

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 6077/Del./2013
Assessment Year: 2007-08**

D.C.I.T., Circle 11(1), New Delhi (Appellant)	vs.	M/s. India Tourism Development Corporation Ltd., Core-6, 6 th Floor, Scope Complex, 7, Lodhi Road, New Delhi (PAN- AAACI 0825J) (Respondent)
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Appellant by	Shri Naveen Chandra, CIT/DR
Respondent by	Shri R.S. Singhvi, C.A.

Date of Hearing	11.10.2017
Date of Pronouncement	25.10.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue against the order of ld. CIT(A)-XV, New Delhi dated 22.08.2013 for the assessment year 2007-08 on the following grounds :

“1. On the facts and circumstances of the case and in law, the CIT(A) has erred in holding the reassessment proceedings bad in law whereas the notice u/s. 148 was issued before the completion of 4 years.

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.11,34,91,000/- on account of contingent liability.”

2. The brief facts of the case are that the assessment of assessee for the impugned assessment year was completed u/s. 143(3) of the IT Act at total income of Rs.82,16,15,883/-. Subsequently, the AO observed that on perusal of the record it revealed that as per note 7(n) to account, ITDC Employees welfare cum performance Incentive Scheme was discontinued by the management effective from F.Y. 2003-04. However, pending final agreement with the Union and implementation thereof, provision of Rs.11,34,91,000/- was made and charged to Staff Welfare Expenses and is shown as included in the contingent liability, which is not an allowable expenditure. On this premise, the AO initiated the proceedings u/s. 147 by issuing notice u/s. 148 of the Act and made addition of Rs.11,34,91,000/- to the total income of the assessee vide order dated 18.01.2013.

3. The assessee carried the matter in appeal before the Id. CIT(A) and challenged the reassessment proceedings on their validity as well as on merits of addition. The Id. CIT(A) after considering the grounds of appeal and the submissions of the assessee, held the reassessment proceedings as invalid on the premise that –

(i). in the case record for the impugned proceedings, even though a notice under section 148 dated 27.03.2012 (wrongly written by CIT(A) as 27.12.2012) is on record, however, there is no evidence of its dispatch by any mode to suggest that it was sent by the AO to the assessee.;

(ii). That in original assessment, the AO specifically examined staff welfare expenses including contribution to staff welfare fund, the details of which were furnished by assessee vide submissions dated 03.12.2009 and therefore, reopening of assessment on this issue tantamount to change of opinion; and

(iii) That no notice u/s. 143(2) in prescribed form was issued by the AO and the show cause notice is said to have been issued u/s. 144 on 08.02.2013 by the AO whereas the order was already passed on 18.01.2012.

On merits, the Id. CIT(A) deleted the addition observing that the impugned liability in respect of settlement entered with the rate unions was an ascertained liability in terms of memorandum of settlement, copy of which was filed before him. It was also observed that since the liability stood subsequently discharged and hence, such liability could not be treated as contingent.

4. The Id. DR reiterating the contents of assessment order, submitted that the Id. CIT(A) was not justified in holding the proceedings as invalid ignoring the fact that notice u/s. 148 was issued before expiry of 4 years and that contingent liability in view of the observations of the AO could not be allowed as deduction claimed. On the other hand, the Id. AR relied on the impugned order.

5. We have heard both the parties and have gone through the entire material on record. As far as the conclusion of Id. CIT(A) as to invalidity of impugned reassessment proceedings on the premise of change of opinion and non-issuance of notice u/s. 143(2) is concerned, we find that the Revenue has not raised any specific ground in the memorandum of appeal to challenge these findings of the Id. CIT(A). Therefore, we have no reason to disturb these findings of the CIT(A) on the reassessment proceedings being invalid. Regarding the observations of the Id. CIT(A) with respect to non-issuance of notice u/s. 148, we find that the Id. CIT(A) found the copy of such notice in the case record, but observed that there was no evidence of its dispatch to the assessee. On this, no comments of the AO appear to have been sought by the Id. CIT(A) before arriving at the conclusion that no notice u/s. 148 was issued to the assessee. Besides, the notice found in the case records was dated 27.03.2012 (wrongly written by CIT(A) as 27.12.2012), which falls before expiry of four years from the end of assessment year under consideration. The Id. DR, however, has also not clarified before us the doubt of the Id. CIT(A) as to the dispatch of impugned notice u/s. 148 dated 27.03.2012 or its service on the assessee. For want of clear facts on record, we restrain our findings on this aspect, keeping in view the other findings of Id. CIT(A) on validity of reassessment proceedings, as noted above. On merits, we, however, do not find

any justification to discard the conclusion reached by the Id. CIT(A). The AO appears to have been guided from the note regarding discontinuation of Incentive Scheme from F.Y. 2003-04, but he appears to have ignored the fact mentioned in the same note that the Management on its own had formulated a new ITDC Employees Welfare cum-profit Linked Incentive Scheme which was to be operational w.e.f. 1st April, 2003 as per acceptance by the Unions, for which a memorandum of settlement was entered into between the management and majority of the unions on 08.10.2007 pending final agreement. The Id. CIT(A) after examining the memorandum of settlement submitted by assessee found that the impugned liabilities claimed by the assessee were in accordance with AS-4 and the said liabilities stood subsequently discharged by the assessee and hence, it cannot be termed as contingent liability. No contrary material is laid on record by the department to interfere with the impugned order on this count. We, accordingly, do not find merit in appeal of the Revenue and the same is liable to be dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 25.10.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 25.10.2017

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