

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, KOLKATA**  
**(E-COURT HEARING)**

**BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND  
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No. 961/Kol/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Ashirwad Vinimay (P) Ltd.</b> C/o. Subash Agarwal & Associates (Advocates) 2 <sup>nd</sup> Floor, Suite 213, Siddha Gibson 1, Gibson Lane, Kolkata – 700 069	<b>बनाम/ Vs.</b>	<b>Pr. CIT – 2, Kolkata</b> Aaykar Bhawan, P-7 Chowringhee Square Kolkata – 700 069
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AACCA-1794-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Subash Agarwal, Advocate-Ld. AR
<b>Revenue by</b>	:	Shri Amol S. Kamat, Ld. CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	10/11/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	10/11/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of revisional order passed by Ld. Pr. Commissioner of Income Tax -2 Kolkata [Ld. Pr. CIT] u/s 263 on 29.03.2019. The grounds urged by the assessee read as under: -

1. For that the order dated 29.03.2019 passed u/s 263 by the Ld. Principal CIT is barred by the law of intimation and liable to be quashed.
- 2.(a) For that on the facts and in the circumstances of the case, the order passed by the Ld. Pr. CIT u/s 263 of the Act is bad in law and is liable to be quashed.  
(b) For that on the facts and in the circumstances of the case the Ld. Pr. CIT was not justified in initiating proceedings u/s 263.
- 3.(a) For that the Ld. Pr. CIT erred in exercising the power of revision for the purpose of directing the AO to hold another investigation when the AO had complied with the directions of the predecessor Principal CIT, Kolkata-4 in the preceding order u/s 263 passed on 15.12.2016.

(b) without prejudice to the preceding grounds, the issue before the Ld. CIT was debatable, as such, the Ld. Pr. CIT did not have the jurisdiction to initiate another proceedings u/s 263.

4. For that the Ld. Pr. CIT wrongly held that an order passed consequent to order u/s 263 is automatically in favour of the revenue.

5. For that the Ld. Principal CIT was not justified in prescribing as to how to conduct the enquiries to ascertain the identity and creditworthiness of shareholders.”

2. The Ld. AR assailed the revision on the ground that revision has been exercised for the second time to re-examine the same issue which was already been subjected to examination and verification during earlier assessment proceedings. The Ld. AR further submitted that the claim was accepted by Ld. AO after due verification and examination and therefore, the revision u/s 263 was bad in law. For the same, reliance has been placed on various judicial pronouncements, the copies of which have been placed on record. The Ld. CIT-DR, on the other hand, relied on the revisional order and submitted that failure on the part of Ld. AO to conduct proper enquiries has resulted into triggering of proceedings u/s 263. Having heard rival submissions and after due consideration of judicial pronouncement as cited during the course of hearing, our adjudication would be as under.

3. The chronology of the events is like that an assessment for the year was framed u/s 143(3) on 16.03.2015 after making an addition of Rs.166 Lacs u/s 68 on account of share capital and share premium. However, the order was subjected to revision u/s 263 on 15.12.2016 wherein the assessment order was set aside and Ld. AO was directed to carry out proper examination of the books of accounts including bank accounts of the assessee as well as that of investor entities and make a fresh assessment. The Ld. AO was also directed to examine the

genuineness of source of fund of share capital and premium and complete the assessment on the basis of outcome of the enquiry.

4. Pursuant to aforesaid directions, an assessment was framed by Ld. AO u/s 143(3) r.w.s. 263 on 29.12.2016. During the course of assessment proceedings, Ld. AO issued summons u/s 131 to each of the investor entities. In response to the same, the respective directors of investor entities appeared before Ld. AO and there statements were recorded. The transactions carried out by all the investor entities were confirmed. The assessment order take note of the fact that all documents viz. Income Tax Returns acknowledgement, audited financial statements, PAN copies, Bank statement, allotment advice, source of fund of investor entities were produced / explained. Further, the documents were verified and identity, genuineness and creditworthiness of investor entities were duly established by the assessee. Accordingly, these transactions were accepted to be genuine transactions. The Ld. AR has also placed on record copies of order sheet entries of the assessment proceedings in support of the fact that necessary verifications were carried out by Ld. AO during assessment proceedings and the claim was accepted with due application of mind. This fact is not in dispute.

5. However, the assessment order so framed u/s 143(3) r.w.s. 263 was again subjected to revision u/s 263 and a show-cause notice was issued by Ld. Pr. CIT on 19/03/2019. In the notice, it was alleged that Ld. AO failed to carry out detailed investigation of the shareholders and also failed to verify the method adopted by the assessee for determining such abnormally high premium specially keeping in view the fact that there was no material in the Balance Sheet of the assessee justifying such

high premium. It was also alleged that Ld. AO failed to collect the relevant evidences in order to reach a logical conclusion regarding the genuineness of the transactions. Certain similar other observations were made and on the basis of the same, it was concluded that the assessment order suffers from lack of independent and adequate enquiry on the aforesaid issue.

6. The assessee refuted the allegations, inter-alia, by submitting that summons were issued u/s 131 and directors of all the 4 investor entities appeared before Ld. AO and confirmed the transactions in recorded statement. The transactions were duly supported by sufficient documentary evidences as already observed by Ld.AO in the assessment order. Therefore, there was no such alleged failure on the part of Ld. AO to ascertain the genuineness of sources of funds invested by the shareholders. Regarding high premium, the same would be the prerogative of Board of directors to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such shares as held by Mumbai Tribunal in **Gagandeep Infrastructure Private Ltd. (ITA No.5784/Mum/2011)**. Further, the provisions of Sec.56(2)(vii) as brought in by Finance Act 2013 were effective only from 01/04/2013 and the same would not apply to year under consideration. However, all these arguments could not convince Ld. Pr. CIT and finally, Ld. AO was directed to re-examine the issue and frame a fresh assessment in the light of observations made in revisionary order. Aggrieved as aforesaid, the assessee is in further appeal before us.

7. Upon careful consideration of factual matrix, it could be gathered that the assessment originally framed u/s 143(3) was subjected to first revision wherein Ld.AO was directed to carry out proper examination of

the books of accounts including bank accounts of the assessee as well as that of investor entities and make a fresh assessment. The Ld. AO was also directed to examine the genuineness of source of fund of share capital and premium and complete the assessment on the basis of outcome of the enquiry. Pursuant to the said directions, Ld.AO issued summons u/s 131 to each of the investor entities. In response to the same, the respective directors of investor entities appeared before Ld. AO and confirmed the transactions in the recorded statements. It is also discernible that the assessee had filed the requisite documentary evidences in the shape of Income Tax Returns acknowledgement, audited financial statements, PAN copies, Bank statement, allotment advice, source of fund of investor entities. After examining all this material, Ld. AO came to a conclusion that identity, genuineness and creditworthiness of investor entities were duly established by the assessee and therefore, these transactions were accepted to be genuine transactions. The fact that due enquiries were made by Ld. AO is also evident from the perusal of order-sheet entries of the assessment proceedings. Therefore, it could be concluded that the issue of receipt of share capital and share premium was specifically examined by Ld. AO with due application of mind and accepted after carrying out necessary enquiries and verification. Simply because the revisionary authority felt that various other aspects were also to be examined or the same very issue was to be examined from another angle, the same could not be a valid ground to revise the assessment order. If this is allowed, there would be no end to litigation and there would not be finality to the assessment. The pre-conditions to revise the order is that there should be lack of enquiry on the part of Ld. AO which made the order erroneous

as well as prejudicial to the interest of the revenue. However, as noted in preceding paragraphs, the issue was duly examined and subjected to due verification by Ld. AO during earlier assessment proceedings and there was due application of mind to the issue. This being so, the second revision on the same very issue could not be held to be sustainable in the eyes of law. Therefore, by quashing the revisionary order dated 29.03.2019, we allow the appeal of the assessee.

8. Resultantly, the appeal stand allowed.

*Order pronounced on 10<sup>th</sup> November, 2021.*

**Sd/-**

**(Aby T. Varkey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

Kolkata; दिनांक Dated: 10/11/2021  
Biswajit, Sr. P.S.

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant: Ashirwad Vinimay (P) Ltd.
2. प्रत्यर्थी/ The Respondent: Pr. CIT-2, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, DR, ITAT
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

Senior P.S  
आयकरअपीलीयअधिकरण, ITAT, Kolkata.