

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 1599/Del/2021 : Asstt. Year : 2016-17

ACIT, Circle-7(1), New Delhi-110002	Vs	Dish Infra Services Pvt. Ltd., FC-09, Film City, Sector-16A, Gautam Budhdha Nagar, Noida, Uttar Pradesh-201301
(APPELLANT)		(RESPONDENT)
PAN No. AAACX1546R		

Assessee by : Sh. Vivek Sarin, Adv. &

Sh. D. P. Singh, Adv.

Revenue by : Ms. Sapna Bhatia, CIT-DR

Date of Hearing: 12.02.2024

Date of Pronouncement: 16.04.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of Id. CIT(A)-3, New Delhi dated 10.08.2020.

2. Following grounds have been raised by the Revenue:

"1. Whether on facts and in circumstances of the case and in law, the CIT(A) was right in restricting the addition of Rs.1,20,86,423/- to Rs.26,88,147/- made by the AO on account of unexplained credit u/s 68 of the act.

2. Whether on the facts and in the circumstances of the case and in law the Ld. CIT (A) has erred in deleting the disallowance of Rs. 40,00,020/- made u/s 37 of the Act.

3. Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) is correct in deleting the disallowance of Rs. 40,00,020/- made under section 37 by the AO on account of disallowance of e-stamping expenses incurred for issuance of debenture for raising funds, after introduction of section 35D of the Act.

4. Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) is correct in deleting the disallowance or Rs. 6,23,34,000/- made u/s 36(1)(iii) of the IT Act.

5. Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) is correct in deleting the disallowance of Rs. 6,23,34,000/- made by AO for no nexus between the advancing/investment of funds business activity of the assessee company."

Unexplained Cash Credit:

3. During the year, the assessee received deposits/advances of Rs.705.05 Cr. on account of Dish installation from small trade partners, EPRS recharge collection, security deposits from distributors, security deposits from corporate customers and advances from Dish Care centre for activation scheme and from "Dish TV India Ltd." The Assessing Officer made addition of Rs.1.20 Cr. out of the advance of Rs.705.05 Cr. owing to non-submission of PAN and confirmation of the parties. The Id. CIT(A) deleted the addition to the tune of Rs.93.98 lacs out of Rs.1.20 Cr. and confirmed the addition of Rs.26.88 lacs on the grounds that the deposits to the tune of Rs.26,88,147/- are not having PAN and rest of the amount is deleted. The Id. CIT(A) has deleted the amounts received from the parties namely, advances from distributors (less than Rs.10,000/-) of Rs.60,89,860/- and advances from EPRS-Distributors (less than Rs.10,000/-) of Rs.11,37,769/-. The remaining amounts being less than Rs.1.8 lacs for which the ledgers have been duly verified by the Id. CIT(A). The Id. CIT(A) has accepted advances from 10 parties who could prove the validity of the advances and confirmed the amounts received from 19 parties who could not prove the advances given. No appeal has been filed by the assessee against the decision of the Id. CIT(A) confirming

Rs.26,88,147/-. Since, the decision of the Id. CIT(A) was based on the factual verification of the business advances received, we decline to interfere with the order of the Id. CIT(A).

Debenture issue Expenditure:

4. The issue of allowability of the debenture issue expenses stands settled by the order of the Hon'ble jurisdictional High Court in the case of Thirani Chemicals Ltd. 290 ITR 196. For the sake of ready reference, the relevant part of the said order is reproduced as under:

"1. The assessed-company, in order to modernise and expand its activities and with a view to augment its long term capital requirements, raised funds to the extent of Rs. 406.65 lakhs during the relevant accounting year by issue of debentures on rights basis to the existing shareholders. The expenditure incurred by the assessed in this regard aggregated to Rs. 22,09,889. The assessed claimed deduction of the said amount from its taxable income. The Assessing Officer, however, came to the conclusion that the expenditure would qualify only for amortisation under Section 35D of the Act. He further held that the decision of the Supreme Court in India Cements Ltd. v. CIT stood nullified by the introduction of Section 35D. In appeal, the Commissioner of Income- tax (Appeals) affirmed the view taken by the Assessing Officer and held that the expenditure could not be allowed as a revenue expenditure because of the introduction of Section 35D with effect from April 1, 1971. In a further appeal before it, the Tribunal reversed that view. The Tribunal held that the Central Board of Direct Taxes had in Circular No. 56, dated March 19, 1971, observed that the provisions of amortization

were not intended to supersede any other provision in the income-tax law under which the expenditure is allowable as deduction against profits. The circular went on to state that the expenditure incurred on the issue of debentures was admissible as deduction by virtue of the decision of the Supreme Court in *India Cements Ltd.'s case* [1966] 60 ITR 52 (SC) and that Section 35D did not have the effect of bringing that expenditure within the scope of the expenditure to be amortized against profits over a period of ten years. The Tribunal also held that the circulars issued by the court were binding on the income-tax authorities, in view of the decision of the Supreme Court in *Commissioner of Customs v. Indian Oil Corporation*. It accordingly allowed the deduction of the expenditure on the issue of debentures. The present appeal filed by the Revenue assails the correctness of the said order.

2. We have heard Ms. Bansal, counsel for the Revenue and perused the record. That the circulars issued by the Board of Direct Taxes are binding upon the Revenue authorities except where the circulars take a view contrary to the decision of the Supreme Court is fairly well-settled by the decisions of the apex court including that in *Indian Oil Corporation's case*. Ms. Bansal was, therefore, candid enough to concede that the circulars issued by the Board could not be departed from by the authorities. What she argued was that the circular notwithstanding, Section 35D covered cases of expenditure incurred on expansion of the existing business like the respondent's business in the present case and would, therefore, exclude any other provision which may have permitted deduction of expenditure that requires to be amortized under Section 35D. There is, in our view, no merit in that contention. The

circular in question, inter alia, says that expenditure incurred on the issue of debentures is an admissible deduction in the light of the decision of the Supreme Court in India Cements Ltd.'s case [1966] 60 ITR 52. It is true that India Cements Ltd.'s case [1966] 60 ITR 52 (SC) did not directly deal with expenditure incurred on the issue of debentures. That was a case where the assessed had borrowed a loan and the question was whether the expenditure incurred on any such loan transaction was an admissible expenditure. The circular all the same extends the logic underlying the said decision to cases where the expenditure is incurred by the assessed by issue of debentures as is the position in the instant case. If that be so, it is difficult to see how the Revenue can still argue that since the case in hand refers to issue of debentures for expansion of an existing business, the expenditure incurred on the same must be amortised. Since the circular instructions are binding, the Revenue would not be entitled to urge any such contention. To set the controversy at rest, the circular specifically states that expenditure incurred on the issue of debentures will be a permissible deduction notwithstanding the introduction of Section 35D. There is, after those instructions, no room for any further debate on the issue. The Tribunal was, in that view, perfectly justified in holding that the expenditure was a permissible deduction and accordingly deleting the additions made by the Assessing Officer. This appeal does not raise any substantial question of law for our consideration. It, accordingly, fails and is hereby dismissed."

5. Since, the decision of the Id. CIT(A) is based on the judgment of the Hon'ble jurisdictional High court in the case of

Thirani Chemicals Ltd. (supra), we hold that the Id. CIT(A) has rightly deleted the addition made by the Assessing Officer on account of the expenditure related to e-stamp duty expenses paid towards non-convertible debenture issued by the assessee.

Disallowance of Interest u/s 36(1)(iii):

6. During the year, the assessee incurred total interest expenses of Rs.122.82 Cr. on account of interest on debentures, term loans, buyer's credits and other borrowing cost etc. The assessee had invested an amount of Rs.82.03 lacs in mutual funds and also invested an amount of Rs.67 Cr. on setting up of call centre. The Assessing Officer held that these expenses were not related to normal business activity and disallowed the proportionate interest charged on these amounts u/s 36(1)(iii) of the Income Tax Act, 1961. The Id. CIT(A) deleted the addition holding that the assessee has own fund of Rs. 118 crores of share capital and Rs. 309 crores as reserve and surplus, therefore, the assessee has his own enough fund to make investment.

7. Having heard the arguments of the Id. CIT DR and the Id. AR who relied on the respective orders of the revenue, we hold that the Id. CIT(A) has rightly relied on the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax, Pune vs. Sharada Erectors (P.) Ltd., [2016] 76 taxmann.com 107 (Bombay), it was held that where interest-free funds are available with an assessee and are sufficient to meet its investment, it should be presumed that investments were made out of interest-free funds available and not out of borrowed funds. Further, the reliance placed by the Id. CIT(A)

on the judgment of Hon'ble jurisdictional High Court in case of CIT vs. Dalmia Cement (Bharat) Ltd. [2002] 254 ITR 377 wherein it was held that once it is established that there was nexus between the expenditure and the purpose of the business, no disallowance on account of interest is called for, is squarely applicable to the facts of the case. Hence, we decline to interfere with the order of the Id. CIT(A) on this ground.

8. In the result, the appeal of the Revenue is dismissed.

Order Pronounced in the Open Court on 16/04/2024.

Sd/-

(Astha Chandra)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 16/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR