

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

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 7784/Del/2018
Assessment Year: 2009-10

SWARAN ASSOCIATES PVT. LTD.
B-122, PUSHPANJALI ENCLAVE,
PITAMPRUA,
DELHI - 34
(PAN: AAKCS7604K)
(ASSEESSEE)

vs. ITO, WARD 22(4),
NEW DELHI

(RESPONDENT)

Assessee by: Sh. Ashish Goyal, CA & Sh. Umang
Luthra, Adv.

Revenue by: Sh. Amrit Lal, Sr. DR.

ORDER

This appeal is filed by assessee against the Order dated 28.09.2018 passed by the Ld. CIT(A)-31, New Delhi relating to Assessment Year 2009-10 on the following grounds:-

- 1. That the impugned order passed u/s 250 by the CIT(A) is invalid and is liable to be set aside because no reasonable opportunity of being heard was given to the assessee and is against the principle of natural justice.*
- 2. That on the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the validity of reopening of the assessment u/s 147/148 of the I.T Act.*
- 3. That having regard to the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the validity of the impugned assessment order which is without complying with the mandatory*

conditions of Section 147 to 153 of the Income Tax Act, 1961, therefore reopening of the assessment is bad in law and may please be annulled.

4(i) That on the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeal) has erred both on facts and in law in confirming the addition of Rs. 40,00,000/- made on account of unexplained cash credit u/s 68 of I.T. Act, 1961 being amount received from M/s Mani Mala Delhi Properties Pvt. Ltd., M/s Euro Asia Mercantile Pvt. Ltd. and M/s Lotus Realcon Pvt Ltd on account of Share subscription money. In this regard, all of his observations are wrong, incorrect and against the facts of the case and material on record.

(ii) That on the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeal) has erred both on facts and in law in confirming the addition of Rs. 72,000/- u/s 69C of the I.T. Act, 1961 being amount alleged as paid for obtaining accommodation entries. In this regard, all of his observations are wrong, incorrect and against the facts of the case and material on record.

(iii) That the aforesaid additions have been made without bringing on record any material or evidence to prove the allegation of the AO and are contrary to the material on record, and are based on conjecture and surmises.

5. That the impugned assessment order passed by the learned Assessing Officer has erred both on facts and law in making an assessment at income of Rs. 40,97,600/- against income of Rs. 25,600/- declared by the assessee.

6. That on the facts and circumstances of the case, the learned CIT(A)-31, New Delhi has erred in upholding the

levy of interest of Rs. 10,55,207/- as charged by AO u/s 234B of I.T. Act, 1961.

7. The above ground of appeal is without prejudice to one another.

8. The appellant craves in the right to add, amend, modify or delete any grounds or grounds of appeal before or at the time of hearing.

2. At the time of hearing, Ld. Counsel for the assessee stated that assessee filed application before the Ld. CIT(A) for adjournment which was wrongly rejected by the Ld. CIT(A) and decided the issue in dispute against the assessee without hearing the Ld. AR of the assessee. To support his contention, he draw my attention towards page no. 13 of the impugned order which is a copy of application filed by the assessee for seeking adjournment and the finding at page no. 14 of the impugned order of the Ld. CIT(A) for rejecting the request of the assessee for adjournment and decided the case of the assessee on the basis of material available on record. Ld. Counsel for the assessee requested that the issue in dispute may be set aside to the file of the Ld. CIT(A) to decide the same afresh, as per law, after giving adequate opportunity of being heard to the assessee.

3. On the contrary, Ld. DR has not raised any serious objection on the request of the Ld. Counsel for the assessee.

4. I have heard both the parties and perused the orders passed by the Revenue authorities especially Page No. 13 of the impugned order, which is a copy of application for seeking adjournment by the assessee and the finding at page no. 14 of the impugned order of the Ld. CIT(A) for rejecting the request of the assessee for adjournment and decided the case of the assessee on the basis of material available on record, I am of the view that assessee has filed all the documentary evidences before the Ld. CIT(A) and Ld. CIT(A) has passed the impugned order against the

assessee without hearing the Assessee's counsel, which is contrary to principle of natural justice, because the assessee is entitled for advancing his arguments orally as well as in writing before the revenue authorities which has not been granted. Therefore, in my view, Ld. CIT(A) has wrongly passed the impugned order without affording the opportunity of hearing which is not sustainable in the eyes of law. Therefore, in the interest of justice, I set aside the issues in dispute to the file of Ld. CIT(A) with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee. Assessee is also directed to fully cooperate with the Ld. CIT(A) and did not take any unnecessary adjournment.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 08/11/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 08/11/2019

"SRB"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches