

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	ITA No. 2088/Del/2014	
	A.Y. : 2005-06	
DCIT, CIRCLE 12(1), New Delhi	VS.	M/S GLOBAL ONE INDIA PVT. LTD., 7 TH FLOOR, TOWER-C, DLF INFINITY TOWER, PHASE-II, SECTOR 25-A, GURGAON (AABCG2558B)
(APPELLANT)		(RESPONDENT)

Department by : Sh. Amrit Lal, Sr. DR

Assessee by : Ms. Geetika Gupta & Sh. Ravi Sharma,
CAs

Date of Hearing : 15-09-2016

Date of Order : 03-10-2016

ORDER

PER H.S. SIDHU : JM

The Revenue has filed the present appeal against the impugned order dated 20/12/2013 passed by the Ld. Commissioner of Income Tax (Appeals)-XV, New Delhi on the following grounds:-

1. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in deleting the addition of Rs. 1,00,10,209/- made by AO on account of disallowance of Network and other Equipment cost?
2. Whether Ld. CIT(A) was correct on facts and circumstances of the case and in law in quashing the proceedings initiated u/s. 148 of the Act in this case?
3. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.

2. The facts in brief are that the assessee filed the return of income on 27.10.2005 declaring loss of Rs. 36,03,300/-. Later on, a revised computation was filed on 10.10.2008 showing loss of Rs. 7,23,56,799/-, which was on the ground that the assessee could not finalise accounts as on the date of filing the original return. The case was picked up for scrutiny under section 143(3) and an order under section 143(3) was passed on 30.12.2008, in which as against the loss of Rs. 7,23,56,799/- the total income was assessed at Rs. 7,86,86,783/-. The main ground of disallowance in the original assessment order was disallowance of 'Circuit Expenses' of Rs. 14,18,24,935/-. The additions made were deleted by the earlier Ld. CIT(A) vide his order dated 2.6.2010 which was also upheld by

the ITAT. Thereafter, the AO issued notice u/s. 148 on 20.3.2012 and assessment was reopened by recording the following reasons.

“In this case assessment under section 143(3) for the assessment year 2005-06 was completed determining an income of Rs. 78,68,673/- as against the written (should be returned) loss of Rs. 36,03,300/-. On examination of the file and documents placed on the record it is seen that assessee has debited a sum of Rs. 100,10,209/- for Network Other Equipment costs in the provisional income and expenditure account. Since the said expenditure is capital in nature, it is not allowable as revenue under the provisions of section 37 of the Income Tax Act. Therefore, I have reason to believe that income of Rs. 1,00,10,209/- had escaped assessment under the meaning of section 147. Notice under section 148 is required to be issued in this case.”

2.1 In response to the aforesaid notice, assessee vide letter dated 15.5.2012 has submitted his reply, which was not accepted by the AO and accordingly, the AO treated the addition of

Rs. 1,00,10,209/- vide his order dated 29.8.2012 passed u/s. 143(3)/147 of the I.T. Act, 1961.

3. Aggrieved with the aforesaid order, assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 20.12.2013 has deleted the addition and quashed the reassessment thereby allowing the appeal of the Assessee.

4. Now the Revenue is aggrieved against the impugned order and filed the present appeal before the Tribunal.

5. At the time of hearing Ld. DR relied upon the order of the AO and reiterated the contentions raised by the Revenue in the grounds and requested that Appeal of the Revenue may be allowed.

6. On the contrary, Ld. Counsel of the Assessee has relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, the same may be upheld and accordingly, the appeal of the Revenue may be dismissed.

7. We have heard both the parties and perused the records, especially the impugned order passed by the Ld. CIT(A). We find that Ld. First Appellate Authority has elaborately discussed the issue in dispute by considering the submissions of the assessee and

adjudicated the issue vide para no. 5.2 to 5.3 at pages 10 to 11 of the impugned order. The said relevant paras are reproduced as under:-

"5.2 I find that while recording the reasons for initiating proceedings under Section 147, the AO has taken the amount of returned income at Rs. 78,68,673/- and amount of assessed loss at Rs. 36,03,300/-. Both these figures are factually incorrect, as the Ld. AO in the original assessment under section 143(3) had assessed the income at Rs. 7,86,86,783/-. Further, the appellant had, during the course of original assessment proceedings, revised the computation of income as the original computation was based on provisional financial account and accordingly, claimed the loss of Rs." 7,23,56,799. The Ld. AO in the original assessment proceedings took, cognizance of the financial accounts and made an addition of Rs.15,10,43,582 of the the aforesaid revised computation of income in which loss of Rs.7,23,56,799 was claimed and based on this, the income under Section 143(3), was assessed at Rs.7,86,86,783. I also find that the main observation of the AO that the appellant had claimed 'Network and

Other Equipments Cost' as 'Circuit Expenses, which were clubbed under the, head revenue expenses, is also factually incorrect. Such mistakes possibly occurred as the AO did not bother to go through the revised computation of income, which was placed before the AO in the original assessment proceedings and which was accepted by him while passing order under Section 143(3), In view of the above, it is evident that the main grounds on which the reassessment proceedings were initiated were factually incorrect observation of the Ld. AO. Moreover, the assessment was reopened after four years and in which already an order under Section 143(3) was passed, therefore, the reopening of assessment could have been justified only where it was proved that the appellant had failed to make 'full and true disclosure' of material facts. Further, I find that the Ld. AO himself has, while recording the reasons mentioned that the observation that the appellant had claimed 'Network and Other Equipment Cost' as revenue expenses, was based on examination of 'file and documents placed on record'. Since there was no independent source of such information and the AO only

re-examined the file and documents, which was already subject matter of scrutiny under Section 143(3), it is evident that the action of the AO was clearly in the nature 'change of opinion', on which reassessment cannot be sustained as was held by the Hon'ble High Court in. the case of (IT Vs. Usha International ltd. (ITA. No.2026/2010) (2012). Moreover, the AO has alleged that such 'Network and Other Equipment Cost' was booked under the head 'Circuit Expenses'. Further, in the original assessment proceedings under Section 143(3), disallowance was primarily made in respect of such 'Circuit Expenses' only. After the assessment under Section 143(3), the matter travelled upto the ITAT, which gave relief to the appellant. The CIT(A) had also deleted the addition made by the AO, which was under section 40(a)(ia). The CIT(A) has all the powers of an income tax authority and even while allowing original disallowance under section 40(a)(ia), the CIT(A) was fully empowered to determine such expenses as capital in nature and would have disallowed it accordingly. However, no such finding was given by the CIT(A). Moreover, the finding of

the AO while recording the reasons, was based on factually incorrect facts.

5.3 Keeping in view the above, the re-assessment order passed by the AO is bad in law, without jurisdiction, and is required to be quashed. On the merit of the case as well, no, addition is called for.”

7.1 After going through the findings of the Ld. CIT(A), as aforesaid, we are of the considered view that AO while recording the reasons for initiating proceedings under Section 147, has taken the amount of returned income at Rs. 78,68,673/- and amount of assessed loss at Rs. 36,03,300/-. Both these figures are factually incorrect, as the AO in the original assessment under section 143(3) had assessed the income at Rs. 7,86,86,783/-. Further, the assessee had, during the course of original assessment proceedings, revised the computation of income as the original computation was based on provisional financial account and accordingly, claimed the loss of Rs.7,23,56,799. The AO in the original assessment proceedings took, cognizance of the financial accounts and made an addition of Rs.15,10,43,582 of the aforesaid revised computation of income in which loss of Rs.7,23,56,799 was claimed and based on this, the income under Section 143(3), was assessed at

Rs.7,86,86,783. We also find that the main observation of the AO that the assessee had claimed 'Network and Other Equipments Cost' as 'Circuit Expenses, which were clubbed under the, head revenue expenses, is also factually incorrect. Such mistakes possibly occurred as the AO did not bother to go through the revised computation of income, which was placed before the AO in the original assessment proceedings and which was accepted by him while passing order under Section 143(3). In view of the above, it is evident that the main grounds on which the reassessment proceedings were initiated were factually incorrect observation of the AO. Moreover, the assessment was reopened after four years and in which already an order under Section 143(3) was passed, therefore, the reopening of assessment could have been justified only where it was proved that the assessee had failed to make 'full and true disclosure' of material facts. Further, I find that the AO himself has, while recording the reasons mentioned that the observation that the assessee had claimed 'Network and Other Equipment Cost' as revenue expenses, was based on examination of file and documents placed on record. Since there was no independent source of such information and the AO only re-examined the file and documents, which was already subject matter of scrutiny under Section 143(3), it is evident that the action of the

AO was clearly in the nature 'change of opinion', on which reassessment cannot be sustained as was held by the Hon'ble High Court in the case of (ITO Vs. Usha International Ltd. (ITA. No.2026/2010) (2012). Moreover, the AO has alleged that such 'Network and Other Equipment Cost' was booked under the head 'Circuit Expenses'. Further, in the original assessment proceedings under Section 143(3), disallowance was primarily made in respect of such 'Circuit Expenses' only. After the assessment under Section 143(3), the matter travelled upto the ITAT, which gave relief to the assessee. The CIT(A) had also deleted the addition made by the AO, which was under section 40(a)(ia). The CIT(A) has all the powers of an Income Tax Authority and even while allowing original disallowance under section 40(a)(ia), the CIT(A) was fully empowered to determine such expenses as capital in nature and would have disallowed it accordingly. However, no such finding was given by the CIT(A). Moreover, the finding of the AO while recording the reasons, was based on factually incorrect facts. In view of the above, Ld. CIT(A) has rightly held that re-assessment order passed by the AO is bad in law, without jurisdiction, and is required to be quashed. On the merit of the case as well, no, addition is called for.

7.2 In the background of the above facts and circumstances of the case, we are of the considered view that the Ld. CIT(A) has passed

a well reasoned order which does not need any interference on our part, hence, we uphold the same and reject the grounds raised by the Revenue.

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

Order pronounced in the Open Court on 03/10/2016.

SD/-
[L.P. SAHU]
ACCOUNTANT MEMBER

SD/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 03/10/2016

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches