

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (SMC), KOLKATA

[Before Hon'ble Shri P.M. Jagtap]

I.T.A. No. 906/Kol/2016  
Assessment Year : 2005-06

*M/s. Armstrong Tracom Pvt. Ltd.....Appellant*  
*83/85, N.S. Road,*  
*Kolkata - 700001.*  
*[Pan : AADCA7379N]*

*Income Tax Officer.....Respondent*  
*Ward No. 4(3), Kolkata*  
*P-7, Chowringhee Square, Aayakar Bhawan,*  
*Kolkata - 700069*

**Appearances by:**

*None appearing on behalf of the Assessee.*

*Shri Pinaki Mukherjee, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : October 23, 2017

Date of pronouncing the order : October 25, 2017

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 16, Kolkata dated 08.03.2016.

2. The relevant facts of the case giving rise of this appeal are that the assessee is an investment company which filed its return of income for the year under consideration on 30.11.2005 declaring a total income of Rs. 2,314/-. In the assessment originally completed under section 143(3) vide an order dated 14.12.2007, the total income of the assessee was determined by the AO at Rs. 8,314/-. The assessment for the year under consideration, however, was subsequently reopened by the AO on the basis of some specific information received from DDIT (Inv.), Unit-IV(5), Kolkata showing an accommodation entry allegedly received by the assessee from M/s.

Rejeshwari Traders. He accordingly issued a notice under section 148 on 30.06.2011 in response to which a letter was filed by the assessee stating that the return originally filed by it on 30.11.2005 may be treated as the return filed in response to notice under section 148. Thereafter reassessment was completed by the AO vide an order dated 19.03.2013 passed under section 147/143(3) of the Act whereby he determined the total income of the assessee at Rs. 6,14,500/- after making addition of Rs. 6,06,200/- on account of unaccounted income of the assessee in the form of accommodation entry received from M/s. Rejeshwari Traders.

3. Against the order passed by the AO under section 147/143(3), an appeal was preferred by the assessee before the Ld. CIT (A) challenging, inter alia, the validity of the said assessment on the ground that the reopening of assessment made by the AO after 4 years from the end of the relevant assessment years without pointing out any failure on the part of the assessee to disclose all the material facts fully and truly was not valid. The Ld. CIT (A) did not accept this stand of the assessee and proceeded to uphold the validity of assessment made by the AO under section 147/143(3) of the Act by observing that the assessment was reopened by the AO on the basis of specific information received from the investment branch which formed the basis for the belief entertained by the AO that the income of the assessee had escaped assessment. The Ld. CIT (A) also confirmed the addition of Rs. 6,06,200/- made by the AO on account of unaccounted income of the assessee in the form of entry received from M/s. Rajeshwari Traders. Aggrieved by the order of the Ld. CIT (A), the assessee has preferred this appeal before the Tribunal.

4. In ground no 2 raised in this appeal, the assessee has raised a preliminary issue challenging the validity of the assessment made by the AO under section 147/143(3) of the Act on the ground that the reopening of assessment made by the AO originally under section 143(3) after a period of 4 years from the end of the relevant assessment years itself was bad in law as there was no failure on the part of the assessee to disclose fully or truly all the material facts necessary for the assessment.

5. When this appeal filed by the assessee was initially fixed for hearing on 26.09.2016, the learned counsel for the assessee sought adjournment on the ground that the assessee had applied for a certified copy of reasons recorded and response for the same was awaited from the concerned Assessing Officer. Accordingly the hearing was adjourned to 01.11.2016 on which date the learned counsel for the assessee again informed the Tribunal that response from the concerned Assessing Officer was still awaited. The bench accordingly thought it fit to direct the learned DR to produce the assessment records including the reasons recorded on the next date of hearing which was fixed on 12.01.2017. The learned DR however failed to produce the relevant assessment records on 12.01.2017 as well as on 31.01.2017, 09.03.2017 and 16.05.2017 when the appeal of the assessee was fixed for hearing. On 16.05.2017, one more opportunity was given to the learned DR as the final opportunity to produce the assessment records by next date of hearing i.e. 14.06.2017. The learned DR however again failed to produce the relevant assessment record on 14.06.2017 as well as 24.08.2017

when the appeal of the assessee was fixed for hearing. In order to give one more opportunity as the last and final opportunity to the learned DR to produce the relevant assessment records, the hearing was adjourned to 23.10.2017. On 23.10.2017 i.e. today, the learned DR however has once again failed to produce the relevant assessment records and keeping in view this repeated failure of the learned DR, I am left with no option but to draw an adverse inference against the department that the reasons recorded by the AO for reopening the assessment originally completed in the case of the assessee under section 143(3) after a period of 4 years from the end of the relevant assessment years do not contain anything to show any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration.

6. As per the first proviso to section 147, where an assessment under section 143(3) has been made for the relevant assessment year, no action shall be taken under section 147 after the expiry of 4 years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee, inter alia, to disclose fully and truly all material facts necessary for his assessment for that assessment year. Keeping in view the said proviso to section 147 and having regard to the failure of the department to bring on record the reasons recorded by the AO showing such failure on the part of the assessee as envisaged in the said proviso, I hold that the reopening of assessment by the AO beyond the period of 4 years was invalid being barred by limitation. I accordingly cancel the

assessment made under section 147/143(3) in pursuance of such invalid initiation and allow ground no 2 of the assessee's appeal.

7. As a result the decision rendered above on the preliminary issue cancelling the assessment made by the AO under section 147/143(3), other grounds raised by the assessee in this appeal challenging the addition made in the said assessment have become infructuous and I do not consider it necessary or expedient to adjudicate upon the same.

**8. In the result, the appeal of the assessee is allowed.**

Order Pronounced in the Open Court on 25<sup>th</sup> October, 2017.

Sd/-  
(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 25/10/2017**

Biswajit, Sr PS

Copy of order forwarded to:

1. M/s. Armstrong Tracom Pvt. Ltd., 83/85, N.S. Road, Kolkata-700001.
2. ITO, Ward 4(3), P-7, Chowringhee Square, Aayakar Bhawan, Kolkata-700069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata