

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. K. NARASIMHA CHARY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.811/Del/2021  
(Assessment Year : 2015-16)

Pushp Steel and Mining Private Ltd. 751, Ground Floor, Kundewalan Street, Ajmeri Gate, Delhi-110006  PAN : AADCP 2925 K <b>(APPELLANT)</b>	Vs.	PCIT Delhi - 7     <b>(RESPONDENT)</b>
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Assessee by	Shri Suresh Gupta, C.A.
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	29.11.2021
Date of Pronouncement:	22.12.2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 31.03.2021 of the Pr. Commissioner of Income Tax (PCIT), Delhi - 7 relating to Assessment Year 2015-16.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which is stated to be engaged in the business of mining of iron ore and making steel. Assessee electronically filed its return of income for A.Y. 2015-16 on 26.09.2016 declaring total income of Rs.7,78,490/-. The case was selected for limited scrutiny under CASS and thereafter assessment was framed u/s 143(3) of the I.T. Act determining the total income at Rs.7,78,490/-, being the income declared by the assessee. PCIT thereafter on examination of the assessment records was of the view that the order passed by AO u/s 143(3) on 29.08.2017 was erroneous and prejudicial to the interest of the Revenue as according to him during the year, assessee had made investment in unlisted equity shares of closely held companies and issue of fair market value of investment as per Section 56(2)(viiia) of the Act was not examined by the AO for determination of the fair market value of share. He accordingly issued show-cause notice on 18.05.2018 asking the assessee to show-cause as to why the order u/s 263 of the Act not be passed. In reply to the show-cause notice, assessee made the submissions which were not found acceptable to PCIT. PCIT thereafter vide order dated 31.03.2021 passed u/s 263 of the Act set aside the order dtd 29.08.2017 passed by AO u/s 143(3) of the Act and directed the AO to make a fresh assessment after taking into consideration the observations of PCIT in the order. Aggrieved by the order of PCIT, assessee is now in appeal and has raised the following grounds:

1. *“The Ld. Pr. CIT has assumed power u/s 263 of the Act holding the assessment order dated 29.08.2017 as erroneous and prejudicial to the interest of revenue on the ground that no*

*independent enquiry or examination of the details were made by the AO. Such assumption of power by the Ld. Pr. CIT is not proper in absence of any minimal inquiry conducted by Pr. CIT to support his finding that the order under revision is prejudicial to the interest of revenue and erroneous.*

*2. On facts and circumstances of the case, the finding of Ld Pr CIT that the order under revision is perverse is based on incorrect assumption of facts and in complete disregard to the evidences furnished before him during revision proceedings.*

*3. The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."*

4. Before us, at the outset, Ld AR submitted that though the assessee has raised several grounds but the sole controversy is the challenge to the proceedings initiated by PCIT u/s 263 of the Act.

5. Before us, the Ld. A.R. submitted that in the present case the pre-requisite conditions specified u/s 263 of the Act have not been satisfied and therefore the proceedings initiated u/s 263 of the Act lacks jurisdiction and are bad in law. He submitted that u/s 263 of the Act, the Ld. CIT/PCIT can revise an order passed by the AO only on the satisfaction of twin conditions namely (i) the order is erroneous and (ii) it is prejudicial to the interest of Revenue. If one of them is absent i.e. if either the order of the Revenue is erroneous but is not prejudicial to the interest of the Revenue or if it is not erroneous but is prejudicial to the interest of Revenue – recourse cannot be had to Sec.263(1). He further submitted that the error envisaged by Sec.263 is not one which depends on possibility of guesswork but it should be an actual

error either of facts or of law. He further submitted that when two views are possible and the AO has taken one view with which the Ld. CIT does not agree, the order of the AO cannot be treated as an erroneous order prejudicial to the interest of the Revenue unless the view taken by the AO is unsustainable in law and for the aforesaid proposition, he relied on the decision of **Malabar Industrial Co., Ltd., Vs CIT reported in (2000) 243 ITR 83 (SC)**.

6. Ld AR thereafter pointing to the notice u/s 143(2) dtd 15.09.2016 issued by the AO during the course of assessment proceedings, the copy of which is placed at page 40 of the paper book submitted, that the reason for which the case of the assessee was selected for limited scrutiny was that during the year assessee had made investment in unlisted equity shares. He submitted that during the year assessee had made Investment in 2500 equity shares of Mukund Coalfields Pvt Ltd @ Rs 10 per share. (Investment Rs 25,000/-) and Investment in 7,70,000 equity shares of Indian Steel & Power Pvt Ltd @ Rs 10 per share (Investment Rs 77,00,000/-). Learned AR thereafter pointed to the questionnaire issued by the AO along with the notice u/s 142(1) dated 18.01.2017 (which is placed at page 41 & 42 of the paper book) wherein the assessee was asked to give the details with respect to the investments made in unlisted equity shares. He submitted that in response to notice and during the course of various hearings before the AO, assessee had furnished requisite details of the investments and had also furnished the copies of

the Memorandum of Associations of the Company & broker note for purchase of shares. He also pointed to the reply of the assessee dated 25.08.2017 which is placed at Page 47 of the paper book wherein assessee had also given the calculation of the book value of the shares of Indian Steel & Power Pvt. Ltd. at Rs.10.69 per share. He further submitted that assessee had also furnished the copies of the bank statement to demonstrate the payments made for the purchase of shares, invoice and delivery instructions. Learned AR therefore submitted that the AO after being satisfied with the submissions and explanations offered by the assessee, passed order u/s 143(3) of the Act without making any adjustment to the total income and computed the total income at Rs. 7,78,490/-.

7. Ld AR thereafter pointed to para 6 of the show cause notice dated 08.05.2018 issued by PCIT and from that he pointed that though PCIT accepts that on the point for which the case was selected for scrutiny, AO had examined the issue and had also examined the income derived from such investments but however PCIT found another reason, namely the application of provisions of Section 56(2)(viiia), which was alien to the reason for selection of the case for scrutiny, for invoking the powers u/s 263 of the Act with respect to the investments made in purchase of shares of Indian Steel & Power Pvt. Ltd. He submitted that in a case which has been selected for limited scrutiny, the powers of the AO are limited to the reasons for which the case has been selected for scrutiny and he cannot enlarge the scope without complying the

requirements stipulated for enlarging the scope of examination. He submitted that in the present case, since the case of the assessee was selected for limited purpose of verifying the investments in unlisted equity shares, the scope of inquiry was limited to the verification of investments in unlisted shares, which was made by the AO and thereafter the AO had after examining the issue in details, had accepted the return of income filed by the assessee and in such a situation, the order of the AO cannot be termed as erroneous and prejudicial to the interest of revenue by invoking the provisions of Section 263 of the Act. He further submitted that identical issue arose before the co-ordinate Bench of tribunal in the case of Pawansut Media Services P. Ltd. vs. Pr.CIT (ITA No. 534/Del/2021 dated 14.10.2021). In that case also the limited scrutiny assessment was made for the verification of large investment in unlisted equities. Ld. PCIT in that case found that the AO had failed to verify applicability of the provisions of Section 56(2)(viia) of the Act. PCIT was of the view that the issue of section 56(2)(viia) was intrinsically connected with the issue of investment in unlisted equities and since it was not examined by AO, PCIT invoked the provisions of Section 263 of the Act. When the matter was carried before the Hon'ble Tribunal, the Hon'ble Bench held that the AO was not empowered to examine the above issue in the limited scrutiny based on the given reason unless the scope of enquiry was enlarged by adopting the due procedure to convert the limited scrutiny to complete scrutiny. The Hon'ble Bench relying on the decision of jurisdictional Delhi High Court in PCIT vs. Brahma Center

Development P. Ltd. (ITA No. 116 & 118/2021, order dated 05.07.2021) held that PCIT was not entitled to expand the scope of enquiry beyond the limitation on the AO at the time of passing of order under revision. He pointed to the copy of the aforesaid order placed in the paper book.

8. He thereafter submitted that according to PCIT the investment of Rs.77,00,000/- made by the assessee in the Shares of Indian Steel & Power Pvt. Ltd. was at the value less than the Fair Market Value requiring the addition of the difference in purchase cost and fair market value u/s 56(2)(viiia) of the Act. He submitted that according to the PCIT, the Fair Market Value of the shares of Indian Steel & Power Pvt. Ltd. (supra) was Rs. 10.83 per share which being higher than the cost of acquisition of Rs. 10.00 per share by Rs. 0.83 per share, the variation in percentage would work out to 8.3% which could be considered to be within permissible limits and therefore cannot be considered to be the acquisition at much below the fair market value. He thereafter submitted from the Fair Market Value computed based on valuation made by PCIT and without going into the correctness of the calculation, the variation between the Fair Market Value and the consideration being of just 8.3% which can be considered to be permissible variation, in view of the accepted position of law that the valuation tools are not exact science and there is always possibility of the inaccuracies creeping in the process forming part of such exercise to work out liability under section 56(2)(viiia) of the Act. He further submitted that Finance Act 2020 provided

tolerance limit of 10% on difference between stamp duty value and actual consideration but even though the amendment is stated to be prospective but in the present case since the difference between the FMV under rule 11UA and the stated consideration of acquisition of shares is less than 10%, taking support cue from the decisions in the case of Chandra Prakash Jhunjhunwala vs. DCIT [2020] 113 taxmann.com 246 (Kolkata - Trib.), Kishore Hira Bhandari vs. ITO [2019] 107 taxmann.com 218 (Mumbai - Trib.), Amit Bansal vs. ACIT [2018] 100 taxmann.com 334 (Delhi - Trib.), he submitted that the order of AO cannot be considered to be erroneous and prejudicial to the interest of Revenue. He therefore submitted that the order passed by PCIT be set aside.

9. Learned DR on the other hand supported the order of lower authorities.

10. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is about the invoking of provisions of Section 263 of the Act by PCIT.

11. Sec. 263(1) of the Act, the powers under which Ld. PCIT has assumed power for revision reads as under :

*“(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving*

*the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.”*

12. The reading of the above provision makes it very clear that the power of suo motu revision u/s 263(1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision u/s 263, namely (i) the order is erroneous (ii) by virtue of being erroneous, prejudice has been caused to the interests of the Revenue.

13. Hon'ble Apex Court in the case of **Malabar Industrial Co., Ltd., Vs CIT reported in (2000) 243 ITR 83 (SC)** has held that PCIT has to be satisfied of twin conditions, namely, (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent—if the order of the ITO is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue—recourse cannot be had to Sec. 263(1). It was further held that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO; when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the CIT does not agree, it cannot be treated

as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the ITO is unsustainable in law.

14. In the present case it is an undisputed fact that the return of income for the year under consideration was selected for limited scrutiny under CASS for making examination of the issue of investment in unlisted equity shares during the year. It is an undisputed fact that during the year under consideration assessee had made Investment in 2500 equity shares of Mukund Coalfields Pvt. Ltd. @ Rs 10 per share. (Investment Rs. 25,000/-) and Investment in 7,70,000 equity shares of Indian Steel & Power Pvt. Ltd. @ Rs 10 per share (Investment Rs. 77,00,000/-). We find that to examine the issue for which the case of the assessee was selected for limited scrutiny, notice u/s 143(2) and 142(1) of the Act was issued by AO along with questionnaire and the assessee was also asked to submit the various details contained therein. The paper book filed by the assessee reveals that in response to the notice issued by AO, assessee had made submissions on various dates wherein assessee had interalia filed the details of the shares purchased, from whom the shares were purchased, copies of bank account evidencing payment to sellers, contract note for purchase note, computation of the book value of shares that were purchased. In view of the aforesaid facts we are of the view that AO had applied his mind to the information and details furnished by the assessee and after considering the information, the AO did not proceed to make any addition on account of purchase of unlisted equity shares, which according to us is a

possible view. Further, Before us, no material has been placed by the Revenue to demonstrate that the view taken by the AO was wholly unsustainable in law or the AO has not examined the issue which he was required to examine in a limited scrutiny matter. Further, it is a settled law that the order of the AO cannot be branded as erroneous if the Commissioner is not satisfied with the conclusion arrived by the Assessing Officer. The order can be brought within the purview of an erroneous order only if it involves an error by deviating from law or upon erroneous application of the legal principle. It is a settled law that the power of revision can be exercised only where no inquiry as required under the law is done and it is not open to enquire in cases of inadequate inquiry. In the present case, as noted above, the AO had raised various queries and the same were also replied by the Assessee. In such a situation it cannot be said that there was lack of inquiry from the end of AO.

15. We find that the Co-ordinate Bench of Tribunal in the case of M/S Pawansut Media Services Pvt. Ltd. (supra) on identical facts and relying on the decision of Hon'ble Delhi High Court in the case of Pr. CIT vs. Brahma Center Development P. Ltd. in ITA Nos. 116 & 118/2021 dated 05.07.2021 held that PCIT was not justified in assuming the jurisdiction.

16. As far as the invocation of Explanation 2 to Section 263 by PCIT in the present case is concerned, we are of the view that only in a very gross case of inadequacy in inquiry or where

inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. In view of the aforesaid facts, we are of the view that in the present case, Ld. PCIT was not justified in invoking the provisions of Section 263 of the Act to set aside the assessment order passed by AO u/s 143(3) of the Act. We therefore set aside the order of PCIT. **Thus the ground of the assessee are allowed.**

**17. In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 22.12.2021**

**Sd/-  
(K. NARASIMHA CHARY)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 22.12.2021*

*PY\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI