

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 6826/DEL/2018 ( A.Y 2009-10)  
(THROUGH VIDEO CONFERENCING)**

|  |    |  |
|--|----|--|
| ITO<br>Ward-2(2)<br>Room No. 375, C. R. Building,<br>New Delhi<br><br><b>(APPELLANT)</b> | Vs | Altamash Township P. Ltd.<br>C/o. Shri Jagminder Gupta,<br>Direcgtor, J-181, Saket<br>New Delhi<br>AABCA0598H<br><b>(RESPONDENT)</b> |
|--|----|--|

|                      |                                   |
|----------------------|-----------------------------------|
| <b>Appellant by</b>  | <b>Sh. Virender Singh, SR. DR</b> |
| <b>Respondent by</b> | <b>Sh. Ved Jain, Adv</b>          |

|                              |                   |
|------------------------------|-------------------|
| <b>Date of Hearing</b>       | <b>27.09.2021</b> |
| <b>Date of Pronouncement</b> | <b>05.10.2021</b> |

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeals is filed by Revenue against the order dated 09/08/2018 passed by CIT(A)-1, New Delhi for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

1. *Whether on the facts and in the circumstances of the case, Ld.CIT(A) has erred in quashing proceedings, u/s 147 of the IT Act on the ground of non-issuance of notice u/s 143(2) of the Income Tax Act.*
2. *Whether on the facts and in the circumstances of the case, Ld.CIT(A) has erred in not considering the order of the Hon'ble High Court of Delhi in the case of CIT-II Vs. Madhya Bharat Energy Corporation Ltd. in ITA No. 950/2008."*

3. The assessee is a Private limited company engaged in the business of real Estate. The return for the year under consideration i.e. 2009-10 was filed on 31.03.2010 declaring NIL income. On 25.03.2014, notice under Section 148 was issued by the Assessing Officer. In response to the above notice, the AR of the assessee company vide its letter dated 04.02.2015 informed the Assessing Officer that the name of the assessee company has been struck off from the records of ROC w.e.f. F.Y. 2009-10. Accordingly, neither the assessee nor its director have received any notice u/s 148 for the AY 2009-10 and requested him to provide a copy of notice u/s 148. Later on, the Assessing Officer issued notice u/s 142(1) on the address of AR of the company. In response to which, the AR vide letter dated 10.02.2015 informed that he is the auditor of the company, the company has been closed and its name has been struck off from the records of ROC and he is not in possession of any of the documents or information with respect to the assessee company. Thereafter, assessee filed a reply dated 11.02.2015 in which it was stated that the original ROI filed u/s 139(1) on 31.03.2010 may be treated as ROI in response to notice u/s 148. Vide letter dated 11.02.2015, the AR submitted the financials and ITR of the assessee company and requested the Assessing Officer to provide the copy of reasons recorded for reopening the case u/s 147. As per the reasons recorded, the Assessing Officer observed that the assessee has received accommodation entries of Rs 1.40 crores from various companies belonging to Shri. Aseem Gupta. Thereafter vide letter dated 13.02.2015, the assessee filed its objection to the reasons recorded by the Assessing Officer. The said objections were disposed off by the Assessing Officer vide letter dated 13.02.2015. Vide letter dated 16.02.2015, the AR of the assessee company informed the Assessing Officer that since the name of the company has been struck off from ROC and all its operations are closed there is no record retained by the company. Further, the AR at the time of assessment proceedings informed the Assessing Officer that the company is also not in possession of its bank account, accordingly they are unable to confirm the share application money exactly received in the year under consideration. The Assessing Officer was informed

that the share application money received to the extent of Rs. 1.01 crore from M/s. Moderate Credit Corporation Pvt. Ltd. has already been forfeited and disclosed as income in the profit and loss account. The Assessing Officer was not satisfied with the explanation filed by the assessee added Rs. 39,00,000/- in the hands of the assessee u/s 68 of the Act treating the same as accommodation entry taken by the assessee and also added Rs. 39,000/- as commission expense u/s 69C of the Act on notional basis. The Assessing Officer also disallowed Rs. 1,24,22,000/- being the securities and deposits written off by the assessee in the profit and loss account stating that the assessee has not offered any explanation in this regard.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the Assessing Officer has rightly made the additions as the assessee company has deliberately dealt the transaction till Assessment Year 2009-10 and thereafter filed proceedings thereby, the assessee Company was struck off from the records of ROC w.e.f. Financial Year 2009-10 while letter dated 4/5/2015 and the same was informed to the Assessing Officer. The Ld. DR further submitted that the decision of the Hon'ble Delhi High Court in case of CIT vs. Madhya Bharat Energy Corpn. Ltd. in ITA No. 950/2008 order dated 11 July, 2011 was not at all considered by the CIT(A). The grounds of appeal before the CIT(A) relating to non issuance of notice under Section 143(2) was also not raised at the initial stages. Thus, the Ld. DR submitted that the additions made by the Assessing Officer should have been confirmed by the CIT(A).

6. The Ld. AR relied upon the order of the CIT(A) and further submitted that the decision of the Madhya Bharat Energy Corpn. Ltd. (supra) is reviewed and is no more a good law. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Pr. CIT vs. Shri Jai Shiv Shankar Traders Pvt. Ltd.

2015 (10) TMI 1765 dated 14.10.2015 as well as Pr. CIT vs. Silver Line 2015 (11) dated 04.11.2015 and CIT vs. Laxman Das Khandelwal 2019 (8) TMI 660 dated 13.08.2019 decided by the Hon'ble Supreme Court.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that in the remand report the Assessing Officer has not commented upon the query related to issuance of notice u/s 143(2). There was nothing on the record to show that 143(2) notice was issued to the assessee. Thus, at threshold itself the assessment proceedings becomes bad in law as held in the case of Pr. CIT Vs. Silver Line (supra) upholding the decision of the Tribunal that the reassessment order cannot be passed without complying with the mandatory requirement of notice being issued by the Assessing Officer to the assessee u/s 143(2) of the Act and, therefore, the re-assessment order was legally unsustainable. Thus, the CIT(A) has rightly quashed re-assessment order passed u/s. 147 and allowed the appeal of the assessee. There is no need to interfere with the findings of the CIT(A). Hence, appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on this 05<sup>th</sup> Day of October, 2021**

**Sd/-  
(B. R. R. KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 05/10/2021  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI