

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member  
Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 3951/Del/2018 : Asstt. Year: 2013-14**

Ashish Gupta, Aerens Estates, Bimaldeep Complex, Mall Road, Kishan Gargh, Behind Pocket D-3, Vasant Kunj, New Delhi-110070	Vs.	Pr. CIT, Central-2, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AHEPG5510G</b>		

**ITA No. 8686/Del/2019 : Asstt. Year: 2011-12**

**ITA No. 8687/Del/2019 : Asstt. Year: 2013-14**

Ashish Gupta, Aerens Estates, Bimaldeep Complex, Mall Road, Kishan Gargh, Behind Pocket D-3, Vasant Kunj, New Delhi-110070	Vs.	ACIT, Central Circle-18, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AHEPG5510G</b>		

**Assessee by : Sh. Rajeshwar Painuely, AR  
Revenue by : Sh. P. Praveen Sidharth, CIT DR**

**Date of Hearing: 05.06.2023**

**Date of Pronouncement: 07.06.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee against the order of Id. PCIT, Central-2, New Delhi dated 31.03.2018 and the order of Id. CIT(A)-31, New Delhi dated 09.09.2019.

2. In ITA No. 3951/Del/2018, the assessee has raised the following grounds of appeal:

*"1. The Id. PCIT erred in law and on facts in passing the order u/s 263 of the Act and set aside the assessment order for the A.Y. 2013-14 passed by the learned Assessing Officer u/s 143(3), despite the fact that the assessment order was neither erroneous nor prejudicial to the interest of the revenue. The Assessing Officer passed assessment order after considering the reply of the assessee and applied his mind. Therefore, assessment order passed by Assessing Officer neither erroneous nor prejudicial to the interest of revenue. Thus, instructions given by the learned Pr. CIT for fresh consideration of assessment merely on surmises and conjecture should be reversed."*

3. In ITA No. 8686/Del/2019, the assessee has raised the following grounds of appeal:

*"1. On the facts, law and circumstances of the case, the Id. Commissioner of Income Tax (Appeals)-31, New Delhi erred in upholding validity of notice u/s 147/148."*

*2. On the facts, law and circumstances of the case, the Id. Commissioner of Income Tax (Appeals)-31, New Delhi erred in law and fact in upholding the addition of Rs.1,25,000/- on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961."*

4. In ITA No. 8687/Del/2019, the assessee has raised the following grounds of appeal:

*"1. That the impugned Appeal Order is bad in law, illegal, and in violation of rudimentary principal of contemporary jurisprudence."*

*2. The Ld. Honorable Commissioner of Income Tax (Appeal)-31, New Delhi erred on law and on facts and against the principal of natural justice upholding addition of made by Ld. A 0 as no show cause notice was issued be for making the addition to the income of the assessee. Thus, assessment order passed by the*

*learned assessing officer on surmises and conjecture should be cancelled.*

*3. On the facts and circumstances of the case, the Honorable Commissioner of Income Tax (Appeal)-31, New Delhi erred in law and fact in upholding the addition of Rs. 21,90,000/- on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961."*

5. The Id. PCIT, Central-2 issued show cause as per the provisions of Section 263 of the Income Tax Act, 1961 to the assessee on 28.03.2018 (Wednesday) and passed the order on 31.03.2018 (Saturday). The Id. PCIT assumed that the Assessing Officer completed the assessment without proper examination and verification of transactions of the assessee with regard to M/s Aerens Projects & Infrastructure Pvt. Ltd. for applicability of provisions of Section 2(22)(e) of the Act.

6. The show-cause notice dated 28.03.2018 issued to the assessee to file submissions on 30.03.2018 is as under:

*" On perusal of the balance sheet of the assessee, it is noticed that you have accepted Rs.3,16,80,800/- as loan or advances from M/s Aerens Projects & Infrastructure Pvt. Ltd. in which you have 18% shareholding not having been brought to tax by the Assessing Officer u/s 2(22)(e). The same was not verified by the Assessing Officer during the assessment proceeding. Thus, this approach on the part of the AO for not verifying the loan or advances of the assessee is prima facie appears to be erroneous so as to cause prejudice to the interest of the Revenue."*

7. The assessee submitted that the issue has been examined in detail by the AO during the assessment proceedings. Further, it was submitted that no loan or advances was received by the assessee during the year. In fact, the balance of M/s Aerens

Projects & Infrastructure Pvt. Ltd. in the books of the assessee has come down from Rs.3.25 Cr. to Rs.3.16 Cr.

8. Against these facts, the record clearly prove that the transactions of the assessee with M/s Aerens Projects & Infrastructure Pvt. Ltd. are as under:

Date	Debit Amount	Credit Amount
04.10.2012	25,00,000/-	
08.06.2012		3,25,000/-
07.07.2012	2,50,000/-	
18.09.2012		18,65,000/-
18.09.2012	3,00,000/-	

9. In respect of credit amount of Rs.21,90,000/-, the assessee claimed that during the F.Y. 2012-13, a sum of Rs.25,00,000/- has been advanced by him to M/s Aerens Project & Infrastructure Pvt. Ltd. against an agreement for purchase of shop FOF 9 – CSG on 10.04.2012. However, the deal was not matured with the company and the part amount of Rs.3,25,000/- and Rs.18,65,000/- has been received back by him on 08.06.2012 & 18.09.2012.

10. Thus, it can be found that,

- The Id. PCIT given just two days time to the assessee to reply to the show cause. The basic tenets of principle of natural justice have not be adhered to.
- The amount alleged by the Id. PCIT was Rs.3.16 Cr. against the actual transactions of Rs.21.90 lacs which reflects that the Id. PCIT has not examined the issue properly.

- Even the transaction of Rs.21.90 lacs has been the amount advanced by the assessee which has been received back which do not attract the provisions of Section 2(22)(e).

11. Hence, we hold that the order of the Id. PCIT was passed in haste without verification of the factual material and hence the same cannot be sustained.

**ITA No. 8687/Del/2019**

12. Since, the order u/s 263 is held to be unsustainable, resultantly the appeal of the assessee in ITA No. 8687/Del/2019 for A.Y. 2019-20 is liable to be allowed.

**ITA No. 8686/Del/2019 A.Y. 2011-12:**

13. In this case, the assessment u/s 153A has been completed on 29.03.2014. The Assessing Officer recorded satisfaction on 30.03.2018 that the assessee has accepted Rs.1,79,65,000/- as loan or advances from M/s Aerens Project & Infrastructure Pvt. Ltd. The AO also held that there has been failure on the part of the assessee to furnish the name of the company in which he had more than 10% share holding. There are only four transactions of the assessee with the said company. After going through the ledger account, an addition of Rs.1,25,000/- was made against the satisfaction recorded for escapement of income of Rs.1,79,65,000/- which clearly goes to prove that the assessee has not even gone through the four transactions wherein the escapement on account of provision of Section 2(22)(e) are alleged. Hence, we hold that the satisfaction derived by the Assessing Officer without examination of the

facts and the subsequent assessment completed cannot be held to be legally valid.

14. In the result, all the appeals of the assessee are allowed.  
Order Pronounced in the Open Court on 07/06/2023.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 07/06/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**