

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 698/JP/2018  
निर्धारण वर्ष / Assessment Year : 2008-09

M/s Samrat Roller Flour Mills Ltd., (Presently named as Deroah Developers & Associates Ltd.) 39-E, MIA, Alwar.	बनाम Vs.	The Pr.CIT, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCS 2220 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 29/10/2018  
उदघोषणा की तारीख / Date of Pronouncement : 10/12/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. Pr. CIT, Alwar dated 28.03.2018 for Assessment Year 2008-09 wherein the assessee has taken following grounds of appeal:-

*"1. Under the facts & circumstances of the case, the order passed by Ld. CIT u/s 263, at the instance of audit objection, without following the principle of natural justice and ignoring that on the issue raised by him, the AO has already made detailed enquiry, is illegal & bad in law.*

*2. The Ld. CIT has erred on facts and in law in holding the order passed by AO as erroneous and prejudicial to the interest of revenue only for the reasons that out of 18 investors, assessee has not filed the bank statement of 15 investors ignoring the various other evidences filed before the AO to prove the creditworthiness of investors and genuineness of the transaction.”*

2. The Id. AR submitted that the assessee filed its return of income on 27.11.2008 declaring total income of Rs. 4,40,810/-. A notice u/s 148 of IT Act was issued on 05.01.2015. The reason recorded for issuance of notice states that during the course of proceedings u/s 147 of IT Act, 1961 for the AY 2009-10, information was received from the Director of Income Tax (I&CI), Jaipur that assessee has issued 47,500 equity shares of Rs.10/- each at premium of Rs.170/- per share, totaling to Rs.85,50,000/- which was found unreasonable by the Directorate. As per Form No.2 submitted by assessee company to ROC, the date of allotment of share is 01.10.2007, hence the matter relates to AY 2008-09 and not AY 2009-10. Therefore, share premium of Rs.80,75,000/- and share capital of Rs.4,75,000/- has escaped assessment within the meaning of section 147 of IT Act, 1961. Thereafter, various notices were issued to assessee to verify the genuineness of share capital in response to which assessee furnished various documents. Notice u/s 133(6) was also sent to 18 companies from whom share capital money has been received. The AO after considering the same and making necessary enquiries framed the assessment u/s 147/ 143(3) on 30.03.2016 accepting the genuineness of share capital raised by the assessee.

3. The Id. AR further submitted that after completion of assessment, an audit objection was raised on 30.12.2016 by ITO (Audit) which was served on the assessee on 20.07.2017. In response to same, the assessee furnished its reply vide letter dt. 28.07.2017. Based on this report, PCIT initiated proceedings u/s 263 vide show cause notice dt.27.03.2018 which was replied by the assessee vide letter dt. 28.03.2018.

4. The Id. AR further submitted that in the order passed by Ld. CIT u/s 263, it is stated that out of 18 companies, only 3 investing companies have provided the copies of bank statement narrating the sources of funds out of which the investment was made in the assessee company. Thus, the genuineness of transactions as well as the creditworthiness of the remaining 15 companies are still pending for making necessary verification. Accordingly, after relying on the amendment made by the Finance Act, 2015 w.e.f. 01.06.2015 u/s 263, it was held that the assessment order passed u/s 148/ 143(3) is based on non-making of proper verification/ examination of the genuineness of transactions as well as creditworthiness of the investing companies on the basis of any substantive evidences of the source of the funds available with them provided either by the assessee company or by such companies. Thus, the order was treated to be erroneous in so far as it is prejudicial to the interest of revenue and set aside to the AO for fresh assessment after proper enquiry.

5. The Id. AR further submitted that from the facts stated above, it can be noted that AO has made detailed enquiry to verify the

genuineness of share capital money of Rs. 85,50,000/- received by the assessee. In the notice dt. 01.03.2016 issued by AO, it was stated that in order to verify the genuineness of transaction, notice u/s 133(6) was sent to 18 companies out of which notice to 8 companies remained unserved. Out of remaining 10 companies to whom notice was served, only 4 companies have replied. Thereafter, assessee was required to furnish necessary document evidence to establish the identity, genuineness and creditworthiness of the transacting parties who have contributed to share capital/ share premium during the year under consideration and to furnish the basis of valuation/ working of the share price and share premium rates at which such subscription were received by the assessee. In response to the same, the assessee vide letter dt. 09.03.2016 submitted that it has provided all the documents like share application form, company master data as per official website of Ministry of Corporate Affairs, ITR/ copy of PAN card/bank statements on 07.01.2016. All the companies are having PAN and registered under the Companies Act having CIN. Perusal of company master data downloaded from official website of MCA shows that status of company is active or in one or two cases the company is amalgamated in another company. With regard to genuineness of transaction, it was submitted that all the transactions are routed through banking channels and details of cheque no., cheque date, name of bank is mentioned on the share application form. All the cheques are cleared in the bank account of the company and same are reflected in the bank statement. Creditworthiness of the company is proved from the Balance Sheet downloaded from MCA website which shows that these companies are having huge amount of share capital and reserve & surplus and huge

amount of investment in shares. The AO after considering the same and making necessary enquiries after receipt of reply by these companies in response to notice u/s 133(6), framed the assessment u/s 147/ 143(3) on 30.03.2016 accepting the genuineness of share capital raised by the assessee. Therefore, the order passed by AO by no stretch of imagination can be considered as erroneous and prejudicial to the interest of Revenue. In support, reliance was placed on the decision in case of Honda Motorcycle & Scooters India Pvt. Ltd. vs. PCIT (2018) 53 CCH 0241 (Trib) (Del) and GE Capital Services India vs. ACIT (2018) 52 CCH 0372 (Trib) (Del).

6. The Id. AR further submitted that after completion of assessment, an audit objection was raised on 30.12.2016 and assessee was asked by the AO to meet with the audit objection. In the audit objection it is stated that assessee has thwarted the AO's query by saying that concept of FMV of the shares does not apply to AY 2008-09 and though each of the 18 investing companies have responded to notice u/s 133(6) but they have not provided the bank statement or other records stating that the same is time barred and they have destroyed the record and therefore, assessment was completed without verification. Against this objection, the assessee has filed the reply dt. 28.07.2017 in which all the objection of the audit has been explained. All these facts shows that detailed enquiries were made by the AO as has been stated in the audit objection itself and therefore, it cannot be said that assessment order is passed by the AO without making proper enquiry. Thus, only on the basis of audit objection, section 263 cannot be invoked as held in the cases of CIT Vs. Sohana Woollen Mills (2007) 296 ITR 238 (P&H)

(HC), SarlabenBhansali Charities Trust Vs. CIT(E) (2017) 51 CCH 464 (Kol.) (Trib.), Surinder Kumar Jain Vs. ITO (2016) 48 CCH 158 (Del.) (Trib.), Dashmesh Motors MuktsarVs. PCIT (2016) 47 CCH 506 (Asr.) (Trib.) and Jaswinder Singh Vs. CIT (2012) 150 TTJ 33 (Chd.) (Trib.)

7. The Id. AR further submitted that it may be noted that the Ld. CIT after considering the fact on record has accepted the investment made by the three companies who have provided the bank statement but doubted the investment made by the remaining 15 companies where bank statement is not available and these companies in response to notice u/s 133(6) has shown their inability to furnish the same as the same is not available with them though all other evidences in support of investment has been filed. Thus, only because the bank statement of these 15 companies is not furnished cannot lead to a conclusion that AO has not made proper enquiry when all other evidences in support of the investment made by these companies are called for and examined by the AO before accepting the genuineness of the transaction. Even after insertion of Explanation 2 to section 263 w.e.f 01.06.2015, the revisionary powers u/s 263 cannot be exercised only to find fault in the assessment order or to make more enquiry as perceived by him. In this connection reliance is placed on the decision in case of Torrent Pharmaceuticals Ltd. Vs. DCIT ITA No.164/Ahd/2018 order dt.08.08.2018 (Ahd.)(Trib.) and Amira Pure Foods Pvt. Ltd. Vs. PCIT (2017) 51 CCH 473 (Del.) (Trib.).

8. Per contra, the Id. DR vehemently argued the matter and relied on the order of the Id. CIT. Our attention was drawn to the following findings of the Id. CIT which are reproduced as under:-

*"On considering the reply filed by the Authorized Representative of the assessee company and the information/papers/documents available on the record, reveal that the main issue involved in the case is that during the year, 47500 equity shares of Rs.10/- each were issued by the assessee company at a premium of Rs.170/- per share, total amounting to Rs.85,50,000/- (47500 x 180/-). Therefore, under section 68 of the Income Tax Act, the assessee company requires to explain the nature and source of credit entries.*

*In this connection, a chart provided by the Authorized Representative of the assessee company has been placed on the record containing the list of the 18 companies to whom the equity shares were allotted during the year. The list contains the details of the numbers of the equity shares allotted to each, their PANs or the copies of their earlier year ITRs filed and the availability of such company's Master Data, Share Application Form & Balance Sheet. Further, the confirmation of having been invested in the equity shares of the assessee company by those companies details of such companies having been provided their confirmations with copies of their accounts, copies or their ITRs filed & their bank statements.*

*In the confirmation given by all these companies, the investment made by such companies in the equity shares of the assessee company*

*have been duly accepted and payments made in this regard have been mentioned through cheques with dates. The confirmations received from such companies have also been attached with the copies of Balance Sheets as downloaded from the official website of Ministry of Corporate Affairs (MCA) and made a submission that the investment in share reflected in the Balance Sheet under the "Investment" which includes investment in this company also. However, as regard to the requirements from such companies in respect of providing the bank statements with source of this investment made, only 3 companies have provided the same. The remaining 15 companies in its confirmation furnished have informed that they are not having any record like bank statement etc. as the same is time barred as per the Income Tax Act and they have disposed off the records relating to FY 2007-08.*

*Thus, from the above discussion made on the issue, it clears that from providing of the PANs or copies of earlier years ITR filed and the details of payment made through cheques, only proves the identities of such companies. However, the genuineness of the transactions as well as creditworthiness of the companies having been invested in the equity shares of the assessee company verify only in the cases of 3 investing companies which have also provided copies of its bank statements narrating the sources of funds out of which the investment made in the assessee company. Thus, the genuineness of transactions as well as the creditworthiness of the remaining 15 companies which have also been claimed to be invested in the equity shares of the assessee company are still pending for making necessary verification in this case.*

*Thus, from the above discussion made, I hold that the assessment order u/s 148/143(3) passed by the Assessing Officer on 30.03.2016 is based on non making proper verification/examination of the genuineness of transactions as well as creditworthiness of the investing companies on the basis of any substantive evidences of the source of the funds available with them provided either by the assessee company or by such companies, accordingly, the assessment made by the Assessing Officer is erroneous as well as is prejudicial to interests of the revenue."*

*"6. In view of the discussion made above and after considering the reply of the Authorized Representative of the assessee company, I am of the opinion that the assessment order u/s 148/143(3) passed by the Assessing Officer on 30.03.2016 is based on non making proper verification/examination of the genuineness of transactions as well as creditworthiness of the investing companies on the basis of any substantive evidences of the source of the funds available with them provided either by the assessee company or by such companies. Thus, the order is treated to be erroneous in so far as it is prejudicial to the interest of the revenue. I, therefore, cancel the assessment order passed by the Assessing Officer u/s 148/143(3) on 30.03.2016 with the direction to the Assessing Officer to pass the assessment order afresh after considering the above mentioned issue(s), apart from other issue(s) discussed in the assessment order u/s 148/143(3) dated 30.03.2016 and also the issue(s) which may subsequently come into the notice of Assessing Officer, during the assessment proceedings u/s 148/143(3) r.w.s. 263 of the Income Tax Act, 1961.*

*Consequently, the order passed u/s 148/143(3) of the Income Tax Act dated 30.03.2016 is set-aside under section 263 of the Income Tax Act with the direction that the Assessing Officer should properly examine the issue(s) raised in the foregoing paras and pass the assessment order afresh after making proper enquiries and after affording adequate opportunity to the assessee company."*

9. We have heard the rival contentions and perused the material available on record. It is a case where the assessment proceedings were reopened by issuance of notice u/s 148 as the AO had a reason to believe that share premium of Rs 80,75,000 and share capital of Rs 4,75,000 has escaped assessment within the meaning of section 147 of the Act. In other words, the issuance of share capital and that too, at a premium was the precise reason for reopening the assessment proceedings. In that factual and legal background, it was incumbent on the AO to verify the identity and creditworthiness of the share holders who have invested in the share capital of the assessee company and the genuineness of the share transaction in terms of fair market value and issuance of shares at a premium.

10. Now, let's examine what the AO has done to verify these transactions. He has issued notices u/s 133(6) to these 18 companies and thereafter, asked the assessee vide letter dated 1.3.2016 to furnish necessary documents to establish the identity, genuineness and creditworthiness of the transacting parties who have contributed to share capital/ share premium during the year under consideration and to furnish the basis of valuation/ working of the share price and share

premium rates at which such subscription were received by the assessee. In response to the same, the assessee vide letter dt. 09.03.2016 submitted that it has provided all the documents like share application form, company master data as per official website of Ministry of Corporate Affairs, ITR/ copy of PAN card/bank statements on 07.01.2016. It was further submitted that all the companies are having PAN and registered under the Companies Act having CIN, all the transactions are routed through banking channels and creditworthiness of the companies are proved from the Balance Sheet downloaded from MCA website which shows that these companies are having huge amount of share capital and reserve & surplus and huge amount of investment in shares.

11. The AO thereafter passed the assessment order on 30.03.2016 u/s 147 r/w 143(3) on 30.03.2016 stating that "in the assessment proceedings, the reasons recorded have been discussed in detail, the Id AR attended the proceedings and submitted the details which have been examined and placed on file".

12. It is therefore not a case where the enquiries/verification have not been carried out by the AO. At the same time, we find that the AO has taken the submissions and documentation in support thereof on face value and has not carried out adequate enquiry and has completed the reassessment proceedings in a summarily manner and in that sense, erroneous. It is a case where the issuance of share capital at a premium was the precise reason for reopening the assessment proceedings. In other words, where the AO has the reasons to believe

that income has escaped assessment at the start of the reassessment proceedings, in order to dislodge his own self- belief, to our mind, the AO should have carried out requisite enquiry and verification as warranted in such circumstances and thereafter, he should have reached the necessary conclusion. It is not a question of determining the nature and extent of investigation that the AO should carry out in the present circumstances, rather it is a case where a person of reasonable intellect and understanding of tax laws and procedures will carry out the requisite enquiry as warranted in the facts and circumstances of the present case.

13. As we have noted above, the AO besides issuing notices u/s 133(6) has taken the assessee's submissions on face value without carrying out further examination and verification. There is no finding regarding determination of fair market value of shares and consequent determination of share premium and thus the genuineness of the transaction where the shares have been issued at a premium. The Id CIT has in fact examined these documents so submitted by the assessee and has given a finding that genuineness of transactions and creditworthiness of 15 companies out of total 18 companies have not been examined and verified by the AO. In particular, she has stated in her order that where the bank statements of these 15 companies are not submitted during the reassessment proceedings, how the AO has arrived at a conclusion that these investee companies have the requisite creditworthiness to subscribe to shares at a premium at the relevant point in time when the investment were made is not emanating from the records. Further, it is not a case where there was an audit objection

and a different view so suggested by the auditor has been blindly applied by the Id CIT. No doubt, there was an audit objection in the present case but at the same time, there was lack of adequate enquiry on part of the AO and the Id CIT has given a specific finding in this regard on examination of documents so submitted during the course of assessment proceedings.

14. In light of above and in the entirety of facts and circumstances of the case, we donot see any infirmity in the order of the Id CIT exercising her jurisdiction under section 263 of the Act in holding the order passed under section 147 r/w 143(3) as erroneous in so far as prejudicial to the interest of Revenue.

15. Before parting, we may add that we have gone through the various decisions so relied upon by the Id AR in support of his contentions. We however find that these decisions have been rendered in their peculiar facts and circumstances of the case and doesn't support the case of the assessee.

In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 10/12/2018.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member  
जयपुर / Jaipur

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

दिनांक / Dated:- 10/12/2018.

**\*Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Samrat Roller Flour Mills Ltd., Alwar.
2. प्रत्यर्थी / The Respondent- Pr.CIT, Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 698/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar