

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE MS. DIVA SINGH JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 7277/DEL/2018 [A.Y 2013-14]

**The J.C.I.T
Special Range - 9
New Delhi**

Vs.

**T.V. Today Network Ltd
F - 26, First Floor,
Connaught Place, New Delhi**

PAN: AABCT 0424 B

ITA No. 7287/DEL/2018 [A.Y 2013-14]

**T.V. Today Network Ltd
F - 26, First Floor,
Connaught Place, New Delhi**

Vs.

**The J.C.I.T
Special Range - 9
New Delhi**

PAN: AABCT 0424 B

(Applicant)

(Respondent)

Assessee By : Shri Madhur Aggarwal, Adv

Department By : Shri Umesh Takyar, Sr. DR

Date of Hearing : 30.11.2021

Date of Pronouncement : 03.12.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two cross appeals by the revenue and the assessee are preferred against the order of the ld. CIT(A) - 43, New Delhi dated 21.08.2018 pertaining to A.Y 2013-14. Since both the appeals were heard together they are disposed of by this, in order for the sake of convenience and brevity.

ITA No. 7277/DEL/2018 [Revenue's Appeal]

2. The first grievance of the revenue relates to the deletion of addition of Rs. 4,48,09,454/- made on account of consumption debtors.

3. At the very outset, the ld. counsel for the assessee stated that this quarrel is coming from the past many years and has been decided in favour of the assessee and against the revenue by the Tribunal since Assessment Year 2008-09 onwards.

4. The ld. DR fairly conceded to this.
5. We find force in the contention of the ld. counsel for the assessee.

This Tribunal in the ITA No. 6080/DEL/2012 and 4097/DEL2013 for Assessment Years 2008-09 and 2009-10 has considered a similar quarrel on identical set of facts and has decided the issue in favour of the assessee.

The relevant findings read as under:

"We have carefully considered the rival contention and found that the claim of the assessee is that company has given discount to its debtors based on consumption of Airtime during the current year. It filed its detail of the credit balance of the debt. From the details of credit balance of debtors, the learned assessing officer enquired about the details of the consumption debtor of Rs. 34,000,000/- which was explained by the assessee, that this is a discount account which is credited by the company by passing an accounting entry by crediting one control account having details of all the parties separately. As the assessee is in the business of the media the main source of income of the assessee company is broadcasting of advertisement in its channel. The assessee company sale space in its channels to advertiser usually a unit of sale of space is 10 seconds. The assessee company gave various schemes to its advertiser like consumption incentive, series discount etc. In case of consumption incentive, the advertisers are given an offer that in case if it consumes particular amount of time during the given period for

broadcasting and advertising then it will be entitled to the consumption incentive. During the year, assessee has passed on this consumption incentive of Rs. 34059992/-. Learned CIT(A) has held that this is the expenditure in the nature of incentive to the advertiser and the assessee has also shown income against this expenditure. Before the learned CIT - A the assessee demonstrated by producing the copies of the deals of some of the parties and shown that it is not an asset or liability but actual expenditure. In view of this, he held that assessee is eligible for deduction of the above expenditure. The learned departmental representative could not point out any infirmity in the order of the learned CIT(A). Therefore, we confirm the order of the learned CIT(A) and dismiss ground number 4 of the appeal of the AO."

6. On finding parity with the facts of the appeal under consideration, Ground No. 1 is dismissed.

7. Second grievance relates to deletion of disallowance of Rs. 33,48,749/- u/s 14A of the Act and restricted the same to suo moto disallowance at Rs.27,07,333/-.

8. Ground No. 2 in assessee's appeal is also on the same set of facts. Therefore, it is also taken up together with the revenue's ground.

9. Briefly stated the facts of the case are that during the year under consideration, the assessee earned dividend income of Rs.18,521/-. The assessee suo moto disallowed a sum of Rs. 27, 07,033/-. The Assessing Officer computed the disallowance invoking Rule 8D at Rs. 33,48,749/-. Since the assessee had suo moto disallowed Rs. 27,07,333/-, the Id. CIT(A) restricted the disallowance to this amount.

10. The undisputed fact is that the assessee has earned exempt dividend income of Rs.18, 521/- only. But when the assessee filed return of income, the decision of the Hon'ble Delhi High Court in 372 ITR 694 was not available with the assessee. The Hon'ble High Court has restricted the disallowance to the extent of exempt income.

11. Similar view was taken by the Hon'ble Delhi High Court in the case of Caraf Builders and Construction 414 ITR 122. Since now we have the binding decision of the Hon'ble Jurisdictional High Court of Delhi we direct the Assessing Officer to restrict the disallowance to the extent of exempt income of Rs.18,521/-. Ground No. 2 of Revenue's appeal is, accordingly, dismissed and that of the assessee is allowed.

ITA No. 7287/DEL/2018 [Assessee 's Appeal]

12. The only surviving ground in assessee's appeal relates to the disallowance of Rs. 37,81,531/- towards leave and encashment.

13. During the course of scrutiny assessment proceedings, the assessee was asked to show cause as to why disallowance of unpaid leave and encashment of Rs. 76,75,736/- be not made. In light of the provisions of section 43B(f) of the Act which was inserted by the Finance Act 2001, w.e.f 01.04. 2002.

14. In its reply, the assessee claimed that claim of leave encashment on accrual basis is based on the judgement given by the Hon'ble Calcutta High Court in the case of Exide Industries Ltd 292 ITR 470.

15. The Assessing Officer was of the opinion that the said judgement of the Hon'ble Kerala High Court has been stayed by the Hon'ble Supreme Court in the case and it has been clarified that the assessee has to pay tax as if section 43B(f) is on the Statute. In view of these facts, Assessing Officer made disallowance of Rs. 37,81,531/-.

16. The assessee agitated the matter before the ld. CIT(A) but without any success.

17. Before us, the ld. counsel for the assessee drew our attention to the decision of this Tribunal in assessee's own case in A.Y 2012-13 and pointed out that the Tribunal has set aside the issue with directions to the Assessing Officer.

18. The ld. DR fairly conceded to this.

19. We have carefully perused the orders of this Tribunal in ITA No. 3356/DEL/2017 for A.Y 2012 -13. The relevant findings of the co-ordinate bench read as under:

"7. We have heard both the parties and perused the material available on record. As regards Ground No. 1, 1.1 & 1.2, the same is covered against the assessee, hence, dismissed. As regards Ground No.2, 2.1, 2.2 & 2.3 relating to disallowance towards leave encashment in lieu of provisions of Section 43B (f) of the Income Tax Act, 1961, the Hon'ble Apex Court in case of Exide Industries (Supra) held that the claim with regard to leave encashment has to be allowed on cash basis

i.e. actual payment basis and not on accrual basis. It 6 ITA No. 3356/Del/2017 is pertinent to note that the payments with regards to the leave encashment have been made in subsequent assessment year i.e. 2013-14 and thus, we direct the Assessing Officer to verify and allow the deduction u/s 43B on actual payment basis as held in the decision of the Hon'ble Apex Court. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, Ground No. 2, 2.1 2.2 & 2.3 are partly allowed.

8. As regards Ground No. 3, it is a matter of fact that the assessee has earned only Rs. 2,34,585/- as exempt income. The assessee also disallowed a sum of Rs. 29,04,491/- u/s 14A. The Ld. AR at the time of hearing contended that the said disallowance was erroneously made by the assessee. This issue needs to be verified. Therefore, we are remanding back this issue to the file of the Assessing Officer and decide the same afresh as per the records available. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, Ground No. 3 is partly allowed for statistical purpose.

20. Ground No. is allowed for statistical purposes.

21. In the result, the appeal of the Revenue in ITA No. 7277/DEL/2018 is dismissed and that of the assessee in ITA No. 7287/DEL/2018 is partly allowed for statistical purposes.

The order is pronounced in the open court on 03.12.2021.

Sd/-

**[DIVA SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 03rd December, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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