

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA Nos.2162-2165/Chny/2018
(निर्धारण वर्ष / Assessment Years: 2011-12 to 2014-15)

ACIT Non-Corporate Circle-20(1) Chennai	बनाम/ Vs.	M/s Sun Direct TV Pvt. Ltd. No.73, Murasoli Towers MRC Nagar, Chennai-600028
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAICS-7671-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Department by	:	Shri M. Rajan – Ld. CIT-DR
Assessee by	:	Shri K.Ramkrishnan (CA) – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	28.03.2022
घोषणा की तारीख / Date of Pronouncement	:	01.04.2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by Revenue for Assessment Years [AY] 2011-12 to 2014-15 arises out of common order dated 27.04.2018 passed by learned Commissioner of Income Tax (Appeals)-14, Chennai in the matter of assessments framed by Ld. AO u/s 143(3). The facts as well as issues are common and the impugned order is also common. The grounds taken by the revenue in AY 2011-12 read as under: -

1. The order of the learned CIT(A) is contrary to facts and circumstances of the case.
- 2.1 The Ld. CIT(A) erred in deleting the addition of Rs.135,86,11,615/- on account of deferred income.
- 2.2 The Ld. CIT(A) erred in holding that the monies received are shown as deferred revenue by the assessee in the year of receipt and are offered as income in the year when programme is aired when the fact remains that the assessee is following Mercantile System of accounting and the impugned revenue has to be offered only in the current year?
3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

As evident, the sole subject matter of the appeal is determination of period of revenue recognition. It is admitted position that similar are the facts as well as issues in subsequent years and the adjudication in any one year shall apply to the other years also.

Arguments before us

2. The Ld. CIT-DR, Shri M.Rajan, submitted that the assessee received money from the channels subscribers but considered the same as deferred revenue expenditure which was not correct in view of the fact that there was no obligation for assessee to refund the subscription money. Therefore, the receipts were to be taxed on receipt basis as rightly done by Ld. AO. The Ld. CIT(A) sought distinction in the case laws as relied upon by Ld. AR. The Ld. CIT(A) also submitted that the ratio of decision of this Tribunal in **ACIT V/s M/s Sun TV Network Ltd. (ITA Nos.1515 & ors/Mds/2013 dated 31.10.2013)** as relied on by Ld. CIT(A) was not applicable to this assessee.

The Ld. AR, on the other hand, submitted that the assessee was following consistent method of revenue recognition and similar factual matrix stood covered in assessee's favor by the decision of this Tribunal in the case of its sister concern i.e., **ACIT V/s M/s Sun TV Network Ltd. (ITA Nos.1515 & ors/Mds/2013 dated 31.10.2013)** as rightly relied upon

by Ld. CIT(A). The Ld. AR also filed written submissions which were duly confronted to Ld. CIT-DR.

Having heard rival submissions, oral as well as written and after going through various judicial pronouncements, our adjudication would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The facts in case record for AY 2011-12 are that the assessee being resident corporate assessee is stated to be engaged as 'Direct To Home' (DTH) satellite platform operator and offers DTH services in India. During assessment proceedings, it transpired that the assessee has shown deferred income of Rs.13586.11 Lacs under the head 'current liabilities'. It was explained that the assessee, as DTH service provider, is engaged in aggregation of various broadcast content and providing DTH services enabling the customers to view channels / services uninterruptedly directly at home. For the said purpose, broadcast signals are downloaded from various satellites from where they are transmitted, aggregated, encrypted and uplinked through a single stream to be downloaded through an individual dish at the customer premises. The signals are then decoded with the help of a set-top box which is authorized to receive the channels that the customers subscribe.

3.2 It was further submitted that the business model predominantly operate under prepaid model. The assessee receives subscription income from various customers in advance which would be on quarterly / half-yearly or annual basis based on the needs of the subscribers. The assessee, following consistent method of accounting since the commencement of business operations in AY 2008-09, recognizes the revenue based on the period i.e., up-to the end of the financial year and

not on the basis of collection. The amount collected in advance is accounted as 'deferred income'. If the broadcast does not happen then the advance money paid would be adjusted against future telecasts. When the assessee receives the amount, the same is credited to 'deferred income account' and thereafter, on daily basis, the income pertaining to that day is transferred from 'deferred income account' to the 'subscription income account' which is offered to tax in the Profit & Loss account. Thus, the amount outstanding in 'deferred income account', at any given point of time, represents only subscription relating to period beyond that date. The said accounting treatment was stated to be in line with the requirement of Accounting Standard-9 (AS-9) on 'Revenue Recognition' issued by The Institute of Chartered Accountants of India. This standard provide that the revenue received or billed should be deferred and recognized over a period of time where the items delivered vary in value from period to period.

3.3 Another plea was that the deferred income was unearned revenue. To offer the income, the income should have been accrued to the assessee during the previous year itself. The company's right to receive the revenue arises only when the company is able to provide uninterrupted DTH signal. To ensure the same, the assessee would incur various costs such as content, entertainment, commissions, royalty, WPC licensing charges, NOCC charges and transponder fees to various agencies without which the assessee could not provide these services. These expenditures are booked and recognized only to the extent of that period for which the services are recognized and provided to the customers. Thus, the deferred revenue would accrue only when the assessee incurs the related input costs.

3.4 However, rejecting the same, Ld. AO held that there was no liability for the assessee to refund the amount to the customers / subscribers and therefore, the income had accrued to the assessee during this year itself. Accordingly, the deferred income of Rs.13586.11 Lacs was added to the income of the assessee.

Appellate Proceedings

4. During appellate proceedings, the assessee reiterated its stand and relied on Tribunal's decision rendered on similar factual matrix in the case of group concern i.e., M/s Sun TV Network Ltd.

5. The Ld.CIT(A) observed that identical issue, in the case of M/s Sun TV Network Ltd in AY 2013-14 stood covered in assessee's favor wherein the appellate authority allowed the appeal by following a favorable decision of Hon'ble ITAT, Chennai. Following the same, the additions as made by Ld. AO, for all the years, were deleted.

6. The relevant observations of Ld. CIT(A) were as under: -

3.3.1 On identical issue, in the case of M/s Sun TV Network Ltd in AY 2013-14, the CIT(A) has allowed assessee's appeal by following a favorable decision of Hon'ble ITAT, Chennai. The relevant portion of the said decision is reproduced hereunder:

"4.3.1 On identical issue in the appellant's own case for A.Ys 2004-05 to 2009-10, the Hon'ble ITAT, Chennai in its common order in ITA Nos.1515, 1516, 1517, 1518, 1519 & 1520/Mds/2013 dated 31.10.2013 held in favour of the appellant and dismissed the appeal filed by the department. The Hon'ble ITAT held as under:

"11. In ITA No.1519 & 1520/2013, for the AYs. 2008-09 & 2009-10 respectively, the Revenue in its appeals has raised an issue with respect to deferred income...

It is not disputed that the income generated by selling the time-slot is offered as income in the year of broadcasting/airing the programme. The monies received are shown as deferred revenue in the year of receipt and are offered as income in the year when programme is aired. We do not find any illegality or irregularity in methodology adopted by assessee in registering the revenue in the year of telecast of programme. There is no merit in this ground of appeal of the Revenue, the same is dismissed."

4.3.2 I have also perused the decision of CIT(A)-VI, Chennai in A.Ys 2008-09 and 2009-10, vide order dated 25.3.2013, which is reproduced hereunder:

"9.4 I have gone through the contrary arguments. I find merit in the arguments of the AR that income has not yet accrued in this case since the time slot has not yet been aired even though the time slot has been sold, bill raised and monies received. This at the best is an advance received for future sale. This is not the case where expenditure related to that income has been debited. In this case the assessee is selling the time slot to air advertisements for which there is no direct identifiable expenditure. Hence the ratio relied upon by the learned AO cannot be accepted here. It is also to be noted here that the said monies were offered as income in the subsequent year and also monies which are shown as deferred revenues in the earlier year were also offered as income in this year, at the beginning. Hence for these reasons this addition is directed to be deleted in both the AYs."

4.3.3 Respectfully following the above decision of the Hon'ble ITAT and in line with my predecessor's decision, the AO is directed to delete the addition made towards "Deferred Revenue". This ground of appeal is allowed."

3.3.2 In view of the above decision of Hon'ble ITAT, Chennai, followed by the CIT(A), in the case of M/s Sun TV Network Ltd., the appellant's grounds are allowed and the AO's additions are deleted in all four assessment years mentioned above.

Aggrieved, the revenue is in further appeal before us.

Our findings and Adjudication

7. After due consideration of factual matrix as enumerated by us in the preceding paragraphs, the undisputed fact that emerges are that the assessee provide DTH services to various subscribers. The assessee receives subscription amount on quarterly / half-yearly / annual basis and credit the same to 'deferred income account'. From this account, the revenue earned, for each day, are transferred to subscription account which is offered to tax by way of credit to Profit & Loss Account. This method of accounting has consistently been followed by the assessee since commencement of business in AY 2008-09. The said method is also in line with the requirement of AS-9 issued by ICAI. The assessee follows the same treatment to input costs. The cardinal principal of taxing the income under mercantile basis of accounting is that the income should have accrued to the assessee. Mere advances could not be brought to tax. The amount lying in 'deferred income account', in

assessee's case, is nothing but advances received for rendering services in future period. Unless these receipts are held to be taxable under the statute, the same could not be brought to tax since only those incomes could be taxed which has accrued to the assessee during the year. In assessee's case, these are unearned revenue and mere advances. The income would accrue to the assessee in future. To clothed the same as the income of the assessee during this year, is bereft of any merits. The argument that the money is never refunded to the subscribers, is not much germane to the issue since the subscription money paid by the subscribers is governed by the contractual terms between the assessee and the subscribers. Nevertheless, the said fact would not alter the position that this income was nothing but mere advances for rendering of services in future. Therefore, the impugned order could not be faulted with.

8. We find that similar is the view of the co-ordinate bench in the case of **ACIT V/s M/s Sun TV Network Ltd. [ITA Nos.1515 & ors/Mds/2013 dated 31.10.2013; as relied on by Ld. CIT(A)]**. The coordinate bench dismissed revenue's appeal, under similar factual matrix, by observing that there was no illegality or irregularity in methodology adopted by the assessee in registering the revenue in the year of telecast. This decision has been followed by another coordinate bench in ITA No.1309/Mds/2017 dated 14.08.2017 for AY 2012-13 in the case of same assessee. The same has subsequently been followed in another order for AY 2013-14 also (ITA No.1243/Chny/2018 dated 20.11.2018). The copies of all these orders are on record. We find that same principal, as followed by us, has been followed by various benches of Tribunal in those cases.

The Ld. CIT-DR has sought distinction in the facts of the assessee as well as in the case of its sister concern. However, upon perusal of para-11 of Tribunal's decision in ITA No.1515 & ors/Mds/2013 dated 31.10.2013, we find that in that case the assessee was collecting fees towards sale of time slots in advance and recognized revenue only when the programs were broadcasted. It was the submissions of the revenue that the bills were raised and the monies were received by the assessee and therefore the receipts should have been offered to tax under mercantile system of accounting. However, rejecting the same, the bench held that the income generated by the assessee was offered as income in the year of broadcasting / airing the programs. The monies received were shown as deferred revenue in the year of receipt and offered as income in the year when the program is aired. Therefore no illegality or irregularity could be found in the methodology adopted by the assessee in registering the revenue in the year of telecast of programme. We find that the facts in the case of present assessee are quite similar. The subscription monies received in advance are treated as deferred income and offered to tax on day to day basis which is correct methodology of revenue recognition under mercantile system of accounting. Therefore, the submissions that this case law would not apply to the case of the assessee, could not be accepted.

9. Therefore, on the given facts and circumstances, finding no infirmity in the impugned order, we dismiss the revenue's appeal for all the years.

10. All the appeal stands dismissed.

Order pronounced on 01st April, 2022

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 01.04.2022
TLN

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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चेन्नई / DR, ITAT, Chennai
6. गार्ड फाईल / Guard File