

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC-1" NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND**

**SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No.9350/Del/2019  
Assessment Year : 2010-11**

<b>Kalinga Conduits &amp; Electricables P. Ltd. H.No.81-B, Road No.41, Punjabi Bagh, New Delhi</b>	<b>Vs.</b>	<b>ITO Ward - 14 (1) New Delhi</b>
<b>PAN No. AACCK5284H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Sh. Rajeev Sabharwal, FCA

Department by : Sh. R.K. Gupta, Sr. DR

Date of hearing : 10-06-2021

Date of pronouncement : 10-06-2021

**ORDER**

**PER O.P.KANT, AM :**

This appeal by the assessee is directed against order dated 30/09/2019 passed by the Ld. CIT(Appeals)-5, New Delhi [in short

the Ld. CIT(A)] for assessment year 2010-11 raising following grounds:

Ground No.	Grounds of Appeal	Tax Effect															
1	That the learned Commissioner of Income Tax (Appeals)-5, New Delhi has erred both in law and on facts in upholding the determination of total income of the appellant company at Rs. 40,85,940/- as against declared income of Rs. 5,940/- in an order of assessment 28.11.2017 passed under section 263/147/143(3) of the Act.																
2	That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an aggregate addition of Rs. 40,00,000/- representing sums received from the following shareholders as share capital and erroneously held as unexplained cash credits under section 68 of the Act:																
	<table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Name of the Shareholder</th> <th>Amount (In Rs.)</th> </tr> </thead> <tbody> <tr> <td>i)</td> <td>M/s Victory Software (P) Ltd.</td> <td>10,00,000</td> </tr> <tr> <td>ii)</td> <td>M/s Zenith Automotive (P) Ltd.</td> <td>10,00,000</td> </tr> <tr> <td>iii)</td> <td>M/s Humtum Marketing (P) Ltd.</td> <td>10,00,000</td> </tr> <tr> <td></td> <td>Total</td> <td>40,00,000</td> </tr> </tbody> </table>	Sr. No.	Name of the Shareholder	Amount (In Rs.)	i)	M/s Victory Software (P) Ltd.	10,00,000	ii)	M/s Zenith Automotive (P) Ltd.	10,00,000	iii)	M/s Humtum Marketing (P) Ltd.	10,00,000		Total	40,00,000	
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	Total	40,00,000															
2.1	That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) has completely overlooked that there was no adverse material brought on record by the learned Assessing Officer to assume that credits by way of share capital represents unexplained cash credit in terms of section 68 of the Act.	Linked to Ground No. 2															
2.2	That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) has failed to appreciate that appellant has duly discharged burden of proof in terms of section 68 of the Act.																

That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the shareholders were corporate entities, duly assessed to tax and had subscribed to share-capital through banking channels and supported by necessary documents and therefore once such shareholders were identifiable companies, share capital received could not in law or on fact be brought to tax u/s 68 of the Act.

- 2.4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that alleged non-compliance to notice u/s 133(6) of the Act by subscriber to share capital cannot be made a basis to draw adverse inference against appellant.
- 2.5 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the Inspector's report is not valid evidence and cannot be relied to draw an adverse inference against appellant.
- 2.6 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the learned Assessing Officer has proceeded to make the addition of Rs. 40,00,000/- representing share capital on the basis of alleged evidence gathered in the course of search of one Shri S. K. Jain which are neither confronted to appellant during assessment proceedings nor appellant is being provided any opportunity of cross-examination of persons alleged to be accommodation entry providers; even no nexus is established of such entry providers with subscribers of share capital in the appellant company.
- 3 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition of Rs. 80,000/- on account of alleged commission paid to the entry provider in cash for obtaining accommodation entries and held as unexplained expenditure u/s 69C of the Act.
- 4 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that an appeal against an order passed on 23.03.2017 u/s 263 of the Act is being pending before Hon'ble Income Tax Appellate Tribunal and therefore action of dismissal of appeal against impugned order dated 28.11.2017 passed u/s 148 of the Act passed in consequence thereof, is premature and thus untenable.

- 5 That both the authorities below have framed the impugned order without granting sufficient proper opportunity to the appellant company and therefore the same are contrary to principle of natural justice and hence vitiated.
- 6 That the learned Commissioner of Income Tax (Appeals) has erred both in Consequential in law and on facts in upholding the levy of interest u/s 234B of the Act, u/s 234B of the Act, u/s 234C of the Act and u/s 234D of the Act which are not leviable on the facts and circumstances of the case of the appellant company.

Prayer It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held that additions made and sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant company be allowed.

3. At the outset, the Ld. Counsel of the assessee submitted that the impugned assessment order has been passed on the direction of the Commissioner of Income-Tax, issued under section 263 of the Income-Tax Act, 1961 (in short the Act), however the Income-Tax Appellate Tribunal ( in short the 'Tribunal') has set aside the order of the Commissioner of Income-Tax and therefore the impugned assessment order is rendered infructuous and thus appeal is rendered infructuous.

4. The Ld. DR could not controvert the submission of the Learned Counsel of the assessee.

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In this case, the Assessing Officer had passed assessment order under section 147/143(3) of the Act on 20/02/2015 at the returned income of Rs.5940/-. The said assessment order was set aside by the Ld. Principal Commissioner of Income-Tax , Delhi-5, Delhi ( in short the PCIT ) vide his order dated 23/03/2017 under section 263 of the Act and directed the Assessing Officer to reassess the income as per the directions given in said order under section 263 of the Act. In compliance to the direction of the PCIT, the Assessing Officer passed the impugned Assessment Order on 20/11/2017 after making addition of ₹ 40, 80,000 to the returned income. On further appeal, the Ld. CIT(A) dismissed the appeal of the assessee and sustained the additions made by the Assessing Officer.

6. Before us, the learned Counsel of the assessee has referred to the order of the Tribunal in ITA No. 3287/del/2017 in the case of the assessee itself, in the appeal which was preferred by the

assessee against the order of the Ld. PCIT passed under section 263 of the Act. The Tribunal has set aside the order of the PCIT observing as under:

*“24. So far as the decision relied on by Ld. DR in the case of Deniel Merchants (P) Ltd. (supra) is concerned, the Ld. DR could not controvert the submission of the Ld. Counsel for the assessee that no enquiry was conducted in the said case whereas in the case of the assessee enquiries were duly conducted during the reassessment proceedings. Therefore, the decision relied on by Ld. DR is not applicable to the facts of the present case, The various other decisions relied on by id. DR are also distinguishable and not applicable to the facts of the present case. We find from a perusal of the paper book that the assessee during the course of reassessment proceeding had filed the requisite details as called for by the AO and the Assessing Officer after considering the same completed the assessment which is in consonance with the decision of the Hon’ble Supreme Court in the case of Lovely Exports prevailing at that time. Therefore, in view of our discussion in the preceding paragraphs the order of the AO in the instant case cannot be held as erroneous. Since for invoking jurisdiction u/s, 263 the twin conditions i.e. order*

*must be erroneous and the order must be prejudicial to the interest of revenue must be satisfied and since, we have held that the order cannot be held to be erroneous since the view of the AO in accepting the share capital is a plausible view, therefore, the twin conditions are not satisfied. Therefore, the Ld. PCFI in our opinion could not have invoked jurisdiction u/s. 263 of the IT Act. We, therefore, set aside the order of the POT passed u/s. 263 of the IT Act and the grounds raised by the assessed are allowed.”*

7. We find that the order of the PCIT under section 263 has been set aside by the Tribunal and therefore the assessment order dated 28/11/2017 passed in compliance to the order under section 263 of the Act, has been rendered infructuous. Once the said assessment order is rendered infructuous, the subsequent proceedings against the said order are also rendered infructuous. In view of the facts, the present appeal before us is also rendered infructuous and accordingly, we dismiss the same.

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

Order pronounced in the open court on 10.06.2021.

Sd/-

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

Dated: 10.06.2021

\*Neha\*

Sd/-

**(O.P KANT)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	22.06.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	