

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5957/Del/2014
Assessment Year : 2007-08

Mahanagar Telephone Nigam Limited, 5 th Floor, 9, CGO Complex, Lodhi Road, New Delhi.	Vs.	DCIT, LTU, New Delhi.
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PAN: AAACM0828R

ITA No.5292/Del/2014
Assessment Year : 2007-08

DCIT, LTU, New Delhi	Vs.	Mahanagar Telephone Nigam Limited, 5 th Floor, 9, CGO Complex, Lodhi Road, New Delhi.
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PAN: AAACM0828R

(Appellant)

(Respondent)

Assessee By	:	Shri Ved Jain, Advocate & Shri Ashish Chadha, CA
Department By	:	Ms Shefali Swaroop, CIT DR

Date of Hearing : 24.10.2017
Date of Pronouncement : 25.10.2017

ORDER

PER R.S. SYAL, VP:

These two cross appeals – one by the assessee and the other by the Revenue arise out of the order passed by the CIT(A) on 27.08.2014 in relation to the A.Y. 2007-08.

2. Briefly stated, the facts of the case are that the Assessing Officer initiated reassessment proceedings. The assessee's objections against the initiation of reassessment were dismissed. *Ex consequenti* an addition of Rs.1,97,40,000/- was made by means of disallowance of interest on customer deposit accounts. The ld. CIT(A) upheld the initiation of reassessment proceedings. On merits, he allowed part relief. Both the sides are aggrieved against the view taken by the ld. CIT(A) on their respective stands.

3. The assessee is primarily aggrieved against upholding the initiation of reassessment proceedings.

4. We have heard the rival submissions and perused the relevant material on record. It is observed that the Assessing Officer initiated reassessment proceedings by recording the following reasons, which have been reproduced in the assessment order itself :-

“1. Perusal of records show that the assessee has debited interest on customers' deposits amounting to Rs 19.74 million (Rs 1,97,40,000/-) to the profit & loss account for the F. Y. 2006-07 relevant to AY 2007-08. The assessee has claimed this expenditure u/s 37 of the Act because there is no express provision in the Act for allowing such expenditure. The essence of deductibility u/s 37 is that there must be fulfilled the twin requirements of “expenditure and the factum of such expenditure having been laid out or expended. The expression "expenditure" "what is paid out" and "Something which is gone irretrievably. In this connection reliance is placed on the judgment of Supreme Court in the case of Indian Molasses Co. (Private) Ltd. (37 ITR 66). In this case the Hon'ble Supreme Court held that expenditure, which is deductible for income tax purpose is one which is towards a liability which actually exists at the time increase in liability at any point of time prior to payment cannot fall within the meaning of the word "expenditure" in section 37 (1). The requirement of expenditure is not met in this case. Similarly the requirement of money "expended or laid out" is also not satisfied and thus claim of deduction is not allowable u/s 37 (1) .

2. In the A. Y. 2006-07 the entire amount of these deposits were disallowed and added back to the income of the assessee as the same was treated on a nonexistent head of account held to be not payable by the assessee and were entirely taxed in that year.

3. In view of the above I have reason to believe that income of Rs 19.74 Million (Rs.1,97,40,000/-) has escaped assessment within meaning of section 147 which warrants issue of notice u/s 148."

5. It can be seen from the above reasons that the assessee's claim for deduction of interest on customers deposit accounts amounting to Rs.1.97 crore and odd was held to be wrongly allowed u/s 37(1) of the Act in the background of the order passed by the Assessing Officer for the assessment year 2006-07 in which the entire amount of such interest was disallowed. It is relevant to note that the assessment order for the assessment year 2006-07 was passed by the Assessing Officer u/s 143(3) on 30.12.2009, a copy of which is available on page 91 onwards of the paper book. Original order u/s 143(3) for the assessment year under consideration was also passed on the same date, namely, 30.12.2009, a copy of which is also available on page 42 and 43 of the paper book. Interestingly, both the orders were passed by the same AO. The Assessing Officer accepted the returned income and did not make any addition in the original order passed u/s 143(3) for the year under consideration. When we peruse the reasons recorded, pursuant to which a notice u/s 148 was issued on 27.03.2012, it is clearly borne out that the entire focus for initiation of reassessment is on the view taken by the Assessing Officer for the A.Y. 2006-07 disallowing similar interest. It is

obvious that order u/s 143(3) for the year under consideration was passed on the same date, namely, 30.12.2009, on which the order for the assessment year 2006-07 was passed. We are unable to comprehend the basis for initiation of the extant reassessment proceedings, being, the order passed for assessment year 2006-07. When the Assessing Officer passed the original order for the instant year u/s 143(3) of the Act, he was fully aware of the assessment order passed for the immediately preceding assessment year on the same date in which such disallowance of interest was made. Having accepted the deductibility of interest on deposits in the assessment order for the instant year, we fail to appreciate as to how the Assessing Officer could later on take cognizance of the assessment order for assessment year 2006-07, passed simultaneously with the assessment order for the current year, as a bedrock for the initiation of reassessment proceedings. It is a trite law that reassessment cannot be initiated on a mere change of opinion. The Hon'ble Supreme Court in the case of *CIT vs. Kelvinator of India (2010) 320 ITR 561 (SC)* has held that a mere change of opinion is impermissible for initiating the reassessment proceedings. It has further been observed that there should

be some tangible material coming into the possession of the Assessing Officer after the passing of original order which can form the basis for indicating that the income chargeable to tax escaped assessment. We are confronted with a situation in which the assessment order for the assessment year 2006-07, considered as a basis for initiating the reassessment, was passed on the same date on which the assessment order for the current year was passed. It shows that when the AO passed original order for the current year allowing deduction of interest on customers deposit accounts, he was fully aware of the similar expenditure having been disallowed for the preceding year. Still allowing deduction in the instant year was a conscious and considered decision on the point. Thus it is manifest that there is absence of any tangible material coming into the possession of the Assessing Officer after the passing of the original assessment order u/s 143(3) for the year under consideration indicating escapement of income. As such, it is evident that the Assessing Officer initiated reassessment proceedings on a mere change of opinion without there being any tangible material. Respectfully following the judgment in the case of *Kelvinator (supra)*

and other numerous judgments on the point, we set aside the initiation of reassessment proceedings and the consequential order passed by the Assessing Officer. In view of our decision on the invalid initiation of reassessment proceedings, there is no need to dispose of the grounds raised by both the sides on merits.

6. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

The order pronounced in the open court on 25.10.2017.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 25th October, 2017.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.