

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH 'B',
NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3258/DEL/2014
Assessment Year: 2006-07

The D.C.I.T.
Circle 10 (1),
New Delhi

Vs.

M/s Delhi Transport Corpn Ltd
Indraprastha Estate
New Delhi

PAN No. AAACD 3004 G

(APPELLANT)

(RESPONDENT)

Appellant by

: Ms. Nidhi Srivastava

Respondent by

: Shri Pradeep Dinodia, Adv

Date of hearing: 18/02/2019

Date of Pronouncement: 20/02/2019

ORDER

PER N. K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - 13, New Delhi dated 13.03.2014 pertaining to A.Y 2006-07.

2. The only substantive grievance of the Revenue is that the ld. CIT(A) erred in directing the Assessing Officer to treat the proceedings u/s 147 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] as dropped as per the provisions of section 152(2) of the Act and while deciding so, the ld. CIT(A) entertained relief claimed by the assessee which was never examined by the Assessing Officer.

3. Briefly stated, the facts of the case are that assessment order u/s 143(3) of the Act, 1961 was completed vide order dated 23.12.2008 at a loss of Rs. 568 crores. Subsequently, it came to the notice of the Assessing Officer that the assessee has claimed certain expenses which were not apparently admissible. Accordingly, notice u/s 148 of the Act was issued and proceedings u/s 147 were initiated. Assessment was framed u/s 147 r.w.s 143(3) of the Act vide order dated 30.08.2011 at an assessed loss of Rs. 429 crores.

4. The assessee assailed the matter before the ld. CIT(A) and strongly contended that the proceedings u/s 147 should have been dropped in view of the provisions of section 152(2) of the Act. It was brought to the notice of the ld. CIT(A) that the Assessing Officer had issued notice u/s 148 of the Act with the allegation that the following incomes have escaped assessment:

(i)	<i>Contribution to reserve fund is not a business expenditure</i>	Rs. 4,04,81,531/-
(ii)	Expenditure on which TDS has not been deducted as per Item I 7(f) of 3(4) Report	Rs. 5,44,45,576/-
(iii)	Excess claim of leave encashment as per Annexure 4!' of 3(4) Report	<u>Rs 11,11,40,147/-</u>
		<u>Rs. 20,60,67,254/-</u>

5. It was brought to the notice of the Id. CIT(A) that the assessee had omitted to deduct the following amounts u/s 43B of the Act on the basis of actual payment as per the Tax Audit Report and Annexure IV before the date of filing the return:

(i)	Provident Fund (disallowance in earlier years)	Rs. 20,77,10,005/-
(ii)	Provident Fund (DTC Employees Pension Fund) (Disallowed in earlier years)	Rs. 15,05,30,425/-
(iii)	Employees Contribution to PF. ESI. EPS disallowed on account of their delay in payment, even though, the assessee was legally entitled to claim deduction on account of retrospective amendment by the Finance Act.2003 w.e.f, 1.4.2004 as a result of which second proviso in clause (b) to section 43B was omitted.(see Annexure-IV of Audit Report)	Rs. 90,15,54,265/-

6. Accordingly, it was strongly contended that the provisions of section 152(2) of the Act squarely apply on the facts of the case in as much as the assessee had made the additions, which were far less than the relief claimed u/s 43B of the Act.

7. After considering the facts and submissions, the ld. CIT(A) was convinced with the claim of the assessee and held that since the assessee has already been assessed at a higher amount than it was legally liable to provisions of section 152(2) of the Act, proceedings u/s 147 of the Act have to be dropped.

8. Before us, the ld. DR strongly contended that the additional relief claimed by the assessee before the first appellate authority was never claimed before the Assessing Officer and therefore, the Assessing Officer had no occasion to examine the additional relief claimed by the assessee. It is the say of the ld. DR that without examining the additional relief, provisions of section 152(2) of the Act cannot be applied.

9. Per contra, the ld. counsel for the assessee brought to our notice that the ld. CIT(A) did not call for a remand report from the Assessing

Officer. But, on receiving no plausible reply, the Id. CIT(A) decided the appeal in favour of the assessee.

10. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. There is no dispute that the additions sought to be disallowed by the Assessing Officer, by issue of notice u/s 148 of the Act, are far more less than the relief which is otherwise available to the assessee and allowed by the Id. CIT(A). This clearly attracts the provisions of section 152(2) of the Act which reads as under:

"Sec. 152(2)

Where an assessment is reopened u/s.147, the assessee may, if he has not impugned any part of the original assessment order for that year either u/s.146 to 148 or u/s.264, claim that the proceedings u/s.147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have been escaped assessment had been taken into account or the assessment or computation had been properly made:

Provided that in doing so he shall not be entitled to reopen matters concluded by an order u/s.154, 155, 260, 262 or 263."

11. However, relief claim by the assessee, which is exhibited elsewhere, remains unverified by the Assessing Officer in spite of the fact that the Id. CIT(A) did call for remand report. In the interest of justice and fair play, we deem it fit to restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to verify the claim of the assessee u/s 43B of the Act, examine the claim and see that the said expenditure are not doubly claimed by the assessee. If the claim u/s 43B of the Act is found correct, then, in the light of provision of section 152(2) of the Act, proceedings u/s 147 deserve to be dropped.

12. In the result, with the above directions, the appeal of the revenue in ITA No. 3258/DEL/2014 is treated as allowed for statistical purposes.

Order pronounced in the open court on 20.02.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 20.02.2019

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Copy forwarded to:

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

Asst. Registrar,

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	11.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	