

**IN THE INCOME TAX APPELLATE TRIBUNAL,
RANCHI BENCH, RANCHI**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER AND
PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.370/Ran/2016
Assessment Year: 2006-2007

Indico Motors Pvt Ltd., M-25,(P) & 26 (P) IVth Phase Adityapur Industrial Area, Ghamaria, Jamshedpur	Vs.	DCIT, Circle-1, C.H. Area, Jamshedpur
PAN/GIR No. AABCI 4002 Q		
(Appellant)	..	(Respondent)

Assessee by: Shri M.K.Choudhary, Adv
Revenue by : Shri P.K.Mondal, JCIT

Date of Hearing : 22/05/ 2018
Date of Pronouncement : 23 /05/ 2018

ORDER

Per N.S.Saini. AM

This is an appeal filed by the assessee against the order dated 16.9.2016 of the CIT (A),Jamshedpur for the assessment year 2006-07.

2. Ground No.2 of appeal reads as under:

“That the CIT(A) erred in law and on facts by not appreciating the assessee contention that assessment made u/s.143(3) of the Income

Tax Act cannot be reopened merely for review or on the basis of change of opinion."

3. Ld A.R. of the assessee argued that the assessment in the instant case was completed u/s.143(3) of the Act vide order passed on 31.12.2008. Thereafter, the assessment was reopened by issuance of notice u/s.148(2) of the Act on 29.3.2011. The reasons recorded for reopening of the assessment by the Assessing Officer given in the remand report called by the CIT(A) which is dated 29.3.2011 and as recorded in the order of the CIT(A) as under:

"Para-2 –The case was reopened for scrutiny assessment u/s.147 of the Act on the ground that the W.D.V. of the Shed and building was at Rs.38,19,496/- as on 27.9.2005 in terms of schedule-IV of the audited final account, whereas the same block of asset has been taken at an enhanced figure of Rs.86,29,724/- as on 28.9.2005 (next day) as per schedule 3A of the final of account of the succeeding entity. As such, the depreciation claimed by the assessee for Rs.4,31,486/- as against admissible for Rs.1,93,591/-. Hence, excess claim of depreciation amount for Rs.2,37,895/- has escaped assessment and rightly disallowed by the Assessing Officer and added back to the income of the assessee."

4. On the above stated facts, the submission of Id A.R is that the reopening of assessment was made on the basis of change of opinion on the very same set of facts and as no new material came to the knowledge of the Assessing Officer after the completion of the original assessment, which trigger the reopening of the assessment, the reopening was bad in law and

for this proposition, he relied on the decision of Hon'ble Supreme Court in the case of **CIT v. Kelvinator of India Ltd., 320 ITR 561(SC)**.

5. Id D.R. on the other hand supported the orders of lower authorities.

6. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find from the recorded reasons that the Assessing Officer has observed that W.D.V. of the Shed and building was stated at Rs.38,19,496/- as on 27.9.2005 in terms of schedule-IV of the audited final account whereas the same block of asset has been taken at an enhanced figure of Rs.86,29,724/- as on 28.9.2005 as per Schedule 3A of the final accounts of the succeeding entity. We find that the books of account and statement of accounts were produced before the Assessing Officer during the course of assessment proceedings u/s.143(3) of the Act as observed by the Assessing Officer in the assessment order at page-1. Thus, on the very same accounts, which were produced by the assessee before the Assessing Officer at the time of original assessment, the Assessing Officer found that that the W.D.V. of the Shed and building was at Rs.38,19,496/- as on 27.9.2005 in terms of schedule-IV of the audited final account, whereas the same block of asset has been taken at an enhanced figure of Rs.86,29,724/- as on 28.9.2005 as per schedule 3A of the final of account of the succeeding entity. Thus, no new material came to the knowledge of the Assessing Officer after passing of the original assessment order, which showed that income chargeable to tax has escaped assessment.

Thus, the forming of the reasons to believe that income has escaped assessment on the very same set of facts, which were before the Assessing Officer during the course of original assessment amounts to change of opinion in view of the decision of Hon'ble Supreme Court in the case of Kelvinator of India Ltd., (supra). The relevant observations of the apex Court are as under:

"On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the- Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. **Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to reassess. But re-assessment has to be based on fulfillment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief."**

7. Therefore, respectfully following the same, we hold that the reopening of assessment is bad in law and consequently we cancel the reassessment order u/s.147 of the Act dated 30.11.2011.

8. As we have cancelled the reassessment order u/s.147 of the Act, other grounds on merits have become infructuous and hence, not adjudicated upon.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 23 /05/2018

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

sd/-

(N.S Saini)
ACCOUNTANT MEMBER

Ranchi; Dated /05 /2018
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Indico Motors Pvt Ltd., M-25,(P) & 26 (P) IVth Phase Adityapur Industrial Area, Ghamaria, Jamshedpur
2. The respondent: DCIT, Circle-1, C.H. Area, Jamshedpur
3. The CIT(A), Jamshedpur
4. Pr. CIT, Jamshedpur
5. DR, ITAT, Ranchi
6. Guard file.
//True Copy//

BY ORDER,

SR.PS, ITAT,
CAMP AT RANCHI