

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3883/Del/2023 : Asstt. Year : 2012-13

Brilliant Metals Pvt. Ltd., A-7/1, A Block, Jhilmil Industrial Area, G.T. Road, Shahdara, East Delhi, Delhi-110095	Vs.	Income Tax Officer, Ward-5(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAECB8006G		

Assessee by : Sh. Deepanshu Singla, CA

Revenue by : Sh. Om Prakash, Sr. DR

Date of Hearing: 18.04.2024

Date of Pronouncement: 19.04.2024

ORDER

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

The present appeal has been filed by the assessee against the order of Id. CIT(A)-26, New Delhi dated 21.11.2023.

2. Following grounds have been raised by the assessee:

"1. The Ld. AO has erred on facts and in law in passing the order u/s 143(3) r.w.s. 147 of the 1. T. Act and determining the total income at Rs. 37,65,156/- as against the returned income of Rs. 11,500/-.

2. The Ld. AO has erred on facts and in law in reopening the assessments of the appellant u/s 147 of the Income Tax Act, 1961 without following the requirements of law as laid down for reopening of assessments by mechanically following the borrowed opinion.

3. The Ld. AO has erred on facts and in law in initiating the proceedings u/s 147 after the limitation date.

4. The Ld. AO has erred on facts and in law in passing the order u/s 143(3) r.w.s.147 of the Act in gross violation of principles of natural justice, without providing copies of documents if any

on the basis of which adverse inference were drawn against the assessee.

5. The Ld. AO has erred on facts and in law in making an addition of Rs. 36,00,000/- on account of unexplained cash credit u/s 68 of the Income Tax Act, 1961 even though all the parameters laid down u/s 68 of the Act with regard identity, genuineness and creditworthiness of the shares subscribers are fully met.

6. The Ld. AO has erred on facts and in law in making an addition of Rs. 1,53,656/ on account of alleged commission received at the estimated rate of 1% of the total Sale and purchase of Rs. 1,53,65,576/- purely on assumption and presumption without any evidence.

7. The Ld. AO has erred in initiating penalty u/s 271(1)(c) of the Income Tax Act, 1961.

8. The Ld. AO has erred in charging interest under section 234B of the Income Tax Act, 1961."

3. From the record, we find that the order of the Assessing Officer as well as the order of the Id. CIT(A) are *ex-parte*. The Id. CIT(A) referred to the maxim "*vigilantibus non-dormientibus jura subveniunt*" i.e. "*the law assist those who are vigilant and not those who sleep over their rights*" is applicable in this case and relied on the judgment of Hon'ble Supreme Court in the case of CIT Vs. B. N. Bhattacharya & Another (118 ITR 461) wherein their lordships held that "*The appeal does not mean merely filing of the appeal but effectively pursuing it*" and dismissed the appeal of the assessee.

4. Both the parties fairly submitted that owing to non-examination of the issues, the matter may be set aside to the file of the Assessing Officer to examine the issue afresh. Hence, in the interest of justice, we remand the matter to the file of the Assessing Officer to complete the assessment proceedings *de novo* after affording an opportunity of being heard to the

assessee. The assessee shall comply to the notices issued by the department from time to time.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 19/04/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 19/04/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR