

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI  
BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER  
I.T.A .No. 1870/DEL/2010 (A.Y 1999-2000)**

Nokia India Pvt. Ltd. SP Infocity, Industrial Plot No. 243 Udyog Vihar, Phase-1 Dundaheera Gurgaon AAACN2170R <b>(APPELLANT)</b>	Vs	DCIT Circle-13(1) Central Revenue Building New Delhi <b>(RESPONDENT)</b>
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**I.T.A .No. 2147/DEL/2010 (A.Y 1999-2000)**

DCIT Circle-13(1) Central Revenue Building New Delhi <b>(APPELLANT)</b>	Vs	Nokia India Pvt. Ltd. SP Infocity, Industrial Plot No. 243 Udyog Vihar, Phase-1 Dundaheera Gurgaon AAACN2170R <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Vikas Srivastava, Adv</b>
<b>Respondent by</b>	<b>Sh. P. Dam Kanunjna, Sr. DR</b>

<b>Date of Hearing</b>	<b>19.04.2016</b>
<b>Date of Pronouncement</b>	<b>03.06.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE JM**

The appeal and cross appeal are filed against the order dated 22/02/2010 passed by CIT(A)- XVII, New Delhi.

2. The grounds of appeal are as follows:

(ITA No. 1870/Del/2010)

- “1. *Based on the facts and circumstances of the case and in law, the Learned Commissioner of income-tax (Appeals) [hereinafter referred to as the CIT(A) has erred in holding that proceedings u/s 147 of the Income-tax Act, 1961 ('the Act') are valid despite the fact that the notice u/s 148 of the Act had been issued on account of mere change of opinion.*
2. *Based on the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the learned Assessing Officer was correct in extending the scope of reassessment proceedings to the issues which were not recorded in the reasons for reopening the assessment and carrying out the detailed scrutiny assessment u/s 148 of the Act.*
3. *Without prejudice, based on the facts and circumstances of the case and in law, the CIT(A) has erred in holding that the Learned Assessing Officer was correct in disallowing the provision for doubtful debts amounting to Rs. 43,*
4. *Without prejudice, based on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the disallowance of 25 percent of the provision for obsolescence amounting to Rs. 1,213,037/- created by the appellant during the previous year relevant to the subject assessment year, for the purpose for computing book profits u/s 115JA of the Act.*
5. *Without prejudice, based on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the disallowance of 25 percent of the provision for obsolescence amounting to Rs. 1,213,037/- created by the appellant during the previous year relevant to the subject assessment year, under the normal provisions of the Act.*

6. *Without prejudice, based on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the disallowance of marketing expenditure of Rs.2,454,798/- incurred on account of mobile phones handset issued to AMCs, dealers and employees during the previous year relevant to the subject assessment year as capital expenditure in the hands of the appellant, under the normal provisions of the Act.*
7. *Without prejudice, based on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the arbitrary addition of an amount of Rs. 2,960,347/- to the closing stock of the appellant, which results in a double disallowance with regard to the marketing expenditure, having regard to the facts of the case.*

(ITA No. 2147/Del/2010)

- “1. *That on the facts and circumstances of the case and in law the CIT(A) erred in deleting the addition made by the Assessing Officer on account of provision of gratuity.*
2. *That of the facts and circumstances of the case and in law the CIT(A) erred in deleting the disallowance of provision for warranty of Rs.1,77,45,202/-.*
3. *That on the facts and circumstances of the case and in law the CIT(A) erred in deleting the disallowance of Rs.1,71,95,149/- out of foreign travel expenses.*
4. *That on the facts and circumstances of the case and in law the CIT(A) erred in deleting the levy of interest u/s 234D of the IT Act, 1961.”*

4. The main contention of the assessee was that the CIT(A) erred in holding that proceedings u/s 147 of the Income Tax Act, 1961 are valid despite the fact that the notice u/s 148 of the Act had been issued on account of change of opinion. Thus the validity of Section 148 Notice is taken up at this stage of hearing.

5. On 29/9/2004 first notice u/s 148 of the Income Tax Act, 1961 was issued, without requisite approval of JCIT. The Assessee filed reply dated 25/10/2004 asking Assessing Officer to consider revised income dated 30/11/2000. Notice u/s 143(2) of the Act dated 10/10/2005 was issued by A.O initiating assessment. The Assessee filed reply dated 20/10/2005 to Section 143(2) notice, requesting reasons for re-opening before proceeding further with the assessment.

6. On 17/11/2005 reasons for re-opening, in respect of first notice under Section 148 was provided to assessee are as under:

*“.....After examination of the assessment records for the Assessment Year 1999-2000 it has been revealed that during the year the assessee has mad various provisions in the return of income listed as Under:-*

*Gratuity-Rs. 1407400/- Doubtful Debts-Rs. 43554990/-  
Warranty-Rs. 17745202/- Obsolescence-Rs. 4852150/-*

*However, while computation of income u/s 115JA the above unascertained liabilities has not been added to the book profit which has resulted in under assessment of income to the tune of Rs.225.97 lacs.....”*

7. The Assessee inspected A.O's records on 21/11/2005 and found that proceedings u/s 148 of the Act were initiated solely on the basis of audit objection suggesting that provisions, being unascertained liabilities, which should be added to book profit for 115JA.

8. The Assessee filed letter dated 28/11/2005 and objected the legality of first 148 notice (dated 29/9/2004) stating that as 4 years had expired after end of Assessment Year 99-00 prior approval of JCIT was mandatory u/s 151 of the Act and it was found that no such approval had been obtained. In the said letter the validity of Section 148 notice was also challenged based on absence of reason to believe that income had escaped assessment and Re-assessment based on audit objections was invalid.

9. On 6/13.02.2006 A.O withdrawn first Section 148 notice (dated 29/9/2004) based on NIPL's objections. On 13/2/2006, second notice u/s 148 was issued, with JCIT approval. On 24/2/2006 NIPL filed a reply asking A.O to consider revised income dated 30/11/2000 and asked for reasons for re-opening. On 8/8/2006 A.O issued notices under Section 143(2), 142(1) of the Act. On 30/8/2006 NIPL filed response to 143(2) notice, reiterating request for reasons recorded before proceeding with assessment.

10. On 30/8/2006 copy of reasons (dated **2/2/2006**) in respect of second 148 notice provided by A.O. to the assessee. The same are reproduced hereunder:

“.....After examination of the assessment records for the Assessment year 1999-2000, it has been revealed that during the year the assessee made various provisions in the return of income listed as under:

Gratuity- Rs. 1407400/-

Doubtful Debts- Rs. 43554990/-

Warranty-Rs. 17745202/-

Obsolescence- Rs. 4852150/-

The provisions claimed are in the nature of unascertained liabilities, however, while computation of income u/s 115JA the above unascertained liabilities have not been added to the book profit which has resulted in under assessment of income.....”

11. On 20/09/2006 NIPL filed its objections to reasons for re-opening. On 8/11/2006 Order passed by A.O rejecting NIPL's objections. On 24/11/2006 NIPL filed its submission before the A.O. The Assessing Officer disallowed 20% of foreign travelling expenses to the extent of Rs. 1,71,95,149/-, provision for warranty to the extent of Rs. 1,77,45,202/-, FOC marketing expenses (after depreciation) to the extent of Rs. 18,41,099/- as well as disallowed 25% of provision for obsolescence of inventory to the extent of Rs. 12,13,037/- and made addition to closing stock for Rs.29,60,347.

12. The CIT(A) rejected NIPL's arguments on Section 148 and deleted the disallowance of 20% of foreign travelling expenses and provision for warranty, but sustained the other issues.

13. The present appeal and cross appeal are filed by Revenue and assessee respectively.

14. The Ld. AR submitted that the first notice was withdrawn after the second notice was issued or was in the process of delivery to the assessee. Therefore, as regards the procedural aspect there is lapse

on the part of the Assessing Officer. There was a clear opinion given by the Assessing Officer before the auditor vide letter dated 24.09.2003 that there was no evidence as the said provision was an unascertained liability. Hence, A.O submitted a report that the department should not have objection. Further, the then AO gave a clear finding that the matter is settled. The said stand was shifted and a contrary view was taken by the Assessing Officer while passing the assessment order in question. Thus it was clear change of opinion. The letter dated 24.09.2003 is extracted hereinbelow:

*“No.ACIT/Cir.13(1)/Audit/2003-04/499*

*Office of the*

*Asstt.Commissioner of I.Tax*

*Circle-13(1), New Delhi*

*Dated: 24.09.2003*

*To*

*The Sr. Receipt Audit Officer*

*ITAP-13*

*Room No. 156*

*C. R. Building,*

*NEW DELHI*

*Sir,*

*Sub: Audit Objection regarding short recovery of tax*

*in the case of M/s. Nokia India Ltd. Asstt. Year 1999-2000*

*Please refer to Audit Memo No. 268 dated 3.7.2003 in the above case.*

*The audit scrutiny raised that for the purpose of Section U/s 115JA, the assessee company has not increased the amount or amounts set aside to provision made for meeting liabilities, other than ascertained liabilities, and*

*omission to do so resulted in under assessment of income of Rs. 1,69,67,732/- involving short recovery of tax of Rs.69,48,229/- under special provision of the Act.*

*I have gone through the records. Keeping in view the above objection, it is found that the liabilities mentioned by the Audit had been declared in his return of income as ascertained liabilities as per Section 115JA Sub Sec.(2) Clause (c) of the I.T. Act. The return was processed U/s 143(1) and as there was prima facie no evidence that the liabilities were not ascertained liabilities in view of the above mentioned assessee's self declaration, these liabilities were not be added to the net profit while computing the Book Profit and therefore, the issue raised by the audit is not accepted.*

*In view of the above, objection raised by the Audit may please be treated as settled as the above adjustment were not permissible U/s 143(1) of the I. T. Act.*

*Yours faithfully,*

*Sd/-*

*(SANJOG KAPOOR)*

*Asstt. Commissioner of I. Tax,*

*Circle- 13(1), New Delhi*

*Copy to: The CIT, Delhi – V, New Delhi for information.*

*Sd/-*

*ACIT, CIR.13(1), N. DELHI”*

Thus the Ld. AR submitted that the issue was already settled and there was no necessity of re-opening the same. The Ld. AR further submitted that the CIT (A) is not justified in disallowing the ground of appeal of the assessee as relates to issuance of notice u/s. 148 for change of opinion. The first notice was as per law withdrawn. Thus, there was no necessity to issue second notice merely on the ground of change of opinion.

15. The Ld. DR relied on the Assessment Order and the order of the CIT(A) and submitted that the appeal of the revenue be allowed on merit.

16. We have perused all the records and heard both the parties. It is found that the Ld. AR was right in its contention that there was a change of opinion which was clearly seen in the letter produced before us dated 24/9/2003 sent to Senior Receipt Audit Officer. In the said letter, the stand of the A.O was that objection raised by the department may be treated as settled as the adjustment mentioned therein was not permissible under the Act. This letter was produced by the Ld. DR during the course of hearing. This letter clearly shows that notice under Section 148, was a clear change of opinion. There was no new material found by the Assessing Officer. There was a clear opinion given by the Assessing Officer before the Auditor that there was no evidence as the said provision was an unascertained liability as per letter dated 24.09.2003. Thus, the proceedings under Section 147 of the Income Tax Act, 1961 are not valid as the notice under Section 148 of the Act was issued on account of change of opinion. Therefore, CIT(A) was incorrect while dismissing the appeal of the assessee.

17. In result, appeal of the assessee is allowed and the Revenue's appeal is dismissed.

**The order is pronounced in the open court on 03<sup>rd</sup> of June, 2016.**

**Sd/-  
(G. D. AGRAWAL)  
VICE PRESIDENT**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 03/06/2016

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

		Date	
1.	Draft dictated on	19/04/2016	PS
2.	Draft placed before	21/04/2016	PS

	author		
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	03.06.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	03.06.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		