

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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4722/DEL/2019
[Assessment Year: 2010-11]

ASTRAL CAPTALS PRIVATE LIMITED,
20A, GREEN MEADOWS FARM,
SATBARI, MEHRAULI,
NEW DELHI - 110 030
(PAN: AAGCA2086H)
[Appellant]

Vs. ITO, WARD 3(3),
NEW DELHI

[RESPONDENT]

Assessee by: Shri Arun Kishore, CA
Revenue by: Ms. Parul Singh, Sr. DR.

ORDER

This appeal is filed by the assessee is against the order of the Ld. Commissioner of Income Tax [Appeals-1], New Delhi dated 26.3.2019 pertaining to assessment year 2010-11 on the following grounds:-

1. (i) That the order of the Ld. Commissioner of Income Tax Appeal I (hereinafter called CIT (A) dismissing the appeal is illegal, unjust, opposed to facts and suffers from the vice of arbitrariness.
(ii) That each ground of appeal is an independent ground, without prejudice to each other.
2. That on the facts and circumstances of the case and in law, the order of CIT (A) and the order of Ld. AO are both bad in the eyes of law, since issue of notice u/s 148 is illegal- the return filed not carefully scrutinized before reopening and case reopened by wrong application of explanation 2(b)

of section 147, and no satisfaction recorded other than reliance on information from JCIT Indore.

3. (i) That on the facts and circumstances of the case and in law, the order of the CIT (A) has erred in holding the contentions of the Ld. AO, who has wrongly relied upon the case at 79 taxmann.com 117 (SC)

(ii) That the case law relied upon by the Ld. AO is not applicable since the facts of the instant case are entirely different.

4. That on the facts and circumstances of the case and in law, the orders of the CIT (A) and Ld. AO upholding and making an addition of Rs. 37,00,000/- is illegal, since the appellant has discharged the onus of providing the source of investment, identity and credit worthiness of the depositor. No addition is called for.

5. i) That on the facts and circumstances of the case and in law, the order of the Ld. AO and confirmation by CIT (A) are both bad in law as no addition in the instant case is called for u/s 69 of The IT Act.

(ii) That no addition u/s 69 of The Act can be made, when the investment of Rs. 37,00,000/- was found recorded in the books of accounts maintained by the assessee.

(iii) That second limb of section 69 is only attracted when the investment is not recorded in the books of accounts.

6. That on the facts and circumstances of the case and in law, the order of the Ld. AO and Ld. CIT (A) are both

bad in law as enquiry notices u/s 133(6) were issued behind the back of the appellant and no opportunity was accorded to the appellant to explain the same. This is a case of natural injustice, no reliance be placed on such paper enquiry made without intimation to the appellant. Addition of Rs. 37,00,000/- be deleted.

7. That on the facts and circumstances of the case and in law, the Ld. AO has grossly erred in seeking justification and reasons of investment, which is prerogative of the assessee, whether it takes good, bad, right or wrong decision, the AO cannot guide the appellant the best ways of investment by putting himself in the arm chair of the businessman. Addition of Rs. 37,00,000/- made on the basis of adverse view taken based on the fallacious approach and judgment of the AO be deleted.

8. That the net income of the appellant be reduced by Rs. 37,00,000/-.

2. At the time of hearing Ld. Counsel for the assessee stated that Ld. CIT(A) has passed the exparte impugned order without providing sufficient opportunity to the assessee. He requested that the issues in dispute may be set aside to the Ld. CIT(A) to decide the same afresh, after giving adequate opportunity of being heard to the assessee.

3. On the contrary, Ld. DR relied upon the impugned order.

4. I have heard both the parties and perused the orders of the authorities below. I am of the view that Ld. CIT(A) has not given

sufficient opportunity to the assessee, therefore, in the interest of justice I am setting aside the issues in dispute to the Ld. CIT(A) to decide the same afresh after giving adequate opportunity of being heard to the assessee.

4.1 Keeping in view of the non-cooperation of the assessee, I am directing the assessee through his counsel to appear before the Ld. CIT(A) on **23.04.2020 at 10.00 am** for hearing. There is no need to issue the notice by the Ld. CIT(A) to the assessee, since this order has already been pronounced in the open court.

5. In the result, the Appeal of the Assessee is allowed for statistical purposes.

The order pronounced on 19.02.2020.

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

Dated:19-02-2020

SRB

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi