

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.21/RPR/2021

(निर्धारण वर्ष / Assessment Year : 2015-16)

Sun and Sun Inframetric Pvt Ltd 11/146, Chikni Mandir, Malviya Road, Raipur, Chhattisgarh	बनाम/ Vs.	Assistant Commissioner of Income-tax, Central Circle-1, Raipur
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCN 1338 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Prafulla Pendse, CA
प्रत्यर्थी की ओर से/Respondent by :	Shri P.K. Mishra, CIT-DR

सुनवाई की तारीख / Date of Hearing	30.07.2021
घोषणा की तारीख /Date of Pronouncement	22.10.2021

□ देश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the revisional order of the Principal Commissioner of Income Tax (“PCIT” in short), Raipur-1 communicated to the assessee on 27.03.2021 passed under Section 263 of the Income Tax Act, 1961 (“the Act” in short) whereby the assessment order passed by the Assessing Officer (“AO” in short) dated 21.08.2017 under section 143(3) of the Act concerning Assessment Year (“AY” in short) 2015-16 was sought to be set aside for reframing the assessment in terms of supervisory jurisdiction.

2. As per its grounds of appeal, the assessee has challenged the revisional action of the PCIT whereby the Assessing Officer was directed to pass the assessment order *de novo* after making enquiries

on the points set out in the notice which has already examined and considered during the original assessment proceedings concerning AY 2015-16. The assessee has challenged the assumption of jurisdiction by the PCIT under Section 263 of the Act on the ground that the Assessment Order under revision is neither erroneous nor prejudicial to the interest of the revenue.

3. Briefly stated, the assessment in the instant case was framed under Section 143(3) of the Act vide order dated 21.08.2017 by the Assessing Officer whereby the total income of the assessee was assessed at a loss of Rs.(-)34,90,150/-. Thereafter, in exercise of jurisdiction under S. 263 of the Act, the case record of the assessment so made was called by the Revisional Commissioner. On its appraisal, the PCIT observed that the impugned assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. A show-cause notice dated 08.03.2021 (signed on 09.03.2021) was issued to the assessee in this regard seeking compliance through e-mail inexplicably on or before 17.02.2021, i.e. prior to the issuance of notice itself. The personal hearing was however simultaneously allowed to be availed at 11.03.2021 at 11.00am, i.e. within less than 48 hours from the date and time of signing the show-cause notice.

4. As per the show-cause notice, the Revisional Commissioner made wide ranging allegations to assail the assessment order. The Revisional Commissioner alleged that the Assessing Officer has failed to carry out necessary verifications in respect of following points:-

- (i) During the year under consideration, the assessee made repayment of Rs.6,11,26,848/- to M/s. Gangotri Tracon P. Ltd. ('GTPL' in short). It was accordingly observed that interest payment of Rs.47,36,052/- and repayment of Rs.6,11,26,848/-

- 3 -

should have been disallowed in terms of Section 69C of the Act;

- (ii) Advance against sale of land of Rs.16 crores was received, but no sale deed was furnished by the assessee; The advance received has not been examined under S. 68 of the Act
- (iii) The assessee issued 550400 equity shares @ 170 per shares (160 premium and 10 face value) on the basis of fair market value determined as per balance-sheet as on 31.03.2013; however, since the shares were issued in the FY 2014-15, the Fair Market Value ("FMV" in short) of the shares should have been worked out on the basis of financial statement of immediately preceeding FY 2013-14 instead of FY 2012-13 adopted, in terms of Section 56(2)(viib) of the Act. The FMV as on 31.03.2014 works out to Rs.153 per shares only as against the issue price of Rs.170 per shares. Consequently, a difference of Rs.17 per share should have been treated as deemed income in view of Section 56(2)(viib) of the Act.
- (iv) The Revenue audit party of the deptt. has pointed out that the assessee paid Rs.25 lakhs in cash to one Mr. Gopichand Khemani as advance for purchase of land and since the assessee is a builder, such payment attracts Section 40A(3) of the Act and hence such payments are liable to be disallowed. Besides, no documentary evidence was available regarding registration of said land.
- (v) The Revenue audit party has pointed out that non-verification of sale deed for possible loss of revenue as specified in Section 43CA of the Act.

In the light of points raised, as noted above, the Revisional Commissioner alleged lack of application of mind by the Assessing Officer and absence of proper enquiry in this regard. The revisional proceedings were thus set in motion and the revisional order was passed under Section 263 of the Act whereby the assessment order passed by Assessing Officer was set aside for fresh adjudication of issues discussed in the revisional order.

5. It is noticed that while the show-cause notice was issued on the points noted in the preceding paragraphs, the final directions in the revisional order was passed taking a slightly different stance. The final directions given to the Assessing Officer on the issues recorded by the PCIT in its revisional order is reproduced hereunder for ready reference:-

“I have gone through the case record and submission of the assessee furnished during assessment proceedings. From the facts narrated above, it is clear that the Assessing Officer has not conducted any inquiry regarding genuineness of the contention made by the assessee. Therefore, I am satisfied that the assessment order is erroneous in so far as it is prejudicial to the interest of revenue in view of Explanation 2 of Section 263 of the Income tax Act. The A.O. is directed to make adequate enquiries.

1. Identity, Genuineness and creditworthiness of M/s Gangotri Tracon P. Ltd in respect of receipt of sum of Rs. 16,00,00,000/- in the light of provisions of section 68 of the I.T. Act, 1961.

2. To verify the genuineness of both stamp paper with competent authority who issued those stamp papers.

3. To invoke the doctrine of Substance over form in respect of transaction with M/s Gangotri Tracon P. Ltd after due verification.

4. To verify the repayment and interest payment of sum of Rs.6,11,26,848/- & Rs.47,36,052 respectively.

5. To verify the applicability of section 56(2)(viib) in respect of shares issued.

6. To verify the applicability of section 43CA in respect of sale deed executed below stamp duty value.

7. To verify the applicability of section 40A(3) in respect of payment for purchase of land.

6. Aggrieved by the impugned revisional order, the assessee preferred appeal before the Tribunal.

7. While the Revenue has supported the revisional action in the absence of adequate enquiries on the points recorded by the PCIT, the learned Counsel for the assessee made extensive submissions and assailed the revisional action of the PCIT assertively. The Ld. Counsel submitted that the revisional order passed by the PCIT suffers from the vice of arbitrariness and lack of application of mind on the oral and written submissions put forth & evidences adduced in its rebuttal. It was alleged that directions were given summarily. It was further contended that the order of the PCIT also suffers from lack of proper opportunity deserved in this regard as can be seen from the date of issue and time made available to assessee for compliance thereon. On a broader reckoning, the learned Counsel claimed that the revisional directions are bad in law in the absence of any perceptible error shown in the assessment order sought to be revised, which may cause prejudice to the interest of the revenue. We shall deal with the issue based submissions advanced before us at the appropriate place hereinafter.

8. We have carefully considered the rival submissions and perused the revisional order as well as the assessment order for AY 2015-16 in question. We have also taken note of the evidences, documents etc.

referred to and relied upon in the course of proceedings before us in terms of Rule 18(6) of the Income-tax (Appellate Tribunal) Rules, 1963.

9. Point no. 1-4 of the directions of the PCIT to the AO [as extracted in para 4 above] concerns transactions relating to GTPL. The PCIT alleges absence of enquiry into the nature and source of loan from GTPL Rs. 16 cr. having regard to S. 68 of the Act; the absence of verification of agreement for receipt of aforesaid sum by way of advance towards sale of land, non verification of repayment of loans Rs. 6.11 crs and interest Rs. 47.36 lakhs thereon from the perspective of S. 69C of the Act. The directions however appear to be vague and innocuous.

9.1 In defense, the assessee contends that the copies of financial statement of the lender, income-tax returns and ledger account of the lender company for AYs 2014-15, 2015-16 and 2016-17 were filed before the AO during the assessment proceedings in pursuance of enquiry made in this regard. It is simultaneously contended that the amount of Rs.16 crores alleged by the PCIT was not received during the year at all, but was received in the preceding Assessment Year 2014-15. A fresh advance received during the year stands at Rs.2.12 crores only. For this assertions, a reference was made to the ledger account of the lender company (page no.115 of the paper-book) to demonstrate that amount of Rs.16 crores referred to by PCIT was received through banking channel in FY 2013-14 relevant to AY 2014-15. Similarly, the ledger account (page no.117 of the paper-book) was referred to demonstrate that only a sum of Rs.2.12 crores was received during the year. It is thus contended that the PCIT clearly misdirected himself in law in giving wrongful directions of enquiry on the touchstone of Section 68 for such amount received in a

different Financial year. It was asserted that the scope of S. 68 is restricted to credits received during the year and does not extend to transactions of credits received in some other assessment year. The assessee thus contends that the directions of the PCIT to make enquiry in this regard is without any legal basis. The AO committed no error in not invoking S. 68 for past credits and the directions of PCIT are *prima facie* bad in law. The Assessee thus urged for setting aside such directions.

9.2 The assessee next submits that nothing adverse has been observed by the PCIT regarding the amount of Rs.2.12 crores received during the year under consideration. There is effectively no finding by the PCIT insofar as advance received of this sum against the sale of land is concerned. The assessee further contends that the assessment of AY 2014-15 in the case of assessee was framed under Section 143(3) of the Act (page no.112 to 114 of the paper-book) and the credits were found to be in order in that year. It was also pointed out that the lender company is a privately held group company under the same management for past so many years and consistently assessed to tax for so many years and has known sources available in public domain as well as on the records of the Department. It was contended that financial soundness of the lender can be gauged from the amount of taxes paid year after year. For instance, the income of the lender company was assessed at Rs.7.04 crores in AY 2014-15 and Rs.8.58 crores in AY 2015-16. Besides, the lender company is a Non-Banking Finance Company (NBFC) registered with Reserve Bank of India as a 'Non-Systematic Non-Deposit Taking NBFC' for the past so many years. These background facts would demonstrate that the lender co. is not a paper co. or a shell co. as alleged and has a substantial net-worth and an entity of sound financial standing.

9.3 Without prejudice to the non applicability of S. 68 at the threshold as contended, It is further case of the assessee in the alternative that the revisionary powers have been exercised by PCIT only on the basis of the lender company being classified by the SEBI as a shell company coupled with some adversarial statement of one Shri Amit Kumar Kedia. It is vociferously contended that both these facts which are the foundation for entertainment of adverse beliefs were not made available on the record at the time of assessment, but appears to have come on record afterwards. The PCIT purportedly in possession of such so called information, has neither provided the information received from SEBI nor the statement of Shri Amit Kumar Kedia. The Assessee was denied the valuable rights of ascertaining the objectivity and correctness of the so called information. The valuable right of cross-examination of such a third party was thus naturally denied despite requests. It was thus contended that in the absence of the assessee being privy to such adverse material, the action against the assessee cannot be invoked under any circumstances. As further submitted, the lender is a closely held co. and not listed and it is a matter of examination to understand as to how the SEBI is implicated such closely held co. behind its back and without any opportunity. The current status of the allegation of SEBI is also unknown. The whole affair is kept a deep secret while trying to displace a completed assessment. The AO in absence of any adverse information on record at the relevant time could not foresee and imagine any enquiry on this aspect. The action of AO could be possibly branded as erroneous, only if the AO was also privy to such purported information adverse to the Assessee at the relevant time of assessment but has failed to make enquiries necessitated in law. This is not the case. The bonafide action of AO, not being privy to such so called information, thus can not be said to be falling within the ambit

of clause (a) to Explanation 2 of S. 263 of the Act and condemned as erroneous. The PCIT, at a subsequently stage, if so proposes to rely on such information, he himself has to necessarily make requisite enquiries after giving some reasonable opportunity to enable the Assessee to assist the PCIT in coming to a lawful conclusion. The directions of the PCIT based on some un-confronted and untested innocuous information thus do not carry any legal base.

9.4 The other directions for verification of genuineness of stamp paper for receipt of advance against sale of land, it was argued, *prima facie* tantamount to an arduous task foisted on AO and does not pass the test of reasonableness in enquiry expected for the purposes of directions under S. 263 of the Act. Be it as it may, it was contended that in the absence of taxability of such sum permissible under S. 68 of the Act in the year under question, the enquiry so directed on this point is devoid of legal backing and is a meaningless exercise. No error could thus be envisaged in the order of AO on this score.

9.5 It was further asserted that notwithstanding total impermissibly in law to assess the receipt/credit in the year other than year of receipt under S. 68, the impugned directions for ‘substance over form’ in the garb of alleged lack of enquiry (absence a reasonable enquiry) is totally incredulous and in gross breach of mandate assigned to the revisional authority. It was contended that the PCIT has failed to show as to how the AO committed error at the time of assessment in not applying ‘substance over form’ theory having regard to material available on record. Such questions, being of extra-ordinary nature and inherently subjective, are outside the scope of revisional proceedings and may, at best, arise only at the time of assessment.

9.6 It was next submitted that, the direction no. 4 although vague like other former directions, the repayment of loans and interest is sought to be verified under S. 69C of the Act. In this regard it was contended that it is difficult to visualize as to who the repayment of existing loans which is normal incidence has caused prejudice to the revenue. It was further contended that where the repayment of loans and interest exp thereon are already recorded in the books, S. 69C is non-starter and can not be invoked.

9.7 It was submitted that all the 4 vague and non-descript directions of the PCIT in relation to transaction with GTPL suffers of vice of lack of application of mind and wholly wrong appreciation of facts and law. The directions given to AO to reframe the assessment these counts are inherently and patently opposed to mandate of provisions of S. 263 of the Act.

10. As evident, the facts narrated on behalf of the assessee speak for itself and does not require any serious elaboration. It is trite that section 68 cannot be invoked in relation to credits unconnected to the assessment year in question. The facts on records placed before the PCIT as well as before us clearly show that the alleged sum of Rs.16 crores from GTPL was not received in assessment year in question but was received in the earlier assessment year and was duly assessed. The amount represents opening balance of carried forward credit of an earlier year. Hence, the direction for verification of transactions, outside the purview of Section 68 of the Act, travels beyond the scope of powers conferred under S. 263 and could not have been given by the PCIT in the garb of revision. The consequential directions towards genuineness of stamp paper of receipt of advance from GTPL and applicability of doctrine of substance over form etc. being relatable to

receipt of loans in other assessment year are apparently far-fetched and have no relevance for assessment of income of this year. The order of the Assessing Officer on this score is neither erroneous nor prejudicial to the interest of revenue. Similarly, we also fail to understand as to how the repayment of loans and payment of interest expenditure during the year being a recorded transaction in the books, falls within the purview of section 69C of the Act as alleged in the show cause notice. All the 4 directions in relation to loan transactions with GTPL thus are devoid of any legal basis and are outside the authority of PCIT.

11. In the absence of any merits found, the direction of the PCIT to the Assessing Officer for some adequate verification on such points are illusory and cannot be countenanced in law at the threshold.

12. Notwithstanding, we also take notice of the plea of the assessee that the so called incriminating information from SEBI and statement of Shri Amit Kumar Kedia coming to the notice of PCIT post assessment, was not made available to the assessee despite requests and enabling it to place its defense. In the converse, it is demonstrated on behalf of the assessee that GTPL is a NBFC registered with RBI and is a company of a sound financial standing and a regular tax payer of very high amounts year after year. Also, as noted, the Assessing Officer could have made enquiries only in relation to transactions entered during the year and on the basis of adverse material received from outside sources as available before him. The AO thus had no perceptible occasion to examine the entries relating to other year having no bearing on the assessment of this year. It thus cannot be said that the Assessing Officer lacked in pragmatism and reasonableness of a prudent person instructed in law

in conducting enquiry on facts which he was neither privy to nor had any impact on the assessment of the year in question.

13. At this juncture, a pertinent legal question also has cropped up on interpretation of mandate available under S. 263 read with Explanation 1 & Explanation 2 appended thereto. The interplay and inter-connect between these Explanation needs some deliberation.

13.1 To begin with, *Explanation 2* deems the order passed by the AO to be erroneous in so far as prejudicial to the interest of revenue in certain situations noted therein. We are presently concerned with clause (a) thereto. Clause (a) to Explanation (2) confers powers on the revisional authority under Section 263 where *the order is passed without making inquiries or verifications which should have been made*. Apparently, in the absence so called incriminating material (as allegedly gathered from third parties in the instant case) at the time of assessment, there is no occasion for the AO to embark upon inquiries which should have been made, as expected in terms of clause (a) Explanation 2. The AO could not be expected to fathom some roving enquiry in the absence of specific inputs which purportedly came to the possession of the PCIT subsequent to the assessment. This is notwithstanding the fact that the impugned receipt of Rs. 16 cr., (sought to be treated as unexplained credit) in itself is unconnected to the assessment of this year. Hence, the alleged lack of enquiry on this issue in the impugned assessment year in question cannot legitimately be deemed as 'erroneous' on the basis of facts coming to light subsequently and that too, in relation to transactions occurred and relatable to some other year on the touchstone of fiction enacted in clause (a) to Explanation 2 to Section 263.

13.2 Notwithstanding, it would be pertinent to simultaneously take a look at the issue with reference to clause (b) to *Explanation 1* thereto. Clause (b) explains the term ‘record’ for the purposes of S. 263 of the Act. Apparently, it seeks to somewhat expand the scope of Section 263 and seeks to hold the order under review to be erroneous even on the basis of incriminating information in relation to the proceeding coming to the notice of the revisional authority subsequent to the order sought to be revised is passed. Hence, while the order of the AO may not *per se* fall within the sweep of clause (a) to Explanation 2, such order may still possibly be regarded as to be erroneous and prejudicial to the interest of revenue having regard to meaning of ‘record’ enlarged in Explanation 1 to Section 263. In terms of clause (b) to Explanation 1, the PCIT herein is thus entitled to refer to all records relating to the assessment proceedings although such records / information did not emanate from the assessment proceedings as such and can also possibly hold such order under review to be erroneous in appropriate case, based on subsequent evidences gathered, without attributing any fault to the AO. Hence, order under review may be held to be erroneous in either of the mutually exclusive situations namely (i) where AO fails to make requisite enquiry in terms of Explanation 2 or (ii) where revisional authority discovers fresh incriminating material after the subject order is passed even without attributing delinquency on the part of AO owing expanded meaning assigned to the expression ‘record’ in Explanation 1.

13.3 In our opinion, a subtle but real distinction between the manner of exercise of revisional powers arise here. Whereas, the template of Explanation-2 itself have been read down and sweeping remit to the AO for fresh enquiries in an unbridled exercise have been discouraged by the Courts, without revisional authority himself undertaking some

basic and minimal enquiries; the second situation, in our view, calls for even greater degree of circumspection. In the instance case, where the failure to make deeper enquiries are not attributable to AO per se having regard to the fact that so called adverse material has come to the light only after the completion of the assessment order, it is ostensible that the sacrosanct principles of natural justice in relation to such new adverse material has not been observed at the stage of framing the assessment order. Thus an obvious incidental question would arise towards safeguards available to the Assessee and onus placed on the revisional authority seeking to disturb the order passed in such an extra-ordinary situation. Prima facie, it appears to us that the revisional authority would, in such a situation, be required to don and subsume the quasi judicial role played by the AO as envisaged in law. In the event of fresh material coming to light, the revisional authority can not bypass the principles of natural justice and casually pre-empt such order to be erroneous. A cancellation of an order already passed and coming to the fore, based on fresh material, without performing quasi-judicial task of confronting the material to Assessee and weigh its defense thereon, would be clearly opposed to doctrine of legitimate expectations and would have to be construed as a mere *ipse dixit* and a perfunctory exercise of revisional powers. In our mind, the imperatives of enshrined principles of fair play are required to be obdurately observed in such situation and with greater circumspection. The onus of a relatively higher pedestal would squarely & profoundly rest upon the PCIT to comprehensively demonstrate by a speaking order that the order is indeed erroneous and causing prejudice. It would be thus incumbent upon the PCIT to exercise due circumspection & restraint expected of a quasi judicial officer before attempting to dislodge the order of a functionary ranked lower in hierarchy. A summary set aside as a sweeping measure and

restoration of issue to AO on account of purported lack or inadequacy in enquiry on the point would be thus not be in accord with schematic interpretation of the provision.

13.4 Ostensibly, Before remitting the matter to AO, the revisional authority would be required to necessarily take upon himself and set a preliminary enquiry in motion to give credence to his satisfaction of order passed being erroneous. The revisional authority would be legitimately expected to make necessary enquiries as he may consider expedient, confront the material sought to be relied upon; followed by a speaking order.

13.5 Pertinent to note that the Hon'ble Gauhati High Court in the case of *Smt. Lila Choudhury Vs. CIT & Ors*, (2007) 289 ITR 226 (Gauhati) has befittingly echoed that defense canvassed by the assessee in response to notice under Section 263 of the Act must be considered and examined to shun symbolic exercise of powers in a nonchalant and routine manner. The reasons are not far to seek. The issues raised in the show-cause notice are understood to be 'rebuttable' and thus the order of the revision without considering the counter-explanation of the assessee could not be validated. Conceivably, the burden on revisional authority with reference to some fresh information surfacing after passing of an order is relatively far greater.

14. In the background of nuanced understanding of law codified in S. 263, we observe that the Assessee has vociferously pleaded before PCIT in the first instance that the so called list of shell co. by SEBI implicating lender (a privately held group co.), statement of some

third party witness alleging such a privately managed company to be a shell company and all other material coming to the notice of deptt., which is basis for allegation of order being erroneous, must be confronted and made available to Assessee. Such material were admittedly never confronted to the assessee despite specific request.

14.1 Pertinent here to observe that while it is fairly settled that substantive power enshrined in the Act cannot be ordinarily held hostage to procedural requirements, nonetheless, it bears to recall that procedure delineated in section 263 is a substantive provision and the provision explicitly requires the revisional authority to meet the mandate of principles of natural justice., an abiding characteristic of any administrative or quasi-judicial function in any case. The statutory protocols are required to be scrupulously met, more so, when revision impinges upon some sort of civil rights accrued to the assessee and seeks to unsettle a settled assessment. It must be acknowledged that such exercise of powers of revision of a concluded assessment and for no fault of assessee, hugely drains the assessee who has to undergo a restart of concluded proceeding. Keeping this in view, the revisional authority being a very senior officer in the hierarchy is expected to exercise powers conferred under section 263 with diligence, dexterity and reasonableness to achieve and advance the object and purposes of the enactment.

14.2 The revisional order so passed, in the instant case, alleging existence of some adverse material without enabling the assessee to respond thereto and without giving any effective opportunity despite express demand is thus palpably fragile and requires to be treated as illegal. In the absence of adherence to salutary principles, the purported new material is rendered extraneous and hence required to

be ignored as *non est* and consequently, the revisional action is required to be tested *dohors* such alleged material. The whole case of the PCIT built on such unintelligible and non-descript premise is thus a *damp squib*. On this score too, the revisional action fails.

15. Looking from any angle, the directions towards verification of loan transactions are unsustainable in law and deserve to be quashed. The directions no. 1-4 are thus set aside.

16. Point no.5 of the directions concern applicability of Section 56(2)(viib) in respect of shares issued. It is the case of the assessee that :-

- (a) The case was properly examined by the AO vide query no.2 of the notice dated 21.03.2017 (page no.99 of the paper-book) whereby the AO sought to make inquiry towards justification for premium on issue of shares. A reply thereto was filed by the assessee (page no.104 & 105 of the paper-book) impliedly to the satisfaction of the AO;
- (b) The assessee determined fair market value (FMV) of equity shares on the basis of the 'Book Value Method' as per balance-sheet drawn up as on the date immediately preceding the valuation date which has been approved and adopted in the Annual General Meeting of the shareholders, and since the balance-sheet of 31.03.2014 was not approved and adopted by the shareholders at the time of issue of shares in July 2014, the audited balance-sheet of 31.03.2013 as last available at the time of issue of shares were considered as required;

- (c) The certificate of the Chartered Accountant vouches the FMV adopted by the assessee which stands at Rs. 169.62 per share on the basis of last audited balance-sheet as on 31.03.2013.

17. In the light of facts pointed out on behalf of the assessee, we are unable to see any error in the action of the AO towards his endorsement on issue of shares at premium. The premium charged is demonstrated to be strictly as per the immediately last available audited and approved balance-sheet at the time of issue of shares. The action of the Assessee is thus on a sound basis. We find *prima facie* merit in the plea advanced for justification of the requirement of Section 56(2)(viib) of the Act. No abnormality is discernable in the admission of claim of the Assessee by the AO. On facts, the balance-sheet for the FY 2013-14 was stated to be signed on 29.08.2014, i.e. after the issue of shares on 30.07.2014 and, therefore, the stance of the assessee to adopt the figures as per last audited accounts of FY 2012-13 is plausible. The Assessing Officer has weighed these facts and has come to a reasonable conclusion.

17.1 Otherwise also, valuation dynamics is contingent upon of plethora of factors such as market interest, feasibility, perception etc. and cannot be determined with a mathematical precision. It is often said that valuation is an art rather than a science. A meager difference in premium *qua* a book net-worth as per past balance-sheet would not, in our view, necessarily invite the deeming fiction in the larger context of its stated objects. Such course is certainly not decipherable under the shelter of revisional proceedings where the order has been passed in exercise of quasi judicial powers and carries legal effect. Such a tiny difference in valuation determined by a highly subjective exercise can not be said to be either erroneous or even prejudicial to

the interest of revenue in its true purport. It is not permissible to PCIT to substitute a view taken by the AO which has a plausible basis.

17.2 The directions, as per point no.5, towards applicability of Section 56(2)(viib) by the Revisional Commissioner is thus set aside.

18. As per point no.6 of the direction, the PCIT has directed the AO to verify the applicability of Section 43CA in respect of sale deed executed below stamp duty value. The assessee contends in this regard that the point in issue was addressed to the Assessing Officer in response to query raised by the revenue audit party of the deptt. It was pointed out that there is no difference between the actual consideration and stamp duty value. A chart was placed before the PCIT also showing actual sale consideration and circled rate/stamp duty value (page no.126 of the paper-book). The assessee thus contends that it was conclusively demonstrated before the PCIT that there exists no infringement of Section 43CA. The PCIT has not applied his mind to the demonstrable facts but has merely directed the assessee to re-verify the point in question.

18.1 The action of PCIT does not appear tenable. The PCIT must have weighed the submissions of the assessee to remove any doubt entertained by him as per show cause. The points at the stage of show cause are ephemeral and rebuttable. The PCIT has not given any finding on the submissions made. We have no hesitation to set aside such action. Section 263 is not meant to conduct roving inquiry howsoever wide the amplitude of the powers may be. When a glaring and demonstrable fact has been placed before the PCIT to address his concern, the minimum that is expected of him is to look at the

relevant facts. He cannot direct the Assessing Officer to make further inquiry/adequate inquiry without himself looking into the facts and carrying out some minimum inquiry to demonstrate the error. The mundane and perfunctory remittance of the issue to the file of the Assessing Officer cannot be approved.

18.2 The action of PCIT is thus set aside and that of AO is restored.

19. As per point no.7 of the direction, the applicability of Section 40A(3) in respect of payment for purchase of land has been remitted by the PCIT for fresh verification. We straight away find substantial merit in the plea of the assessee that Section 40A(3) has no application in the facts of the case where the payment was made merely by way of advance and consequently not claimed as expenditure/deduction. The PCIT has not controverted the claim of the assessee that no expenditure has been claimed under the provisions of law towards advances made. Apparently, the provisions of Section 40A(3) does not apply to such transactions of mere advance without being claimed as expenditure. The genuineness of stamp-paper for execution of documents for advance payment is not relevant where no prejudice is caused to the revenue having regard to the fact that no expenditure has been claimed at all. The proposed directions are grossly opposed to the scheme of the revisionary powers. We thus see no merit, whatsoever, in this direction either.

20. The whole set of directions given by the revisional order thus are thus marred in law and traveled beyond the mandate. In the backdrop of reasons noted above on various points, the revisional

- 21 -

order passed by the PCIT is found to be under misconception of facts and law and hence quashed and set aside.

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

Pronounced on 22.10.2021 as per Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
(N. K. CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

BT

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By order

Assistant Registrar
Income Tax Appellate Tribunal
Raipur Bench, Raipur