

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4050/Del/2018  
Assessment Year : 2008-09

DCIT Circle – 3(1)(1), International taxation New Delhi  PAN – AAACU 5017 A <b>(APPELLANT)</b>	Vs.	UT Starcom Inc. Shop No.12, A-1/8A, Ground Floor, Krishna Nagar, New Delhi - 110051  <b>(RESPONDENT)</b>
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Assessee by	--None--
Revenue by	Shri Mahesh Thakur, Sr. D.R.

Date of hearing:	26/07/2021
Date of Pronouncement:	28/07/2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the Revenue is directed against the order dated 28.03.2018 of the Commissioner of Income Tax (Appeals)-43, New Delhi relating to Assessment Year 2008-09.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which stated to be tax resident of USA and stated to be engaged in the business of telecommunication equipment worldwide, software and marketing of telecom related equipments. Assessee filed its return of income for A.Y. 2008-09 on 29.09.2008 declaring total taxable income of Rs.37,39,880/-. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 144C of the Act vide order dated 18.10.2012 and the total income was determined at Rs.3,19,18,373/-. Subsequently, notice u/s 148 of the Act was issued on 27.08.2015 which was duly served on the assessee. The assessee *inter alia* vide letter dated 13.04.2015 submitted that return filed on 29.09.2008 be treated as return of income filed in response to notice issued u/s 148 of the Act. Thereafter, the case was taken up for scrutiny and assessment was framed u/s 144C(3)/147/143(3) vide order dated 29.04.2016 and total income was determined at Rs.7,06,30,521/-.

4. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 28.03.2018 in Appeal No. 113/2016-17 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds of appeal:

1. *“Whether on the facts and in the circumstances of the case the CIT(A) has erred in holding that the liquidated damages are deductible expenditure from the assessee’s income ignoring the fact that the assessee failed to substantiate the claim with any third party documentary evidence to show that its customers had indeed levied liquidated damages?”*

2. *Whether on the facts and in the circumstances of the case the CIT(A) has erred in holding that the liquidated damages are deductible expenditure from the assessee's income when the financials as well as the audit report of the assessee is silent on the reasons for reversal of the provisions for liquidated damages?*
3. *Whether on the facts and in the circumstances of the case, the CIT (A) has erred in holding that the liquidated damages are deductible expenditure from the assessee's income relying upon the decision of the Hon ble ITAT in case of DCIT Vs M/s Nice Projects Private Limited ignoring the fact that the said decision has not been accepted by the Department and an appeal has been filed before the Hon'ble High Court U/s 260A of the Act which is pending for adjudication?*
4. *The appellant prays for leave to add, amend, modify or alter any grounds of appeal at the time of or before the hearing of the appeal."*
5. The case file reveals that there was no appearance on behalf of the assessee. Even on the date of hearing, none appeared on behalf of the assessee nor any adjournment application was filed. In the absence of any representative from the side of assessee, we proceed to dispose of the appeal *ex parte* qua the assessee after considering the material on record and after hearing by the Learned DR.
6. Before us, at the outset, Learned DR submitted that though the Revenue has raised various grounds but the sole controversy is with respect to allowability of the claim of liquidated damages by CIT(A).
7. AO noted that assessee had made a provision for liquidated damages amounting to Rs.3,87,12,148/- during the year which

was added to computation of total income and the liquidated damages amounting to Rs.4,37,36,387/- (Rs.3,87,12,148 +50,24,239) were deducted from the total income which according to AO shows that the said damages were actually claimed as expenses by the assessee. AO noted that the aforesaid amount of Rs.4.37 crore (rounded off) was reduced from the total income meaning thereby that assessee has claimed the aforesaid amount of Rs.4.37 crore as liquidated damages. AO has noted that the perusal of assessment record showed that neither in the computation of total income nor in the copy of submissions made by the assessee during the course of assessment proceedings, the basis of the claim of so called "liquidated damages" was submitted. AO also noted that assessee has not submitted any material supporting the claim of so called liquidated damages. He thereafter held that the claim of liquidated damages amounting to Rs.4.37 crore to be unproved and unsubstantiated and therefore allowed the claim of Rs.50,24,239/- and the balance amount of Rs.3,87,12,148/- was disallowed. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). The CIT(A) while deleting the addition made by AO has given a finding that the amount of Rs.3,87,12,148/- were actually liquidated damages which were deducted by BSNL/MTNL for execution of contract relating to supplies made to them and the liquidated damages were in the nature of expenses and was a deductible expenditure from assessee's income. He has further given a finding that the aforesaid amount was actually deducted and did not constitute the provision for liquidated damages. He accordingly deleted the

addition. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

8. Before us, Learned DR supported the order of AO.

9. We have heard the Learned DR and perused the material on record. The issue in the present grounds is with respect to allowability of the claim of liquidated damages. We find that CIT(A) after considering the submission made by the assessee had given a finding that the amount of Rs. 3,87,12,148/- did not constitute the provision for liquidated damages but in fact it was the deductible expenditure as the aforesaid amount of liquidated damages were actually deducted by BSNL/MTNL. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A). **Thus the grounds of the Revenue are dismissed.**

**10. In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 28.07.2021**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 28.07.2021*

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Copy forwarded to:

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