

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1723/DEL/2020**  
**[Assessment Year: 2010-11]**

<b>Astral Properties &amp; Constructions Pvt. Ltd., 20-A, Green Meadows Farm Satbari, Mehrauli, New Delhi-110030.</b>	<u>Vs</u>	<b>Income-tax Officer, Ward-3(3), New Delhi.</b>
<b>PAN- AAACA8109P</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>		<b>Sh. Arun Kishore, CA &amp; Sh. Alok Suri, CA</b>
<b>Respondent by</b>		<b>Sh. Sanjay Kumar, Sr. DR</b>
<b>Date of hearing</b>		<b>22.02.2022</b>
<b>Date of pronouncement</b>		<b>12.04.2022</b>

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-32, New Delhi, dated 30.07.2020, pertaining to the assessment year 2010-11. The assessee has raised following grounds of appeal:

*“1.(i) That the order of the Ld. Commissioner of Income Tax (A) 32 hereinafter called CIT(A) dated 30.07.2020, confirming the addition of Rs. 16,00,000/- is illegal, unjust, opposed to facts and suffers from the vice of arbitrariness.*

*(ii) That all grounds and sub-grounds are independent and without prejudice to each other*

*2. That on the facts and circumstances of the case and in law, Ld. CIT(A) and Ld. AO have erred in confirming addition of Rs. 16,00,000/- u/s 69 of the IT Act, when the said investment was duly entered in the audited books of account and payment was made through a regular bank account of the company. Since, section 69 has no applicability deemed income assessed u/s 69 of the IT Act be deleted.*

*3. That on the facts and circumstances of the case and in law, the assessment made is illegal as it is against the principles of natural justice. In spite of repeated requests:*

- a) Copy of information received from JCIT Indore used for reopening of assessment is not provided to the Appellant.*
- b) Copy of satisfaction recorded separately u/s 151 of the IT Act is not provided for consideration and rebuttle.*
- c) Proof of Service of Notice u/s 148 not provided*
- d) No opportunity accorded for compliance of notices issued u/s 133(6) behind the back of the Appellant.*

*4. That on the facts and circumstances of the case and in law, the assessment is illegally reopened u/s 148, since:*

- a) It is based on erroneous facts – it is reopened on the basis of proviso 2 sub-clause ‘b’ of section 147 which has not applicability in the instant case.*
- b) It is reopened on borrowed satisfaction of JCIT Range 3 Indore without any application of mind, without verification of facts and without any enquiry.*

*5. That on the facts and circumstances of the case and in law, the assessment is illegally reopening u/s 148 for making fishing and roving enquiries with no tangible facts and cogent satisfaction of the Ld. AO and of the Commissioner of Income Tax u/s 151 of the IT Act.*

6. *That on the facts and circumstances of the case and in law, the assessment is barred by limitation since no notice u/s 148 was validly served upon the appellant up to 31<sup>st</sup> March 2017.*

7. *That on the facts and circumstances of the case and in law, the deeming addition of Rs. 16,00,000/- on the basis of issue of notice to the investee company at a wrong address at Raipur, Chattisgarh, when the AO was in possession of information that the assessment of the investee was made by JCIT Indore.*

8. *That on the facts and circumstances of the case and in law, the deemed addition of Rs. 16,00,000/- is uncalled for when the identity, source of deposit received from Director with her PAN and ITR copy and confirmations of the depositor and depositee filed for transaction through bank, enquiring source of source is not within the ambit of section 69.*

9. *That the addition of Rs. 16,00,000/- be deleted.”*

2. Facts, in brief, are that in this case the Assessing Officer received information regarding investment made by the assessee company in another company i.e. Brahaspati Iron & Steel Co. Pvt. Ltd. of Rs. 16,00,000/-. It was noticed by the Assessing Officer that the assessee company had not filed its return of income. Therefore, the investment made in this company was not disclosed. The Assessing Officer, therefore, proceeded to reopen the case u/s 147 of the Income-tax Act, 1961, hereinafter referred to as the “Act”, by issuing notice u/s 148, after obtaining necessary approval u/s 151. In response to the notice, learned authorized representative of the assessee appeared before the assessing authority and filed reply/ details. It was further observed that the assessee filed its return of income on

24.6.2017 vide acknowledgement no. 822743941240617, declaring 'Nil' income. The assessing Officer issued a notice u/s 143(2) of the Act and copy of the reasons were also supplied to the assessee. Thereafter, the assessee filed his objections against the reopening of the assessment. The objections of the assessee were disposed of by the Assessing Officer and the objections taken by the assessee were rejected. Thereafter, the Assessing Officer proceeded to frame the assessment u/s 147 read with section 143(3) of the Act. Thereafter, he rejected the explanation offered by the assessee and made addition of Rs. 15,00,000/- on account of investment made by the assessee company in Brahaspati Iron & Steel Co. Pvt. Ltd. u/s 69 of the Act.

3. Aggrieved against this, the assessee preferred appeal before the learned CIT(Appeals), raising various grounds against the reopening and making the addition u/s 69 of the Act. The learned CIT(Appeals), after considering the submissions of the assessee, dismissed the appeal and sustained the addition made by the Assessing Officer. Now the assessee is in appeal before the Tribunal.

4. Ground nos. 1 to 7 are against reopening of the assessment and validity of the assessment. All the grounds are disposed of together for the sake of convenience.

5. Learned counsel for the assessee submitted that the assessment was reopened without any basis. He further submitted that the information, which was in possession of the Assessing Officer, was not supplied to assessee and the assessee was not confronted with the same. He submitted that the action of the authorities below is highly unjustified, illegal, arbitrary and against the settled principles of law. He submitted that the objections of the assessee before assessing authority were not considered in right perspective and rejected mechanically.

6. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below. Learned DR submitted that the authorities below have given sufficient opportunity to the assessee. It is not the case where the assessee was not provided the opportunity.

7. I have heard the rival submissions, perused the material on record and gone through the orders of the authorities below. I find that the learned CIT(Appeals) has decided similar grounds taken before him by observing as under:

*7.3. Ground Nos. 3 to 6: Through these grounds and the written submissions, the appellant has challenged the reopening of the case u/s 147/148. I have considered the grounds and submissions of the appellant made through AR as well as the satisfaction note recorded by the assessing officer. In this case, AO received an information from JCIT, Range-3, Indore vide letter F.No. JCIT/R-3/Ind./Misc./2012-13/2 dated 04.04.2013 intimating that M/s Astral Properties & Construction Pvt. Ltd. has invested Rs. 16,00,000/- in share application money/share capital in M/s Brahaspati Iron & Steel Co. Pvt. Ltd. (PAN-AACCB3640Q) in the F.Y. 2009-10 relevant to A.Y. 2010-11, source of which investment was not disclosed as assessee had not filed its ITR for A.Y. 2010-11. On the basis of information*

received, AO reopened the case u/s 147 of the Act and issued notice u/s 148 dated 20.03.2017 after obtaining necessary sanction u/s 151 of the I.T. Act, 1961 from the competent authority.

7.3.1 The assessing officer has reproduced the satisfaction note on page 2 of his order. I find that the assessing officer has duly applied his mind upon the information received by him. He did find that the appellant has not filed any income tax return for the assessment year 2010-11 and in spite of this the appellant had made investment of 16 lakhs in share application money /share capital in M/s Brahaspati Iron & Steel Co. Pvt. Ltd. In view of these facts I find that the assessing officer has rightly invoked the provisions of section 147 of the act and had issued notice under section 148. I do not find any infirmity in the action of the AO resorting to re-open the case u/s 147/148. The AO had sufficient reasons to believe that the income has escaped assessment to the extent of Rs. 16 lakhs.

7.3.2 It has been held in *Raymond Woollen Mills Ltd. v. ITO And Others* [236 ITR 34] by the Hon'ble Supreme Court that "in determining whether commencement of reassessment proceedings was valid it has whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency of the material is not a thing to be considered at this stage".

7.3.3. In *ACIT Vs. Rajesh Jhaveri Stock Brokers (P) Ltd.* [2007] 161 Taxman 316 (SC)/[2007] 291 ITR 500 (SC)/[2007] 210 CTR 30 (SC): The Hon'ble Supreme Court held that

“Section 147 authorizes and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion.

