

3. Briefly stated the facts of the case of the assessee is similar to the group of cases already decided by the Tribunal referred to in the earlier paragraph. The modus operandi of the assessee was that the assessee with meagre income would file returns of income showing receipt of huge share capital and huge share premium without any financial justification. Intimation was issued u/s 143(1); thereafter notices u/s 148 was issued either at the instance of such companies divulging a paltry escapement of income or otherwise ; assessment order was passed u/s 143(3) read with section 147 after making nominal additions and the AOs, during the course of such assessment proceedings, would make some formal enquiries about shares issued by such companies at huge premium by issuing notices u/s 133(6) to some of the shareholders and getting satisfied without any further investigation. The jurisdictional CITs have passed orders u/s 263 in all such cases, which have been assailed before the Tribunal.

4. We have perused the relevant material on record. It is relevant to mention that we have disposed of more than 500 cases involving same issue through certain orders with the main order having been passed in a group of cases led by *Subhlakshmi Vanijya Pvt. Ltd. vs. CIT* (ITA No.1104/Kol/2014) dated 30.7.2015 for the A.Y. 2009-10. The grounds of challenge to the order u/s 263 of the Act are also identical to some of the grounds raised in the group of appeals referred to in para-2 of this order. The grounds of appeal of the assessee read as follows :-

“1. That on the facts and in the circumstances of the case, the Hon'ble CIT's Order u/s 263 dated 18.03.2015 is wholly bad, illegal, unjustified, uncalled for and void abinitio both on points of law as well as facts and in view of the facts and in the circumstances such order u/s 263 is required to be cancelled/quashed and in view of the facts and in the circumstances the order of the A.O being neither erroneous nor prejudicial to the interest of revenue the order of the CIT may kindly be cancelled/ quashed.

2. That on .the facts and in the circumstances of the case, the Order u/s 263 were time barred and Ld. CIT is wholly unjustified in initiating such proceedings and passing such order u/s 263 and in view of the facts and in the circumstances it may kindly be held accordingly.

3. *For that in view of the facts and in the circumstances the Order u/s 263 is wholly bad, illegal, unjustified, uncalled for and void abinitio for the reason that such proceedings having been initiated & concluded mechanically and arbitrarily and on mere surmise, conjecture, assumptions and presumptions and without specific finding as to how the assessment framed u/s. 1471143(3) of the Act, dated 15.03.2013, was erroneous and prejudicial to the interest of the Revenue & hence the order u/s 263 may kindly be quashed / cancelled.*

4. *That, on the facts and in the circumstances of the case, the A.O having completed the assessment after examining and making enquiries to all the issues in respect of which the CIT had set aside the assessment, and had assessed the income of the appellant, after obtaining all necessary details and particulars which he considered necessary for forming such assessment, the order of the A.O cannot be said to be erroneous in as much as prejudicial to the interest of revenue and here it may kindly be held accordingly and the order of the CIT u/s 263 may kindly be cancelled/quashed.*

5. *For that your petitioner craves the right to put additional alter/amend/modify the present grounds at the time of hearing.”*

5. We find that facts and circumstances of the cases under consideration are *mutatis mutandis* similar to those decided earlier. In our aforesaid order in *Subhlakshmi Vanijya Pvt. Ltd., vs. CIT* (ITA No. 1104/Kol/2014 A.Y. 2009-10), we have drawn the following conclusions: -

A. Contention of the assessee that since the AO of the assessee-company was not empowered to examine or make any addition on account of receipt of share capital with or without premium before amendment to section 68 by the Finance Act, 2012 w.e.f. A.Y. 2013-14 and hence the CIT by means of impugned order u/s 263 could not have directed the AO to do so, is unsustainable.

B. Failure of the AO to give a logical conclusion to the enquiry conducted by him gives power to the CIT to revise such assessment order, by holding that :-

i) the enquiry conducted by the AO in such cases can't be construed as a proper enquiry;

ii) CIT u/s 263 can set aside the assessment order and direct the AO to conduct a thorough enquiry, notwithstanding the jurisdiction of the AO in making enquiries on the issues or matters as he considers fit in terms of section 142(1) and 143(2) of the Act, which is relevant only up to the completion of assessment ;

iii) Inadequate inquiry conducted by the AO in the given circumstances is as good as no enquiry and as such, the CIT was empowered to revise the assessment order ;

iv) The order of the CIT is not based on irrelevant considerations and further in the present circumstances, he was not obliged to positively indicate the deficiencies in the assessment order on merits on the question of issue of share capital at a huge premium ; and

v) the AO in the given circumstances can't be said to have taken a possible view as the revision is sought to be done on the premise that the AO did not make enquiry thereby rendering the assessment order erroneous and prejudicial to the interest of the revenue on that score itself.

C. In the given facts and circumstances of all such cases, the notices u/s 263 were properly served through affixture or otherwise. Further the law does not require the service of notice u/s 263 strictly as per the terms of section 282 of the Act. The only requirement enshrined in the provision is to give an opportunity of hearing to the assessee, which has been complied with in all such cases.

D. Limitation period for passing order is to be counted from the date of passing the order u/s 147 read with sec. 143(3) and not the date of Intimation issued u/s 143(1) of the Act, which is not an order for the purposes of section 263. In all the cases, the orders have been passed within the time limit.

E. The CIT having jurisdiction over the AO who passed order u/s 147 read with section 143(3), has the territorial jurisdiction to pass the order u/s 263 and not other CIT.

F. Addition in the hands of a company can be made u/s 68 in its first year of incorporation.

G. After amalgamation, no order can be passed u/s 263 in the name of the amalgamating company. But, where the intention of the assessee is to defraud the Revenue by either filing returns, after amalgamation, in the old name or otherwise, then the order passed in the old name is valid.

H. Order passed u/s 263 on a non-working day does not become invalid, when the proceedings involving the participation of the assessee were completed on an earlier working day.

I. Order u/s 263 cannot be declared as a nullity for the notice having not been signed by the CIT, when opportunity of hearing was otherwise given by the CIT.

J. Refusal by the Revenue to accept the written submissions of the assessee sent after the conclusion of hearing cannot render the order void *ab initio*. At any rate, it is an irregularity.

K. Search proceedings do not debar the CIT from revising order u/s passed u/s 147 of the Act.

6. It is noticed that all or some of the above conclusions are applicable to this appeal also . In view of the foregoing discussion and following the view taken in *Subhlakshmi Vanijya Pvt. Ltd. (supra)*, we uphold the impugned order.

7. In the result, the appeal is dismissed.

Order pronounced in the Court on 31.07.2017.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 31.07.2017.

[RG PS]

Copy of the order forwarded to:

- 1.M/s. Hamsafar Investments Consultants Pvt. Ltd., C/o Salarpuria Jajodia & Co., 7, C.R.Avenue, Kolkata-700072.
2. C.I.T., Kolkata-2, Kolkata.
- 3..CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Sr. Private Secretary
Head Of Office/D.D.O., ITAT Kolkata Benches

