

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. LALIET KUMAR, JUDICIAL MEMBER**

ITA No.3962/DEL/2016  
Assessment Year: 2007-08

<b>Asstt. Commissioner of Income Tax, Circle – 2 (2), New Delhi</b>	<b>Vs</b>	<b>M/s. Amserve Consultants Ltd., First Floor, Elegance Tower, Plot No.8, Non- Hierarchical Commercial Centre, Jasola, New Delhi-110025 PAN No.AAECA8626K</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Ms. Rinku Singh, Sr. DR
Respondent by	Sh. C. S. Aggarwal, Sr. Advocate Sh. R. P. Mall, Advocate Sh. Shailesh Gupta, CA

Date of hearing:	25/07/2019
Date of Pronouncement:	26/07/2019

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-I, New Delhi dated 08.04.2016 pertaining to A.Y. 2007-08.

2. The grievance of the revenue read as under :-

1. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law quashing proceedings u/s 147 and the consequent assessment thereof.*

2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in not deciding the issue of addition of Rs.1,75,66,745/- expenses u/s. 40A(2) (a) of the Income Tax Act, 1961 on merit.*

3. Briefly stated that the facts of the case are that the return of income filed on 31.10.2007 declaring total income of Rs.8,31,39,315/- was processed u/s. 143 (1) on 06.03.2009.

4. Subsequently reassessment proceedings were initiated after recording of the following reasons :-

*"The assessee had paid Data processing charges to it's joint holding company Amway India which is a wholly owned subsidiary of the American Coglomerate Amway.*

*Disallowance of Rs. 14,38,57,868/ u/s 40A(2) was made to the assessee's income during A. Y. 2009-10.*

*The addition was confirmed by the Ld. CIT(A). Since the issue may have implications in other years, the Ld. CIT(A) has directed to take necessary action on the issue in the preceding years.*

*Since, the assessee failed to disclose fully and truly all material facts necessary during the assessment proceedings for the assessment year 2007-08, an income of more than Rs. one lakh chargeable to tax may have escaped assessment for the assessment year 2007-08. "*

5. Approval was taken from the competent authority as per the relevant provisions of the Act and notice u/s. 148 was issued and served upon the assessee. In response to the notice, the assessee company stated that the return of income filed u/s. 139 (1) of the Act may be treated as return filed in pursuance of notice u/s.148 of the Act.

6. Thereafter notice u/s.143 (2) and u/s.142 (1) alongwith questionnaire were also issued and served on the assessee.

7. The bone of contention was the expenditure incurred by the assessee towards data processing charges paid to M/s. Amway India Enterprises. The assessment was completed by disallowance of excessive unreasonable expenditure as under :-

Total Processing Charges paid to Amway (A) Total	62,498
number of policies processed (B) Processing charges	Rs.855/-
per policy (C=A/B) Therefore, total amount paid for	Rs.855 X 53550 -
new business	Rs.4,57,85,250/-
	<b>Rs.14,46,313/-</b>
<b>Disallowance on new business (D)</b>	<b>(25% of Rs.4,57,85,250/-)</b>
	Rs.855 X 8948 =
Total amount paid for Renewal of policies	Rs.76,50,540/-
	<b>Rs.61,20,432/-</b>
<b>Disallowance on Renewal of policies (E) Total</b>	<b>(80% of Rs.76,50,540/-)</b>
	<b>Rs.1,75,66,745/-</b>
<b>Disallowance (D + E)</b>	

8. Accordingly the addition of Rs.1,75,66,745/- was made by the Assessing Officer and the total income was assessed at Rs.1,00,706,060/-.

9. The assessee carried the matter before the CIT(A) and challenged the validity of the notice u/s. 148 of the Act and the consequent order framed u/s.147 r.w.s. 143 (3) of the Act.

10. Before the CIT(A) the assessee strongly contended that there exist no reason to believe that any income chargeable to tax has escaped assessment in the assessment year. It was brought to the notice of the CIT(A) that the pre-requisite condition for initiation of reassessment proceedings has not been fulfilled as the assessee had made adequate disclosure of facts in the return of income filed. It was also brought to the notice of the CIT(A) that the Assessing Officer has reopened the assessment on the ground that CIT(A) has directed to take necessary action on the issue of disallowance of data processing charges to M/s. Amway India Limited u/s. 40A (2) (b) of the Act in the order for A. Y.2009-10. It was strongly contended that reopening has been done on the basis of direction of CIT(A).

11. After considering the facts and the submissions of the CIT(A) found that there is no such direction issued in the order of the CIT(A) for A. Y. 2009-10, therefore, formation of believe by the Assessing Officer is based on wrong presumptions and there is no material fact available on the record. The CIT(A) was convinced

that reopening of the assessment was illegal and same was without application of mind by the Assessing officer and accordingly quashed the assessment.

12. The DR strongly contended that since the original assessment was framed u/s. 143 (1) of the Act and since there was no scrutiny of the assessment, therefore, for making the impugned additions/ disallowances reopening is justified.

13. Per contra the counsel for the assessee reiterated what has been stated before the CIT(A) and in support of his contention reliance was placed in the case of M/s. Silver Oak Laboratories Private Limited and another in WP (C) 17719-20/2006 judgment of Hon'ble High Court of Delhi dated 18.12.2008.

14. We have carefully considered the orders of the authorities below. The reasons for reopening the assessment are mentioned elsewhere. We are of the considered view that the reasons recorded for reopening the assessment are devoid of any application of mind because the Assessing Officer has mentioned that "since the assessee failed to disclose fully and truly all material facts necessary during the assessment proceedings for A. Y. 2007-08". We fail to understand when the return was processed u/s.143 (1) of the Act how can the Assessing Officer say that the assessee failed to disclose during the assessment proceedings.

15. We further find that the basis for reopening the assessment is the disallowance made u/s.40A(2)(b) of the Act in respect of data processing charges paid to Amway in subsequent years.

16. Documents on record show that the disallowance made in A.Y. 2009-10 were deleted by the Tribunal and the revenue has not preferred any appeal against the order of the Tribunal and the issue has attained finality. We also find that similar disallowances were made in A.Y.2010-11 and A.Y.2011-12 and such disallowances were deleted by the Tribunal vide order for the respective assessment years.

17. When the very basis for reopening the assessment has been removed the assessment proceedings does not survive any more. For this proposition, we draw support from the judgment of the Hon'ble High court of Delhi in the case of M/s. Silver Oak Laboratories (surpa). The relevant findings of the Hon'ble High Court read :-

3. *“We have heard the counsel for the parties. It is apparent that the reasons recorded do not contain any specific allegation with regard to the year in question, i.e., the assessment year 1999-2000. The sole and entire basis of re-opening the assessment is the additions made in respect of the assessment years 1998-99 and 2001-02. There is no other reason given by the Assessing Officer for re-opening the assessment. Since the tribunal has already deleted the additions in respect of the assessment years 1998-99 and 2001-02, the very basis for*

*continuing any further with the reassessment proceedings does not survive any more. We have also indicated above that there is no specific allegation with regard to the assessment year 1999-2000 regarding suppression of sale figures.”*

18. Considering the facts of the case in the light of the decision of the Hon'ble Delhi High Court (supra) we do not find any error or infirmity in the order of the CIT(A) in so far as quashing of assessment order is concerned. Since the assessment order has been quashed the CIT(A) did not find it necessary to dwell into the merits of the case and we do not find any reason to interfere with the order of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

19. In the result, the appeal filed by the revenue is accordingly dismissed.

Order pronounced in the open court on 26.07.2019.

**Sd/-**  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:-26 .07.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR  
 ITAT NEW DELHI

Date of dictation	25.07.2019
Date on which the typed draft is placed before the dictating Member	26.07.2019
Date on which the typed draft is placed before the Other member	26.07.2019
Date on which the approved draft comes to the Sr.PS/PS	26.07.2019
Date on which the fair order is placed before the Dictating Member for Pronouncement	26.07.2019
Date on which the fair order comes back to the Sr. PS/ PS	26.07.2019
Date on which the final order is uploaded on the website of ITAT	26.07.2019
Date on which the file goes to the Bench Clerk	26.07.2019
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	