

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**I.T.A Nos.1990 & 1991/Del/2022
Assessment Years: 2015-16 & 2016-17**

Aparajita Homes Pvt. Ltd., A-410, Ansal Chamber-1, R.K. Puram, South West Delhi, New Delhi.	Vs.	ACIT Central Circle-2, Jhandewalan Extn., New Delhi.
PAN No. AAHCA 4557 C		
Appellant		Respondent

Assessee by	Shri Salil Aggarwal, Sr. Adv. & Shri Shailesh Gupta, CA
Revenue by	Shri Zafarul Haque Tanweer, CIT DR

Date of hearing:	04.10.2023
Pronouncement on	19.10.2023

ORDER

PER C.M. GARG, J.M.

These two appeals are filed by the assessee against the order of the Ld. CIT(Appeals)-31, New Delhi dated 17.05.2022 for the assessment years 2015-16 & 2016-17 respectively.

2. Since as agreed by Id. Senior counsel as well as Id. CIT(DR) that facts and circumstances of both the years under consideration are identical and similar on the sole issue for adjudication. Therefore we are taking up ITA n. 1990/Del/2022 for AY 2015-16 as lead case, wherein following grounds have been raised by the assessee.

- 1. "That having regard to the facts and circumstances of the case and in law the addition of Rs.11,28,545/- confirmed by Ld. Commissioner of Income Tax (Appeals) on account of unexplained expenditure is arbitrary, against law and facts on record and is not sustainable on various legal and factual grounds.*
- 2. That on the facts and circumstances of the case and in law the Ld.CIT(Appeals) while confirming the above addition arbitrarily and, mechanically rejected the explanation and ignored the fact that the addition of Rs.11,28,545/- are related to income earned and the income so earned forms part of return of income and as such the addition so confirmed is incorrect and is not sustainable.*

3. That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other."

3. The Id. Senior Counsel submitted that having regard to the facts and circumstances of the case and in law the addition of Rs.11,28,545/- confirmed by Ld. Commissioner of Income Tax (Appeals) on account of unexplained expenditure is arbitrary, against law and facts on record and is not sustainable on various legal and factual grounds. He further contended that on the facts and circumstances of the case and in law the Ld.CIT(Appeals) while confirming the above addition arbitrarily and, mechanically rejected the explanation and ignored the fact that the addition of Rs.11,28,545/- are related to income earned and the income so earned forms part of return of income and as such the addition so confirmed is incorrect and is not sustainable.

4. The Id. Senior Counsel also pointed out that from the perusal of 26AS it may be observed that transactions mentioned at serial no 8, 9 & 12 are part of Form no. 26AS of the appellant company for AY 2015-16 and transaction mentioned at serial no. 13 is part of 26AS for AY 2016-17. He further submitted that the profit and loss account of the appellant for AY 2015-16 & 2016-17 as per which commission income is part of income as per Profit and Loss A/c which is available at pages 3 to 14 of assessee paper book in the audited balance sheet for both the years. The Id. Senior Counsel vehemently pointed out that the alleged transaction is related to income earned by the appellant company which has already been offered to tax and as such the Id. Assessing Officer wrongly made the addition of Rs. 11,28,545/- and as such the same may please be deleted.

5. Replying to the above the Id. CIT(DR) supported the orders of the authorities below and submitted that the Assessing Officer has rightly made addition which upheld by the Id. CIT(A) on sound sustainable reasoning. However he did not controvert a factual position that the impugned amount is part of income as profit & loss account which is part of audited books of account and balance sheet in consolute with the 26AS for both the years.

6. On careful consideration of above rival submissions we note that the Id. Assessing Officer made the addition by alleging that above transactions are related to expense which is not correct as the above transactions are related to income earned by the appellant company and on the income as earned TDS have been deducted by parties and the said factual position is vivid from the perusal of 26AS for AY 2015-16 & 2016-17 of the appellant company which is available at pages 1 and 2 of assessee paper book. Thus we are in agreement with the contention of the Id. Senior Counsel that transactions mentioned at serial no 8, 9 & 12 are part of Form no. 26AS of the appellant company for AY 2015-16 and transaction mentioned at serial no. 13 is part of 26AS for AY 2016-17. He further submitted that the profit and loss account of the appellant for AY 2015-16 & 2016-17 as per which commission income is part of income as per Profit and Loss A/c which is available at pages 3 to 14 of assessee paper book in the audited balance sheet for both the years. Above noted factual position has neither been negated by the authorities below nor by the Id. CIT(DR) before us by way of any plausible and sustainable adverse positive material on record. Therefore we are inclined to hold that when the assessee has included impugned amount as income in the P&L account then the further addition is not required to be made by alleging the same as unexplained investment u/s. 69 of the Act. Accordingly, grievance of assessee is allowed and Assessing Officer is directed to delete the addition.

7. Since facts and circumstances of AY 2016-17 are identical to the facts and circumstances for AY 2015-16 therefore our conclusion drawn in the earlier part of this order would apply mutatis mutandis to AY 2016-17 also. Accordingly, grounds of assessee in ITA No. 1991/Del/2022 for AY 2016-17 are also allowed and Assessing Officer is directed to delete the addition.

8. In the result, both the appeals of assessee are allowed.

Order pronounced in the open court on 19.10.2023.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: October, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi