

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4726/Del/2018

Asstt. Year : 2014-15

Taurus Agile Technology Corporation P. Ltd. 7/1, 2 nd Floor, Block No. 41, Singh Sabha Road, Shakti Nagar, Delhi 110007 PAN AACCT3803H	Vs.	ACIT Circle-25(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	None
Department by :	Shri Umesh Takyar, Sr. DR.
Date of Hearing	29.03.2022
Date of pronouncement	06.04.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee is directed against the order dated 21.05.2018 of the Ld. Commissioner of Income Tax Appeals-9, New Delhi ("**CIT(A)**") pertaining to the assessment year 2014-15.

2. The assessee company is engaged in the business of manufacture of parts/ components of Aeroplane. It has e-filed its return of income for the assessment year 2014-15 declaring loss of Rs. 11,42,54,700/- on 30.09.2014. The case was selected for scrutiny. Statutory notices under section 143(2) and 142(1) of the Income Tax Act, 1961 (the “**Act**”) were issued and served upon the assessee. From the scrutiny of balance sheet the Ld. Assessing Officer (“**AO**”) noticed that an amount of Rs. 1,12,53,000/- was lying with the company pending allotment of shares. On being asked the assessee submitted that the shares are not allotted till date. The Ld. AO was of the view that the assessee company is bound to allot the shares within the time prescribed under the Companies Act, 2013 which it failed to do. The Ld. AO invoked the provisions of section 28(iv) of the Act and treated the impugned amount as income of the assessee company. He also added the said amount to the income of the assessee under section 56 protectively.

3. The assessee filed an appeal before the Ld. CIT(A) who for non-compliance of the notices of hearing passed ex-parte order confirming the order of the Ld. AO.

4. Aggrieved, the assessee filed an appeal before the Tribunal. None appeared on behalf of the assessee. We have heard the Ld. Departmental Representative.

5. On perusal of the records we find that in the statement of facts submitted before the Ld. CIT(A) the assessee stated that the plant of the company is inoperational for a long time because of lack of working capital. In the year of account to keep the plant operational the Managing Director and CEO of the company had borrowed money from friends, relations etc. and from time to time money was transferred from his savings account into the account of the company to meet the requirement of the working capital.

It was further stated that in all the amount of Rs. 1,12,53,000/- was loaned to the company to meet the essential minimum expenses like salary, electricity bills etc. to keep the plant going. According to the assessee the Ld. AO erred in making the impugned addition under section 28(iv) since the amount does not represent any benefit or perquisite. Moreover, the addition of the same amount on protective basis under section 56(1) is also uncalled for and illegal. The impugned amount is simply a loan which is to be converted into equity.

6. The Ld. CIT(A) neither took notice of the above explanation of the assessee nor verified the varacity of the averments made therein. The proceedings before the Ld. CIT(A) are quasi-judicial proceedings. It is incumbent upon him to confirm to the rules of natural justice. The cardinal principle of natural justice is that no person should be condemned unheard. In other words proper opportunity of being heard may be given to the assessee to present his case properly.

7. We are, therefore of the considered opinion that the matter be restored to the file of the Ld. CIT(A) for decision afresh in accordance with law after giving proper opportunity to the assessee.

8. In the result, the appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 6th April, 2022.

sd/-

(N.K. BILLAIYA)

ACCOUNTANT MEMBER

sd/-

(ASTHA CHANDRA)

JUDICIAL MEMBER

Dated: 06/04/2022

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR

ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	