

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

The present cross appeals have been preferred by revenue as well as assessee against the order passed by Ld. CIT (A)-10, New Delhi for assessment year 2002-03 on the following grounds of appeal:

ITA No. 4181/del/2011

“1. The Ld.CIT(A) has erred in law and on facts and circumstances of the case in deleting addition of Rs.29,921,085/- made by the AO on account of Prior Period Expenses.

2. The Ld.CIT(A) has erred in law and on facts and circumstances of the case in deleting addition of Rs. 1,79,44,942/- on account of receivables.

3. The Ld.CIT(A) has erred in law and on facts and circumstances of the case in deleting addition of Rs.1,40,22,335/- on account of advertisement expenses.

4. The appellant craves leave to add, alter, amend or forego any ground of appeal at any time before or during the course of hearing of the appeal.”

CO No. 363/del/2011

1. That the CIT(A) erred on facts and in law in not holding that the reassessment order dated 16.12.2009, passed under section 147/143(3) of the Act was beyond jurisdiction, , bad in law and void ab-initio.

1.1. That the CIT(A) erred on facts and in law in holding that the reassessment proceedings were not barred by limitation in terms of proviso to section 147 of the Act, alleging that there was failure on the part of the assessee to make full and true disclosure of all material facts necessary for the assessment year under consideration.

1.2. That the CIT(A) erred on facts and in law in not appreciating that the aforesaid reassessment order was passed on a mere change of opinion on reappraisal of the same facts as were available at the time of original assessment and the said order was therefore, not sustainable in law.

1.3 That the CIT(Appeals) erred on facts and in law in observing that certain factual errors were brought to the notice of the assessing officer by the Revenue audit party which constituted fresh "information" and reassessment proceedings initiated on the basis of the same were, therefore, valid.

1.4 That the CIT(Appeals) erred on facts and in law in not appreciating that the aforesaid alleged factual errors did not have any bearing on the assessable income of the assessee and therefore, could not constitute "information" leading to formation of belief that the income has escaped assessment so as to warrant initiation of reassessment proceedings under section 147 of the Act.

The assessee craves leave to add to, alter, amend or vary the aforesaid grounds of appeal at or before the time of hearing.

2. Brief facts of the case are as under:

Original assessment was completed under section 143 (3) of the Act at Rs.67,97,24,064/- on 21/03/05 as against returned loss of Rs.(-)4,63,27,044/-. Thereafter notice u/s 148 was issued on 25/03/09 after recording reasons, which were conveyed to assessee during the reassessment proceedings. Various objections regarding legality in reopening of assessments were traced which were dealt with by the Ld. AO

2.1. The Ld. AO thereafter completed the reassessment proceedings by making various additions as under:

1.	On account of inadmissible expenses, payable under Schedule XIII of Companies Act	Rs. 6,04,991/-
2.	On account of non deduction of TDS u/s 201(1A)	Rs. 2,18,91,250/-
3.	On account of prior period expenses	Rs. 29,91,085/-
4.	Disallowance on account of receivable	Rs.1,79,44,942/-
5.	On account of capital expenditure	Rs.1,40,22,335/-
	Total taxable income	Rs.73,71,78,667/-

2.2. Aggrieved by the assessment order passed, assessee preferred appeal before Ld. CIT (A).

2.3. Assessee challenged legality and validity of reassessment proceedings. It was alleged that reassessment proceedings was initiated beyond 4 years. Assessee also challenged the reopening on the ground that there was full and true disclosure by assessee

during the original assessment proceedings. After considering the submissions advanced, Ld.CIT(A) upheld reopening of assessment.

2.4. On merits, it was submitted that Ld.AO in original assessment order observed that assessee had not debited advertisement expenses/receivables to the profit and loss account and therefore no doubt could be cast regarding genuineness of the same. This was supported by the certificate issued by auditor which was filed before the Ld. AO during original assessment proceedings wherein it was submitted that no deduction was sought in respect of the said expenditure by assessee for the year under consideration and therefore the question of these expenditure being current year expenses or prior period expenses becomes irrelevant. Ld. CIT (A) thus on the basis of various observations deleted the addition made by Ld. AO.

3. Aggrieved by the order of Ld. CIT (A) assessee as well as the revenue are in appeal before us now.

3.1. The grounds raised by assessee in its Cross Objection goes to the root of the case as the legality of reassessment proceedings has been challenged. We therefore deal with the legal issue raised by assessee in the Cross Objection as it goes to the root of the case.

3.2. Ld.AR submitted that the case of assessee is covered by Explanation 1 to section 147, as all material facts relevant for assessment of the issue were disclosed during the original assessment proceedings, in terms of Proviso to section 147. He submitted that as the primary facts relevant for consideration of issue were fully and truly disclosed, the reassessment proceedings

initiated under section 147 would be bad in law. Further Ld.AR submitted that nowhere in the reassessment order Ld. AO indicated any failure on behalf of assessee to fully and truly disclose material facts relevant for the purposes of assessment. Ld.AR placed reliance upon the decision of *Hon'ble Delhi High Court* in the case of *Haryana Acrylic Manufacturing Company reported in 175 taxman 262*.

3.3. Further the Ld.AR submitted that reassessment proceeding is not based on any new material, that has been unearthed by Ld.A.O. It has been submitted that the additions are based on the materials already available on record. Ld.AR placed reliance upon the decision of *Hon'ble Delhi High Court* in the case of *CIT vs Kelvinator India Ltd reported in 256 ITR 1* which has been upheld by *Hon'ble Supreme Court reported in 320 ITR 561*.

Thus Ld.AR submitted that the reassessment proceedings are bad in law and *void ab initio*.

3.4. Ld. DR on the contrary placed reliance upon the findings of Ld. CIT (A) on the legality of the reassessment proceedings.

4. We have perused the submissions advanced by both the sides in the light of the records placed before us.

4.1. Admittedly, the addition made by the Ld. AO in reassessment proceedings is on account of prior period expenses and claim of receivables. There was no tangible material outside the record which was the basis of reassessment proceedings. And further admittedly there is no reason to believe that income has escaped assessment, as assessee has not claimed the amount that has

been the addition in the reassessment proceedings. The observations of Ld. AO in the original assessment proceedings are very much pertinent at this juncture. Ld. AO therein has given categorical finding regarding the expenditure not been considered for the purposes of deduction in the P&L account.

The decisions relied upon by Ld. DR in the written submissions filed mostly relate to situations where there was tangible material available outside the record based on which Hon'ble Supreme Court and various High Courts have held reassessment proceedings to be valid.

4.2. In our considered opinion there was no tangible material in the possession of Ld. AO to initiate the reassessment proceedings and the additions made by Ld. AO was based on the materials already on record which has failed to stand the test of law as the same has been deleted by Ld. CIT (A) by observing categorically that they were never considered for the purposes of deduction in the original assessment proceedings itself.

4.3. On the basis of the above discussions we allow the legal ground raised by assessee in its cross objection and quash and set-aside the notice issued under section 147 of the act. Accordingly the reassessment proceedings also stands consequentially cancelled.

5. ITA No. 4181/del/2011

As we have already cancelled the reassessment order passed by Ld.AO, the additions made therein also stands deleted. Accordingly

the grounds raised by revenue in respect of the additions having been deleted by Ld. CIT (A) stands dismissed.

6. In the result appeal filed by the revenue stands dismissed and the Cross Objection raised by assessee stands allowed.

Order pronounced in the open court on 23.02.2018.

Sd/-

(N.K.SAINI)
ACCOUNTANTMEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 23rd Feb., 2018

- mv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

ITA 4181/Del/2011 and C.O. 363/Del/11
ACIT vs. Samsung India Electronics P Ltd.
Assessment Year 2002-03

S.No.	Details	Date	Initials	Designation
1	Draft dictated on Dragon			Sr. PS/PS
2	Draft placed before author			Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement			Sr. PS/PS
7	File sent to Bench Clerk			Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			