

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER, AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.1077/M/2020
Assessment Year: 2010-11**

M/s. Spectrum Venture Pvt. Ltd., 501/502, Makhija Chambers Premises CSL, 196, Turner Road, Bandra West, Mumbai – 400 050 PAN: AANCS6614C	Vs.	The Pr. CIT-4, Room No.629, 6 th Floor, Aayakar Bhavan, Maharshi Karve Marg, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajnish K. Vohra, A.R.
Revenue by : Shri Rajeek Sahu, D.R.

Date of Hearing : 23.08.2021
Date of Pronouncement : 01.09.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 03.02.2020 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The facts in brief are that the assessee is a Private Limited Company and is engaged in the business of trading in shares and securities. A return of income was filed for the instant year on 19.09.2010 declaring an income at Rs.7,956/-. The assessment was framed u/s 143(3) vide order dated 11/03/2013 after calling for details in respect of issue of share capital and share premium by the AO. Subsequently, the case

was re-opened by the AO by issuing notice u/s 148 of the I T Act on 31.03.2017, which was apparently beyond four years to verify transactions carried out by the assessee company with M/s Bhavani Enterprises and M/S Asher Ventures Pvt. Limited in respect of money received from these two companies which belonged to and controlled by Shri Praveen Aggarwal. It is pertinent to mention that the said assessment was not reopened in respect of the issue of share premium. The Assessing Officer verified the issues for which assessment was reopened and after considering the submissions of the assessee, no additions were made in respect of both the concerns for which the assessment was reopened. Subsequently Ld. PCIT, on the basis of letter dated 31/01/2018 received from AO that issue of share capital raised by the assessee during the year could not be verified due to shortage of time, initiated revisionary proceedings by issue of notice u/s 263 of the Act dated 26.02.2019 to the appellant assessee.

3. The said notice was replied by the assessee vide written submissions dated 11.03.2019 and after considering submissions of the appellant, the ld. PCIT passed an order U/s 263 of the Act by setting aside order passed U/s 143(3) r.w.s. 147 of the Act dated 29/12/2017 which has been challenged before us raising several grounds which are reproduced as under:

“1. The ld. Pr. CIT erred in invoking the provisions of section 263 of the Act without pointing out the exact error in the assessment order in the show-cause notice issued in the matter and did not appreciate the material and case law relied upon which were brought to his notice in the course of the hearing.

2. In doing so, the ld. Pr. CIT erred in holding that AO has not made enquiries which is not borne out from the record and did not appreciate that this was not a case of ‘lack of enquiry’ on the part of the AO but, at the most, a case of ‘inadequate

enquiry' which by itself does not give rise to action u/s 263 of the Act as held by the jurisdictional high court in the case of CIT Vs. Gabriel India Ltd. [(1993) 203 ITR 108(Bom)].

3. Further in doing so, the Id. Pr. CIT did not appreciate that the revisionary jurisdiction cannot be exercised only on the ground that the AO did not have sufficient time to independently enquire to establish the identity and creditworthiness of the parties from whom the share capital was raised at a premium and genuineness of the transaction though the full details were furnished by the appellant in the course of re-assessment proceedings which were also furnished in the course of original assessment proceedings and were extensively examined by the then AO.

4. The Id. Pr.CIT further did not appreciate that the re-assessment order pursuant to notice u/s 148 of the Act based on reasons recorded is bad in law and there was no occasion earlier for the appellant to challenge the same as the re-assessment order ultimately was not adverse to the appellant.

5. In any event, the Id. Pr. CIT did not appreciate that issue of genuineness of credits aggregating to Rs. 1 cr. referred to in the show cause notice u/s 263 of the Act, which was the ground for re-opening of the assessment, was duly examined by the AO in the re-assessment proceedings and with regard to issue of share capital at a premium, the same was not the ground on which the assessment was reopened and, therefore, the revisionary power with regard to issue of share capital was hopelessly time barred as the period of limitation provided for under sub-section (2) of section 263 of the Act would begin to run from the date of original assessment order and not from the order of re-assessment as held by the Apex Court in the case of CIT Vs. Alagendran Finance Ltd. [(2007)] 162 Taxman 465 (SC)].

6. The Id. Pr. CIT did not appreciate that the facts in the case of Pr. CIT, Central -1 Vs. NRA Iron & Steel Pvt. Ltd. [103 Taxmann.com 48(SC)] relied upon by him are distinguishable with the facts of the appellant.”

4. We would like to adjudicate the ground no.5 which challenges the jurisdiction of the Id PCIT to pass order u/s 263 of the Act on the ground that the 263 proceedings are hopelessly barred by limitation.

5. The Id. AR vehemently submitted that the revisionary proceedings and consequent order passed under section 263 of the Act is invalid and nullity as the same is barred by limitation in terms of section 263(2) of the Act. The Id AR argued that the Id. PCIT did not appreciate that issue of genuineness of credits aggregating to Rs. 1.00 Cr from two parties referred to in the show cause notice issued u/s 263 of the Act, which was the ground for re-opening of the assessment u/s 147 of the Act ,

was duly examined by the AO in the re-assessment proceedings and with regard to issue of share capital at a premium, the same was not the ground on which the assessment was reopened u/s 147 of the Act and, therefore, the revisionary power with regard to issue of share capital was hopelessly time barred as the period of limitation provided for under sub-section (2) of section 263 of the Act would be counted and reckoned from the date of original assessment order passed u/s 143(3) of the Act dated 11.03.2013 and not from the order of re-assessment dated 29.12.2017. The ld AR stated that original assessment u/s 143(3) was completed on 11/03/2013 and during the course of assessment Ld AO has verified entire details of share capital along with share premium issued during the instant financial year. The ld AR, while referring to the notice dated 15.10.2012, submitted that in the notice issued under section 142(1) of the Act, AO has asked the assessee to furnish details of shares issued on premium. The ld AR submitted that the details were filed before the AO qua 1,00,000 shares issued @ Rs.200/- per share inclusive of share premium of Rs.190/- per share. The ld AR submitted that the assessee had received Rs.10,00,000/- by way of share capital and Rs.1,90,00,000/- by of share premium aggregating to Rs.2,00,00,000/- in A.Y.2010-11 from four companies. The ld AR submitted that the assessee allotted shares to four companies at premium and in response to specific query raised vide notice dated 15.10.2012, assessee vide letter dated 13.12.2012 furnished complete details of shares issued at premium. The ld AR further submitted that the assessee vide letter dated 20.12.2012 submitted copies of all the bank statements with ledger accounts. The AO thereafter also issued notices under section 133(6) of the Act, which were also

complied with by the allottee companies. Subsequently, AO had issued a show cause notice and assessee vide letter dated 25.02.2013 made further submissions and objected to proposed additions. Having considered and taken into account the submissions and contentions of the assessee, the AO framed the assessment order under section 143(3) of Income Tax Act on 11.03.2013 by assessing income at Rs. Nil. The ld AR submitted that subsequently, the assessment was re-opened u/s 147 of the Act by issuing notice u/s 148 dated 31/03/2017 after recording reasons to believe, copy of which is enclosed on page 108 of paper book. The ld AR stated that as per these reasons, the assessment was reopened on the basis of information received relating to transactions with two parties namely Bhawani Enterprises and Asher Ventures Pvt. Ltd. which were duly verified in the course of assessment proceedings and no addition was made in the order passed u/s 143(3) r.w.s. 147 of the Act. It may be noted that the issue of share capital and share premium was not the subject matter of reassessment proceedings, hence time limit for revisionary proceedings u/s 263 of the Act has to be reckoned from the order framed u/s 143(3) of the Act and not from the date of re-assessment order framed u/s 143(3) r.w.s. 147 of the Act dated 29.12.2017. As period of two years of limitation got over on 31.03.2015, hence no order under section 263 of Income Tax Act could have been passed on 03.02.2020. Thus, order passed by Ld. Pr. PCIT under section 263 of Income Tax Act dated 03.02.2020 may please be quashed being an order passed beyond time limit of 31.03.2015. The ld AR in defense of his arguments relied on the decision of the Apex Court in the case of CIT Vs. Alagendran Finance Ltd. [(2007)] 162 Taxman 465 (SC)]. The ld AR also relies on a series of decisions namely

CIT Vs ICICI Bank Ltd (343 ITR 74)(Bombay), Skyline Builders Vs CIT (412 ITR 182)(Kerala) and L.G. Electronics India (P.) Ltd Vs PCIT (388 ITR 135)(Allahabad).

6. The ld DR on the other hand contended that two years have to be taken from the date of assessment framed u/s 143(3) r.w.s. 147 of the Act dated 29.12.2017 and not from the date of original assessment order passed u/s 143(3) of the Act dated 11.03.2013. The ld DR relied on the revisionary order passed by the ld PCIT and submitted that the grounds raised by the assessee may kindly be dismissed.

7. We have heard the rival contentions of both the parties and perused the materials on records including the impugned order of ld. PCIT. The undisputed facts are that the assessment was framed u/s 143(3) vide order dated 11.03.2013 in which the issue of shares capital and share premium was specifically asked and replied during the course of assessment proceedings. The date of questionnaire and reply of the assessee have been stated hereinabove. Thereafter the assessment was re-opened u/s 147 r.w.s. 148 of the Act by issuing notice u/s 148 of the Act dated 31.3.2017 in which the reasons recorded u/s 148(2) of the Act state that the verification of transactions of the assessee with two parties namely Bhawani Enterprises and Asher Ventures Pvt. Ltd. which were controlled by Praveen Agarwal a well known entry provider. The ld PCIT exercised revisionary powers u/s 263 of the Act after receiving a proposal from the AO that inquiries qua identity, creditworthiness of the parties from whom share premium was received could not be conducted due to shortage of time. The Ld. PCIT finally passed the order under

section 263 of the Act setting aside the reassessment framed u/s 143(3) r.w.s. 147 of the Act on the ground that the same is erroneous and prejudicial to the interest of the revenue as the issue of share capital and share premium were not verified by the AO. The revisionary order u/s 263 of the Act was passed on 03.02.2020. Now the issue before us whether the revisionary order is barred by limitation u/s 263(2) of the Act. We are quite convinced with the submissions of the assessee that period of limitation has to be taken from the original assessment order dated 11.03.2013 and not from re-assessment order dated 29.12.2017. It is also true that the issue which was subject matter of revisionary proceedings u/s 263 of the Act was not at all subject matter of re-assessment proceedings u/s 147 of the Act nor addition was made on the items of escapement of income as recorded u/s 148(2) of the Act. We are therefore of considered view that the revisionary order is barred by limitation and accordingly the entire proceedings are invalid and nullity. The case of the assessee is squarely covered by the decision of the Apex court in the case of CIT Vs. Alagendran Finance Ltd. (supra) wherein the very same issue of limitation has been decided in favour of the assessee under similar facts. The operative part is extracted below:

“We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income Tax exercising its revision jurisdiction reopened the order of assessment only relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under subsection (2) of section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revision jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding nullity.”

8. Considering the facts of the present case before us in the light of above apex court decision, we hold that the revision order passed by Ld PCIT is barred by limitation in terms of provisions of section 263(2) of the Act and is nullity. Accordingly, the revisionary proceedings under section 263 of the Act as well as the consequent order passed under section 263 dated 03.02.2020 are quashed.

9. Since we have allowed the appeal of the assessee on limitation, other grounds raised by the assessee are not being adjudicated.

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

Order pronounced in the open court on 01.09.2021.

**Sd/-
(Ravish Sood)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 01.09.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.