

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 608/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2020-21)

Ducere Technologies Vs. Deputy Commissioner of
Private Limited, Income Tax,
Secunderabad Circle-8(1),
[PAN No. AAECD2585L] Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा / Assessee by: Ms. Mrudulatha Devdas, AR
राजस्व द्वारा / Revenue by: Ms. Vishnu Priya, DR

सुनवाई की तारीख/Date of hearing: 01/12/2022
घोषणा की तारीख/Pronouncement on: 05/12/2022

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 09/09/2022 passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Ducere Technologies Private Limited ("the assessee") for the assessment year 2020-21, assessee preferred this appeal.

2. Assessee being a private company filed return of income for the assessment year 2020-21. However, the Centralised Processing Centre (CPC), Income Tax Department raised demand for Rs. 2,55,650/-. Solitary grievance of the assessee before the learned CIT(A) was that the CPC failed to consider the brought forward losses from assessment year 2013-14 to

2019-20 resulting in raising demand to Rs. 2,55,650/-. Learned CIT(A) observed that in view of provisions under section 71(2A) of the Income Tax Act, 1961 (for short "the Act") the assessee shall not be entitled to have the losses set-off against the income assessed under the head 'salaries'.

3. In this appeal, it is pleaded by the learned AR that the assessee is a company and there cannot be any salary income. She also submitted that in case of company, there is no option in the return of income to show the income under the head 'salary' but looking at the amounts of gratuity and leave encashment expenses the learned CIT(A) inferred that the assessee was deriving salary income. Learned AR submitted that though the said expenses were not paid before the filing of return of income, the said fact was disclosed in the tax audit report.

4. The sum and substance of the grievance of the assessee before us is that though the additions were properly made, the same should have been considered to have been set-off against the losses brought forward from assessment year 2013-14 to 2019-20 which were disclosed at page No. 60 of the ITR form. Learned AR prayed that if proper verification is made, these amounts would be adjusted against such brought forward losses.

5. Learned DR submits that it could be seen that certain amounts were set-off against brought forward losses, but the amount of Rs. 30.36 crores towards brought forward losses has to be verified.

6. It is therefore clear that the assessee is not disputing the additions made but only prays for verification of the brought forward losses for the purpose of setting-off the additions now made against such losses. Since the assessee is a company as is established by the 143(1) intimation, question of assessing its income under the head 'salary' does not arise. Impugned order is, therefore, liable to be set aside. The aspect of availability of brought forward losses needs verification at the end of the

Learned Assessing Officer, for the purpose of considering the set-off against current year income.

7. I, therefore, restore the issue to the file of the Learned Assessing Officer to verify the availability of brought forward losses for the purpose of setting-off the current year income against such losses. Grounds are accordingly treated as allowed for statistical purposes.

8. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 5th day of December, 2022.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 05/12/2022

TNMM

Copy forwarded to:

1. Ducere Technologies Private Limited, 222/B, San Marine House, West Marredpally, Secunderabad.
2. Deputy Commissioner of Income Tax, Circle-8(1), Hyderabad.
3. NFAC-Delhi.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD