

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'A', New Delhi**

**Before : Shri Bhavnes Saini, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 5008/Del/2015  
Assessment Year: 2010-11**

DCIT, Central Circle-25, New Delhi  <b>(Appellant)</b>	<b>vs.</b>	HFCL Infotel Ltd., (Now known as M/s. Quadrant Televentures Ltd.), B-71, Industrial Area, Phase-VII, Mohali, Chandigarh. PAN- AABCT2862R <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. P.V. Gupta, Sr. DR
<b>Respondent by</b>	Sh. Yogesh Agrawal, CA

<b>Date of Hearing</b>	22.04.2019
<b>Date of Pronouncement</b>	24.04.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by Revenue against the order dated 28.05.2015 of Id. CIT(A)-I, New Delhi for the assessment year 2010-11 on the following grounds :

*"1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the disallowance of deduction of Rs.57,40,488/- u/s 35ABB of the Act on expenses incurred towards liquidated damages and interest thereon paid to the Department of Telecommunications.*

*2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law and on facts in deleting the disallowance of membership fee paid to various clubs amounting to Rs.96,265/-.*

3. *On the facts and in the circumstances of the case, the Id. CIT(A) has erred in directing the AO to adopt the loss at figure of Rs.94,10,62,358/- for the A.Y.210-11 without appreciating the fact that the assessee did not claim the business loss of Rs.44,26,99,485/- for the A.Y. 2010-11 and thus the assessee is not entitled to claim the above business loss in view of the judgement of Hon'ble Apex Court given in case of Goetze (India) Ltd. vs. CIT 284 ITR 323.*
  4. *That the grounds of appeal are without prejudice to each other.*
  5. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.*
  6. *The order of the CIT(A) is erroneous and is not tenable on facts and in law."*
2. By way of aforesaid grounds, the Revenue has challenged the deletion of following disallowances :
- (i). disallowance of deduction of Rs.57,40,488/- claimed u/s. 35ABB
  - (ii). Disallowance of deduction of Rs.96,265/- paid towards membership fee of various clubs.
  - (iii). Disallowance of business loss of Rs.44,26,99,485/- as against Rs.94,19,62,358/- claimed.
3. As regards the first issue, the brief facts are that the assessee company claimed a deduction of Rs. 33,02,68,457/- u/s 35ABB of the Income Tax Act, 1961 on account of payments made Department of telecommunication (DoT) towards liquidated damages and interest thereon amounting to Rs. 8,61,07,328/-. As per Assessing Officer, these payments, being not legitimate

expenditure, were not admissible to the assessee. On being asked, the assessee submitted that the assessee had made payment of liquidated damages and interest thereon of Rs. 8,61,07,328/- in terms of clauses 12.2 to 12.4 of the license agreement dated 07.11.1997 entered with DoT, whereby it was obligatory on the part of assessee to pay interest and liquidated damages in case of failure to deliver the services or part thereof within the stipulated period. As the assessee company could not meet with time frame for delivery of service, liquidated damages and interest amounting to Rs. 8,61,07,328/- were paid to Dot, for which the assessee had claimed 1/15th deduction u/s 35-ABB. It was also submitted that the payment on account of liquidated damages and interest are incurred and paid in the course of obtaining the rights to operate telecommunication services and not for any breach/violation of any law. The liquidated damages and interest has been paid in business interest and commercial exigency. The Assessing Officer was not satisfied with the submissions of assessee and referring to the provisions of section 35ABB, disallowed the claim of assessee holding that liquidated damages and interest paid thereon were penal in nature and was not allowable u/s. 35ABB of the Act.

4. Regarding second issue, the facts are that the assessee claimed deduction of payments of Rs.96,265/- made to various clubs as membership fee, stating it to have been incurred wholly and exclusively for the purpose of business. The Assessing Officer disallowed the same observing that the assessee has tried to link the personal expenses with the business expenses and that the

expenditure incurred in the club is not wholly and exclusively for the purpose of business.

5. As regards the third and last issue, the facts are that the assessee is stated to have claimed business loss at Rs.94,10,62,358/- in its return of income. The acknowledgement of return, however, reflected current year loss as Rs.49,83,62,873/-. The Assessing Officer, therefore, took the figure of loss as reflected in the acknowledgement of return, i.e., Rs.49,83,62,873/- as against Rs.94,10,62,358/- claimed by the assessee.

6. The assessee carried the matter in appeal before the Id. CIT(A), who after considering the submissions of the assessee, deleted the impugned disallowances vide impugned order. Aggrieved, the Revenue is in appeal before the Tribunal.

7. The learned DR relying on the assessment order submitted that the Id. CIT(A) was not justified in deleting the disallowance claimed u/s. 35ABB ignoring the fact that the assessee did not satisfy the conditions envisaged under that section, as enumerated by the Assessing Officer. It was submitted that the payments made towards membership fee of various clubs was not wholly and exclusively for the purpose of business and the Assessing Officer had rightly taken the business loss as claimed by assessee as per acknowledgement of return and therefore, the claim which was not reflected in

the return was not permissible in view of decision of Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT 284 ITR 323.

8. The ld. AR of the assessee, on the other hand, supported the impugned order and submitted that the first two issues are squarely covered in favour of the assessee by the decision of coordinate Bench of Tribunal in the cases of assessee itself for A.Yrs. 2002-03 to 2008-09. It was submitted that it was due to some technical error in the e-return filing utility system that current year loss was wrongly reflected as Rs.49,83,62,873/- instead of correct loss of Rs.94,10,62,358/- claimed by the assessee in the return.

9. After hearing both the parties and perusing entire material on record, we find that first two issues regarding disallowance of deduction of Rs.57,40,488/- claimed u/s. 35ABB and disallowance of deduction of Rs.96,265/- paid towards membership fee to various clubs are covered in favour of the assessee by the consolidated order date 31.07.2017 in the cases of assessee itself for A.Yrs.2002-03 to 2008-09 (copy placed on record), observing as under :

*"3.6 Considering above submissions, we find that undisputedly payment of liquidated damages and interest charges thereon have been made as per clauses 12.2 to 12.4 of the afore-mentioned license agreement between, the assessee and DOT, whereby it has been made obligatory on the part of the assessee company to pay interest and liquidated damages in case of failure to deliver the services or part thereof within the period prescribed. Liquidated damages and interest thereon have been made to DOT due to non-fulfillment of obligations specified in the agreement in time, where time was an essence. These payments have been incurred in the course of*

*obtaining the rights to operate telecommunication services and not for any breach / violation of any law. As per the decision in the case of CIT Vs. Indo Asian Switch Gears P. Ltd. (supra) the payment of damages is for breach of contract and not on account of infraction of law and, therefore, the same is admissible as expenses having been expended wholly and exclusively for the purposes of business. When we examine the facts of the present case in view of the ratio laid down in the above cited decision, we find that the assessee in the present case has paid liquidated damages and interest thereon due to breach of the agreement and not as a breach of law. Thus, the expenditure claimed does not fall within Explanation to section 37(1) of the Act. And since it was incidental to business, it cannot be disallowed. The Id. CIT (A) was thus justified in deleting the disallowance in question. The same is upheld. The issue is accordingly decided in favour of the assessee."*

*"4. Issue No. 2 [Disallowance of Club Expenses] : The Assessing*

*Officer made disallowance of Club Expenses incurred during the years under consideration on the basis that the Club expenditure was not wholly and exclusively incurred for business purposes. The Assessing Officer also suspected personal element in the expenditure.*

*4.1 In support of the related ground on the issue the Id. CIT [DR] has placed reliance on the assessment order. The Assessing Officer stressed that expenditure has to be incurred wholly and exclusively for the purpose of business. The Id. CIT (A) has not specified how such finding of fact is not correct. She contended that allowability under section 37(1) depends on as to whether the expenditure is wholly for business.*

*4.2 The Id. AR, on the other hand, placed reliance on the first appellate order and reiterated submissions made on behalf of the assessee before the authorities below. He submitted that expenses were incurred towards the annual corporate membership for various clubs and referred page No. 12 of the paper book in support. The Id. AR contended that all Club expenses have been incurred wholly and exclusively for the purpose of business, to promote and foster business of the company. The expenses, have been*

*incurred for the club membership of different employees of the assessee company. Clubs being common special platform are based for the officials of the assessee company to develop contract for promoting interest of the company and promote business. He cited following decisions in support*

- (i) Hero Hondo Motors Ltd. Vs. JCIT 103 ITD 157 (Del.);*
- (ii) JCIT Vs. Mukand 291 ITR 249 (Mum.) (SB);*
- (iii) Gujarat Petro Synthesis Ltd. Vs. DCIT 76 ITD 257 (Ahd.);*
- (iv) CIT Vs. Samtel Colour Ltd. 2009 - TMI - 32263 (Delhi High Court);*

*4.3 Considering the above submissions and the decisions cited in support we do not find any infirmity in the first appellate order on the issue as considering the expenditure incurred and nature of industry, the amount incurred by the assessee for corporate club membership fees is held for business promotion, The first appellate order in this regard is thus upheld. The issue is thus decided in favour of the assessee. The related grounds of the appeals are accordingly rejected."*

Thus, respectfully following the above decision of co-ordinate Bench in the identical facts and circumstances of the present case, both these issues are decided in favour of the assessee and against the Revenue. Accordingly, the grounds raised by the Revenue challenging these issues are dismissed.

10. Adverting to the last issue regarding disallowance of business loss of Rs.44,26,99,485/- as against Rs.94,10,62,358/- claimed by the assessee, it is born out on record that before the Id. CIT(A) the assessee had taken a plea that current year's loss in the acknowledgement of return generated by the Income-tax Department is reflecting as Rs.49,83,62,873/- as against Rs. 94,10,62,358/- declared by the assessee. We have examined the schedule "BP" of ITR-6 regarding computation of income from business or profession and we find that

at Sr. No. 12(ii), the assessee has mentioned the figure of Rs.49,83,62,873/- under the head depreciation allowable u/s. 32(1)(i). This figure is filled manually by the assessee while filing ITR-6. However, Schedule "DPM" & Schedule "DOA" pertaining to depreciation of plant & machinery and depreciation on other assets, are lying blank. It is not understandable as to why these schedules were kept blank by the assessee when he has claimed depreciation. This may also affect the business losses claimed by the assessee. In Schedule "CYLA" – losses to be adjusted is reflected of Rs.94,10,62,358/- and Schedule "CFL" is also reflecting the losses of current year as at Sl. No. (xi) of Rs.94,10,62,358/-. Same figure of (-94,10,62,398) in schedule "BP" at Column (C) under computation of Income from business or profession. However, on perusal of this schedule "BP" of ITR-6, we find that there are distorted figures at various serial nos. of this schedule. For example, the figure shown at Sl. No. 24 of this schedule is Rs.42,79,17,101/-, which is the total of Sl. Nos. 14 to 23, whereas no figure is mention in inner columns of these serial numbers. These figures and columns of ITR-6 filed by the assessee need to be thoroughly examined and verified at the stage of Assessing Officer. The Assessing Officer is also required to examine and verify the figure of depreciation of Rs.79,97,78,815/- mentioned at Sl. No. 11 and at sl. No. 12(ii) of Rs.49,83,62,873/- of Schedule "BP" whereas in Profit and loss account, the amount of depreciation is shown at Rs.95,01,65,233/- at Sl. No. 42. All these distorted figures shown in the return of the assessee need to be examined and verified thoroughly by the AO before arriving at correct business losses admissible to the assessee. We, therefore, do not find any justification in the direction of the Id. CIT(A) to take the business loss of Rs.94,10,62,358/-. Accordingly, this issue is restored back to the file of Assessing Officer for



making proper verification of the figures returned by the assessee in ITR-6 as noted above and thereafter he shall work out correct business profit/losses of the assessee. The assessee is directed to reconcile all the figures shown in ITR-6. Needless to say, the assessee shall be given reasonable opportunity of being heard.

11. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 24.04.2019.

Sd/-

**(Bhavnesht Saini)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 24.04.19

*\*aks\**

*Copy of order forwarded to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*