

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K CHOUDHRY, JUDICIAL MEMBER

ITA.No.8652/Del./2019
Assessment Year 2011-2012

The ACIT, Circle-21(1), Room No.202-B, 2 nd Floor, C.R. Bldg., New Delhi. PIN – 110 002	vs.	Railtel Corporation Ltd., 10 th Floor, Bank of Baroda Building, 16-Sansad Marg, Cannought Place, New Delhi 110 001 PAN AABCR7176C
(Appellant)		(Respondent)

Cross Objection No.197/Del./2022
Arising out of
ITA.No.8652/Del./2020 - Assessment Year 2011-2012

Railtel Corporation Ltd., 10 th Floor, Bank of Baroda Building, 16-Sansad Marg, Cannought Place, New Delhi 110 001 PAN AABCR7176C	vs.	The ACIT, Circle-21(1), Room No.202-B, 2 nd Floor, C.R. Bldg., New Delhi. PIN – 110 002
(Cross-Objector)		(Respondent)

For Revenue :	Shri A K Arora, Sr. DR
For Assessee :	Shri Omprakash Rajpurohit, Advocate

Date of Hearing :	14.12.2022
Date of Pronouncement :	04.01.2023

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Revenue and the Cross Objection filed by the Assessee are directed against the Order of the Ld. CIT(A)-7, New Delhi, dated 21.08.2019 in Appeal No.10305/300/CIT(A)-7/Del/2018-19 relating to the A.Y. 2011-12.

2. Briefly stated facts of the case are that the assessee is a public sector Govt of India undertaking under the Ministry of Railways and is wholly owned by Indian Railways. It is engaged in the business of providing telecommunication services in respect of leasing of bandwidth, tower space and others. Assessee electronically filed its return of income for A.Y. 2011-12 on 14.09.2011 declaring income of Rs. 1,61,62,469/- under the normal provision of tax and book profit of Rs. 1,16,01,41,441/- u/s. 115JB of the Act. Since the tax on book profit u/s. 115JB of the Act was more than normal, income tax was paid accordingly. The return of income was initially processed

u/s. 143(1) of the Act. Assessee thereafter filed revised return of income on 28.03.2013 declaring income of Rs. 21,72,67,398/- under the normal provisions of Income Tax and book profit of Rs. 1,16,01,41,441/- u/s. 115JB of the Act. Initially the assessment was framed u/s. 143(3) vide order dated 24.03.2014 and the total income under the normal provisions was determined at Rs. 21,72,67,398/- and book profits of Rs. 16,01,41,441/- u/s. 115JB. Thereafter the case was reopened by issuing notice u/s. 148 on 31.03.2017 which was served on the assessee. Thereafter assessment was take-up scrutiny and consequently, assessment was framed under section 147 r.w.s.143 (3) of the I.T. Act, 1961 vide order dated 29.11.2018 and total taxable income u/s. 115JB was determined at 1,24,14,41,441/- .

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 21.08.2019 in Appeal No. 10305/300/CIT(A)-7/Del/2018-19 granted substantial relief to the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following effective ground :

1. That the Order of the learned Deputy Commissioner of Income Tax, Circle 21(1), New Delhi is bad in law and on facts.

2. That the appellant denies its liability to be assessed u/s 147/143(3) of the Income Tax Act, 1961 on a total income being Book Profit of Rs 1,24,14,41,441/- and consequently denies liability to pay tax based on such re-assessment.

3. That on the facts and circumstances of the case and in law, the Ld. Deputy Commissioner of Income Tax erred in passing the impugned order without affording reasonable opportunity of being heard and keeping the principles of natural justice at bay.

4. On the-facts and circumstances of the case and in law, the Ld. Deputy Commissioner of Income Tax erred

in issuing notice u/s. 148 of the Act. The notice u/s. 148 issued in this case is illegal, void and without jurisdiction and accordingly the assessment order passed on the foundation of such notice is liable to be quashed.

5. That the Ld. Deputy Commissioner of Income Tax erred in not passing a speaking order on the objections raised by the appellant to the issuance of notice u/s 148 of the Income Tax Act, 1961 and without considering the Return filed on 02-05-2018 against the notice issued U/s 147/148.

6. The Ld. Dy. Commissioner has neither allowed revised claim of deduction U/s 80IA claimed based on decision of Honorable High Court of Delhi in the case of Principal commissioner of Income Tax, Delhi Vs BSL, Dt. 01-08-2016 and also, in the case of assessee for the AY2012-13 wherein the same has been allowed by the Ld. Commissioner (Appeals)

7. That the learned Deputy Commissioner of Income Tax, Circle 21(1), New Delhi erred both in law and on the facts and in the circumstances of the case in making an addition of Rs.8,13,00,000/- to the Book Profits under section 115JB of the Income Tax Act, 1961 on account of additional liability relating to prior periods. The addition so made is not warranted at all and therefore is prayed to be deleted in the interest of justice.

8. That on the facts and the circumstances of the case, the Ld. Income Tax Officer, erred in charging interest under section 234 D of the Income Tax Act, 1961 and withdrawal of interest U/s 244A.

9. That the learned Deputy Commissioner of Income Tax, Circle 21(1), New Delhi erred both in law and on the facts and in the circumstances of the case by applying tax rate @30% instead of 18.5% on the Book Profits under section 115JB of the Income Tax Act, 1961 on the Income so assessed.

10. That the appellant prays for the grant of permission to add, alter, delete or modify any or all the grounds of Appeal at any time on or before the hearing.

4. Assessee has also filed the CO. wherein the grounds raised are as under:-

“1. THAT the addition made by the A.O. to the book profit under section 115JB of the Income Tax Act was erroneous and liable to be struck down as was aptly granted by the Ld. CIT(A).

“2. Any other ground that may be urged during the hearing.”

5. Before us, at the outset Ld. A.R submitted that the grounds raised by the assessee are supportive of the order of CIT(A) and if the grounds of Revenue are dismissed then the C.O. of the assessee would be rendered academic. The aforesaid contention of the Ld. A.R has not been controverted by Ld. D.R.

6. Before us at the outset Ld.DR submitted that though Revenue has raised various grounds but all the grounds are interconnected.

7. A.O. has noted that “provision for additional liability relating to prior” amounting to Rs. 8,13,00,000/- was added back to normal income but the same was not added back u/s. 115JB of the Act. The assessee was asked to show cause as to why the aforesaid amount not be added back to determine book profits u/s. 115JB of the Act. In response to the query of the A.O. assessee made the submissions which were not accepted by AO. AO noted that identical issue arose about the disallowance of prior period expenses arose during A.Y. 2012-13 in that year and the amount of prior period item was added back for the purpose of computation of income under MAT. A.O. was thus of the view that the provision for additional liability relating to prior should be added back to income u/s. 115JB of the Act. He accordingly made its addition for computing of income u/s. 115JB of the Act.

8. Aggrieved by the order of A.O. assessee carried the matter before Ld. CIT(A).

9. Ld. CIT(A) while deciding the issue in favour of the assessee noted that identical issue arose in assessee's case in A.Y. 2012-13 and his predecessor vide order dated 26.02.2016 had deleted the addition made by A.O. He following the decision of his predecessor deleted the addition.

10. Aggrieved by the order of Ld. CIT(A), Revenue is now before us.

11. Before us Ld. DR supported the order of A.O.

12. Ld. A.R on the other hand supported the order of CIT(A) and further submitted that against the order passed by Ld. CIT(A) for A.Y. 2012-13, Revenue had preferred appeal before the coordinate bench of Tribunal. The Tribunal vide order dated 28.11.2018 in ITA no. 2743/Del/2016 had dismissed the appeal of the Revenue. He pointed to the copy of the order placed in the paper

book. He therefore submitted that since the facts of case in the year under consideration are identical to that of 2012-13, the grounds of Revenue deserves to be dismissed.

13. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the addition of Rs. 8,13,00,000/- on account of provision for additional liability relating to prior period u/s. 115JB of the Act. We find that Ld. CIT(A) while deciding the issue in favour of the assessee had followed the order of his predecessor for A.Y. 2012-13. We further find that against the order of Ld. CIT(A) for A.Y. 2012-13 Revenue had preferred appeal before the Tribunal. The Tribunal vide order dated 28.11.2018 in ITA no. 2743/Del/2016 had dismissed the appeal of the Revenue. Before us, Revenue has not placed any distinguishing facts in the case of the assessee and that in the year under consideration and that for earlier years nor has placed any material to demonstrate that the order of Tribunal in assessee's own case for A.Y. 2012-13 has been set aside/

stayed or overruled by higher judicial forum. In view of the aforesaid facts we find no reason to interfere with the order of Ld. CIT(A) and **thus the grounds of Revenue dismissed.**

14. Since we have dismissed the appeal of Revenue therefore in view of the submissions of Ld. A.R, the Cross objection filed by the assessee being supporting the order of Ld. CIT(A), have been rendered academic and therefore required no adjudication and therefore dismissed.

15. In the result, **cross-objection of the Assessee is dismissed.**

16. To sum-up, **appeal of Revenue is dismissed and cross-objection of Assessee is dismissed.**

Order pronounced in the open Court on 04.01.2023.

Sd/-
(N.K CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 04th January, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.