

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "FRIDAY-C" NEW DELHI  
BEFORE SHRI G.S. PANNU, VICE PRESIDENT**

**&**

**SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.4819/Del/2019

Assessment Year 2009-10

M/s Guru Kripa Shuttering Pvt. Ltd. NM-4&5, 3 <sup>rd</sup> Floor, Old DLF Colony Gurgaon,	vs.	Principal Commissioner of Income Tax, HSI IDC Building, Vaniya Nikunj, Udyog Vihar Phase-V, Gurgaon
TAN/PAN: AACCG9340C		
(Appellant)		(Respondent)

Appellant by:	Sh. Ajay Wadhwa, Advocate & Ms. Ragini Handa, Advocate		
Respondent by:	Ms. Sunita Singh, CIT-DR		
Date of hearing:	04	12	2020
Date of Pronouncement:	11	12	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the assessee, against impugned order dated 30.03.2019, passed by the Ld. Pr. Commissioner of Income Tax, Gurgaon, in revisionary jurisdiction u/s 263 of the Income Tax Act, 1961 (in short, 'the Act') for Assessment Year 2009-10.

2. In the grounds of appeal, the assessee has challenged the order of Ld. Pr. CIT passed u/s 263 of the Act setting aside the assessment order passed u/s 147/148 of the Act by the Assessing Officer and directing to pass fresh assessment order.

3. The facts, in brief are that the assessee has filed its return of income of Rs.1,43,911/- on 24.09.2009. Thereafter, the assessee's case was reopened vide notice dated 30.03.2016 u/s 148 of the Act, on the following 'reasons recorded' :-

*"2. Further information has been received from the Investigation Wing, Unit-2(1). New Delhi that a search & seizure operation was carried out on 18.11.2015 in the cases of Shri Pradeep Kumar Jindat Group of Companies and Shri Sajjan Kumar Jain Group of Companies who had taken accommodation entries in the form of bogus share premium besides other accommodation entries of Long Term Capital Gains and share forfeiture from front companies of Shri Pradeep Kumar Jindal, Subsequently, a Survey was carried out on 01.02.2016 at 116, R.K.Complex, Mahendru Enclave, G.T.Karnal Road, Delhi which was found to be a secret office of Shri Pradeep Kumar Jindal, where record and data related to accommodation entries of various nature was found recorded in his iaptop and computers. / The documents/digital data impounded/seized during search*

*and surveys and the submission of Shri Pradeep Kumar Jindal and dummy directors of his front companies has established beyond doubt that Shri Pradeep Kumar Jindal provides bogus entries to various business entities and individuals by accepting cash from them in lieu of such accommodation entries and thus abets tax evasion by way of channeling undisclosed income into their books of accounts. The detailed analysis of digital data and annexures/seized/impounded as discussed above revealed that Shri Pradeep Kumar Jindal has a nexus of large number of companies run/controlled/managed by him through his dummy directors, intermediaries and clients seeking accommodation entries. The digital data impounded during the course of survey proceedings at the secret office premises of Shri Pradeep Kumar Jindal at 116, R.K.Complex, Mahendru Enclave, G.T Kama Road, Delhi on 01.02.2016 was analyzed. From the analysis of the digital data, accommodation entries and their respective beneficiaries were identified as under:-*

<i>Name of the beneficiary</i>	<i>Address of the beneficiary</i>	<i>PAN</i>	<i>Name of the Accommodation entry</i>	<i>From company of Pradeep Kumar Jindal</i>	<i>Date</i>	<i>Amount</i>
Guru Kripa Shuttering Pvt. Ltd.	938, Sec- 15, Part-II Gurgaon-122001	AACCG9340C	Share premium/ application	Euphoria Capital Private Limited	01.04.2008	10.00,000
Guru Kripa Shuttering Pvt. ltd.	938, Sec- 15, Part-II, Gurgaon-122001.	AACCG934QC	Share premium/ application	Euphoria Capital Private Limited	10.06,2008	10,00,000

2. However, from the AST records, it has been verified that the assessee company has shown Issue, subscribed and paid up" share capital at Rs.17,30,000/- and "Securities Premium Account" at Rs.65,20,000/- as against Issue, subscribed paid up share capital at Rs,9,10,000/- and Securities Premium Account at Rs.32,40,000/- in the immediately preceding year, respectively. Thus, it is clearly evident from the records that the assessee company has introduced bogus share premium/application through M/s Euphoria Capital Private Limited out of undisclosed income in the garb of share premium/application as found in the impounded books of Shri Pradeep Kumar Jindal during the survey proceedings

3. From the above, it is clearly established that M/s Guru Kirpa Shuttering Pvt. Ltd. has taken the accommodation entries of bogus share premium/application from Shri Pradeep Kumar Jindal through his company M/s Euphoria Capital Private Limited amounting to Rs.20,00,000/-, (Rs. 10,00,000 on 01.04,2008 and Rs.10,00,000 on 10.06.2008) as discussed above.

4. Therefore, I have reasons to believe that the income chargeable to tax has escaped assessment to the extent of Rs.20,00,000/- for the assessment year 2009-10 within the meaning of Section 147 of the Income Tax Act, 1961.

4. Thereafter, the assessee filed objections to proceedings u/s 147/148 vide letter dated 30.05.2016, wherein, the assessee submitted that the assessee did not receive any money from **M/s Euphoria Capital Private Limited** as alleged in the 'reasons recorded' for sums aggregating of Rs.20 Lakhs. The assessee also produced its bank statement and books of accounts to show that there was no credit entry from M/s Euphoria Capital Private Limited and it did not enter any such transactions with the said company. Since, reopening u/s 147 was only on the basis of information received from Investigation Wing and there is no such entry in the bank account of the assessee, then such 'reasons recorded' itself cannot be basis of reopening of assessment. Thereafter, the assessee further vide reply dated 14.07.2016 reiterated that there is no such credit amount from the said company in the books of accounts of the assessee and the copy of bank account and books of accounts were duly filed. It was also pointed out that there was no fresh increase in the share capital during the year and there was no credit in the books of account.

5. The Ld. Assessing Officer after examining the record and the financial statements given in the audited balance sheet and the bank statement, noted that there is only one entry of Rs.10 Lakhs on 24.01.2009 which was from **M/s Gannon Dunkerly and Company Ltd.** and no money has come from M/s Euphoria Capital Private Limited. The relevant finding in the assessment order dated 29.09.2016 reads as under:-

**“4. On perusal of the bank account of the assessee company, only one entry of Rs.10,00,000/- was found credited in the bank account, which was received from one M/s Gannon Dunkerly & co. Ltd. on 24.01.2009. No further entry of Rs.10 Lakhs was found. Accordingly, the Return of Income of the assessee is accepted.”**

6. Thereafter, the Pr. CIT in his revisionary jurisdiction u/s 263 of the Act has firstly, noted exactly the same ‘reasons recorded’ which was recorded by the Assessing Officer for reopening the case u/s 147 and observed that the Assessing Officer had neither called for the information from the Investigation Wing, so as to verify the premium of Rs. 20 Lakhs from M/s Euphoria Capital Private Limited nor examined that share premium of Rs.32.80 Lakhs as declared in the balance sheet. Thus, he observed that assessment order passed by the Assessing Officer is erroneous insofar as it is prejudicial in the interest of the Revenue. In response to the show cause notice, the assessee filed a very detailed reply, a copy of which has been incorporated in the impugned PCIT’s order. Besides challenging the assessment order itself on the ground that ‘reasons recorded’ were not valid or was not in accordance with law, the assessee submitted that the AO has duly verified and examined the records about the allotment of shares and premium. The relevant portion of the reply by the assessee before the Pr. CIT is reproduced as under:-

*“Further to our submissions dated 14.12 2017 we would like to inform to your good office that during the year, assessee has allotted shares of Rs. 8,10,000/- at a premium of Rs. 32,80,000/- The complete details of allotment along with Form-2 was submitted before assessing officer and the AO duly verified the transactions of allotment with Bank statement. The AO was duly satisfied that there was no amount received from M/s. Euporia Capital Private Limited during the year and passed the order accordingly. It would not be fair to allege the AO that he has not verified the details of allotment of shares including the premium of Rs, 32,80,000/-.*

*Since there was no transaction with M/s Euporia Capital Private Limited and/or no amount was received from the said party, the reason to reopen the case and the AO had no specific information on record, AO was convinced that no further investigation was required in the absence of the credit of Entries as reported by the Investigation wing. In view of the various court decisions. Prima Facie the case was wrongly re-opened u/s 147/148, as such the AO passed the order. If any addition is made on this account, it will be mainly due to change of opinion m the part of department.”*

7. However, the Pr. CIT has set-aside the order of the AO to pass a fresh assessment order after observing as under:-

*“The reply of the assessee has been gone through carefully. The assessee did not furnish in detail of a person from whom the share. The assessee received share premium nor furnished any explanation regarding the identity, the source of investment and creditworthiness of the subscribers. He also did not furnish any documents in support of the fair market value adopted by the company and received huge premium during the course of assessment proceedings the A.O. has also not examined the above issues and accepted the same as declared by the assessee.*

*In view of the above facts and circumstances of the case, I am of the confirmed view that the A.O. by not pursued the inquiries to their logical end and has made the order erroneous and prejudicial to the interest of the Revenue. Hence, the same deserves to be revised u/s 263 of the I.T. Act, 1961. Therefore, the said order passed by the Assessing Officer is set aside on this particular issue only. The Assessing Officer is directed to pass fresh assessment order after making through and detailed inquiries on this particular issue only. The assessing officer should pass a speaking order after providing adequate opportunity to the assessee.*

8. Before us, the Ld. Counsel for the assessee, Mr. Ajay Wadhwa after explaining the entire facts and background of the case, submitted that the very premise of Ld. PCIT to exercise his revisionary jurisdiction u/s 263 was based on the

same information on the basis of which the assessee's case was reopened u/s 147 on the 'reasons recorded' by the AO. He pointed out that the assessee has raised following two additional grounds of appeal:-

*“That the Ld. PCIT has erred in law in seeking to revise the order under section 147 without considering the fact that reopening under section 147 itself was incorrect and hence was invalid. Hence, against an invalid reopening, no 263 is permissible.*

*“That the Ld. PCIT has erred in law in seeking to revise the order under section 147 without considering that while making additions under section 147, other additions on the basis of which the foundational addition is made by the Ld. Assessing Officer and as the addition on the basis of which the assessment was reopened does not exist, it is not open to make other additions.”*

9. He submitted that, first of all, the reasons recorded by the AO, to acquire jurisdiction to reopen the assessment u/s 147 of the Act itself was bad in law, because the same was based on alleged accommodation entry when no such amount have been received by the assessee company. Based on such erroneous facts, the reasons itself was invalid and therefore, the entire proceedings u/s 147/148 was *void-ab-initio*; and accordingly no valid jurisdiction u/s 263 could have been assumed on such invalid order. He further submitted that the reasons were recorded only on the ground that the assessee

company has taken accommodation entry of bogus share premium/application for sums segregating to Rs.20 Lakhs received from M/s Euphoria Capital Private Limited for two amounts of Rs.10 Lakhs each on 01.04.2008 and 10.06.2008. Once, it was proven on record before the AO that no such amount has been credited in the bank account of the assessee or in the books of account from the said company, then the entire foundation of the reopening fails. There is only one entry of Rs.10 Lakhs which was from a different party. Therefore, the very basis on which the reasons were recorded based on such alleged information was found to be incorrect and therefore, the AO had rightly accepted the return of income of the assessee. He further drew our attention to the reply before the AO along with various documents filed in the course of assessment proceedings to show that, AO has duly examined this issue and accepted the assessee's contention. Once the very basis on which reasons were recorded were found to be factually incorrect, then the AO could not have travelled beyond the reasons to make any further addition for which no such material or information has come on record. Nor he has recorded his satisfaction or 'reason to believe' on any other issue. Once, the Ld. Pr. CIT in his revisionary jurisdiction now cannot go beyond the reasons recorded for which the case was reopened u/s 147 and say that the AO should have enquired other things also. Once, the reopening is only on alleged escapement of Rs.20 Lakhs, which the AO has verified and found that this amount was not received

from that party, then Ld. Pr. CIT cannot travel beyond the reasons recorded. No error has been found or highlighted by the Ld. Pr. CIT in the order of the AO.

10. Alternatively, he submitted that even on other points on which the Ld. Pr. CIT has made observations, the assessee has filed all the details and evidences before the AO, which were duly examined, which is evident from the various replies and documents filed before the AO as placed in the paper book. Once, the AO has applied his mind and called for the record from the assessee even on the points which has been raised by the PCIT, then it cannot be said that either he has not carried out any enquiry or has not applied his mind.

11. On the other hand, the Ld. CIT-DR strongly relied upon the observations of the Ld. Pr. CIT as incorporated above and pointed out that in the set-aside proceedings in pursuance to order passed u/s 263 of the Act, the assessee did not participate and did not provide any details, therefore, the AO has passed an ex-parte order and matter still pending before the Ld. CIT (A). If the assessee claims that the assessee has not received any amount from the said party and on the other issue also, the assessee can get it verified and substantiate its case before the Ld. CIT (A).

10. We have heard the rival submissions, perused the relevant material placed on record and the observations of the Ld. Pr. CIT. As stated above, the assessee case was reopened u/s 147/148 of the Act on the basis of information received

from Investigation Wing that the assessee has taken accommodation entry of Rs.20 Lakhs as the per reasons incorporated above from M/s Euphoria Capital Private Limited. Since, the case was reopened on the basis of information received from Investigation Wing, on the particular amount from a particular party, the assessee has raised objection before the AO pointing out that it has not received any money from the said entity nor there is such amount credited in the bank account or books of account of the assessee from the said party. This fact was reiterated before the AO along with copy of bank statements and books of accounts. The Ld. AO on examination of the bank account and books of accounts has categorically noted that, *firstly*, only amount of Rs.10 Lakhs was found credited in the bank account which was received from M/s Gannon Dunkerly and Company Ltd. on 24.01.2009; *secondly*, there is no such entry as mentioned in the Investigation report or information; and *lastly*, is no other entry of Rs.10 Lakhs found. In view of the factual verification, the AO accepted the return income in order dated 29.09.2016 passed u/s 147/148 of the Act. Now, Ld. Pr. CIT in his revisionary jurisdiction u/s 263 of the Act based on same information which has been incorporated in reasons recorded has sought to draw adverse inference by observing that AO has not verified the share premium of Rs. 20 Lakhs from Euphoria Capital Private Limited and therefore, order of the AO is erroneous insofar as prejudicial in the interest of the Revenue.

11. Once, the very basis for reason to believe on the basis of which assessment was reopened does not exist; and the AO has duly accepted after verification that the addition cannot be made and information was incorrect, then, it was incumbent upon the Ld. Pr. CIT to point out as to what was the error in the assessment order. Once, the AO has not made any addition in respect of alleged accommodation entry from M/s Euphoria Capital Private Limited, then there is no scope of expanding the reasons recorded and travel beyond the reasons recorded on which Assessing Officer had acquired jurisdiction for reopening u/s 147 by the Ld. Pr. CIT in his revisionary jurisdiction u/s 263. Before us, the Ld. Counsel for the assessee had heavily relied upon the order of the jurisdictional High Court in the case of **CIT vs Software Consultants [2012] 341 ITR 240 (Del.)**, wherein on almost on similar issue, the Hon'ble Court observed and held as under:-

*“One of the contentions, which has been accepted by the Tribunal is that the order of the Assessing Officer cannot be regarded as erroneous even if the Assessing Officer had failed to carry out necessary verification and required enquiries in respect of the share application money, as no addition has been made on account of the reasons for reopening, which were recorded before issue of notice under section 148. It has been held that the Assessing Officer could not have made an addition on account of share application money as no addition has been made on*

*account of FDRs of Rs. 20 lacs. The Tribunal has noticed and recorded that in the reasons for reopening it was mentioned that the assessee had made investment in form of FDRs of Rs. 20 lacs but in the assessment order passed under section 147/143(3) it has been held that the respondent assessee had been able to show and establish the genuineness of and capacity to make the said investment. [Para 9]*

*On the second aspect raised by the Commissioner (Appeals) with regard to the Assessing Officer accepting the loss return of Rs. 1,02,756 it is held that the same did not require exercise of revisionary power under section 263. The observations of the Assessing Officer were only to the extent of stating that he had accepted the return. Benefit of carry forward of loss can be claimed in case a return is filed under section 139(1). It is not the case of the revenue that the assessee had tried to claim benefit of carry forward of loss on the basis of the order passed under section 147/143(3). [Para 13]*

*For exercise of power under section 263 it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interest of the revenue. In the instant case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under section 148, This position is not disputed and disturbed by the Commissioner in his order under section 263. Sequitur is that the Assessing Officer could not have*

*made an addition on account of share application money in the assessment proceedings under section 147/148. Accordingly, the assessment order is not erroneous. Thus, the Commissioner could not have exercised jurisdiction under section 263. [Para 14]*

*The question of law is accordingly answered in affirmative against the revenue and in favour of the assessee. [Para 15].”*

12. It is not a case here where the basis and material on which the ‘reasons were recorded’ has not been considered by the Assessing Officer. In fact, the assessment record clearly shows that the AO has duly called for all the information and has verified the same and has arrived at the conclusion. Without finding any error in such finding of the AO or from the records, the Ld. Pr. CIT cannot hold that the order passed by the AO is erroneous in law or in facts. It is trite law that while exercising the jurisdiction u/s 263 of the Act, the Ld. Pr. CIT has to prove twin conditions are met, that is, the order passed by the AO is erroneous; and secondly, it is prejudicial to the interest of the Revenue. Both the condition should fulfill simultaneously and is cumulative and if one of the conditions is lacking, then Pr. CIT cannot cancel/set-aside the assessment order. Here the Ld. Pr. CIT had tried to presume the error in the assessment order which at the face of the record is not there; or there is anything to perceive that Assessing Officer has not examined the information which was the basis for reason to believe for reopening the case.

Here in this case, it cannot be held that the AO has not applied his mind on the information received or has not carried out any enquiry or verification. Nowhere, the Ld. Pr. CIT has held as to how the order of the AO is erroneous and prejudicial to the interest of the Revenue. The Ld. Pr. CIT has to establish from the records and has to give reasons as to why the order of the AO is erroneous and prejudicial to the interest of the Revenue to cancel or set-aside the assessment order. We find that nowhere the Ld. Pr. CIT has pointed out any error as to how the order of the AO is erroneous and since one of the condition is lacking, therefore, neither in law nor on facts, he can set aside or cancel the assessment order and direct to pass fresh assessment order. In view of our aforesaid reasoning, the impugned order u/s 263 passed by the Ld. Pr. CIT is quashed.

13. In the result, appeal of the assessee is allowed.

**Order pronounced in the open Court on 11<sup>th</sup> December, 2020.**

**Sd/-**

**[G.S. PANNU]**

**VICE PRESIDENT**

**Sd/-**

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**

DATED: 11<sup>th</sup> December, 2020

*Shikhar*

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT(A)
4. CIT
5. DR

Assistant Registrar  
ITAT, New Delhi