

**THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
& MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No. 3259/Del/2023
(Assessment Year 2015-16)**

DCIT, Circle 4(2) Room No. 384, C.R. Building I.P. Estate, New Delhi, Delhi - 110002	Vs.	Bharat Broadband Network Limited, 3 rd Floor, East Kidwai Nagar, NBCC, Office Block 1, Kidwai Nagar East, South West, Delhi Delhi - 110023
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAFCB0525K		
Appellant	..	Respondent

**C.O. No. 168/Del/2023
(Assessment Year 2015-16)**

Bharat Broadband Network Limited, 3 rd Floor, East Kidwai Nagar, NBCC, Office Block 1, Kidwai Nagar East, South West, Delhi Delhi - 110023	Vs.	DCIT, Circle 4(2) Room No. 384, C.R. Building I.P. Estate, New Delhi, Delhi - 110002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAFCB0525K		
Appellant	..	Respondent

Appellant by :	Sh. Ved Jain, Adv. & Sh. Amit Sharma, CA
Respondent by :	Sh. Sujit Kumar, CIT (DR)

Date of Hearing	11.06.2024
Date of Pronouncement	06.09.2024

ORDER

PER MADHUMITA ROY, JM:

The instant appeal filed by revenue and a Cross Objection against the order passed by the Ld. CIT(A) dated 21.09.2023 whereby and whereunder the order of assessment has been confirmed. In fact such reopening of assessment has been initiated beyond the period of 4 years from the end of the relevant assessment year which has been assailed before us.

2. Brief facts leading to the case are that the assessee company filed its return of income on 29.09.2015 declaring total income at Rs.130,22,390/- and claimed refund of Rs.659,22,800/-. The case of the assessee company was selected for limited scrutiny on the following issues:

- i. High ratio of refund to TDS.
- ii. Large other expenses claimed in the Profit and Loss A/c.
- iii. Depreciation claimed at higher rates/Higher additional depreciation claimed.
- iv. Large business loss set off against others heads of income.
- v. Large difference in the closing stock shown in Balance sheet and P & L. A/c of current year as per return of income.

- vi. Mismatch in sales turnover reported in Audit Report and ITR.
- vii. Mismatch in amount paid to related persons u/s 40A(2)(b) reported in Audit Report and ITR.

3. The assessee duly submitted its Income Tax Return acknowledgment along with computation of income and audited financial statement and other documents as called for by the Ld. Assessing Officer. Such assessment proceeding was finalized upon accepting the returned income filed by the assessee on 24.11.2017 appearing at page 58-59 of the paper book filed before us. Subsequently, the assessment was reopened upon issuing of notice dated 30.03.2021 under Section 148 of the Act i.e. beyond the period of 4 years from the end of relevant Assessment Years 2015-16 under consideration on the ground that the income of the assessee has escaped assessment the reason so recorded by the Ld. Assessing Officer is at page 63 & 64 of the paper book filed before us. Relevant to mention that the discrepancy mentioned therein was the outcome of the audit objection against the return filed by the assessee. The Ld. Counsel for the assessee joins issue here to this effect that the reassessment under Section 148 of the Act is beyond 4 years from the end of the relevant assessment year which is permissible only on the following counts in default the same is not maintainable.

- “i. ITR was not filed by the assessee u/s 139, or
- ii. Response to notice u/s 142(1) was not submitted, or
- iii. Response to notice u/s 148 was not submitted, or
- iv. Full and True disclosure of all material facts which were necessary for scrutiny assessment was not made.

4. In the case of the assessee before us the assessee has already filed the return of income admittedly on 29.09.2015. The notice issued by the Assessing Officer appearing at page 56 & 57 of the paper book filed before us has been complied with disclosing of all material facts which were necessary for scrutiny assessment, therefore was duly made. The computation of income filed by the assessee appearing at page 3 to 5 of the paper book audited financial statement appearing at 15 to 42 therein, the audit report by CAG appearing at 43 & 44, tax audit report appearing at page 45 to 55 have, therefore, been relied upon by the Ld. A.R during the course of hearing, so as to establish the fact that full and true disclosure of materials was done by the assessee. Apart from that specific disclosure with respect to the interest received of amount of subsidy received from universal service obligation fund i.e. USOF for National Optic Fibre Network i.e. NOFN being credited to capital work-in-progress of NOFN made in schedule 10 of the capital work-in-progress of audited financial statements of the assessee appearing at page 29 schedule 19 i.e. other income of audited financial statement of the assessee appearing at page 99 were also relied upon. That the high ratio of refund to TDS as one of the observations made while recording reasons in reopening of assessment by the Assessing Officer was also taken into consideration during the course of scrutiny assessment under Section 143(3) of the Act and no addition was made in the scrutiny assessment by and under the order dated 24.11.2017 has also contended by him. Under this facts and circumstances of the

matter, as there was full and true disclosure of all material facts necessary for scrutiny assessment made by the assessee, the question of reopening of assessment under Section 148 of the Act is not permissible. On this count he has relied upon the judgment passed by the coordinate bench in the case of NTPC Ltd. Vs. DCIT, vide ITA No. 3176/Del/2019 for Assessment Year 2006-07, a copy whereof has already been submitted before us. Relevant portion made by the Coordinate Bench is as follows:

“12. From the perusal of the record, we observed that the issue of depreciation and written off of stores are already part of the record before the Assessing Officer while completing the assessment u/s 143(3). The depreciation claimed is available clearly in the depreciation schedule and the writing off of stores is decipherable from the P & L account. Thus, we find that there was no failure on the part of the assessee to disclose fully and truly all the material facts required for assessment for the year. The audit party has raised objections only after going through the assessment record before them. There was no new information available to the revenue nor there was any default on the assessee to disclose all the required material facts.

13. Hence, we hereby hold that the notice issued u/s 148 on 18.03.2013 after the expiry of four years from the end of the relevant assessment year, a period of 4 years for the Assessment Year 2006-07 after completion of the assessment u/s 143(3) on 26.11.2007 is invalid and hence the entire assessment is liable to be quashed.

14. We observe that the notice would have been valid, had it been issued before 31.03.2011 as the proviso to Section 147 are not attracted if the notice is issued before expiry of 4 years. The revenue gladly waited for a period of 5 years for the reasons best known to them to issue notice in the year 2013 after the receipt audit objections u/s 148 in the year 2008.”

5. At this juncture we would like to indicate the reason recorded by the AO while reopening assessment under Section 148 of the Act appearing at page 63 & 64, the relevant portion whereof is as follows:

“**High ratio of refund to TDS:** On examination of the assessment record, it is seen that s per notes given under schedule 19 of the Profit & Loss Account, it is

mentioned that the interest of Rs 63,88,02,261/- earned by the assessee during the year under consideration from bank on short term deposit/fixed deposit of the amount of subsidy received from USOF for execution of NOFN has not been offered as revenue receipt, but has been credited to Capital Work in Progress. However, TDS deducted by the Bank on this interest has been claimed by the assessee, which has resulted in high ratio of refund to TDS. The interest income on the subsidy received has to be treated as capital receipt and has to be credited to Capital Work in Progress. Hence, it is clear that the interest income of Rs 63,88.02.261/-earned by the assessee during the year under consideration from bank on short term deposit is a taxable revenue receipt in the hands of the assessee company During the year under consideration income of Rs 63,88,02 261/- has escaped assessment.

2. Brief details of information collected/received by the AO: The assessee has concealed income of income of Rs 33,25.770/- on account of interest income u/s 244A and Rs.63,88,02,261/-on account of revenue receipt

3. Enquiries made by the AO as sequel to information collected/received: On perusal of CIB/AIR/26AS it seen that the assessee company has received interest u/s 244A of Rs. 33,25,770/-on Income-tax Refund issued for the AY 2014-15.

The auditor has mentioned in the notes that it amount to diversion of interest by overriding title in favour of Government of India through the Administrator, USOF, hence it is evident that the interest income of Rs 63.88.02 261/- earned by the assessee during the year under consideration from bank on short term deposit is a taxable revenue receipt in the hands of the assessee company.

4. Findings of A.O.: From above it is clear that there is under assessment of Rs. 64,21,28,031/- which has escaped assessment. In view of above facts, it is crystal clear that the assessee has not disclosed fully and truly all material facts during the assessment proceedings before A.O. resulting in under assessment of income of Rs.64,21,28,031/-by reason of failure on part of the assessee.

5. Applicability of the provisions of Section 147/151 to the facts of the case: In this case ITR was filed for AY 2015-16 and assessment was completed u/s 143(3) of the IT Act, 1961 on 24.11.2017 Since 4 years from the end of relevant year has expired in this case the requirements to initiate proceedings u/s 147 of the Act is reason to believe that the income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above.

6. It is true that the assessee has filed a copy of annual report and audited P&L a/c and balance sheet along with return of income where various information/ materials were disclosed However the requisite full and true

disclosure of all material facts necessary for assessment has not been made by the assessee. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report audited P&L and balance sheet or other evidence, the requisite material facts as mentioned in the reasons above, were embedded in such a manner that material evidence could not with due diligence have been discovered by AO, accordingly attracting provisions of Explanation 1 of Section 147 of the Act. It is evident that the issues under consideration were never examined by the AO during the course of regular assessment and were embedded in annual report audited P&L balance sheet and books of accounts in such a manner that it would tantamount to non-disclosure of material facts necessary for making Assessment. For aforesaid reasons, it is not a case of change of opinion by the AO

7. In view of the above the amount of Rs.64,21,28,031/-has escaped assessment. Therefore, I have reason to believe that an amount to the extent mentioned above chargeable to tax has escaped assessment and I am satisfied that it is a fit case for initiating proceedings u/s 147/148 of the I.T Act.

8. Further approval from competent authority has been taken for reopening the assessment proceedings u/s 147 of the Income Tax Act 1961.”

6. It appears from the above that the assessee company has received interest under Section 244A of the Act to the tune of Rs.33,25,770/- and of income tax refund issued for Assessment Year 2014-15 such revenue receipt has been concealed as recorded by the Ld. AO because of the reason that, it amounts to diversion of interest by override title in favour of Government of India through the demonstrator, hence, it is evident that the interest income of Rs. 63,88,02,261/- earned by the assessee during the year under consideration from the bank of short term deposit is a taxable revenue receipt in the hands of the assessee company. Thus, this under assessment of Rs.64,21,28,031/- has escaped assessment as the said fact has not been disclosed fully and truly by the assessee resulting under assessment of Income of Rs.64,21,28,031/- for the failure on the part of the assessee the assessment was reopened. It

was further noted that even though the assessee has produced books of account, annual report, audited profit and loss account and other evidences the requisite material facts as mentioned as discussed by us hereinabove were embedded in such a manner that material evidence could not with due diligence has been discovered by AO. Therefore, attracting the provision of Explanation 1 of Section 147 of the Act the issues are found to have never examined by the AO during the course of assessment proceedings and were embedded in annual report, audited profit and loss account, balance sheet and books of account in such a manner that it would tantamount to non-disclosure of material facts necessary for making assessment. In that view of the matter, it is a case of change of opinion by the AO. However, taking into consideration the entire aspect of the matter we find that in the event, if, this particular fact of receiving under Section 244A of the Act of Rs.33,25,770/- and Rs.63,88,02,261/- on account of revenue receipt is disclosed before the Assessing officer along with evidences, then the CIT(A) to take a call whether the reopening under Section 147/148 of the Act is sustainable in view of the order passed by the coordinate bench in NTPC Ld. Vs. DCIT, vide ITA No. 3176/Del/2019 for Assessment Year 2006-07 and to pass orders accordingly upon granting an opportunity of being heard to the assessee and upon taking into consideration the evidence on record or any other evidence which the assessee may chose to file at the time of hearing of the matter. The Cross Objection filed by the assessee is, therefore, allowed for statistical purposes.

7. In that view of the matter the CIT(A) is also to decide the other aspect of the matter raised by revenue in their appeal preferred before us. The said appeal is, thus, allowed for statistical purposes.

8. The appeal of the revenue and Cross Objection filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 06.09.2024

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated 06.09.2024

PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, delhi
6. Guard file.

BY ORDER,
/True Copy//

(Asst. Registrar)
ITAT, Delhi