‘.....’

so long as the conditions of section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer

*powerless to initiate reassessment proceedings, even when intimation under section 143(1) has been issued. ADANI EXPORTS v. DCIT[1999J 240 ITR 224 (Guj) was distinguished”.*

*7.3.4 Thus, in view of the decisions of Hon’ble Supreme Court cited supra and the facts of the case, I am of the view that the AO has rightly taken the re-course of section 147/148 to re-open the case.*

*7.3.5 As regards the claim of the appellant that the assessing officer had wrongly invoked clause (b) of the explanation (2) of the section 147 is concerned, I do not find any merits in the arguments of the AR. In the reasons for the reopening of the case, the assessing officer has considered all the facts of the appellant company. He has duly applied his mind to the facts of the case and observed that the appellant company has not filed any income tax return for the assessment year 2010-11 and the investment by the company was ? 16 lakhs, which had escaped assessment. The facts of the case were sufficient for recording the satisfaction under section 147/148 towards escapement of income. Without prejudice to this, the case of the appellant company is duly covered by clause (a) of the explanation (2) of the section 147.*

*“Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-*

*(a) Where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax.”*

*7.3.6 Thus, the reopening of the case was validly made by the assessing officer. Therefore, the legal grounds Nos. 3 to 6 taken by the appellant against reopening of the case are not maintainable and deserve to be rejected. Hence, dismissed.”*

8. Admittedly in this case the assessee has not filed the return of income and the assessee has also admitted the fact that it had made investment in company, namely, Brahaspati Iron & Steel Co. Pvt. Ltd. Therefore, in my considered view

non filing of return of income and having an information regarding investment made by the assessee would be sufficient for the Assessing Officer to reopen the assessment for verifying the genuineness of the investment and source of such investment. Hence, I do not see any reason to interfere in the finding of the learned CIT(Appeals) in respect of the reopening of the case. Hence, ground nos. 1 to 7 of the assessee's appeal are dismissed.

9. Now coming to ground no. 8, on merit of addition, the learned counsel for the assessee submitted that assessee had provided all details regarding the impugned investment and source of such investment. He submitted that before the Assessing authority it was categorically stated vide letter dated 1.12.2017 that the funds were transferred from Royal bank of Scotland to Brahaspati Iron & Steel Co. Pvt. Ltd. on 20.03.2010. The learned counsel took me through the various pages of the paper book to demonstrate that the finding recorded by the authorities below is contrary to the records. Learned counsel submitted that in view of the evidence filed before the Assessing Officer, the addition made and sustained deserves to be deleted.

10. per contra, learned DR opposed these submissions and supported the order of authorities below. He submitted that the assessee failed to furnish supporting evidences. Therefore, Assessing Officer was justified in making the addition.

11. I have heard rival submissions, perused the material on record and gone through the orders of the authorities below. I find that the learned CIT(Appeals) has decided the issue in para nos. 7.4.1 to 7.4.5, by observing as under:

*7.4.1 During the course of assessment proceedings, assessee was asked to provide copy of Board resolution for investing in M/s Brahaspati Iron & Steel Co. Pvt. Ltd. along with the reasons for investing. Assessee vide its letter dated 08.12/2017 submitted that they were enclosing the copy of Board Resolution for advancing of Rs. 16,00,000/- to M/s Brahaspati Iron & Steel Co. Pvt. Ltd., but no copy was found attached with the letter by the AO. Thereafter, detailed information was called for u/s 133(6) from M/s Brahaspati Iron & Steel Co. Pvt. Ltd. vide letter dated 30.10.2017. Further, as submitted by assessee before the AO that loans/advances amounting to Rs. 16,00,000/- had been received from its director Mrs. Surabhi Bishnoi, details were also called from Mrs Surabhi Bishnoi u/s 133(6) vide a detailed letter dated 01.12.2017. However, no reply/details had been received from M/s Brahaspati Iron & Steel Co. Pvt. Ltd. and Mrs Surabhi Bishnoi, Director. These non-compliances of notices u/s 133(6) was also brought to the knowledge of the AR by the AO, but no efforts were made by the assessee company for ensuring compliances and no further details or explanation were filed. The assessee has also not offered any explanation regarding the present status of investment which would have shed some light on the nature of investment made. The AO held that any prudent company would keep track of its investment so that the capital it has invested do fetch returns for the company and also for its shareholders. If not, then such investments come in the realm of unexplained investment. Accordingly, AO made an addition of Rs. 16,00,000/- u/s 69 of the Act on account of unexplained investment in M/s Brahaspati Iron & Steel Co. Pvt. in share capital/share premium.*

*7.4.2 During the appellate proceedings the AR of the appellant attended once and also filed his submission through email. He filed written submissions and a paperbook relying upon the documents already filed before the AO. The submissions have been considered and are reproduced in this order supra.*

7.4.3 I have considered the submissions of the AR of the appellant. It is noticed that there had been no serious efforts by the appellant to explain the source of investment of Rs. 16,00,000/- made in M/s Brahaspati Iron & Steel Co. Pvt. Ltd. The appellant did no efforts during the assessment proceedings or even before the undersigned for getting the compliance to the notices sent by the AO u/s 133(6) to this company as well as Mrs. Surabhi Bishnoi. If there had been any change in address of M/s Brahaspati Iron & Steel Co. Pvt. Ltd. then he could have provided the same to the AO, had there been a genuine investment. The bank account of Mrs. Surabhi Bishnoi was never produced. The appellant instead of getting compliance done from Mrs. Surabhi Bishnoi u/s 136(6) has relied upon the documents like PAN, ITR etc of this lender, without producing her bank account. The onus was upon the assessee to establish the source of the credit, which has been invested in M/s Brahaspati Iron & Steel Co. Pvt. Ltd., the appellant has failed to prove the source. The copy of the Boards resolution stated to have been got detached from the submission before the AO, has been submitted before the undersigned now in the paperbook. It is not a copy of it but an extract claimed to have been taken from minutes of meeting of Board of Directors held on 19/03/2010. This extract is dated 08/12/2017 and is not supported with any documents and cannot be relied upon and also deserve to be rejected u/r 46A. The audited report dated 30/08/2010 and books of accounts of the appellant company cannot be relied upon because these have never been filed u/s 139(1). The appellant filed the ITR much after the due date in compliance to notice u/s 148 of the Act on 24/06/2017. Thus, the evidences being filed by the appellant as rightly held by the AO, are nothing but self serving documents. J

7.4.4 I find that the AO has rightly held that the identity of the creditor as discussed by the assessee is meaningless in view of the above facts and also in view of the silence of the assessee to provide the latest or the current status of investment. These web of transactions have been created with a clear attempt to create a colorable device with attempt to evade taxes in the form of accommodation entry. The AO has relied upon the judgement of the Hon'ble Supreme Court in the case of R Mallika Vs CIT, reported in [2017] 79 taxmann.com 117 (SC), wherein it was held that "where assessee had not discharged burden as regards source from which investment had been made, investment was an unexplained investment and

*same was rightly added to income of assessee."*

*7.4.5 In view of the above discussion I am inclined to reject the grounds of appeal no. 7 to 11 and confirm the addition of Rs. 16,00,000/- made u/s 69 of the Act. Accordingly, these grounds of appeal are dismissed.*

12. Further, it is seen that the Assessing Officer has recorded his finding in para nos. 13.1 to 13.5 as under:

*"13.1 However, on the fixed date and also till the date of finalization of the assessment, no reply/details have been received from any of the above parties in response to notice u/s 133(6) sent. Further, the assessee has also not given any details on the present status of investment nor has submitted any details of the Share application/premium money paid as required vide notice u/s 142(1) dated 06.09.2017. As per the information in possession and also per information during the course of assessment proceedings in the case of M/s Brahaspati Iron & Steel Co. Pvt Ltd for AY 2010-11, the assessee company had invested in share application money/share capital in M/s Brahaspati Iron & Steel Co. Pvt Ltd during the AY 2010-11. The AR of the assessee company was also informed regarding the non-compliance of the information called u/s 133(6), however, no further details or explanation were filed. The assessee has also not offered any explanation regarding the present status of investment which would have shed some light on the nature of investment made. Any prudent company should keep track of its investment so that the capital it has invested do fetch returns for the company and also for its shareholders. If not then such investments come in the realm of unexplained investment.*

*13.2 During the course of assessment proceedings, the assessee company did not submit its complete bank account for the relevant AY as was asked for. Further, no reply has been received from Mrs. Surbhi Bishnoi from whom the assessee claims to have received the advances for further investment in M/s Brahaspati Iron & Steel Co. Pvt. Ltd. Again, no status/explanation of the investment has been furnished by the assessee nor by Mrs. Surbhi Bishnoi with regard to the logical conclusion of the investment made. From a perusal of the ITR of Mrs Surbhi Bishnoi filed by the assessee, the following is noticed:*

S. No.	AY	Total Income (in Rs.)	Agricultural Income (In Rs.)
1	2010-11	2,25,696/-	8,75,000/-

*Mrs. Surbhi Bishnoi has not given any details regarding the above to substantiate its claims.*

*13.3 The assessee despite being given specific opportunity to lead by positive evidence has merely relied upon filing of return, PAN Card details, confirmation & bank account details of the creditor to establish Identity: creditworthiness & genuineness of transaction. Assessee has failed to utilize the opportunity provided to it to establish as to why the evidence discussed against it should not be used against it. In fact, the details filed by the assessee just confirm the fact that these are self serving documents created at the time of providing accommodation entry. They do not stand the test of truthfulness & genuineness in view of the fact that information called for U/s 133(6) from both M/s Brahaspati Iron & Steel Co. Pvt. Ltd. and Mrs. Surabhi Bishnoi have not been complied with and no information/details have been received from them. Thus, in this case, the assessee has not discharged burden as regards source from which investment had been made.*

*“Section 69 : Unexplained investments : -Where in the financial year - immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income and the assessee offers no explanation about the nature and source of investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”*

*13.4 There is sufficient evidence on record to establish that identity of the creditor as discussed by the assessee is meaningless in view of the above facts and also in view of the silence of the assessee to provide the latest or the current status of investment. These web of transactions have been created with a clear attempt to create a colorable device with attempt to evade taxes in the form of accommodation entry. Reliance on the above is also drawn from the judgment of the Hon’ble Supreme Court in the case of r. Mallika Vs. CIT reported in [2017] 79 Taxmann.com 117 (SC), wherein it was held that “where assessee had not discharged burden as regards source*

*from which investment had been made, investment was an unexplained investment and same was rightly added to income of assessee.”*

*13.5 The assessee company has made no serious efforts to justify the reasons for investment nor given details/ submission on the status of investment to justify its investment. In the civil law, a mere pre-ordnance of probability, is enough to fix the responsibility. Section 69 is enacted in these terms only. It is clearly indicated from the wordings of the section that where the assessee offers no explanation about the nature and source of investments or the explanation offered by the assessee is unsatisfactory, the provisions of section 69 are attracted. In the light of all above facts & circumstances of the case and the settled legal position, the amount of investment in M/s Brahaspati Iron & Steel Co. Pvt Ltd in share capital/share premium amounting to Rs.16,00,000/- is hereby added to the income of the assessee u/s 69 of the Income-tax Act, 1961 as unexplained investment.”*

13. I find that the assessee had stated before the authorities below that the amount in question was received from the Director of the assessee company, who is also income-tax assessee and has filed her return of income for the relevant period. The source of income was stated to be agricultural and other income. Therefore, it is not the case where the investment is made in vacuum. Considering the material placed before me, I am of the considered view that the assessee has brought on record certain evidence that goes to prove that the amount was received from one of its Director, who herself is an income-tax assessee and filed her return of income. The Assessing Officer should have very well verified from the return of the concerned Director regarding source of such amount given to the assessee company. The Assessing Officer has also not stated as to what action was taken in

the case of Director of the company. There is no dispute with regard to the fact that the impugned transaction was executed between two parties i.e. assessee company and its Director. The Director is the giver of the amount in the transaction and the assessee company is the recipient of the amount. Hence, the Assessing Officer ought to have investigated from both the parties for verifying the veracity of the transaction. The assessee has discharged its primary burden by furnishing the source of the investment. Under these facts it was open to Assessing Authority to make further investigation. In the absence of bringing any adverse material regarding creditworthiness of the Director and genuineness of the transaction, I am of the view that the addition made and sustained by the learned CIT(Appeals) is not justified. The same is, therefore, deleted. Ground is allowed.

14. In the result, assessee's appeal is partly allowed.

Order pronounced in open Court on 12<sup>th</sup> April, 2022

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI