

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Sri J. Sudhakar Reddy, Accountant Member]**

I.T.A. No. 2069/Kol/2017
Assessment Year: 2010-11

M/s. Reliance Electricals and Metals Pvt. Ltd.....Appellant
26, Rabindra Sarani
Kolkata - 700 073
[PAN : AABCR 2796 N]

Income Tax Officer, ward-3(2), Kolkata.....Respondent
P-7, Chowringhee Square
Kolkata - 700 069

Appearances by:

Shri Rakesh Jain, FCA, appeared on behalf of the assessee.

Shri Sallong Yaden, Addl. CIT, appearing on behalf of the Revenue.

Date of concluding the hearing : March 27th, 2018

Date of pronouncing the order : April 13th, 2018

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals)-1, Kolkata (hereinafter the 'ld. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 04/08/2017, for the Assessment Year 2010-11, on the following revised grounds of appeal:-

"1. That in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals) erred in confirming the disallowance made by the ld. Assessing Officer for a sum of Rs.2,42,180/- u/s 80IB(3) which is bad in law and on facts.

2. That in the facts and circumstances of the case, the order passed under sec. 147 of the I.T. Act, 1961 by the ld. Assessing Officer is bad in law and on facts.

3. That in the facts and circumstances of the case, the appellant craves leave to add, alter, modify and/or submit further or more grounds(s) of appeal either before or at any time during the hearing of the appeal."

2. After hearing rival contentions, I find that the reasons recorded for re-opening of the assessment u/s 147 of the Act, are as follows:-

"The assessee e-filed return of income for the year on 26/09/2010 and declared a total income of Rs.5,36,831/-. The assessee failed to furnish the

'nature of business' in the return. The declared gross receipts is Rs.8,60,76,350/-, the major expense declared purchase of Rs.1,46,13,901/- and Consumption of raw material of Rs.5,90,33,376/-. The expenditure constitutes 85.56% of the gross receipts, which appears excessive. The assessee claimed huge amount of expenditure on a/c. of interest payment at the tune of Rs.14,13,950/-. The amount of loan taken as on 31/03/2010 of Rs.1,40,81,679/-. The Loan given as on 31/03/2009 is Rs.18,06,752/- and loan given as on 31/03/2010 is Rs.78,07,727/-. But, the declared interest income is only Rs.14,188/-, which is not proportionate to the prevailing rate of interest. Considering the above, it appears that there is an understatement of income by way of claim of the excessive expenses on ac.

In view of the above I have reason to believe that income chargeable to tax has escaped assessment for the year. Hence, notice u/s 148 is issued."

3. A perusal of the above demonstrates that no new material has come into the possession of the Assessing Officer. Without any fresh material, the Assessing Officer recorded the reasons based on the material facts already on record, that it appears that there is understatement of income by way of claim of excessive expenditure. The Assessing Officer had on an earlier occasion issued notice u/s 148 of the Act on 18/06/2012 and thereafter he had dropped these proceedings vide his letter dt. 24/09/2017. The assessment proceedings were again re-initiated for the very same reasons and one additional reason i.e., interest payments appear to be excessive. During the course of assessment proceedings no addition has been made on the issues on which re-opening of assessment has been made on the ground that there is escapement of income chargeable to tax. The question is whether in re-assessment proceedings, additions can be made on issue or grounds which are not the grounds on which re-assessment is made, when there is no addition on the grounds on which re-opening was done by recording reasons to believe.

4. The Delhi Bench of the Tribunal in the case of *Krishan Kumar vs. Income Tax Officer, being ITA No. 3985/kol/2017, Assessment Year 2007-08, dt.15/12/2017*, while adjudicating a similar issue held as follows:-

"9. I have considered the rival arguments made by both the sides, perused the orders of the AO and Ld. CIT(A) and the paperbook filed on behalf of the assessee. I have also considered the various decisions cited before me. A perusal of the reasons recorded by the AO as reproduced by him in the assessment order shows that the reopening was made on account of cash deposit of Rs. 19 lakh in the bank account of the assessee. However, the AO in the assessment order has made addition

of Rs. 36,26,500/- on account of capital gain and interest income. Thus, there is no addition on account of which the assessment was reopened by issue of notice u/s 148 of the I.T. Act. Hon'ble Delhi High Court in the case of Ranbaxy Ltd. vs. CIT (supra) has held that the assessing officer has the jurisdiction to reassess the issues other than issues in respect of which proceedings were initiated. But he was not justified when the reasons for the initiation of those proceedings seized to survive. Since, in the instant case, there was no addition made in the assessment order on account of which the assessment was reopened but some other additions have been made by the AO, therefore, the AO does not have jurisdiction to make such other additions in absence of any addition made for which the assessment was re-opened in the light of the decision of Hon'ble Delhi High Court in the case of Ranbaxy Laboratory Ltd. (supra). Therefore, the re-assessment proceedings have to be quashed."

5. Consistent with the view taken therein, I have to necessarily hold that the assessment order is bad in law.
6. Even otherwise, the re-opening is not based on any tangible material which has come into the possession of the Assessing Officer. The reasons are based on material already available on record. On this count also the re-opening is bad in law.
7. In the result, appeal of the assessee is allowed.

Kolkata, the 13th day of April, 2018.

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 13.04.2018
{SC SPS}

Copy of the order forwarded to:

**1. M/s. Reliance Electricals and Metals Pvt. Ltd
26, Rabindra Sarani
Kolkata – 700 073**

2. Income Tax Officer, ward-3(2), Kolkata

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches