

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI G. S. PANNU, VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**I.T.A No.3023/Del/2016  
(ASSESSMENT YEAR 2006-07)**

|   |     |  |
|---|-----|--|
| M/s Mahanagar<br>Telephone Nigam Ltd.,<br>5 <sup>th</sup> Floor, 9CGO Complex,<br>Lodhi Road, New Delhi.<br><br>PAN-AAACM 0828R | Vs. | Dy. CIT,<br>Large Taxpayer Unit,<br>New Delhi. |
| <b>(Appellant)</b>  |     | <b>(Respondent)</b>                            |

|                       |  |
|-----------------------|--|
| Appellant By          | <b>Sh. Ved Jain, Adv.<br/>Sh. Aashish Goel, Adv.</b> |
| Respondent by         | <b>Ms. Sushma Singh, CIT-DR</b>                      |
| Date of Hearing       | <b>22.12.2020</b>                                    |
| Date of Pronouncement | <b>29.12.2020</b>                                    |

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal is preferred by the assessee against order dated 19.04.2016 passed by the Learned Commissioner of Income Tax (Appeals)-22, New Delhi {CIT(A)} for Assessment Year 2006-07.

2.0 The brief facts of the case are that the assessee had filed its return of income declaring total income at Rs. 5,12,96,04,406/-. The case was selected for scrutiny and, thereafter, the income was assessed u/s 143(3) of the Income Tax Act, 1961 (hereinafter called 'the Act') at an income of Rs.17,25,09,62,611/- vide order dated 30.12.2009. Thereafter, a notice u/s 148 of the Act was issued on 28.03.2013 to tax the income of Rs.15,41,18,249/- in respect of house property tax which had allegedly escaped assessment. In response to notice u/s 148 of the Act, the assessee stated that the return filed by it earlier may be treated as returned filed in response to notice issued u/s 148/-. The assessee also asked for a copy of reasons which was duly supplied to the assessee. The reasons for reopening were as under:

*“During the year under consideration, the assessee while computing the taxable income, claimed and was allowed deduction of an amount of Rs.15,41,18,249/- pertaining to property tax relating to rectification entry of Assessment Year 2005-06. Since the said amount pertained to Assessment Year 2005-06, the same should not have been claimed in the computation for the Assessment Year 2006-07.*

*I have, therefore, reason to believe that by reason of failure on the part of the assessee to disclose all material facts truly and fully, the income on account of the following has escaped assessment.*

*In view of above facts, action u/s 147 is initiated to assess the income chargeable to tax which has escaped assessment.”*

2.1 The assessee filed objections before the Assessing Officer (AO) against the reopening. However, the objections were not accepted by the Assessing Officer and the Assessing Officer proceeded to make an addition of Rs.15,41,18,249/- by making the addition of the impugned amount and completed the assessment u/s 143(3) read with section 147 of the Act at an income of Rs.7,04,29,97,580/-.

2.2 Aggrieved, the assessee preferred an appeal before the Ld. CIT (A) which was dismissed.

2.3 Now, the assessee has approached this Tribunal and has challenged the assessment both on the legal question of validity of reassessment proceedings as well as on the merits of the

disallowance. The following grounds have been raised in this regard:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax Appeals [CIT (A)] is bad both in the eyes of law and on facts.

2. On the facts and circumstances of the case, the learned CIT (A) has erred in ignoring the contention of the appellant that reopening of the assessment is barred by limitation in view of the proviso to Section 147 of the Act.

3. (i) On the facts and circumstances of the case, the learned CIT (A) has erred, both on facts and in law, in confirming the order passed under Section 147 read with Section 148 of the Act, ignoring the fact that the same was bad in the eyes of law, as the conditions and procedures prescribed under the statute have not been satisfied and complied with.

(ii) On the facts and circumstances of the case, the learned CIT (A) has erred in confirming the order passed by AO as the reassessment proceedings initiated by the learned AO are bad in the eyes of law, as the reasons recorded for the issue of notice under Section 148 are bad in the eye of law and are contrary to the facts.

4. (i) *On the facts and circumstances of the case, the reassessment proceedings initiated by the AO and upheld by the learned CIT (A) are bad in the eyes of law, as the reasons recorded for the issue of notice under Section 148 are based merely on account of change of opinion.*

(ii) *On the facts and circumstances of the case, the learned CIT (A) has erred in law and on facts in upholding the reassessment proceedings, despite the fact that there has been no omission on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment.*

5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the addition of Rs.15,41,18,249/- made by the AO on account of disallowance of property tax.*

(ii) *That the learned CIT (A) has erred in sustaining the addition made by the AO despite the fact that the said liability has been generated during the year under consideration and the deduction has been claimed by the assessee in terms of the provisions of section 43B of the Act.*

6. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

3.0 The Ld. Authorized Representative (AR) argued that the reopening was bad in law for the reason that there was no suppression of any material fact by the assessee during the course of original assessment proceedings and the information on the basis of which the reopening proceedings were initiated was already before the Assessing Officer in the original assessment proceedings. It was submitted that it was merely a change of opinion and, therefore, it was bad in law. The Ld. Authorized Representative relied on numerous judicial precedents in support of his contention that the reopening itself was invalid void *ab initio*.

3.1 On the merits of the case, the Ld. Authorized Representative (AR) submitted that during the year under consideration, the assessee, while computing the taxable income, had claimed and was allowed deduction of an amount of Rs. 15,41,18,249/- pertaining to property tax relating to rectification entry of Assessment Year 2005-06. Since the said amount pertained to Assessment Year 2005-06, the same had no bearing on the taxable income of Assessment Year 2006-07. He drew our attention to the following charts:

Annexure of Tax Audit Report for Assessment Year 2005-06 at  
Paper Book Pg.244:

| Liability                         | Amount incurred during F.Y.2004-05  | Amount paid till date of filing of return | Amount unpaid due date of filing of return |
|-----------------------------------|---|---|--|
| Property Tax<br>Mumbai MS<br>Unit | 15,41,18,249/-  | -   | 15,41,18,249                               |
| Remarks                           | Disallowed as per Section 43B in computation of income of Assessment Year 2005-06 (PB Pg.205) |   |  |

Annexure of Tax Audit Report for A.Y.2005-06 at Paper Book Pg.41:

| Liability                         | Amount incurred during F.Y.2005-06  | Amount paid till date of filing of return | Amount unpaid due date of filing of return |
|-----------------------------------|---|---|--|
| Property Tax<br>Mumbai MS<br>Unit | -   | 15,41,18,249/-                            | -  |
| Remarks                           | Disallowed as per Section 43B in computation of income of Assessment Year 2005-06 (PB Pg.205) |   |  |

3.2 The Ld. AR submitted that the amount of Rs.15,41,18,249/- in respect of property had been disallowed by the assessee in Assessment Year 2005-06 u/s 43B. However, in Assessment Year 2006-07, the tax auditor realized that it was a mistake as it had been wrongly shown as Liability whereas there was no liability for Assessment Year 2005-06. Therefore, the tax auditor has rectified this mistake by writing back this amount in the year under consideration. It was submitted that it did not affect any tax liability of the assessee as same amount had been disallowed in one year and had been allowed in the present assessment year for rectification purpose. The Ld. AR submitted that the AO reopened the case merely on the ground that in the computation of income, the assessee had claimed deduction of an amount of Rs.15,41,18,249/- pertaining to property tax relating to rectification entry of Assessment Year 2005-06 without appreciating the fact that the assessee had not incurred any liability for property tax i.e. neither in Assessment Year 2005-06 and nor in Assessment Year 2006-07. It was submitted that the AO had

misunderstood the fact that the assessee had claimed a deduction but it was only a rectification entry passed for writing back that amount in Assessment Year 2005-06. Reliance was placed on the case of ACIT v. Johnson Matthey India Pvt. Ltd. in ITA No.4397/Del/2011 dated 03.07.2013 wherein it has been held that reversal of provision during the year cannot be added to income if such provision has been added back in computation of income in the year in which it was created.

4.0 Per contra, the Ld. Sr. Departmental Representative (DR) submitted that the reopening was perfectly valid and based on the record before the Assessing Officer and that there was a failure on the part of the assessee truly and fully disclose all material facts necessary for the assessment of income at the time of original assessment proceedings. On merits of the addition, the Ld. Sr. DR placed reliance on the categorical finding recorded by the Ld. CIT (A) in para-6 of the impugned order. It was submitted that the addition had been correctly made.

5.0 We have heard rival submissions and have also perused the material on record. At this juncture, we are not inclined to go into the legal question of the validity of reassessment proceedings. However, on merits of the addition, it is seen that facts surrounding the controversy are that the amount of Rs.15,41,18,249/- in respect of property tax was disallowed by the assessee for Assessment Year 2005-06 in terms of provisions of Section 43B of the Act in the computation of income for that Assessment Year. However, in the Assessment Year under consideration i.e. Assessment Year 2006-07 it was realized by the auditor that a mistake had been committed and that this amount has been wrongly shown as a liability whereas no such liability existed for Assessment Year 2005-06. The Auditor rectified this mistake by writing back this amount in Assessment Year 2006-07. The Assessing Officer, not only initiated the reassessment proceedings, but also made an addition of this amount under the notion that assessee had claimed a deduction in this year although, this was not any deduction but only a rectification entry for writing back the impugned amount which pertained to

Assessment Year 2005-06. Thus, apparently this rectification was tax neutral and no addition/disallowance was warranted for the reason that this amount was never claimed or allowed as a deduction in the earlier year. When the assessee's appeal came up before the Ld. CIT (A), he dismissed the assessee's appeal on an altogether mis-appreciation of the facts of the case as well as law. He went on to observe that if a liability was wrongly provided in a particular Assessment Year, the assessee should have filed revised return for that year. The Ld. CIT (A) also observed that the assessee did not substantiate the working of this amount of Rs.15,41,18,249/-. In our considered opinion, the Ld. CIT (A) has entirely misdirected himself by making observations which were entirely out of context and leading to an incorrect conclusion being guided by entirely irrelevant logic. Therefore, while setting aside the order of the Ld. CIT (A) on the issue, we hold that the impugned addition was unwarranted in as much as the rectification entry made by the assessee in Assessment Year 2006-07 was tax neutral. We direct the deletion of this addition.

6.0 In the final result, the appeal of the assessee stands allowed.  
Order pronounced on 29<sup>th</sup> December, 2020.

Sd/-

**(G.S.PANNU)**  
**VICE PRESIDENT**

Dated: 29/12/2020

PK/Ps

Copy forwarded to:

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

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI