

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

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1491/KOL/ 2014
Assessment Year: 2008-2009**

***M/s. Controlla Electrotech Pvt. Limited,.....Appellant
Y-10, Sector-V, EP Block,
Electronic Complex, Salt Lake City,
Kolkata-700 091
[PAN: AABCC 1029 K]***

-Vs.-

***Deputy Commissioner of Income Tax,.....Respondent
Central Circle-XXI, Kolkata***

Appearances by:

*Smt. Parnashree Banerjee, Advocate, for the assessee
Md. Ghayas Uddin , JCIT, D.R., for the Department*

Date of concluding the hearing : March 31, 2017

Date of pronouncing the order : March 31, 2017

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Central-II, Kolkata dated 27.06.2014.

2. The assessee in the present case is a Company, which is engaged in Real Estate business. The return of income for the year under consideration was filed by it on 29.09.2008 disclosing total income at 'NIL'. Although the said return was initially processed by the Assessing Officer under section 143(1), the assessment for the year under consideration was subsequently re-opened by him by issuing a notice under section 148 on 26.03.2013 after recording the reasons. In the assessment completed under section 147/144 vide an order dated 24.03.2014 in pursuance of the said notice, a sum of Rs.37,282/- was brought to tax by the Assessing Officer in the hands of the assessee on

account of unaccounted commission paid to one Shri Kejriwal for providing accommodation entries.

3. Against the order passed by the Assessing Officer under section 147/144, an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging therein the validity of assessment made by the Assessing Officer as well as disputing the addition of Rs.37,282/- made therein on merit. The Id. CIT(Appeals), however, did not find merit in the said appeal and dismissed the same by following orders of his predecessor in assessee's own case for the immediately preceding two years, i.e. A.Y. 2006-07 and 2007-08, wherein the assessments were re-opened on identical grounds and similar addition was made to the total income of the assessee. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As regards the preliminary issue raised in this appeal of the assessee challenging the validity of assessment made by the Assessing Officer under section 147/144, the Id. counsel for the assessee has submitted that a similar issue was involved in the case of the assessee for A.Y. 2006-07 and 2007-08, wherein the assessments were reopened by the Assessing Officer after recording the identical reasons and the Tribunal vide its common order dated 09.09.2014 passed in ITA Nos. 1443 & 1444/KOL/2014 has decided the same in favour of the assessee holding that the reopening itself being bad in law, the assessments made by the Assessing Officer for A.Y. 2006-07 and 2007-08 were invalid. She has also placed on record a copy of the said order and perusal of the same shows that a similar issue involved in assessee's own case for A.Ys. 2006-07 & 2007-08 has been decided by the Tribunal in favour of the assessee for the following reasons given in paragraph no. 6 & 6.1 of its impugned order:-

"6. We have considered the rival submissions. A perusal of the assessment order, wherein the reasons had been recorded for reopening, clearly shows that the reopening has been done only

on the basis of the statement and disclosure petition filed by Shri Suresh Kejriwal. This so-called statement and disclosure are the foundation along with the appraisal report. At the outset, a perusal of the statement from Shri Kejriwal shows that this is the statement taken in the course of survey. This statement loses its evidentiary value in so far as the statement recorded in the course of survey has no conclusive evidentiary value. It is not recorded under oath. No oath has been administered. The very foundation of the appraisal report and the reopening fail because of this primary defect. Assuming, we are giving evidentiary value to this statement, in question no.3 in the statement as has been specified by the Id. CIT,DR, list of the main parties to whom the said accommodation entries had been provided by Saket Vinimay.Pvt. Ltd. has been listed out 13 in number. When these names are compared with the chart in the assessment order, which is specifying the reasons for reopening, shows that many of the names in the list tallied with that in the chart but the assessee's loan amount is the highest. Obviously, assessee's name must be the main person that Shri Suresh Kejriwal would have remembered, as the assessee is the person to whom such a huge loan had been extended. But the assessee's name is conspicuous by its absence in that list. Thus, the reference to the statement recorded from Shri Kejriwal for the purposes of reopening in the case of the assessee again fails without a foundation, as the assessee's name is nowhere referred to in the statement recorded on the confessional disclosure. Similarly, even if an attempt to protect the reopening is made by reference to the disclosure made by Shri Kejriwal even there, there is no reference to the assessee. Thus, prima facie, there is no live link nor direct nexus to the statement of Shri Kejriwal of having provided any accommodation entry to the assessee before us. On this ground itself, the reopening is liable to be held to be bad in law and we do so.

6.1. Coming to the improvement to the reasons recorded, as has been alleged by the Id. AR by referring to the letter of the AO dated 06.12.2013, we are unable to give any support to the reopening in so far as such computer extract is not found in the assessment records nor has it been placed before us. Even otherwise, the decision of the Hon'ble Kolkata High Court in the case of Equitable Investment Co. (P) Ltd. referred to supra, clearly holds in favour of the assessee in so far as only such reasons recorded for obtaining the sanction for the purposes of reopening is the only document which can be considered. This view is also supported by the decision of the Hon'ble Supreme Court in the case of Lakhmani Mewal Das, referred to supra. Thus, on all the above grounds, it is held that reopening of assessment in the case of the assessee for both the assessment years stand cancelled and consequently, the assessment orders

passed for both the assessment years as a consequence of such reopening also stand cancelled”.

5. The preliminary issue involved in the case of the assessee for A.Y. 2008-09 thus is squarely covered in favour of the assessee by the order of the Division Bench of this Tribunal dated 09.09.2014 passed for A.Y. 2006-07 and 2007-08 and this position clearly evident from the relevant record placed before me is not disputed even by the ld. D.R. I, therefore, respectfully follow the said decision of the Tribunal and cancel the assessment made by the Assessing Officer under section 147/144 for the year under consideration by treating the same as invalid.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on March 31, 2017.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 31st day of March, 2017

Copies to : (1) ***M/s. Controlla Electrotech Pvt. Limited,
Y-10, Sector-V, EP Block,
Electronic Complex, Salt Lake City,
Kolkata-700 091***

(2) ***Deputy Commissioner of Income Tax,
Central Circle-XXI, Kolkata***

(3) ***Commissioner of Income Tax (Appeals), Central-II,
Kolkata;***

(4) ***Commissioner of Income Tax- ,***

(5) ***The Departmental Representative***

(6) ***Guard File***

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By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***