

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1274/DEL/2015 [A.Y 2007-08]

Historic TBS Asia LLC
[Formerly Turner Broadcasting System
Asia Pacific Inc.]
C/o Pricewater House Coopers Pvt Ltd
Sucheta Bhawan, Gate No. 2, 1st Floor
11A, Vishnu Digamber Marg, New Delhi

Vs.

The Dy. C.I.T.
Circle 21(2)
New Delhi

PAN: AABCT 6252 D

(Applicant)

(Respondent)

Assessee By : Shri Ravi Sharma, Adv
Department By : Ms. Anupama Anand, CIT-DR

Date of Hearing : 07.03.2022
Date of Pronouncement : 11.03.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order dated 01.01.2015 framed u/s 148/143(3) r.w.s 144C of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] pertaining to A.Y. 2007-08.

2. The assessee has raised the following grounds of appeal:

1. On the facts and circumstances of the case and in law, the impugned reassessment order passed under Section 148 read with Section 143(3) and Section 144C of the Income tax Act, 1961 ('the Act') is wrong, bad in law and void-ab-initio.
2. On the facts and circumstances of the case and in law, the Learned Deputy Commissioner of Income Tax, Circle-i(i) International Taxation, New Delhi ('Ld. AO') erred in initiating reassessment proceedings under Section 147/ 148 of the Act and the proceedings initiated are illegal, bad in law and void-ab-initio.
 - 2.1 That in so initiating the proceedings under section 147/148 of the Act, the Ld. AO failed to appreciate that the reassessment proceedings were barred by limitation in view of the proviso to section 147 of the Act.
 - 2.2 That the original assessment proceedings were completed under section 143(3) of the Act vide order dated December 03, 2009 after examining all the relevant information and facts of the case duly furnished by the Appellant and therefore the initiation of reassessment proceedings is wrong, bad in law and void-ab-initio.
3. Without prejudice to grounds at 2 above, on the facts and circumstances of the case and in law, the Ld. AO/ Learned Dispute Resolution Panel-IV, New Delhi ('Ld. DRP') erred in bringing to tax royalty from Global Broadcast News Private Limited ('GBN') of INR

4,56,98,942/- instead of INR 2,31,79,797/-, as offered to tax by the Appellant and assessed in the original assessment order.

3.1 That on the facts and circumstances of the case and in law, the Ld. AO/ Ld. DRP erred in bringing to tax the royalty from GBN amounting to INR 2,25,19,145/- in AY 2007-08, which has been offered to tax by the Appellant in the return of income and assessed to tax in the AY 2009-

4. Without prejudice to grounds at 2 and 3 above, on the facts and circumstances of the case and in law, having taxed the royalty from GBN amounting to INR 2,25,19,145/- in AY 2007-08, the Ld. AO/ Ld. DRP erred in not allowing corresponding GBN has already been offered and assessed to tax.
5. Without prejudice to grounds at 2 and 3 above, on the facts and circumstances of the case and in law, having taxed the royalty amounting to INR 2,25,19,145/- from GBN in AY 2007-08,, the Ld. AO/ Ld. DRP erred in not granting credit of taxes deducted at source on said royalty as per provisions of Section 199 of the Act in the AY 2007-08.
6. Without prejudice to grounds at 2 above, on the facts and circumstances of the case and in law, the Ld.AO erred in not allowing the complete credit of taxes deducted at source without assigning any reason.
7. Without prejudice to grounds at 2 above, on the facts and

circumstances of the case and in law, the Ld.AO erred in levying interest under Section 234B of the Act.

8. Without prejudice to grounds at 2 above, on the facts and circumstances of the case and in law, the Ld AO erred in initiating penalty proceedings under Section 27i(i)(c) of the Act.

3. The first challenge which goes to the root of the matter is that the reassessment order is bad in law and void ab initio.

4. The representatives of both the sides were heard at length, the case records carefully perused. Relevant documentary evidences brought on record duly considered.

5. Briefly stated, the facts of the case are that the appellant is a company incorporated under the laws of the State of Georgia, USA and is a tax resident of USA. In F.Y. 2005-06, the appellant entered into an agreement with Global Broadcast News Private Limited [GBN] on 27.10.2005. The revenue arising from the aforesaid agreement is offered to tax as royalty.

6. The return of income was filed on 27.03.2009 wherein an income of

Rs. 2,85,33,011/- was declared. The return was selected for scrutiny assessment and, accordingly, statutory notices were issued and served upon the assessee. During the course of scrutiny assessment proceedings, the assessee filed a copy of News Services Agreement concluded with GBN.

7. After considering the submissions filed by the assessee, assessment was framed u/s 143(3) of the Act vide order dated 03.12.2009.

8. Subsequently, on perusal of the records, the Assessing Officer was of the opinion that the assessee company has not disclosed its income fully and truly and proceeded by issuing notice u/s 148 of the Act. Reasons recorded for initiating reassessment proceedings u/s 147/148 of the Act are summarized as under:

"The assessment of Turner Broadcasting System Asia Pacific for the assessment of Turner Broadcasting System Asia Pacific for the assessment year 2007-08 was completed after scrutiny in December 2009 determining income of Rs. 285.33lakh. M/s Global Broadcast New Pvt Ltd in its accounts for the AY 2007-08 debited an amount of Rs. 456.98 lakh on account of royalty paid to Turner Broadcasting System Asia Pacific. During the course of perusal of records, it is revealed that the assessee has credited an amount of

Rs. 231.79 lakh on account of royalty received from M/s Global Broadcast New Pvt Ltd. Balance amount of Rs. 225.19 lakh should have been included in the total income. This has resulted in escapement of income, in excess of Rs.1 lakhs.

In view of the above, I have reasons to believe that the income chargeable to tax has escaped assessment within the meaning of section 147 /148 of the IT Act, 1961."

9. Objections were raised for reopening the assessment and it was brought to the notice of the Assessing Officer that taxability of differential amount has already been analyzed while framing original assessment, and income was taxed accordingly, after considering the material on record. It was also brought to the notice of the Assessing Officer that the difference between the amount reported by the assessee and GBN is due to the archival amount payable by GBN to the assessee.

10. The archival amount is payable by GBN to the assessee in consideration for archive content licensed to GBN. This amount was payable only after expiry of three years from the date of execution of the News Services Agreement. It was strongly contended that all material facts necessary for assessment were fully and truly disclosed during the course of original assessment. Therefore, initiation of reassessment proceedings is not in consonance with the provisions of section 147 of the Act.

11. The contentions of the assessee were dismissed by the Assessing Officer who proceeded by computing the total assessed income at Rs. 5,09,05,644/-.

12. Objections of the assessee did not find any favour with the DRP.

13. We have carefully perused the orders of the authorities below. It is not in dispute that during the course of original assessment proceedings itself the assessee has furnished detailed reply in respect of the agreement with GBN. This fact is also apparent from the body of the assessment order wherein, at Note 2, the AO has mentioned:

"During F.Y. 2005-06, TBSAP entered into an agreement with Global Broadcast New Private Ltd dated 26.10.2005. TBSAP's income under the terms of the agreement is in the nature of royalty and is offered to tax on gross basis at 10.455% including surcharge and cess u/s 115A of the Act. During the F.Y. 2006-07, TBSAP's income under this agreement was Rs. 2,31,79,797/-. Out of this amount, tax amounting to Rs. 26,68,691/- has been withheld at source".

15. We further find that during the course of original assessment proceedings, the assessee has furnished details of invoices raised to the Indian customers/income received and has also furnished reconciliation of receipts as per TDS certificates filed as per the books of account.

16. Further, the revenue from GBN offered to tax in Assessment Year 2009-10 has been accepted by the Assessing Officer as is evident from the chart at page 39 of the synopsis.

17. We are of the considered opinion that the reassessment notice has been issued after four years and, therefore, the 1st proviso to section 147 of the Act squarely applies on the facts of the case. A perusal of the factual matrix considered during the original assessment proceedings

shows that there was no failure on the part of the assessee to disclose fully and truly all material facts. In our considered opinion, no new facts or information has come in the possession of the Assessing Officer, which could have led to the formation of the belief that any income chargeable to tax has escaped assessment.

18. Assessment order for Assessment Year 2009-10 framed u/s 143(3) of the Act is dated 28.11.2011 wherein the assessee has offered income from GBN at Rs. 18,12,95,264/- whereas the notice issued u/s 148 of the Act is dated 20.02.2012 which means that the assessment order for Assessment Year 2009-10 was very much available with the Assessing Officer before assuming jurisdiction u/s 148 of the Act. It is clear that reassessment proceedings are initiated on same set of facts as existed in the course of original assessment and reasons so recorded clearly show that it is re-application of mind on same set of facts.

19. The Hon'ble Supreme Court in the case of Kelvinator of India Ltd 228 CTR 488 upheld the Full Bench decision of the Hon'ble Jurisdictional High Court of Delhi in 256 ITR 1 and has held as under:

"...however, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, [Section 147](#) would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.

20. A perusal of the reasons recorded for reopening assessment shows that the entire exercise has been done by the Assessing Officer on the basis of assessment of GBN for Assessment Year 2007-08 wherein an amount of Rs. 4,56,498/- on account of royalty paid to the assessee was found. The amount accrued by the payer in its books has no relevance as

it is a trite law that payment may be treated differently in the books of payer and the payee.

21. The Hon'ble Supreme Court in the case of Empire Jute Company 124 ITR 1 has laid down the following ratio:

"In the first place it is not a universally true proposition that what may be capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of a recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer. It was felicitously pointed out by Macnaghten, J. in *Race Course Betting Control Board v. Wild*(') that a "payment may be a revenue payment from the point of view of the payer and a capital payment from the point of view of the receiver and vice versa. Therefore, the decision in *Maheshwari Devi Jute Mills'* case (supra) cannot be regarded as an authority for the proposition that payment made by an assessee for purchase of loom hours would be capital expenditure. Whether it is capital expenditure would have to be determined having regard to the nature of the transaction and other relevant factors."

22. Considering the facts in totality, we have no hesitation in holding that assumption of jurisdiction u/s 147 of the Act by issuing of notice u/s 148 of the Act is bad in law and assessment order so framed is liable to be quashed. We, accordingly, quash the assessment order.

23. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

24. In the result, the appeal of the assessee in ITA No. 1274/DEL/2015 is allowed.

The order is pronounced in the open court on 11.03.2022.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: March, 2022.

VL/

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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	