

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 551/Del/2022
(Assessment Year : 2012-13)

Astro Offshore Pte. Ltd. 8, Temasek Boulevard #35-03, Sunter Tower Three, Singapore-038 988 PAN No. AAJCA 0983 G (APPELLANT)	Vs.	DCIT, Int. Tax Circle – 1(1)(1) New Delhi (RESPONDENT)
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Assessee by	Shri Aman Garg, Adv.
Revenue by	Shri Umesh Takyar, Sr. DR

Date of hearing:	26.04.2022
Date of Pronouncement:	26.04.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 15.02.2022 of the Commissioner of Income Tax (Appeals)- Delhi relating to Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a non-resident company. In this case the assessment was framed u/s 147 r.w.s 144 r.w.s 144C(1) of the Act vide order dated 12.01.2021 and the total income was determined at Rs.45,17,870/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 15.02.2022 in Appeal No.CIT(A), Delhi-42/10079/2011-12 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds :

1. *On the facts and circumstances of the case, the order passed by learned Commissioner of Income Tax (Appeals) {CIT(A)} is bad both in the eye of law and on facts.*
2. *(i) On the facts and circumstances of the case, the order passed by the learned CIT(A) is bad both in the eye of law and on facts as the same having been passed without giving adequate opportunity of being heard in gross violation of principle of natural justice.*
(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order ex parte.
3. *On the facts and circumstances of the case, the order passed by learned Commissioner of Income Tax (Appeals) (CIT(A)} is illegal and void intio in the eye of law as the same has been passed without having valid jurisdiction upon the assessee.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee, that the assessment order passed by the learned AO under section 144/ 147/ 1440(1) of the Act is non-est in the eyes of the law.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the assessment order passed by the learned AO under section 144/ 147/ 1440(1) of the Act is illegal and barred by*

limitation as the same has been passed beyond the statutory time limit prescribed under the Act.

6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the reopening of the assessment proceedings as well as the re-assessment order passed by the learned AO is illegal & without jurisdiction as the same has been done without there being valid issue of notice under section 148 of the Income Tax Act.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the reassessment order passed by learned AO is illegal and bad in law as the same has been passed without assumption of valid jurisdiction upon the assessee.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the learned AO has erred in initiating the proceedings under section 147 read with section 148, ignoring the fact that the same was bad in the eye of the law as the conditions and procedure prescribed under the statute have not been satisfied and complied with.*
9. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the reassessment proceedings initiated by the learned AO are bad in the eye of the law as the reasons recorded for the issue of notice under Section 148 are bad in the eyes of law and are vague.*

(ii) That the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the reassessment proceedings initiated by the learned AO are bad in the eye of law as there is no live nexus between the reasons recorded and the belief formed by the Assessing Officer.
10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that the learned AO has erred both on facts and in law in reopening the proceedings merely on the ground that the assessee has not filed its return of income.*

11. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that, the learned AO has erred both on facts and in law in reopening the proceedings despite the fact the income alleged is not chargeable to tax and accordingly the same has not escaped assessment.*
12. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 45,17,870/- on account of receipts from M/s Larsen And Toubro Ltd. holding the same to be taxable under section 44BB of the Act.
(ii) That the learned CIT(A) has erred in confirming the above addition despite the fact that the income on account of receipts from M/s Larsen And Toubro Ltd. is not chargeable to tax in the hands of the assessee under the provisions of the Act.*
13. *(i) On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the above said addition ignoring the contention of the assessee that the addition has been made by the AO despite the fact that the income is not chargeable to tax in the hands of the company in India under the Double Tax Avoidance Agreement between India and Singapore.

(ii) That the addition has been confirmed addition ignoring the contention of the assessee that the addition has been made by the AO despite the fact that the provisions of Double Tax Agreement overrides the provisions of the Act to the extent they are more beneficial in accordance with section 90(2) of the Act.*
14. *Without prejudice to the above and in the alternative, the CIT(A) has erred in ignoring the alternative contention of the assessee that the learned AO has erred in not providing the credit of TDS of Rs. 19,01,611/- deducted by the deductor and appearing in Form 26AS.*
15. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

4. Before us, at the outset, Learned AR submitted that the Coordinate Bench of Tribunal vide ITA No.192/Del/2021 order dated 09.12.2021 has quashed the assessment order dated

12.01.2021. He placed on record the copy of the aforesaid order. He therefore submitted that in such circumstances, the present appeal of the assessee is rendered infructuous.

5. Learned DR did not controvert the submissions made by Learned AR.

6. We have heard the rival submissions and perused the material available on record. We find that AO vide order dated 12.01.2021 passed u/s 147 r.w.s 144 r.w.s 144C(1) of the Act had determined the total income at Rs.45,17,870/-. When the matter was carried by assessee before the Tribunal, the Tribunal vide order dated 09.12.2021 in ITA No.192/Del/2021 has quashed the impugned assessment order. When the assessment order itself has been quashed, we are of the view that the present appeal of the assessee has been rendered as infructuous and **therefore the same is dismissed.**

7. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 26.04.2022

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

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 26.04.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI