IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I', NEW DELHI

Before Sh. N. K. Saini, AM and Smt. Beena Pillai, JM

ITA No. 4040/Del/2010 : Asstt. Year : 2002-03

Deputy Commissioner of Income Tax, Circle-3(1), New Delhi	Vs	M/s Canon India Pvt. Ltd., 2nd Floor, Tower A & B, Cyber Green, DLF Phase-III, Gurgaon , Haryana
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACC4175D		

Assessee by : Sh. S. K. Agarwal, Adv.
Revenue by : Sh. Neeraj Kumar, Sr. DR

Date of Hearing : 26.07.2016		**Date of Pronouncement : 19.10.2016**

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 10.06.2010 of ld. CIT(A)-VI, New Delhi.

2. Following grounds have been raised in this appeal:

"1. On the facts and circumstances of the case and in law, the order of the Ld. CIT(A) is wrong, perverse, illegal and against the provisions of law which is liable to be set aside.

2. The Ld.CIT(A) has erred on facts and in law in annulling order u/s 147/143(3) while holding that the Assessing Officer was not justified in reopening the assessment, as:

(a) this case has been reopened on the basis of audit objection and the jurisdictional High Court has upheld the reopening based on audit objection in the case of Bawa Abhi Singh Vs. DCIT 253 ITR 83.

(b) Hon'ble Supreme Court in the case of CIT(A) vs. P.V.S. Beadies Pvt.Ltd. 237 ITR 13 held that reopening on factual information provided by the internal auditor is valid.

3. The Ld. CIT(A) has erred on facts and in law in deleting addition of Rs.53,15,240/- on account of unused capital subsidy ignoring that as per records the assessee had not offered this amount as income in A.Y.2003-04.

4. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of this appeal."

3. The only grievance of the department in this appeal relates to the setting aside the order of the AO relating to the re-assessment u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

4. Facts of the case in brief are that the assessee filed the return of income on 31.10.2002 declaring a loss of Rs.9,60,35,600/-. Which later on was revised on 29.03.2004 by declaring a loss of Rs.8,96,79,222/-. The assessment u/s 143(3) of the Act in this case was completed on 18.03.2005 at an

assessed loss of Rs.2,04,28,159/-. The AO noticed that the assessee had received Rs.11,56,69,974/- as subsidy from its parent company M/s Canon Singapore Pvt. Ltd. to meet the advertisement expenditure. Out of the said amount a sum of Rs.53,15,240/- had been carried forward to next year for the reasons that the related advertisement amount had not been incurred in the year under consideration. The AO considered the said amount as an escapement of income and reopened the assessment u/s 147 of the Act by issuing a notice u/s 148 of the Act. The assessee submitted to the AO that the ld. CIT(A) in the succeeding assessment year 2003-04 found that there was double addition on this account. However, the said contention of the assessee was not accepted by the AO by observing that the order of the ld. CIT(A) was challenged before the ITAT. The AO also rejected the objections raised by the assessee against the reopening of the assessment and the amount of Rs.53,15,240/- was disallowed. Accordingly, addition of the said amount was made in the hands of the assessee.

5. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that the subsidy was received by the assessee from its holding company subject to the condition that it would be utilized for advertisement and sales promotion

activities and if any subsidy remains unspent it was to be carried forward and recognized as income in the year in which the corresponding expenditure was incurred. It was pointed out that unspent subsidy of Rs.53,15,240/- was carried forward and offered to tax. The next assessment year 2003-04 when the related expenditure was actually incurred by the assessee. A reference was made to the order dated 23.09.2009 passed by the ld. CIT(A) wherein it was held that the said subsidy amount of Rs.53,15,240/- was offered to tax for the assessment year 2003-04. It was stated that there was no escapement of income as the said amount had already been taxed in the assessment year 2003-04. It was also stated that reassessment on the basis of change of opinion was not sustainable as the issue had already been discussed at length in the original assessment proceedings wherein the details regarding the subsidy amount and the explanation thereto were filed. It was also contended that the said amount represented subsidy received in advance from the parent company for incurring advertisement expenses and the said amount has been considered as income and offered to tax in the subsequent year when the related advertisement expenditure had been incurred. Therefore, there was no justification for the reassessment

proceedings. The reliance was placed on the following case laws:

- *CIT Vs Eicher Ltd. 294 ITR 310 (Del)*
- *CIT Vs Kelvinator of India Ltd. 256 ITR 1 (Del)*
- *KLM Royal Dutch Air Lines Vs ACIT 292 ITR 49 (Del)*

6. The ld. CIT(A) after considering the submissions of the assessee observed that the only reason for reopening of the case was that the amount of Rs.53,15,240/- had not be credited in the subsequent year. The ld. CIT(A) categorically stated that once the AO had accepted the accounting entries of the assessee that the amount pertained to the subsequent year and no fresh material come on record to show that the amount related to the year under consideration, there was no justification to reconsider the same for taxation in the current year because the taxability of the said amount was to be determined in the assessment year 2003-04 and not in the current year. Therefore, taking a different view was merely a change of opinion, as such the reopening u/s 147 of the Act was not justified. The reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of CIT Vs Kelvinator of India Ltd. (supra).

7. The ld. CIT(A) further observed that the AO in the assessment order had himself mentioned that addition of the said subsidy amount of Rs.53,15,240/- was deleted in the assessment year 2003-04 by the then ld. CIT(A) and the department had been contested before the ITAT. Therefore, when the taxability of the said amount was considered for the assessment year 2003-04, the same could not be taxed for the year under consideration. Accordingly, it was held that the AO was not justified in reopening the assessment u/s 147 of the Act. Consequently, the order passed u/s 143(3) r.w.s. 147 of the Act was annulled.

8. Now the department is in appeal. The ld. DR strongly supported the order of the AO and further submitted that there was no change of opinion as the AO did not raise any query in the original assessment for the advertisement expenses incurred out of the subsidy. The reliance was placed on the judgment of the Hon'ble Delhi High Court in the case of CIT-VI, New Delhi Vs Usha International Ltd. (2012) 348 ITR 485. It was further submitted that in the assessment year 2003-04 also the capital subsidy was not recognized, therefore, the AO rightly reopened the assessment as there was escapement of income.

9. In his rival submissions the ld. Counsel for the assessee strongly supported the impunged order passed by the ld. CIT(A) and reiterated the submissions made before him. It was further submitted that the ITAT vide order dated 03.05.2013 in ITA No. 4602/Del/2010, 5593/Del/2011 & 6086/Del/2012 for the assessment years 2006-07 to 2008-09 vide para 14 had held that unspent subsidy was not income of the assessee but liability to be spent for specified purpose and that the recoverable for non utilization for specific purposes could not be treated as income of the assessee. It was stated that the view taken by the AO in the original assessment was inconsonance with the aforesaid view, therefore, the ld. CIT(A) rightly held that the reopening was not justified. It was further stated that the aforesaid order of the ITAT has been affirmed by the Hon'ble Jurisdictional High Court vide order dated 03.08.2015 in ITA No. 137 & 138/2014 (copy of the said orders were furnished which are placed on record).

10. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee carried forward the unspent subsidy amounting to Rs.53,15,240/- to the subsequent assessment year. The said fact was considered and accepted by the AO during the original

assessment proceedings. Therefore, the reassessment proceeding initiated by the AO u/s 147 of the Act was a change of opinion. It is also noticed that for the assessment year 2003-04, the said amount was added by the AO and the ld. CIT(A) deleted the same. The AO himself admitted that the said issue was contested by the department before the ITAT. It is, therefore, clear that the amount in question pertained to the subsequent assessment year and not to the year under consideration. It is also noticed that in assesseeôs own case for the assessment years 2006-07 to 2008-09, the ITAT vide order dated 03.05.2013 in ITA No. 4602/Del/2010 vide para 14 observed as under:

> *"14. Apropos unrealized subsidy, it is a trite law that every receipt does not tantamount to income, as per charging sections 4 & 5 of the I.T. Act. While examining whether the receipt is chargeable as income or not, relevant facts and circumstances are to be seen. From the record it clearly emerges that the subsidy provided by CSPL is in lump sum with specific direction that this amount is to be spent only for specified purposes and the unspent amount is to be held in trust for and on behalf of CSPL. This is duly confirmed by CSPL and this fact is further corroborated by the fact that unutilized amount is not credited to the P&L A/c but taken to balance-sheet as a current liability. Once it is acknowledged as current liability assessee does not become owner of this amount and the receipt of unspent amount does not*

become income of the assessee. Besides, this method of accounting has been followed by the assessee consistently. In these circumstances, we are of the view that unspent subsidy being not income of the assessee but a liability to be spent for specified purposes and recoverable for non-utilization for specific purposes cannot be treated as income of the assessee. Therefore, this ground of the assessee is also allowed. Since we have allowed the main ground, there is no need to go into alternate arguments."

11. The said view taken by the ITAT has been affirmed by the Honôble Jurisdictional High Court in ITA Nos. 137 & 138/2014 vide order dated 03.08.2015 in assesseeôs own case and relevant findings have been given in para 20 of the said order which read as under:

"20. We are, therefore, unable to accept the Revenue's contention that the unutilized subsidy is required to be recognized as income of the Assessee in the year of its receipt. This would be contrary to the matching concept, which is the substratal principle for computing income during a relevant period. It is necessary that income be recognized along with the corresponding expenditure incurred for earning the income. Thus, where an Assessee follows the Accrual/Mercantile system of Accounting – as in this case – income can be recognized only when the matching expenditure is also accounted for irrespective of the cash outflows/inflows during the year. It would thus, not be correct to recognize the subsidies received for incurring specific expenditure

as income without accounting for the corresponding expenditure."

12. In the present case, it is an admitted fact that the amount of Rs.53,15,340/- received by the assessee on account of subsidy against the advertisement remained unutilized during the year under consideration, so it was rightly carried forward to the subsequent year and as such there was no escapement of income as alleged by the AO while reopening the assessment. In that view of the matter also we are of the confirmed view that the ld. CIT(A) rightly annulled the reassessment framed by the AO u/s 143(3) r.w.s. 147 of the Act. Accordingly, we do not see any merit in this appeal of the department.

13. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 19/10/2016)

Sd/-	**Sd/-**
(Beena Pillai)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 19/10/2016
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR