

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH : "E" NEW DELHI ]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. No. 672/DEL/2018 (A.Y 2008-09)**

<p>Motorola Solutions India Pvt. Ltd., 415/2, Motorola Excellence Centre, Mehrauli Gurgaon Road, Sector : 14, Gurgaon, Haryana - 122 001.</p> <p><b>PAN No. AAACM9343D</b> <b>(APPELLANT)</b></p>	Vs.	<p>DCIT, Circle : 2, Gurgaon.</p> <p><b>(RESPONDENT)</b></p>
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<b>Assessee by</b>	<b>Shri Himanshu Sinha, Advocate; &amp; Shri Bhuwan Dhooper, Adv.</b>
<b>Department by</b>	<b>Shri Ajay Kumar &amp; Sh. Sanjay Kumar, Sr. D. R.;</b>

<b>Date of Hearing</b>	<b>17.03.2023</b>
<b>Date of Pronouncement</b>	<b>06.06.2023</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-1, Gurgaon [hereinafter referred to CIT (Appeals) dated 13.11.2017 for assessment year 2008-09.

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

*“1. That on the fact and in the circumstances of the case and in law, the Ld. Assessing Officer ("Ld. AO") I Ld. CIT(A) has erred in initiating and completing I upholding the validity of reassessment proceedings completed by the Ld. AO under section 147 read with section 143(3) of the Act without appreciating that the said reassessment is bad in law and void-ab-initio.*

*2. That on the fact and in the circumstances of the case and in law, the Ld. AO I Ld. CIT(A) has erred in initiating and completing I upholding the validity of reassessment proceedings completed by the Ld. AO under section 147 without obtaining requisite satisfaction under section 151 of the Act.*

*3. That on the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. CIT(A) erred in completing/ upholding the validity of the reassessment proceedings which were barred by limitation in view of proviso to section 147 of the Act without appreciating that the appellant had fully and truly disclosed all material facts.*

*4. That on the facts and in the circumstances of the case and in law, the Ld. AO I Ld. CIT(A) erred in completing upholding the validity of the reassessment proceedings even though the reasons recorded by the Ld. AO were vague and based on pretence without any new material coming into existence.*

*5. That on the facts and in the circumstances of the case and in law, the Ld. AO/ Ld. CIT(A) erred in completing upholding the*

*validity of the reassessment proceedings which were initiated merely on change of opinion of the Ld. AO.*

*6. That the Ld. AO / Ld. CIT(A) erred on facts and circumstances of the case and in law in disallowing / upholding the disallowance of donation expenses amounting to Rs. 5,53,509.*

*6.1. That the Ld. AO / Ld. CIT(A) erred in not appreciating that the above expense is a normal business expense of the appellant incurred in the regular course of business.*

*6.2. That the Ld. AO / Ld. CIT(A) failed to appreciate that the appellant had fully disclosed its stand on allowability of the above expense during the course of assessment proceedings and therefore the reassessment proceeding is a mere change of opinion.*

*7. That the Ld. AO / Ld. CIT(A) erred on facts and circumstances of the case and in law in disallowing / upholding the disallowance of provision for compensated absences amounting to Rs.3,26,22,752.*

*7.1. That the Ld. AO / Ld. CIT(A) erred in not appreciating that the said provision was created on scientific basis and therefore is an ascertained liability and represents liability in praesenti and therefore the said provision is allowable under section 37(1) of the Act.*

*7.2. That the Ld. AO / Ld. CIT(A) erred in making/upholding the above disallowance under section 43B(f) of the Act without appreciating that provisions of section 43B(f) were not applicable in the present case..*

8. *That the Ld. AO / Ld. CIT(A) erred on facts and circumstances of the case and in law in disallowing / upholding the disallowance of provision for litigation and claims amounting to Rs.2,80,00,000.*

8.1. *That the Ld. AO / Ld. CIT(A) erred in not appreciating that above subject provision represents liability in praesenti and not liability de futuro.*

9. *That the Ld. AO has erred in facts and in law in charging interest under section 234B and 234D of the Act.*

9.1. *That the Ld. AO has in facts and in law in withdrawing interest under section 244A of the Act.*

10. *That the Ld. AO has erred on the facts and the circumstances of the case and in law in mechanically initiating the penalty proceedings under section 271(1)(c) of the Act against the appellant.*

*The above grounds are independent and without prejudice to each other.”*

3. Brief facts of the case are that, the assessee filed its return declaring income of Rs. 9,42,01,184/-, the case of the assessee was selected for scrutiny u/s 143(2) of the Act. A final assessment order came to be passed by computing the total income of the assessee at Rs.440,86,65,970/- on 08/11/2012 u/s 143(3)/144C of the Act by making the following additions:-

<b>Particulars</b>	<b>Amount (in INR)</b>
<i>Additions under section 92CA of the Act (Transfer Pricing additions)</i>	<i>4,26,07,37,457</i>
<i>Disallowance of provision for liquidated damages</i>	<i>4,32,06,463</i>
<i>Disallowance of software expenses</i>	<i>1,05,20,867</i>
<b>Total</b>	<b>431,44,64,787</b>

4. Aggrieved by the assessment order dated 08/11/2012, the assessee filed an appeal before the Tribunal in ITA No. 5797/Del/2012, the Tribunal vide order dated 31/10/2019, remanded the TP additions to the file of A.O./TPO.

5. The assessee had received a notice u/s 148 of the Act on 27/03/2015 directing the assessee to file return of income within 30 days from the date of service of the notice, which has been compiled by the assessee. The assessment proceedings initiated against the assessee and the assessment order dated 30/03/2016 came to be passed u/s 143(3) read with Section 147 of the Act are assessing the total income of the assessee to Rs.446,98,42,231/- by making following disallowances:-

<i>Particulars</i>	<i>Amount (in INR)</i>
<i>Inclusion of donation under the head 'Other Operating Expense', to be disallowed being non-business expenditure</i>	<i>5,53,509</i>
<i>Provisions for compensated absences being unascertained liabilities, not deductible under the Act</i>	<i>3,26,22,752</i>
<i>Provision for litigations &amp; claims being unascertained liabilities, not deductible under the Act</i>	<i>2,80,00,000</i>

6. The assessment order u/s 147/143(3) of the Act dated 30/03/2016 has been challenged by the assessee before the CIT(A). The CIT(A) vide order dated 13/11/2017, upheld the validity of the assessment proceedings and also sustained addition/disallowance made by the A.O. Aggrieved by the order dated 13/11/2017 the Assessee has preferred the present Appeal on the grounds mentioned above. Since, the Assessee in Ground No. 3 has challenged the impugned orders passed by the A.O. and the CIT(A) contending that the reassessment proceedings are barred by limitation in view of proviso to Section 147 of the Act, we deem it fit to take up first and adjudicate the said preliminarily issue in Ground No. 3 regarding validity of re-assessment.

7. The Ld. Counsel for the assessee vehemently submitted that the re-assessment proceedings u/s 147 of the Act were initiated by the A.O. on 27/03/2015 i.e. four years from the end of subject assessment year, the sole basis for the Ld. A.O. to reopen the assessment was on the basis of annual accounts and existing assessment record of the assessee company, therefore submitted that, the reassessment is barred by limitation. The Ld. Counsel for the Assessee had also taken us through the judicial pronouncements on the issue.

8. Per contra, the Ld. DR has relied on the orders of the Lower Authorities and submitted that the invoking Section 147 is just and proper which requires no interference from the Tribunal, hence the said ground of Appeal of the Assessee is liable to be dismissed.

9. We have heard the parties and perused the material available on record. In the instant case, the original assessment order was passed on 08/11/2012, u/s 143(3) read with Section 144C of the Act by making following adjustments to the return of income:-

- Transfer Pricing addition- Rs. 4,523,580,353/-
- Disallowance of provision for liquidated damages- Rs. 43,206,463/-
- Disallowance of software expenses-Rs.10,520,867/-

The re-assessment proceedings u/s 147 of the Act were initiated by the A.O. by issuing notice dated 27/03/2015 u/s 148 of the Act. Subsequently, a copy of the reasons recorded was provided to the Assessee wherein the A.O. proposed to make following disallowances:-

1. Capital reserve- Rs. 8,000,000/-
2. Donation expense- Rs.553,509/-
3. Provision for compensated absences- Rs.32,622,752/-
4. Provision for litigations and claims- Rs.28,000,000/-

While recording the reasons for initiating the proceedings u/s 147 of the Act, the A.O mentioned as under:-

*“2 As per Schedule 18 of profit and loss account, ‘other operating expense ’ include donation of INR 10,00,000. The same was needed to be disallowed being non-business expenditure*

*The assessment records revealed that the assessee had created provisions for compensated absences of INR 3,26,22,752 and provision for litigation & claims for INR 2,80,00,000 in the books of accounts. Since these provisions were for unascertained liabilities the same were not deductible under the Income Tax Act.*

*3. Therefore I have reasons to believe that became of failure on part of assessee to disclose fully and truly all material facts, an income to extent of Rs. 696,22,752 has escaped assessment”*

10. The Assessee contended before the A.O. that notice u/s 148 and the proceedings u/s 147 were bad in law in following manners:-

*“a) Initiation of reassessment proceedings is barred by limitation, in terms of proviso to Section 147 of the Act.*

*b) There was no failure on part of the appellant to disclose material facts which is a condition precedent for initiating assessment proceedings in terms of proviso to Section 147 of the Act.*

*c) Initiation of proceedings were, in any case, on mere change in opinion and/or difference of opinion which is not permissible in law;*

*d) Reassessment proceedings have been initiated without there being any new tangible material/information and without forming independent reasonable belief that income of the appellant had*

*escaped assessment which a pre-requisite condition for validly initiating proceedings under that section;*

*e) Reassessment is illegal, since copy of sanction, if any, obtained under Section 151 of the Act has not been communicated to the appellant;*

11. It is found from the above that, the reasons that re-assessment notice was issued on the basis of the same set of facts/materials which was already available and considered at the time of original assessment. The additions have been made on the basis of documents filed by the assessee i.e. audited financial statement and computation of income. The Ld. A.O. in the reasons recorded in respect of each of the items/issues relied on information filed by the Assessee. In so far 'donation' is concerned, the Ld. A.O. referred to Schedule-18 'Other operating expenses' of the profit and loss account, in so far as 'provision for compensated absences', the Ld. A.O. referred to the assessment records and in so far as 'provision for litigation and claims', the Ld. A.O. has also referred to the assessment records. Thus, there it cannot be said that there was a 'failure on the part of the assessee to disclose fully and truly of material facts' and it is found that no new tangible material came to be existence post completion of original assessment.

12. In terms of Proviso to Section 147 of the Act, once the assessment had been completed u/s 143(3) of the Act, reopening is not permissible beyond four years from the end of relevant assessment year, unless income has

escaped assessment by reason of failure of the assessee to disclose fully and truly all material/primary facts necessary for the assessment. There is no material facts brought on record by the A.O. to show that the assessee had failed to disclose fully and truly all material/primary facts necessary for assessment, on the contrary, additions have been made based on the revisit of the documents filed by the assessee himself i.e. audited financial statement and computation of income. Thus, the reassessment proceedings are barred by limitation in view of proviso to Section 147 of the Act.

13. The above view of ours has been already settled in the following case laws:

- *Calcutta Discount Co. Ltd. vs. ITO: [1961] 41 ITR 191 (SC)*
- *CIT v. Foramer France: [2003] 264 ITR 566 (SC)*
- *CIT vs. Motor & General Finance Ltd: [2009] 184 Taxman 465 (Del)*
- *BLB Limited vs. ACIT: [2012] 206 Taxman 37 (Del)*
- *D.T. & T.D.C. Ltd. vs. ACIT: [2010] 232 CTR 260 (Del)*
- *CIT vs. Maruti Suzuki India Ltd: [2013] 215 Taxman 495 (Del)*
- *JSRS Udyog Ltd. v. ITO: [2009] 313 ITR 321 (Del)*
- *Vatika Ltd. vs. ITO: [2012] 357 ITR 170 (Del)*

14. Further in order to validly reopen and already concluded assessment u/s 143(3) of the Act beyond four years from the end of the relevant assessment, it is incumbent upon the Assessing Officer to make specific assertion the reasons recorded to the effect that escapement of income have any is on the

account of failure of the assessee to disclose fully and truly material facts relating to its assessment. The above said view is supported by following decisions:-

- *Wei Inter trade (P.) Ltd. vs. ITO: [2009] 308 ITR 22 (Del)*
- *CIT vs. Indian Farmers Fertilizers Cooperative Ltd. [2008]171 Taxman 379 (Del)*
- *Haryana Acrylic Manufacturing Company vs. CIT: [2008] 308 ITR 38 (Del)*
- *Atma Ram Properties (P.) Ltd. vs. DCIT: [2011] 343 ITR 141 (Del)*
- *CIT vs. Purolator India Ltd.: [2012] 343 ITR 155 (Del)*
- *Best Cyber city India Pvt. Ltd. vs. CIT: [2019] 414 ITR 385 (Del)*

15. By considering the above facts and circumstances and by following the above judicial pronouncements (supra) on the issue in hand, we find merit in the Ground No. 3 of the Appeal on the issue of limitation and in our considered opinion the order of the A.O. dated 08/11/2012 and the order of the CIT (A) dated 30/03/2016 are unsustainable on facts as well on law. Accordingly, the orders impugned are quashed and the Ground No. 3 of the Assessee is allowed.

16. Since, we have allowed the ground No. 3 of the Assessee on the point of limitation for invoking Section 147 of the Act, we refrain to adjudicating on the other issues/grounds which are being academic in nature.

17. In the result, Appeal of the Assessee is partly allowed.

**Order pronounced in the Open Court on: 06.05.2023.**

**Sd/-**

**(Dr. B. R. R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated: 06 /06/2023

*\*MEHTA/R.N, Sr. PS\**

Copy forwarded to:

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

**Sd/-**

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI