and its business was set up immediately on acquiring office and appointed various employees. It had also incurred various expenses in the form of payment on its own employees and outside

agencies for starting development of various programs and video contents during the year and also in the previous year for the purpose of the business that the assessee has already set up its business at an early stage of F.Y. 2011-12 and hence entitled to claim deduction. However, the A.O has not agreed with the submission of the assessee and observed that assessee had not carried out any business activity during the year under consideration and no income has been derived by it from its regular business activity. Therefore loss claimed by the assessee company at Rs.14,20,82,522/- was disallowed and business income was computed at Rs.nil. The interest income credited in the profit and loss account was assessed under the head income from other sources.

3. The assessee filed the appeal before the ld. CIT(A). The ld.CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before the ld. Counsel that vide letter dated 22.01.2016, the assessee had made detailed submission before the A.O in support of its claim of deduction of expenses. The ld. Counsel explained that the main business of the assessee was production and development of internet program products, contents etc. and during F.Y. the assessee was fully engaged in its business activity though revenue could not be generated in this year. It is also explained that assessee has made detailed submission before the assessing officer and assessee has claimed expenses of RS.13,59,72,075/- and particulars of these expenses were also furnished before the assessing officer. These expenses also includes expenses of Rs.5,90,86,852/- on employees benefit, depreciation of Rs.51,14,484/- and other expenses of Rs.7,17,70,739/-. These expenses were incurred in normal course of business of the assessee which was started in assessment year 2012-13. It was also

explained that assessee was in the process of creating platform for its project for its customer, however, subsequently, it was realized that the concept under the particular platform was not workable and viable for the assessee. Therefore, this concept was dropped and the entire amount of Rs.7,50,96,480/- incurred on creation of the said platform was debited to the profit and loss account as exceptional items.

5. The ld. Counsel has also placed reliance on the following judicial pronouncements i.e Bengal Shriram Hitech City (P) Ltd. Vs. ACIT, Circle 2(1), Bangalore (2021) 131 taxman.com 241 (Bangalore Tribunal) and in the case of Orient Green Power Co. Ltd. Vs. ACIT (2022) 138 taxmann.com 383 (Chennai Tribunal) and in the case of DCIT vs. PPFAS Asst. Management (P) Ltd. (2019) 105 taxmann.com 103 (Mumbai Tribunal) and Hon'ble High Court of Madras in the case of Daimler India Commercial Vehicals (P) ltd. Vs. DCIT, Corporate Circle-1(1) (2019) 107 taxmann.com 243 (Madras) and Hon'ble High Court of Bombay in the case of Western India Vegetables Products Ltd. Vs. CIT (1954) 26 ITR 151 (Bom) and High Court of Delhi in the case of CIT Vs. L.G. Electronic (India) Ltd. (2005) 149 taxman.com 166 (Delhi) and Hon'ble High Court of Bombay in the case of CIT -3 Vs. Axis (P) Equity Ltd (2017) 88 taxmann.com 488 (Bom).

On the other hand, the ld. D.R has submitted that business of the assessee company was not commenced during the year and referred page no. 7 & 8 of the assessment order wherein the A.O has concluded that assessee has not carried out any business activity during the year under consideration and no income has been derived by it from its regular business activity. The ld. D.R. also submitted that at page no. 8 of the assessment order the A.O has stated that assessee has not given supporting evidences in support of its claim that all the expenditure were incurred for running of day to day business activity. The ld.

Counsel also submitted that business of the assessee was at the set up stage and supported the order of the lower authorities.

6. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above in this order the assessing officer disallowed the claim of business loss of Rs.13,04,62,517/- on the ground that assessee has not commenced its business and income has been derived by it from its regular business activity. During the course of assessment vide submission dated 22.01.2016 assessee has explained that it was in the business of production and development of internet program, products, contents, services, and application for creating and providing independent interactive platform for various purposes including for business, social group, entertainment, education and knowledge networking and other information through the internet or any other known or unknown means of communication and to produce, acquire distribute or purchase or license any audio & visual content including any edited or/remixed content for multimedia television, under working mobile, radio, cable started online platform and other networking mobile, radio, cable, satellite, online platform or other network or media etc. The output services of the assessee company was in the form of advertisements within the content (mainly video content) which can be telecasted/uploaded on any platform like you tube, television, face book, mobile etc. and then the revenue is generated from sponsors. As a start-up company, the assessee has incurred cost for branding of the company which creates popularity which helps promotion of contents at the time of its product launch. The assessee company has also appointed a chief Marketing officers during the financial years. During the course of assessment vide letter dated 16.02.2016 the assessee has also explained nature of various expenses incurred along with reason for incurring these expenditure The reason for incurring some of such expenses are given as under:

Nature of Expenses	Amount in INR	Reason for incurrence
Platform Maintenance Fees	105,21,556	It was incurred by the company to resolve the further queries and to get post development maintenance services of the platform. <u>We have enclosed herewith the copy of platform Maintenance Services Contract for your kind perusal.</u>
Hosting Service	97,46,387	It was incurred towards the rental services of Servers which were needed to provide the smooth access to expected number of subscribers. <u>We have enclosed herewith the copy of Hosting Service Contract for your kind perusal.</u>
Marketing Consultancy Fees	83, 55,362	Marketing cost was also incurred to promote the platform and to reach targeted subscribers base.
Artist and Curation Fees	72,41,774	Contract entered into with Artist like Imtiaz Ali, Chetan Bhagat, etc. were obligatory in the nature which required payment to Artist irrespective of the service rendered by them. The fees were paid as an endorsement for attracting subscribers to the creative network. <u>We have enclosed the copy of the few contracts entered into with the Artist and Curators.</u>
Content Creation Fees	56,21,171	Content creators had provided services to develop the content which was used for publishing on online platforms and it was also used for to get visitors to the company created network. <u>We have enclosed the copies of few contracts entered into with the content creators.</u>
Recruitment Charges	45,27,572	These are mainly in the nature of regular operating services which were required to be incurred to operate the regular business of the company in compliance with all regulatory norms applicable to the company.
Legal Consultancy Fees	25,58,630	
Accounting, Payroll & Compliance Services	21,21,978	
IT Consultancy Services	15,20,919	
Other Professional Fees	27,16,502	
Total	5,49,31,851/-	

The assessee explained that these expenses were incurred by the company in expectation of generating revenue but even after spending all these expenses company could not manage to achieve the expected number of subscriber as a result it did not generate revenue in F.Y. 2012-13. However, the assessee also explained that on failure of earning revenue did not mean that assessee company has not commenced its business. The assessee has also explained that during the year it has raised its first invoice of Rs.5 lac for running an advertisement campaign for intel project. This invoice was raised on Result Service

Private Ltd. which demonstrate that the company had commenced its business. However, the services for the same were rendered in the month of July 2003 and the client has considered the same in their books of account for F.Y. 2013-14 and accordingly deducted TDS thereon. Therefore, the assessee had disclosed the transaction as trade receivable and unearned revenue under the head current asset and current liability respectively. The assessee also explained that incurring of various expenses in the form of payments to own employees and outside agencies for starting development of various program and video contents during the year and also in the previous year for the purpose of business clearly suggests that the assessee has already set up its business at an early stage of F.Y. 2011-12. We have also perused the judicial pronouncements referred by the Id. Counsel. In the case Western India Vegetables Products Ltd., as referred above the Hon'ble High Court of Bombay wherein held that when a business has established and is ready to commence business then it can be said that business is set up and the expenses incurred in the business can be claimed as permissible deduction.

In the decision of Daimler India Commercial Ltd., the Hon'ble High Court of Madras held that assessee has already commenced various activity, merely because manufacture and sale of vehicle did not take place during the relevant year due to non-completion of construction of plant it could not be concluded that business of assessee has not been set up so as to assessee claim of deduction.

In the case of Axis (P) Equity Ltd (2017) as referred supra the Hon'ble jurisdictional Bombay High Court held that where assessee, an asset management company, had taken steps for commencing business of Venture Capital Fund, it had engaged legal and financial advisors incurred expenditure to decide appropriate tax efficient structure for

funds and employed necessary personnel for purpose of running its business, Tribunal was justified in holding that assessee had set up its business during relevant assessment year.

In the case of L.G. Electronics Ltd. (2006) 282 ITR 545 (Delhi) it is held that there is distinction between commencement of business and setting up of business and the two dates need not necessarily overlap and (b) of Sec. 3 referred to date of setting up of business and as such it is only thereafter that previous year of newly set up business would commence and therefore, expenses incurred prior thereto could be taken into account for purpose of determining profit of newly set up business.

In the case of PPFAS Asst. Management (P) Ltd. the ITAT, Mumbai held that in case of assessee at asset management company, date of approval given by SFBI was to be recorded as date on which assessee set up its business and was ready to commence said business and therefore, expenses incurred for the purpose of business after said date of approval were eligible for deduction u/s 37(1) of the Act.

In the case of Orient Green Power Com. Ltd. Vs. ACIT the ITAT, Chennai held that where assessee company engaged in business of investing owing and operating renewable energy sources had already acquired land to carry out business activities, obtained various approvals permission in hand deployed technical personnel, placed purchase orders and also signed long term power purchase agreement with clients it could be said that business had been set up and was ready to commence and hence business expenditure claimed towards employees cost, depreciation etc. was to be allowed as deduction.

In the case of Bengal Shriram Hitech City (P) Ltd, the ITAT, Bangalore held that in the case of the assessee a real estate developer

had started acquiring land in 2007 itself acquired it could be concluded that business of assessee had already been set up and thus expenses incurred in running business of assessee was allowable u/s 37(1) of the Act.

We have also gone through copies of Audited Accounts and balance sheet filed by the assessee pertaining to assessment year 2012-13 to A.Y. 2015-16. On perusal of the balance sheet of the assessee as on 31.03.2013 it is noticed that assessee has shown fixed asset under the head tangible assets of Rs.45,46,616/- and intangible assets of Rs.11,30,761/- and also shown current asset under the head trade receivable at Rs.5,61,800/-, cash and cash equivalent Rs.7,97,69,045/-, short term loan and advances Rs.33,70,647/- and other current assets at Rs.17,09,240/-. The assessee has also shown current liabilities and trade payable at Rs.2,13,02,280/- other current liabilities at Rs.41,32,033/- and short term provision of Rs.3,07,217/-. As on 31.03.2014 and as on 31.03.2015 the assessee has shown tangible assets and intangible assets under the fixed assets at Rs. 35,46,970/- and Rs. 5,68,537/- for assessment year 2014-15 and Rs.16,92,491/- and Rs.11,86,381/- for assessment year 2015-16. The assessee has generated revenue from operation in the assessment year 2014-15 of Rs.10,20,000/- and in the assessment year 2015-16 of Rs.55,44,264/-. The assessee has demonstrated from the copies of profit and loss account and balance sheet that it had set up its business. Therefore, looking to the above facts and circumstances and after following the judicial pronouncements as discussed supra, we consider that decision of Id. CIT(A) is not justified in not allowing the claim of deduction of expenses therefore, we direct the assessing officer to allow the claim of business loss of Rs.13,04,62,517/- of the assessee. Therefore, the ground no. 1 of the assessee is allowed.

7. Ground No. 2 to 4 are of consequential in nature which is not required any adjudication, since we have allowed the ground no. 1 of the assessee. Therefore, these ground of appeal stand dismissed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 09.01.2023

Sd/-

Sd/-

(Rahul Chaudhary)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 09.01.2022

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.