

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI C. N. PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA Nos. 520 & 2292/Del/2023
(Assessment Years: 2012-13 & 2016-17)

M/s. Basant Aerospace Pvt. Ltd, M-51, Ram Krishna Park, Patparganj, East Delhi	Vs.	ACIT,
(Appellant)		(Respondent)
PAN:AADCB1828R		

Assessee by :	Shri V. K. Agarwal, Adv
Revenue by:	Shri Ajay Kumar Arora, Sr. DR
Date of Hearing	04/06/2025
Date of pronouncement	23/07/2025

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.520/Del/2021 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-24, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. CIT(A), Delhi-24/10176/2019-20 dated 24.03.2021 against the order of assessment passed u/s 147 r.w.s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 26.12.2019 by the Assessing Officer, ACIT, Circle-05, New Delhi (hereinafter referred to as 'ld. AO'). As both these appeals were heard together, they are disposed of by this common order for the sake of convenience.

ITA No. 520/Del/2021 – Asst Year 2012-13 – Assessee Appeal

2. The Ground No. 1 raised by the assessee is challenging the validity of assumption of jurisdiction under section 147 of the Act by the Learned AO. The other grounds raised by the assessee are challenging the confirmation

of addition made under section 68 of the Act in the sum of Rs 4.05 crores by the Learned CITA.

3. We have heard the rival submissions and perused the materials available on record. The original return of income for the assessment year 2012-13 was filed by the assessee company on 31-03-2013 declaring total income of Rs. 8,05,820/- which was duly processed under section 143(1) of the Act. This assessment was sought to be reopened by issuance of notice under section 148 of the Act on 27-03-2019 in response to which, the assessee filed the return on 12-06-2019 declaring the same income as was declared in the original return. The reasons recorded for reopening the assessment are as under:-

"Reasons for reopening of the assessment in the case of M/s Basant Aerospace Pvt Ltd. for AY 2012-13 147 of the Income Tax Act, 1961

1. *The assessee is a company and has income from business or profession and income from ether sources. The assessee filed return of income for A'Y 2012-13 declaring total income of Rs. 805820/-, The ITR was processed u/s 143(1) of the act, however, no assessment was carried out /s 143(3) of the act.*

2. *A survey u/s 1334 of the act was conducted on the assessee on 04.03.2016. A perusal of details gathered during the survey and post survey proceedings, it was found that the assessee had received investment in the form of equity from M/s Sridhar Agencies Pvt. Ltd., 27-A Metcalfe Street, Kolkata. It is seen that the assesses received the said investment as per the following:*

Date	No. Of shares @ Rs. 10 per share	Total Investment (in INR)
03.05.2011	30 lacs	3 crores
09.03.2012	10.50 lacs	1.05 crores

3. *Further, details available with the department have been perused and it is noted that M/s Sridhar Agencies Pvt Ltd has no creditworthiness to invest such huge sums in the assessee. The investor company has no revenue*

generating apparatus. M/s Sridhar Agencies Pvt. Ltd. has declared the following income in its returns of income during the relevant assessment years:

AY	Returned Income
2010-11	238/-
2011-12	361/-
2012-13	No 1TR filed

Summons u/s 131 of the act were issued to the Principal Officer of M/s Sridhar Agencies Pvt. Ltd. on 22.11.2018 and 25.02.2019. However, there was no compliance and the lender/investor is not forthcoming in disclosing sources of its income.

4. In view of the foregoing, it is seen that M/s Sridhar Agencies Pvt Ltd has no creditworthiness to invest such a huge sum (Rs. 4.05 crores) in the assessee company. The financials of the investor company are in complete contrast with the huge investment made in the assessee.

5. It is evident that M/s Sridhar Agencies Pvt. Ltd. has no creditworthiness to make an investment of Rs. 4.05 crores in the assessee company. Hence, the provisions u/s 68 of the act are attracted in this case.

Section 68 provides that

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about nature and sources thereof or the explanation offered by him is not, in the opinion of the [Assessing) Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that year

Since, the creditworthiness of M/s Sridhar Agencies Pvt. Ltd. has not been proved as per provisions of section 68 of the act, the investment amount credited in the books of the assessee needs to be charged to income tax as income of the assessee for AY 2012-13.

6. Therefore, based on the above analysis, I have reasons to believe that income, chargeable to tax has, escaped assessment for AY 2012-13. Such escaped income is likely to amount to be at least Rs. 4.05 crores/-.

7. In this case, a return of income was filed for the AY under consideration, but no scrutiny assessment u/s 143(3) of the Act was carried out. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 of the Act is that the AO have "reasons to believe" that income

chargeable to tax has escaped assessment, which has been duly recorded in Paras 1 to 6 above. Also it is pertinent to mention here that no assessment as stipulated u/s 2(40) of the act was made and the return of Income was only processed u/s 143(1) of the act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to the facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.”

4. The Learned AR submitted that Assessee had received only Rs 1.90 crores as share capital on different dates from Sridhar Agencies Private Limited during the year. He submitted that a sum of Rs 2.15 crores on account of share application money pending allotment was received in the earlier assessment year i.e assessment year 2011-12. In support of this, he drew our attention to the balance sheet of the Assessee company as on 31-3-2012 and 31-3-2011 enclosed in pages 25 to 36 of the paper book. On perusal of the said balance sheet, we find that a sum of Rs 2.15 crores was received by the Assessee company in assessment year 2011-12 which was lying as share application money pending allotment. This sum of Rs 2.15 crores was converted from share application money to share capital during the year. Hence, this sum of Rs 2.15 crores cannot be construed as amount found credited during the year and no sum of money was received during the year. Hence, there cannot be any application of provisions of section 68 of the Act in respect of sum of Rs 2.15 crores. To this extent, the assumption of jurisdiction under section 147 of the Act by the Learned AO is flawed. The Assessee duly brought on record its objections to the reasons recorded before the Learned AO. The Assessee company also submitted that M/s Sridhar Agencies private limited had disposed of its existing investments and the proceeds of the said investments were used for investing in the share capital of the Assessee company through regular banking channels. Hence, the genuineness and creditworthiness of the transaction for issue of shares to Mr. Sridhar Agencies private limited

cannot be doubted. Further, the Assessee had also submitted before the Learned AO that Sridhar Agencies private limited had indeed filed a detailed reply to the summons issued under section 131 of the Act before the Learned AO. Hence, the fact mentioned in the reasons recorded that summons stood uncomplied by the investor company is factually incorrect. The Assessee had duly filed its objections that the entire assumption of jurisdiction for reopening the assessment was based on incorrect facts recorded by the Learned AO in the reasons. Accordingly, the Assessee prayed for dropping of the reassessment proceedings per se. However, the Learned AO did not heed to this contention of the Assessee and proceeded to frame the reassessment by adding a sum of Rs 4.05 crores merely based on reasons recorded ignoring all the documentary evidences placed on record.. The Assessee also duly brought on record that the permission accorded by the competent authority in terms of section 151 of the Act, though sought for, was not provided to the Assessee. Accordingly, the learned AR pleaded that the reassessment proceedings should be treated as void ab initio.

5. As regards the amount received in the sum of Rs 1.90 crores towards share capital from Sridhar Agencies Private Limited, the Assessee had filed confirmation from Sridhar Agencies Private Limited , copy of bank account of Sridhar Agencies Private Limited duly highlighting the transactions of investments made in the Assessee Company , copy of audited financial statements of Sridhar Agencies Private Limited for the year ended 31-03-2012 along with the income tax return acknowledgement for assessment year 2012-13, copies of share certificates issued to Sridhar Agencies Private Limited , copies of the allotment letters issued by Assessee Company and the copy of share application money forms issued by Assessee Company to Sridhar Agencies Private Limited. We find that the

Assessee had indeed received share capital in the sum of Rs 1.90 crores during the year under consideration on various dates as under:-

7-5-2011 50 lakhs

9-5-2011 50 lakhs

1-9-2011 45 lakhs

13-9-2011 45 lakhs

Total 190 lakhs

6. Hence, it could be seen that the date of receipt of amount received as mentioned by the learned AO in the reasons recorded are factually incorrect. Hence, it could be safely concluded that the entire reassessment has been made based on incorrect assumption of facts , which becomes fatal to the entire assumption of jurisdiction under section 147 of the Act and consequential reassessment proceedings . Reliance in this regard has been rightly placed on the coordinate bench decision of Delhi Tribunal in the case of Kunwar Ayub Ali vs ITO reported in 2023-TIOL-679-ITAT-DEL wherein it was held that reassessment made based on incorrect assumption of facts would result in quashing of reassessment proceedings. Similar views were expressed in the following decisions of Delhi Tribunal :-

ANM Fincap Pvt Ltd vs ITO reported in 2022-TIOL-698-ITAT-DEL

Sungrow Impex Pvt Ltd vs ITO reported in 2021-TIOL-974-ITAT-DEL

Shri Dheeraj Yadav vs ITO reported in 2021-TIOL-115-ITAT-DEL

7. We further find that the learned AO merely relied upon the report of the investigation and proceeded to reopen the assessment of the Assessee company, without even verifying the facts that are already available on record and without even verifying the primary document of balance sheet

of the Assessee company which is already on record. The preliminary verification of the balance sheet of the Assessee company could have proved the fact that only a sum of Rs 1.90 crores was received from Sridhar Agencies Private Limited towards share capital and a sum of Rs 2.15 crores was lying outstanding as share application money pending allotment in the earlier year itself. Hence, it could be proved that no sum of 4.05 crores was received during the year under consideration by the Assessee Company. This fact itself goes to prove that the learned AO had merely borrowed the report of the investigation without making any independent enquiries thereby becoming fatal to the basic formation of belief that income of the Assessee Company to the tune of Rs 4.05 crores had escaped assessment. This also further goes to prove that the competent authority had accorded sanction under section 151 of the Act for reopening the assessment based on this incorrect assumption of facts. This clearly proves that even the competent authority had not examined the basic facts from the evidences placed on record and had merely granted a mechanical approval under section 151 of the Act which becomes fatal to the entire reassessment proceedings. In the instant case, the Assessee Company had indeed sought for approval of the competent authority in terms of section 151 of the Act which was not granted by the learned AO. In this regard, the learned AR rightly placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Sabh Infrastructure Limited vs ACIT reported in 2017-TIOL-2041-HC-DEL-IT.

8. In view of the aforesaid observations and respectively following the various judicial precedents relied upon herein above, we have no hesitation in quashing the reassessment proceedings framed for the assessment year 2012-13 as it is based on (a) incorrect assumption of facts; (b) based on borrowed satisfaction and (c) approval granted under section 151 of the Act

by the competent authority in a mechanical manner. Accordingly, the entire reassessment proceedings are quashed. The Ground No. 1 raised by the Assessee is hereby allowed.

9. Since the entire reassessment is quashed, the other grounds raised by the Assessee need not be adjudicated and they are left open.

10. In the result, the appeal of the Assessee for assessment year 2012-13 is allowed.

ITA No. 2292/Del/2023 – Asst Year 2016-17 – Assessee Appeal

11. The Ground No. 1 raised by the Assessee is general in nature and does not require any specific adjudication.

12. The Ground No. 2 raised by the Assessee is challenging the confirmation of addition of Rs. 50 lakhs on account of unsecured loan received from Sridhar Agencies Private Limited as unexplained cash credit under section 68 of the Act.

13. We have heard the rival submissions and perused the materials available on record. During the year under consideration, the Assessee Company is engaged in the business of maintenance, repair and overhaul of mechanical, electrical and avionic components of civil and military aircraft and provide consultancy in the field of aviation. The return of income for the assessment year 2016-17 was filed by the Assessee company on 19-09-2016 declaring loss of Rs. 32,19,822/-. The assessment was completed in section 143(3) of the Act on 31-12-2018 determining total income of Rs. 19,11,160/-. In the said assessment, unsecured loan of Rs 50 lakhs received by the Assessee Company was added as unexplained cash credit under section 68 of the Act. The Assessee Company had taken loan of Rs. 50 lakhs from Sridhar Agencies Private Limited during the year. The

Assessee company filed the following documents before the Learned AO in order to prove the identity of the lender, genuineness of transactions and credit worthiness of the lender:-

- a) Name and address of the lender together with its PAN
- b) Confirmation from the lender.
- c) Bank statement of the lender duly highlighting the payments made to the Assessee
- d) Copy of income tax return acknowledgement of the lender for assessment year 2016-17
- e) Audited financial statements of the lender for the year ended 31-3-2016.
- f) Company master data from Ministry of Corporate Affairs website showing the status of the lender company as active.
- g) Ledger account of the Assessee in the books of the lender for the relevant period.
- h) Details of interest paid on loans by the Assessee company to Sridhar Agencies Pvt Ltd after due deduction of tax at source

14. We find that the Assessee had duly furnished the name and address of the lender together with its PAN which proves the identity of the lender. The transactions of the loan were duly routed through regular banking channels and the lender company had duly reflected in its balance sheet under the head 'loans and advances' duly reflecting the amounts advanced to the Assessee Company. This proves the genuineness of transaction. The lender company has sufficient bank balances in its kitty which is evident from the bank statements of the lender placed on record. This proves the credit worthiness of the lender to advance loan to

the Assessee company. In this regard, we find that the Hon'ble Jurisdictional High Court in the case of CIT vs Kamadhenu Steel & Alloys Ltd reported in 361 ITR 220 (Del) had held that creditworthiness or financial strength of the investor could be proved by producing the bank statement of the investor showing that it had sufficient balance in its bank to make the investment. The Special Leave Petition (SLP) preferred by the revenue before the Hon'ble Supreme Court against this decision was dismissed in CC 15640/2012 dated 27-9-2012. Hence the Assessee had duly proved all the three necessary ingredients of section 68 of the Act in the instant case.

15. We find that Assessee had furnished all the relevant documents (as listed supra) before the Learned AO and the Learned AO had proceeded to examine the veracity of those documents by seeking information separately from the lender company under section 133(6) of the Act. The Learned AO also issued summons under section 131 of the Act to the lender company. The lender company had duly responded to the summons under section 131 of the Act by furnishing the requisite details vide its letter dated 10-12-2018 directly filed before the Learned AO which is placed on record in Page 50 of the Paper Book filed before us. Hence, no adverse inference per se could be drawn on the documents furnished by the Assessee before the Learned AO. We further find that Assessee Company had duly paid interest on the loan received from Sridhar Agencies Private Limited. This interest payment was claimed as deduction and duly subjected to deduction of tax at source. Strangely, the Learned AO having sought to add the loan amount as unexplained cash credit had allowed deduction for the interest paid on such loans.

16. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we have no hesitation to delete

the addition made under section 68 of the Act. The Ground No. 2 raised by the Assessee is allowed.

17. The Ground No. 3 raised by the Assessee is challenging the confirmation of ad hoc disallowance made on account of 50% of travelling expenses.

18. We have heard the rival submissions and perused the materials available on record. During the year under consideration, the Assessee has claimed a sum of Rs 2,61,969/- in its profit and loss account on account of travelling expenses as deduction. The Learned AO on perusal of the bills observed that majority of the bills relate to travelling expenses incurred on director on travelling from Delhi to Bangalore and back. This was sought to be concluded as travelling expenses not meant for the purpose of business by the Learned AO. The Assessee submitted the invoices together with the details of the travel before the Learned AO. The Learned AO however not being satisfied proceeded to disallow 50% of the travelling expenses on ad hoc basis in the assessment. This action of the Learned AO was upheld by the Learned CITA.

19. We find that Assessee had submitted the bills and vouchers related to travelling from Delhi to Bangalore and back together with the communications of the Director of the Assessee company with IHQ (Navy) Ministry of Defence duly detailing the purpose of travel. These documents proving the purpose of travel and the communication with the Ministry of Defence are enclosed in pages 73 to 77 of the paper book. This proves clearly the business nexus of the Assessee company. While this is so, there is absolutely no need to make any ad hoc disallowance of expenses. Further, we find that the Learned AO had accepted the book results of the Assessee company and had not rejected the books under section 145(3) of

the Act. Hence there cannot be any ad hoc disallowance of expenses and accordingly the same is hereby deleted. The Ground No. 3 raised by the Assessee is allowed.

20. The Ground No. 4 is challenging the chargeability of interest under section 234 B, C and D of the Act. We hold that the interest under section 234 B of the Act is consequential in nature. With regard to chargeability of interest under section 234 C of the Act, the law is very well settled that the same shall be charged only on the returned income and not on the assessed income. The chargeability of interest under section 234 D of the Act is consequential subject to the verification that refund, if any, was earlier granted to the Assessee. The Ground No. 4 is accordingly disposed of.

21. In the result, the appeal of the Assessee for assessment year 2016-17 is allowed for statistical purposes.

22. To sum up, the appeal of the assessee for assessment year 2012-13 is allowed and appeal of the assessee for assessment year 2016-17 is allowed for statistical purposes.

Order pronounced in the open court on 23/07/2025.

-Sd/-

(C. N. PRASAD)
JUDICIAL MEMBER

-Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 23/07/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi