

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**AND**

**SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.230/DEL/2021  
[Assessment Year: 2010-11]**

Hallex Applied Power P. Ltd. 48, Gurudev Apartments, R.C. Marg, Chembur Naka, Chembur, Mumbai-400071	Vs	DCIT-11(1), Room No.247, Central Revenue Building, I.P. Estate, New Delhi-110002
<b>PAN-AACCN1424A</b>		
Assessee		Revenue

Assessee by	Shri Venugopal Nair, CA
Revenue by	Shri Amit Katoch, Sr.DR

<b>Date of Hearing</b>	<b>15.04.2024</b>
<b>Date of Pronouncement</b>	<b>08.05.2024</b>

**ORDER**

**PER BRAJESH KUMAR SINGH, AM,**

This appeal by the assessee is directed against the order of the  
ld. Commissioner of Income Tax (Appeals)-4 (in short 'ld. CIT(A)),  
New Delhi, dated 28.10.2019 pertaining to Assessment Year 2010-  
11.

2. The grounds of appeal raised by the assessee reads as under:-

*"1. The Ld CIT(A) erred in facts, circumstances of the case and in law in holding assessment of other income without assessing income, precisely for assessing which, re-assessment had been resorted to, to be as per law.*

*2. Without Prejudice, The Ld CIT(A) erred in facts, circumstances of the case and in law in holding that*

*reopening of the assessment U/S 147, by the AO assuming at certain percentage of profit that appellant might have earned is synonymous to reason to believe*

*3. Without Prejudice to the above, The Ld CIT(A) erred in facts, circumstances of the case and in law in holding that the AO has disposed off the objections when factually the AO had disposed off all the objections*

*4. Without prejudice, The Ld CIT(A) erred in facts, circumstances of the case and in law in denying the cost of sales offered in computation of income after accepting sales in same computation of income.*

*5. The Ld CIT(A) erred in facts, circumstances of the case and in law i denying expenses of the nature of interest & depreciation stating assessee did not earn business income after accepting sales as business income”.*

3. Brief facts of the case: In this case, the assessee did not file its return of income for the Assessment Year 2010-11. As per information received by the AO, regarding the turnover of the assessee company obtained from ITD and ITBA, it was gathered that during the Financial Year 2009-10 relevant to AY 2010-11, the assessee company had received interest income, contractual payments and fees for professional and technical services amounting to Rs.4,87,50,347/- from different entities/banks/persons, which according to the AO had escaped assessment. The AO issued notice u/s 148 dated 30.03.2017. In response, the assessee company filed a return of income on 05.10.2017 declaring income of Rs.68,76,640/-. The AO issued notice u/s 143(2) of the Act dated 11.10.2017 which was duly served upon the assessee. The AO noted that the assessee was engaged in the business of installation of generators on sites.

3.1. The reasons recorded by the AO for the issue of notice u/s 148 is reproduced under:-

Annexure 'A'

2

**Reasons recorded in the case of M/s Hallex Applied Power Pvt. Ltd - A.Y. 2010-11 for initiating proceedings u/s 147/148 of the Income- tax Act, 1961**

The return of income for the year 2010-11 has not been filed by the assessee company. Therefore, obviously no assessment u/s 143(3) for the AY 2010-11 has been made in this case. An information regarding turnover of the assessee company has been obtained from ITD & ITBA system, wherein it is seen that during the FY 2009-10 relevant to the AY 2010-11 the above mentioned assessee had received interest income, contractual payments and fees for professional and technical services amounting to Rs. 4,87,50,347/- from different parties / banks, on which TDS was deducted. Since, the assessee has received interest income, contractual and consultancy payments of Rs. 4,87,50,347/- from different parties / banks and assuming the net profit of 10% of gross receipts, it is apparent that the assessee was earning taxable income during the year under consideration. However, as per the ITD system and records the assessee has not filed any return of income for the year under consideration.

The assessee being a company, as per the provision of Section 139(1) of the I. T. Act it is mandatorily required to furnish its return of income or loss for every previous year under consideration and it was required to file the return for this year also, which inspite of having a turnover and consequent income has not filed return of income.

As per the provision of sub clause (a) to Explanation 2 of section 147 of IT Act, 1961, since the assessee has not furnished the return of income, it shall be deemed to be assessee whose income chargeable to tax has escaped assessment. The escapement of income has been clearly on account of failure on the part of the assessee company to furnish its return of income. Thus, it is a fit case for initiation of proceedings u/s 147 of the Income-tax Act, 1961.

Thus, in the light of aforesaid facts / documents, I have reason to believe that the income of the assessee company of A.Y. 2010-11 has escaped assessment.

Since more than four years have been elapsed from the end of the relevant A.Y. i.e. A.Y. 2010-11 necessary statutory approval u/s 151(1) of the IT Act may kindly be accorded to issue notice u/s 148 for the AY 2010-11 for the purpose of opening of the case u/s 147 of the IT Act, 1961. The limitation for issuing the notice is expiring on 31.03.2017.

Submitted for kind perusal and approval.

Dated: 27.03.2017

(Hardayal Meena)  
ITO, Ward 11(1), New Delhi

*[Signature]*

3.2. The assessee company objected to the reopening of the assessment u/s 147 of the Act, which was rejected by the AO by letter dated 06.11.2017.

3.3. The main thrust of the objection by the assessee company is that there is an assumption of net profit of the gross receipts, which

amounting to suspicion, which the AO wants to get clarified, which is antithesis to belief. The assessee company submits that reassessment for making enquiry or verification is not supported by law and relied upon the following case laws:-

1. Bhor Industries Ltd. v/s. ACIT - [(2004) 267 ITR 161 (Bom)]
2. Hindutan Lever Ltd. v/s. R. B. Wadkar, ACIT - [(2004) 268 ITR 332 (Bom)]
3. Bhogwati Sahakari Sakhar Karkhana Ltd. v/s. Dy. CIT [(2004) 269 ITR 186 (Bom)]
4. Ajanta Pharma Ltd. v/s. ACIT - [(2004) 267 ITR 200 (Bom)]
5. Grindwell Norton v/s. Jagdish Prasad Jabgid, ACIT - [(2004) 267 ITR 673 (Bom)]

3.4. The AO held that as per the provisions of section 139(1) of the Act, the assessee company was mandatorily required to furnish its return of income or loss for every previous year and by not doing so, there is failure on its part by not offering the taxable income by not furnishing the return of income and the income getting escaped assessment. The AO also noted the fact that the assessee company, in response to notice u/s 147 filed a return of income on 05.10.2017 offering total income of Rs.68,76,640/-, on which taxes amounting to Rs.21,24,882/- was paid which also establishes the belief that the income assessable to tax had escaped assessment. The AO also took note of the fact that the reasons submitted for not filing the return by the assessee company vide letter dated 30.11.2017 was not convincing as according to the AO only the promoter was not well but the other employees were working and the assessee company had incurred expenses on their salary and professional charges.

The AO also held that the assessee's belief that if there was no income, filing of return of income was not necessary, was not acceptable.

4. Against the above order, the assessee appealed before the Ld. CIT(A).

5. The Ld. CIT(A) rejected the contention of the assessee by observing as under:-

*6.1 Ground No. 1 to 4: Validity of proceedings us 147 of the Act.*

*6.1.1 I have considered the grounds raised by the appellant and the submission filed on record.*

*6.1.2 The appellant submitted that no 'reason to believe' was recorded by the AO in actual as the same was 'reason to suspect'. I have considered the 'reason to believe' recorded by the AO. As per the 'reasons to believe', the AO has initiated the reassessment proceedings, as the appellant has not filed the return of income, even though, the information from ITD and ITBA systems shows that the appellant company has earned interest income, contractual payments and fees for professional and technical services from different parties on which TDS was deducted.*

*6.1.3 While recording the 'reasons to believe' the AO assumed that 10% profit must have been earned by the appellant on the undisclosed revenue on which TDS was also deducted.*

*6.1.4 The appellant before the AO as well as before me submitted that since the AO assumed the profitability to be 10%, he had 'reason to suspect' and not 'reason to believe'. The appellant merely 'cherry picked' one observation of the AO and is only harping on the said fact, without considering that the appellant company at the first place did not file the return of income, inspite of having numerous transactions.*

*6.1.5 I have further considered the finding of the AO, wherein, the AO has dismissed the objection of the assessee.*

*6.1.6 In view of my independent finding as aforesaid and keeping in consideration the detailed finding of the AO, the objection of the appellant is dismissed.*

*6.1.7 Furthermore, the assessee has argued that the AO can only do the assessment with regard to the reasons for which the proceedings were initiated. In this, scenario, it is noted that the assessee didn't file the return of income, inspite of the fact that substantial revenue was earned by appellant company on which TDS was also deducted. Thus the reassessment proceedings were initiated to assess the income of the appellant which has escaped assessment on account of non-filing of return of income. The AO has made the addition only with respect to the*

*expenditure. Thus, the additions made by the AO are within the ambit of the reasons recorded. These grounds of the appeal are dismissed.”*

6. Against the order of the Ld. CIT(A), the assessee is in appeal before us.

7. The AR in its written submission dated 19.02.2019 filed before the learned CIT(A), New Delhi, (page-25 and 26 of the paperbook), which was reiterated before us submitted as under:-

*Ground No. 1- Resorting to assessment u/s 147 for verifying assumption of 10% of Net Profit: From the reasons recorded. it may kindly be observed that, the AO assumes that the appellant is having a net profit of 10% of gross receipts. Assumption is not synonymous to Belief. There is no basis either in the form of comparable cases or information from any source about this 10% net profit. It is only his personal perception. Hence it is humbly submitted that with-out having belief, but only an assumption and to verify for which resorting to re-opening u/s 147 is not supported by law*

*Ground 2: Without Prejudice, to ground 1- Assessment U/s 147 without disposing off all objections The AO while disposing off objections completely side steps our objection on his baseless assumption of an adhoc 10% NP, assumption being not the same as belief, cannot resort to re-assessment for verifying his assumption. The AO also did not even attempt to distinguish the 5 decisions of Bombay High Court, that the appellant had relied on to object to resorting to action U/S 147 He had relied on various decisions, the crux of which are AO had information,-only the sufficiency of which were being debated and court had held in favour of department. Again the decisions relied on by AO were about AO having prima facie material to give belief of an escapement of income. But since in our case, there was no information or prima facie material to give any basis of 10% NP on gross receipts, which, formed the basis for re-opening, it is our humble submission that the AO carried out re-assessment without disposing off our specific objections.*

*Ground 3: Without Prejudice, to above - Assessment U/s 147 without assessing income, assessing for which The AO had*

*resorted to re-opening. The AO had re-opened the assessment, due to his purported belief that assessee had 10% NP on gross receipts - i.e Rs 48 75 034/-. The appellant filed ROI with taxable income of Rs 6876640/-, The AO did not make addition of his 10% NP, for assessing which he invoked 147. Thus the moment he could not make assessment of the alleged escaped income on account of his belief of 10% NP on gross receipts, he is precluded from making assessment by making addition of any other item as per decision of Jurisdictional Delhi High Court in Ranbaxy Laboratories Ltd Vs CIT.”*

7.1. The learned DR relied upon the orders of the authorities below.

8. We have considered the submissions of the assessee company and the facts of the case. In this case, it is undisputed that the assessee company did not file its return of income for AY 2010-11, which as per the provisions of section 139(1) of the Act, it was mandatorily required to do so. The AO noted this fact and about the turnover of Rs.4,87,50,347/-, which according to the AO had escaped assessment on which, he assumed the net profit being 10% of gross receipts. This assessment of the AO and the quantification of the escaped income in the given facts of the case amounts to reason to believe and not reason to suspect as contended by the appellant company. It is also to be noted that in response to the notice u/s 148 of the Act, the assessee company filed the return of income amounting to Rs.68,76,644/- and also paid taxes amounting to Rs.21,24,882/-. As regards the contention of the assessee that assessment of other income without assessing income, precisely for assessing for which reassessment had been resorted was not correct as per law, the same is also not acceptable as the estimation of 10% of the gross receipts made by the AO was for the purpose of quantification of the escaped income and even though the word used by the AO is ‘assuming’

but in the given facts of the case, it cannot be said to be an unreasonable assumption. The AO was conscious of the fact that in this case, the assessee company had not filed its return of income and there was an escapement of turnover amounting to Rs.4,87,50,347/-, the profit of which he wanted to assess, for which an assumption of 10% of the escaped turnover amounting to Rs.4,87,50,347/- was made by him in the reasons recorded and it did not mean that the AO only wanted to assess 10% of the escaped turnover as contended by the assessee. Therefore, the contention of the assessee company in ground no.1, 2 and 3 challenging the reopening of the assessment and the AO having not made addition of his 10% NP, for which, he invoked 147, while making other additions are not accepted and the same are rejected. Ground nos.1, 2 and 3 of the appeal are dismissed.

9. Ground no.4 and 5 of the appeal are reproduced again for ready reference:-

*4. Without prejudice, The Ld. CIT(A) erred in facts, circumstances of the case and in law in denying the cost of sales offered in computation of income after accepting sales in same computation of income.*

*5. The Ld. CIT(A) erred in facts, circumstances of the case and in law in denying expenses of the nature of interest & depreciation stating assessee did not earn business income after accepting sales as business income”.*

9.1. In this regard, the submissions of the assessee vide letter dated 19.02.2019 (page 25 and 26 of the paper book), which was reiterated before us, are reproduced as under:-

*“Ground 4: Without Prejudice, above- Not allowing costs attributable to additional sales offered in ROI and accepted in assessment: Though the appellant had not credited sales and debited corresponding costs in the P&L account, it offered the sales and claimed costs attributed to the sales in return of income. It is an admitted fact that one cannot have sales without costs. The AO Accepted the sales but did not give benefit of costs due to a typographical initially committed by appellant about the costs - Used the term Bad debts instead of costs - Later it was also clarified and also shown that no bad debts have been claimed. Despite AO seeing that what is claimed is only the costs attributable to sales (break up of costs were also provided), and that no bad debts have been claimed, he holding on to the erroneous terminology used by the appellant, denied deduction of costs of sales from sales. If the stand of AO is given credence, then, it would lead to a situation where assessee is expected to make 100% NP .*

*Ground 5: Disallowance of entire expenses debited to P&l Account: The AO disallowed entire expenses debited to P&L Account except depreciation, stating that expenses claimed by assessee company cannot be allowed in the absence of any business income. This assertion of the AO is factually incorrect as in the Return of Income, the assessee had indeed offered business income of 67.45 lacs. The schedule to the Profit & Loss Account furnished to AO gave full break up of these expenses. He never ever raised any question on these nor issued any show cause notice before making addition. Since the addition has been made on a factually incorrect observation that no business income has been offered, kindly direct deletion of these additions.”*

9.2. The assessee company relied upon the computation of income (page no.8 and 9 of the paper book), which is reproduced as under:-

Name of Assessee	HALLEX APPLIED POWER PRIVATE LIMITED		
Address	A-49 MATHURA ROAD MOHAN COOPERATIVE INDL AREA NEW DELHI DELHI 110044		
E-Mail	dasravi14@gmail.com		
Status	Company(Domestic)	Assessment Year	2010-2011
Ward	ward 12(1)	Year Ended	31.3.2010
PAN	AACCN1424A	Incorporation Date	08/07/2005
Residential Status	Resident		
Bank Name	MICR:110240009, A/C NO:00892560000575 ,Type: Current		

**Computation of Total Income**

<b>Income from Business or Profession (Chapter IV D)</b>	<b>6745714</b>
Profit as per Profit and Loss a/c	-41651549
<u>Add:</u>	
Depreciation Debited in P&L A/c	41035387
Amount of Income not reflected in P&L account, now offered as income	48621071
	<hr/>
Total	48004909
<u>Less:</u>	
Expenses pertaining to amount of income which not reflected earlier in P&L account, and being offered now	26120575
Depreciation as per Chart u/s 32	<u>15138620</u>
	<hr/>
	41259195
	6745714
Profit as per Profit and Loss a/c	0
<b>Income from Other Sources (Chapter IV F)</b>	<b>130930</b>
Interest on F.D.R.	<u>130930</u>
	<hr/>
<b>Gross Total Income</b>	<b>6876644</b>
	<hr/>
<b>Total Income</b>	<b>6876644</b>
Round off u/s 288 A	<b>6876640</b>
Tax calculated @ 15% on Book Profit is Rs. 0	
Tax Due	2062992
Educational Cess	<u>61890</u>
	2124882
T.D.S.	<u>2361261</u>
	-236379
	<hr/>
<b>Refundable (Round off u/s 288B)</b>	<b>236380</b>
<b>T.D.S./ T.C.S. From</b>	
Non-Salary(as per Annexure)	2361261
Due Date for filing of Return September 30, 2010	
Due date extended to 15/10/2010 225/72/2010/ITA.II DT. 27.9.2010	

*Benu*

9

NAME OF ASSESSEE : HALLEX APPLIED POWER PRIVATE LIMITED A.Y. 2010-2011 PAN : AACCN1424A

**Details of Depreciation**

Particulars	Rate	Opening	More Than 180 Days	Less Than 180 Days	Total	Sales	Balance	Depreciation (Short Gain)	WDV Closing
Plant	15%	2268590	0	0	2268590	0	2268590	340289	1928301
Plant	30%	48353743	0	0	48353743	0	48353743	14506123	33847620
Plant	60%	415878	0	0	415878	0	415878	249527	166351
Furniture and Fitting	10%	426811	0	0	426811	0	426811	42681	384130
<b>Total</b>		<b>51465022</b>	<b>0</b>	<b>0</b>	<b>51465022</b>	<b>0</b>	<b>51465022</b>	<b>15138620</b>	<b>36326402</b>

**Details of T.D.S. on Non-Salary**

S.No	Name of the Deductor	Tax deduction A/C No. of the deductor	Amount Paid/credited	Total Tax deducted	Amount out of (5) claimed for this year
1	BHARTI INFRASTRUCTURE LIMITED	DELBO9347C	809690	18380	18380
2	GAUTAM FILLING STN.	DELG00836D	232109	23211	23211
3	GTL INFRASTRUCTURE LIMITED	MUMG10575F	10850	217	217
4	HDFC BANK LIMITED	MUMH03189E	11675	1878	1878
5	ICICI BANK LIMITED	DELI03780A	119255	11926	11926
6	INDUS TOWERS LIMITED	AHMI01231G	380141	8614	8614
7	INDUS TOWERS LIMITED	BLRI03870G	3199600	63992	63992
8	INDUS TOWERS LIMITED	CHNI01057A	420804	9534	9534
9	INDUS TOWERS LIMITED	JPRI01549C	372233	42172	42172
10	INDUS TOWERS LIMITED	MRTI00795E	762877	86434	86434
11	INDUS TOWERS LIMITED	PNEI05443E	16886173	1466064	1466064
12	INDUS TOWERS LIMITED	RTKI01234C	23851050	477021	477021
13	INTEC CAPITAL LIMITED	DELI04630D	113783	25783	25783
14	MOTOROLA INDIA PRIVATE LIMITED	CHEM09604A	792689	79269	79269
15	NORTEL NETWORKS INDIA PRIVATE LIMITED	DELN03697B	332096	37626	37626
16	QUIPPO TELECOM INFRASTRUCTURE PRIVATE LIMITED	DELQ00415C	456974	9140	9140
	<b>TOTAL</b>		<b>48751999</b>	<b>2361261</b>	<b>2361261</b>

*Bangal*

9.3. It is contended by the AR that an amount of Rs.2,61,20,575/- was not allowed by the AO on the ground that the AO held it to be a bad debts, whereas, the assessee company submitted that it was a typographical error and that the amount of Rs.2,61,20,575/- was the cost incurred in realizing the sales. Further, the AO did not allow the expenditure under the head 'other expenses' amounting to Rs.10,54,712/- on the ground that these expenses cannot be allowed in the absence of any business income, whereas, the assessee submits that it had offered business income amounting to Rs.67.45 lakhs and the schedule to the profit & loss account furnished to the AO gave full break-

up of these expenses. The AR further submitted that the AO never ever raised any question on these nor issued any show-cause notice before making the addition. It was further submitted that since the addition has been made on a factually incorrect observation that no business income has been offered, the addition may be deleted.

10. Before the ld. CIT(A), the assessee gave the following break up of expenditure of Rs.2,61,20,575/- as under:-

(i) cost of stock in hand – Rs.1,24,32,322/-

(ii) Payment to Asian Power Controls Ltd. -Rs.1,36,88,253/-

10.1. However, the learned CIT(A) rejected the claim on the ground that the assessee did not furnish any invoices, bills, vouchers, payments details pertaining to the expenses incurred. The learned CIT(A) also observed that if the cost included stock value, then why the balance-sheet and profit & loss account shows the closing stock at Rs.1,24,32,322/-. He also noted that the same stock cannot be stated to be consumed on one hand and on the other hand cannot be stated to be still lying. With regard to the expenditure of Rs.1,36,88,253/- being amount paid to M/s Asian Power Controls Ltd., the learned CIT(A) held that the assessee did not furnish any invoices, bills, vouchers, payments details pertaining to the expenses incurred to show that payment was genuinely made and it was an expenditure. Regarding the expenses of Rs.10,23,375/- in P & L Account (mentioned wrongly as Rs.10,54,712/- in the assessment order), the learned CIT(A) held that the assessee failed to produce the

documentary evidence and proof of expenses claimed and other expenses claimed in P & L Account and hence rejected the claim of the assessee.

11. Against the above order, the assessee is in appeal before us.

12. The ld. Counsel for the assessee reiterated its submissions as before the ld. CIT(A)

13. 11. The learned DR relied upon the orders of the authorities below.

14. We have considered the submissions of the assessee company and the facts of the case. There is a merit in the contention of the assessee company that the amount of Rs.2,61,20,575/-which was claimed to be the cost incurred in respect of sales receipts and not bad debts, was never examined by the AO on the ground that the assessee was not clear itself in claiming the deduction even though the assessee company claimed before the appellate proceedings that the break up of the cost were provided to the AO and it was also asserted by the assessee company that no bad debts have been claimed. The contention of the assessee that if the stand of the AO is given credence, then it would lead to a situation, where assessee is expected to make 100% net profit needs verification.

15. The learned CIT(A) rejected the claim on the ground that no evidence of the expenses claimed regarding the opening stock of Rs.1,24,32,322/- was furnished as well as no details of payments of Rs.1,36,88,253/- being amount paid to M/s Asian Power Controls Ltd. was furnished. However, on perusal of the bank statements, as appearing

on pages No.16 to 24 of the paper book, which was also filed before the AO, it is seen that on page no.18 of the paper book that the following transfers have been made to M/s Asian Power Controls Ltd.

(i) 08.01.2010-Rs.8,50,055/-

(ii) 11.01.2010-Rs.65,00,055/-

(iii) 19.01.2010-Rs.45,00,055/-

Total:-Rs.1,18,50,165/-

16. Thus, it is seen that out of the expenses claimed amounting to Rs.1,36,88,253 paid to M/s Asian Power Controls Ltd., evidence at least to the extent of Rs. 1,18,50,165/-/- is appearing in the account of the assessee company which was neither examined by the AO or the learned CIT(A). Further, there are various other debits in the bank account of the assessee, which also not examined by them. The assessee company submitted before us that the details of the expenses claimed are available with them and it was also submitted before the AO as well as the Ld. CIT(A), which was not examined by them. Further, it is also to be noted that the main promotor was suffering from cancer during that year which ultimately lead to his demise in 2015. Therefore, in the interest of justice, the assessee company deserves one more chance to explain the facts properly before the AO on the merits of the addition/disallowances made in the assessment order. Thus, keeping in view totality of facts and circumstances of the case and in the interest of justice, we restore this issue to the file of the AO for *de novo* assessment. Needless to say that the

assessee be given reasonable opportunity of being heard. Therefore, ground nos. 4 & 5 are set-aside to the file of the AO for *de novo* assessment.

17. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 8<sup>th</sup> May, 2024.

**Sd/-**  
**[CHALLA NAGENDRA PRASAD]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[BRAJESH KUMAR SINGH]**  
**ACCOUNTANT MEMBER**

**Dated** 08.05.2024.

*SJK*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi