

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.4817/Del/2016
निर्धारणवर्ष/Assessment Year:2007-08

DCIT Circle-1, LTU, NBCC Plaza, Pushap Vihar, New Delhi.	बनाम Vs.	Mahanagar Telephone Nigam Ltd., 5 th Floor, 9, CGO Complex, Lodhi Road, New Delhi.
		PAN No. AAACM0828R
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

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आ.अ.सं./I.T.A No.4349/Del/2016
निर्धारणवर्ष/Assessment Year:2007-08

Mahanagar Telephone Nigam Ltd., 5 th Floor, 9, CGO Complex, Lodhi Road, New Delhi.	बनाम Vs.	DCIT Circle-1, LTU, NBCC Plaza, Pushap Vihar, New Delhi.
PAN No. AAACM0828R		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Ms. Sarita Kumar, CIT DR
निर्धारितकीओरसे /Assessee by	Shri Ved Jain, Adv. Shri Aman Garg, CA

सुनवाईकीतारीख/ Date of hearing:	26.04.2023
उद्घोषणाकीतारीख/Pronouncement on	27.04.2023

आदेश /O R D E R

PER N.K. BILLAIYA, A.M.

These are cross appeals by the Revenue and the Assessee preferred against the order of the Ld.CIT(Appeals)-22, New Delhi dated 20.06.2016 pertaining to AY 2007-08.

2. The sum and substance of the grievance of the assessee is that the Ld. CIT(A) erred in confirming the order passed by the AO as the reassessment proceedings initiated by the AO are bad in law. On merits the assessee has challenged the confirmation of the addition of Rs.74,51,016/- made by the AO on account of disallowance of property tax.

3. Only grievance of the Revenue relates to the deletion of the disallowance to the extent of Rs.18,46,73,041/- on account of property tax.

4. Representatives of both the sides were heard at length, case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rules.

5. Briefly stated the facts of the case are that the assessee company is a PSU engaged in the business of providing basic telephone and mobile services in Delhi and Mumbai. The assessee filed its return of income on 13.11.2007 which was assessed u/s 143(3) of the Act on 30.12.2009. Thereafter, the assessment was reopened u/s 147 of the Act and the reassessment proceedings were completed by making an addition of Rs.1.97 crores. The order was quashed by the Tribunal which was affirmed by the Hon'ble Delhi High Court.

6. A notice u/s 148 of the Act was issued again on 29.03.2014 the reasons recorded for reopening the assessment read as under: -

“11. Reasons for the belief that income has escaped assessment During the year under consideration, the assessee while computing the taxable income, claimed and was allowed deduction of an amount of Rs.20,56,82,131/- pertaining to property tax relating to assessment year 2004-05. Since the said amount actually pertained to AY 2004-05 the same is not allowable for the AY 2007-08 which has wrongly been claimed & allowed.

I have, therefore, reason to believe that by reasons of failure on the part of the assessee to disclose all material facts truly and fully, the income to the extent of Rs.20,56,82,131/- on account of the deduction in respect of property tax as mentioned above has escaped assessment.

In view of above facts, action u/s 147 has been initiated to assess the income chargeable to tax which has escaped assessment. Necessary sanction for issue of notice u/s 148 may kindly be granted.”

7. We find that vide notice dated 20.10.2009 the AO raised 33 queries during the course of the original assessment proceedings, wherein at query no. 1 the AO has asked “with reference to computation of income

please produce evidence of payment of property tax and explain why prior period income tax has been reduced from tax computation of Income tax also give the gross income and the expenditure". The assessee filed a detailed reply dated 23.11.2009 gave specific reply to the query raised by the AO explaining the property tax and the treatment of prior period Income tax. It would be pertinent to refer to the computation of income filed by the assessee for the year under consideration and the same is as under: -

		<u>COMPUTATION PART-I</u>	
MAHANAGAR TELEPHONE NIGAM LIMITED			
Assessment Year : 2007-2008			
Previous Year : 2006-2007			
PAN : AAACM0828R			
Status : Company			
Circle : 4(i)			
<u>COMPUTATION OF TAXABLE INCOME</u>			
<u>PROFITS & GAINS OF BUSINESS</u>			
Net Profit as per Profit & Loss A/c (Audited)			6,817,344,638
<u>Add :</u>			
1	Provision for Taxation (As per P&L a/c)		
	Income Tax	3,177,977,642	
	Defferred Tax	88,522,196	3,266,499,838
2	Depreciation under SLM Method (As per P&L a/c)	6,831,840,574	
	Add : Prior Period Depreciation (As per Schedule S)	85,936,307	6,917,776,881
3	Provisions for doubtful debts including disputed bills (As per Sch.Q)		1,119,679,998
4	Provisions for Wrong billing (As per Sch.Q)		383,427
5	Provision for obsolete stores/advance/claims (As per Sch.Q)		3,946,548
6	Prior period expenditure (As per Schedule S)	142,497,576	
	Less : Prior Period Depreciation (Already considered in point 2 above)	85,936,307	56,561,269
7	Loss on sale of assets (As per Sch.Q)		50,123,092
8	Provision of Bonus (As per TAR)		415,079,843
9	Provision of leave encashment (As per Sch.P)	531,606,344	
10	Provision for Gratuity (As per Sch. P)	733,977,753	
12	Property Tax Provision for the year 2006-07 (As per TAR)	188,363,064	
13	Loss of Assets	2,821,312	
		<u>13,286,824,370</u>	<u>20,104,169,008</u>
<u>Less:</u>			
1	Depn. as per WDV computed in accordance with Sec. 32 of I.T Act (As per TAR)		5,919,666,483
2	Profit on sale of assets (As per Sch.Q)		9,823,552
3	Property tax paid (As per Certificates no. 1 & 2 enclosed)		
	- Paid/Reversed during F.Y 2006-07 (Not claimed in A.Y 2005-06)	193,601,473	
	- Paid/Reversed during 1/4/06 till filing of ROI	12,080,658	
		<u>205,682,131</u>	
4	Amount wrongly disallowed in previous year 2004-05, now rectified		205,682,131
	Bonus paid during F.Y 2006-07 out of Provision of F.Y 2005-06 (Not claimed in A.Y 2006-07) [As per certificate no. 3 enclosed]		1,119,865
5	Bonus paid upto 31.10.2007 [As per certificate no. 4 enclosed]		473,174,264

6	Amount transferred to Approved Gratuity Trust till the filing of Return (AS per certificate no. 7 enclosed)		737,382,711
7	Prior Period Income Tax(Not taxable) Leave Encashment paid during the year 2006-07 (As per certificate enclosed)		2,283,170,000 305,203,079
8	Total	9,935,222,085	10,168,946,923
	Gross Total Income		10,168,946,923
	TAXABLE INCOME		10,168,946,923
	Tax, Surcharge & Ed. Cess on above @ 33.66		3,422,867,534
	Tax & Surcharge as per sec. 115JB (Computation enclosed)		528,489,939
	Tax payable being higher of above two or say		3,422,867,534
	Advance Tax, Self Assessment Tax & TDS paid (Challans and TDS certificate enclosed)		
	1) Advance Tax (Adv. Tax Challans enclosed)		
		<u>Instalment</u>	<u>Date of payment</u>
		Ist Inst.	15.06.2006
		IInd Inst.	15.09.2006
		IIi rd Inst.	15.12.2006
		IVth Inst.	15.03.2007
		Total of Advance tax Paid	2,761,700,000
	TDS		561,198,260
	Total Advance tax paid and TDS		3,322,898,260
	TAX PAYABLE		99,969,340
		Interest	
	INTEREST U/S 234C		
		5827512	
		15631536	
		22936560	
		999693	45,395,302
	Tax and Interest Payable		145,364,642
	Tax As per Computation 31-10-2007		165,250,917
	SC Refund of tax		19,886,275
	ED		

8. We are of the considered view that during the course of the assessment proceedings the AO had raised specific queries which were specifically replied by the assessee in the light of the computation of income exhibited elsewhere.

9. A plain reading of the reasons recorded mentioned hereinabove show that there is no allegation against the assessee of failing to disclose fully and truly all material facts necessary for the assessment for the year under consideration.

10. Facts on record show that the reopening of the assessment is after four years from the end of the relevant assessment year. Therefore, the first proviso to section 147 is clearly applicable, wherein it has been specifically provided that the escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts fully and truly. For this proposition, we draw support from the decision of the Hon'ble Jurisdictional High Court in the case of Haryana Acrylic Manufacturing Company [308 ITR 38], wherein the Hon'ble High Court has held as under: -

“20. In the reasons supplied to the petitioner, there is no whisper, what to speak of any allegation, that the petitioner had failed to disclose fully and truly all material facts necessary for assessment and that because of this failure there has been an escapement of income chargeable to tax. Merely having a reason to believe that income had escaped assessment, is not sufficient to reopen assessments beyond the four year period indicated above. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts, fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to section 147. If this condition is not satisfied, the bar would operate and no action under section 147 could be taken. We have already mentioned above that the reasons supplied to the petitioner does not contain any such allegation. Consequently, one of the conditions precedent for removing the bar against taking action after the said four year period remains unfulfilled. In our recent decision in Wel Intertrade Private Ltd (supra) we had agreed with the view taken by the Punjab and Haryana High Court in the case of Duli Chand Singhania (supra) that, in the absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the Assessing officer under section 147 beyond the four year period would be wholly without jurisdiction. Reiterating our view-point, we

hold that the notice dated 29.03.2004 under section 148 based on the recorded reasons as supplied to the petitioner as well as the consequent order dated 02.03.2005 are without jurisdiction as no action under section 147 could be taken beyond the four year period in the circumstances narrated above."

11. Considering the facts of the case in totality in the light of the ratio laid down by the Hon'ble Jurisdictional High Court (supra). We have no hesitation in setting aside the notice issued u/s 148 of the Act thereby quashing the reassessment order.

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

13. In the result, appeal of the Assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open court on 27/04/2023

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

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

Dated: 27.04.2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi