

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No.5302/Del/2014  
(ASSESSMENT YEAR 2005-06)**

DCIT, Circle-9(1), New Delhi.	Vs.	M/s SPL Industries Ltd. C-2/54, 5 <sup>th</sup> Floor, Rajasthali Apartments, Pitam Pura, Delhi-110 034.  PAN –AAACS 0343R
<b>(Appellant)</b>		<b>(Respondent)</b>

**Cross Objections No.119/Del/2015  
Arising out of ITA No.5302/Del/2014  
(ASSESSMENT YEAR 2005-06)**

M/s SPL Industries Ltd. C-2/54, 5 <sup>th</sup> Floor, Rajasthali Apartments, Pitam Pura, Delhi-110-034.  PAN –AAACS 0343R	Vs.	DCIT, Circle-24(1), New Delhi.
<b>(Cross Objectors)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. Prakash Dubey, Sr. DR</b>
Respondent by	<b>Sh. Anshul Mittal, CA &amp; Sh. Divesh Kalra, CA</b>
Date of Hearing	<b>27.01.2021</b>
Date of Pronouncement	<b>29.01.2021</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

ITA No.5302/Del/2014 is the Department's appeal against order dated 02.07.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-12, New Delhi {CIT (A)} for Assessment Year 2005-06 whereas Cross Objection No.119/Del/2015 has been preferred by the assessee..

2.0 The brief facts of the case are that the return of income was filed declaring an income of Rs.8,84,23,980/-. Subsequently, the assessment was completed an income of Rs.9,59,45,806/- u/s 143(3) of the Income tax Act, 1961 (hereinafter called 'the Act') on 26.12.2007. Thereafter, a notice u/s 148 of the Act was issued on 02.11.2011 after recording of reasons. In response to the said notice, the assessee submitted that the original return of income filed by the assessee may be treated as the return filed in compliance of notice issued u/s 148 of the Act. The reasons recorded for the re-opening are as under:

*“During the year, the assessee has claimed an amount of Rs.2,05,16,000/- for running and maintenance of foreign office. This expenditure is not allowable as per the provisions of the Act and therefore, should have been added to the income of the assessee.*

*Further, the assessee has claimed an expenditure of Rs.4,32,39,948/- being Quota Expenses. This expenditure being in the nature of giving enduring benefit to the assessee should have been treated as capital expenditure and the added to the income of the assessee.*

*In addition to the above, while calculating the taxable income an income an amount of Rs.1,16,32,526/- relating to advance recoverable by way of income from financial transaction has not been included by the assessee.*

*The escapement of income has been account of failure on the part of the assessee to truly and fully disclose all the material facts necessary for assessment. In view of the above, I have reason to believe that an income of Rs.7,53,88,474/- has escaped assessment within the meaning of section 147 of the IT Act, 1961.”*

2.1 The assessee objected to the reopening but the objections were not found acceptable by the Assessing Officer and the assessment was completed at an income of Rs.17,13,34,280/- after making total addition of Rs.7,53,88,474/- i.e., on account of all the three issues mentioned in the reasons as reproduced above.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority challenging the assumption of jurisdiction u/s 148 of the Act and also challenged the additions on merits. The Ld. CIT (A) deleted all the three additions on merits and also observed that in view of all the additions having been deleted, there was no necessity to adjudicate on the legal issue of validity of assumption of jurisdiction for re-assessment.

2.3 Aggrieved, the Department is now in appeal before this Tribunal challenging the deletion of additions on merits whereas the assessee has filed memorandum of Cross Objections in which the assumption of jurisdiction u/s 148 of the Act has been challenged. The respective grounds raised by both the parties are as under:

ITA No.5302/Del/2014 by the Department

*“1. The Ld. CIT (A) erred in deleting the addition made by the AO on account of running and maintenance expenses of foreign office amounting to Rs.2,05,16,000/-.*

*2. The Ld. CIT (A) has erred in deleting the addition made by the AO on account of quota expenses amounting to Rs.4,32,39,948/-.*

3. The Ld. CIT (A) has erred in deleting the addition of Rs.1,12,76,154/- made by the AO on account of advance recovery by way of income from financial transaction amounting to Rs.1,16,32,526/-.

4. The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal.”

Cross Objections No.119/Del/2015 by the assessee

That the Ld. CIT (A)-XII, New Delhi {CIT A} erred in law in not adjudicating on legality of reopening the assessment raised in Ground No.1 to 3 before her while deciding the appeal. The Ground No.1 to 3 as raised before Ld. CIT (A) are as under:

1. That the Ld. Deputy Commissioner of Income Tax (AO) has erred on facts and in law in issuing the notice u/s 148 of the Act and reopening the assessment relating to AY 2005-2006.
2. That the Order of Ld. Deputy Commissioner of Income Tax (AO) passed u/s 147/143(3) of the Act, making the additions of Rs.7,53,88,474/-, is against law and facts of the case, therefore, liable to be quashed.
3. That the AO erred in law in passing the non-speaking and non-reasoned order without discussing the issues in detail and without discussing the reasons for making the additions.”

3.0 The Ld. Authorized Representative (AR) argued that the re-opening had been done after a period of four years and that there was no recording by the Assessing Officer that there had been any

non-disclosure of material relevant facts by the assessee with respect to the issues which were the subject matter of re-opening. The Ld. Authorized Representative also submitted that the issues which were the subject matter of the reopening were duly disclosed in the audited financial statements of the assessee. It was also submitted that the issue pertaining to foreign office expenses had arisen after an audit objection being raised by the internal audit party of the Department and, therefore, the reopening was bad in law.

4.0 Per contra, the Ld. SR. Departmental Representative (DR) submitted that the assumption of jurisdiction u/s 148 was valid in law.

5.0 Arguing for the Department's appeal, the Ld. Sr. DR placed extensive reliance on the findings and observations of the Assessing Officer on all the three issues and vehemently argued that the Ld. CIT (A) had erred in deleting the additions while ignoring the observations of the Assessing officer.

6.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the impugned order, the submissions made by the assessee and the paper book filed by the assessee. As far as the appeal of the Department is concerned, it is seen that Ground No.1 of the Department appeal challenges the action of the Ld. CIT (A) in deleting the addition amounting to Rs.2,05,16,000/- pertaining to running and maintenance expenses of foreign office. It is seen that these foreign expenses have been debited by the assessee company to the Profit & Loss Account under the head manufacturing, administrative and other expenses under the sub-head miscellaneous expenditure in Schedule-13 of the audited accounts. These expenses are in the nature of payments made to assessee's foreign representative in USA, Mr. Danny Williams who has been claimed to be looking after the interest of the company in the USA. It has been claimed by the assessee that Mr. Danny Williams was performing functions relating to sales promotions, procuring orders, providing assistance in logistic issues, assistance in inspection of company's products, assistance in collection of payments and

advising etc. It has further been claimed that all the payments made to Mr. Danny Williams were made in foreign currency as per the norms of RBI through State Bank of India. The Ld. CIT (A), while deleting the addition, has noted that the Assessing Officer has not doubted the genuineness of the expenditure incurred and the Ld. CIT (A) has also noted that the expenditure incurred is duly supported by documentary evidences like vouchers, Bank Advices, and correspondences. A perusal of the assessment order passed u/s 147 of the Act shows that the Assessing Officer has based the addition merely on the reasons recorded for reopening wherein it has been stated that this expenditure was not allowable as per the provisions of the Act. How and why this expenditure was not allowable has not been specified by the Assessing Officer. Before us also, the Ld. Sr. DR could not point out any perversity in the findings of the Ld. CIT (A) on the issue. We also note that this amount has been duly disclosed in the audited financial statements and no fresh material on the issue has been brought on record by the Assessing Officer. Undisputedly, the reassessment is beyond the period of four years and, therefore, it was incumbent upon the

Assessing Officer to point out specifically as to how the escapement of income from tax on this issue could be attributed to any fault on the part of the assessee. Therefore, in view of the categorical findings recorded by the Ld. CIT (A) that no adverse inference was drawn by the Assessing Officer and that the payment was duly supported and evidenced by documentary evidences and that the genuineness of expenditure incurred was not doubted by the AO, we find no reason to interfere with the findings recorded by the Ld. CIT (A) and, we upheld the same.

6.1 Ground No.2 of the Department's appeal pertains to deletion of addition amounting to Rs.4,32,39,948/- pertaining to quota expenses. It is seen that the assessee company is into exports of Garments manufactured by it. The quota was allotted on year to year basis and, therefore, it had no enduring benefit. While deleting the addition, the Ld. CIT (A) has noted that the assessee company had been incurring quota expenses from year to year and in Assessment Year 2004-05 i.e. the immediately preceding assessment year, the assessee company had incurred quota expenses amounting to Rs.1,85,92,535/- and since this

expenditure did not result in creation of any tangible or intangible assets, it was necessarily incurred as part of the profit earning process and was, therefore, revenue in nature. In the Assessment Order passed u/s 147 of the Act, the Assessing Officer has not pointed out any reason for treating this expenditure as capital expenditure but has only as referred to the reasons recorded for reopening and has disallowed the same. Even the Ld. SR. DR could not point out any perversity in the findings of the Ld. CIT (A) on the issue. The Ld. CIT (A) has also placed reliance on a judgment of the Hon'ble Madras High Court in the case of M.S. Kandappa Mudaliar vs. CIT reported 32 ITR 313, wherein it was held that the expenditure for acquisition of quota rights is not a capital expenditure. Therefore, on this issue also, the contention of the Department fails and the order of the Ld. CIT (A) is upheld.

6.2 The third issue under challenge by the Department is deletion of addition of Rs.1,12,76,154/- on account of 'advance recoverable by way of income from financial transactions'. The Ld. CIT (A) has noted that the amount debited to 'income from financial transactions receivable' was in respect of income already credited

under the head 'income from financial transactions' amounting to Rs.1,12,76,154/- shown under Schedule -12 of the audited annual accounts under the Main Head "Exchange Fluctuations" and under the head "Misc. Receipts" amounting to Rs.10,58,343/- shown under the Main Head "Other Income" under Schedule-12 of audited accounts. The Ld. CIT (A), while deleting the disallowances, has noted that this was a case of double taxation of income as the same was already part of the profit shown by the assessee in its income tax return and was again added back in the order passed in reassessment proceedings. The Ld. Sr. DR could not point out any perversity in the finding of the Ld. CIT (A) that this amount had come to be taxed twice. Accordingly, on this issue also we find that there is no reason to interfere with the findings of the Ld. CIT (A) and we uphold the same.

7.0                    In the result, the appeal of the Department stand dismissed.

8.0                    Since, we have upheld the order of the Ld. CIT (A) on all the three issues under challenge in the Department's appeal and have dismissed the appeal of the Department, there is no

necessity for us to adjudicate on the Cross Objections filed by the assessee challenging the assumption of jurisdiction u/s 147/148 of the Act. Accordingly, the Cross Objections of the assessee is dismissed as having become *in fructuous* in view of the dismissal of the Department's appeal.

9.0 In the final result, the appeal of the Department as well as the Cross Objections of the assessee stand dismissed.

Order pronounced on 29<sup>th</sup> January, 2021

Sd/-

**(DR.B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

Dated: 29/01/2021

PK/PS

Copy forwarded to:

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

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI