

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

(Before Sri Aby T. Varkey, Judicial Member & Sri Manish Borad, Accountant Member)

**I.T.A. No.: 255/Kol/2021
Assessment Year: 2015-16**

***Avro Commercial Co. Private Limited.....Appellant
[PAN: AAECA 1892 M]***

Vs.

Pr. Commissioner of Income Tax-1, Kolkata.....Respondent

Appearances by:

Ms. Priyanka Salarpuria, A/R, appeared on behalf of the Assessee.

Md. Ghayas Uddin, CIT(D/R), appeared on behalf of the Revenue.

Date of concluding the hearing : February 21st, 2022

Date of pronouncing the order : April 7th, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2015-16 is directed against the order of ld. Pr. Commissioner of Income-tax-1, Kolkata [in short ld. "Pr. CIT"] u/s 263 of the Income Tax Act, 1961 (in short the "Act") dated 27.03.2021 vide Document No. (DIN) ITBA/REV/F/REV5/2020-21/1031817687(1).

2. At the outset the ld. Counsel for the assessee submitted that there is a delay of 78 days in filing of the appeal. This delay was stated to be neither deliberate nor intentional but was due to the COVID-19 pandemic prevailing at that time. We take note of the pandemic situation where the movement of people were restricted and because of such practical situation, it was always not possible to follow the time of limitation regarding filing of appeal before various forums. This fact was also observed and taken cognizance by the Hon'ble Supreme Court of India, in *Civil Original Jurisdiction, Suo Moto Writ Petition (Civil) No. 3 of 2020* dated 8th March, 2021 excluding the limitation period from 15.03.2020 to 14.03.2021. The assessee has also filed separately condonation petition. The ld. D/R agreed for the condonation of

delay of 78 days. After hearing the parties and taking guidance from the decision of the Hon'ble Supreme Court (supra), we condone the delay of the assessee and proceed to hear the case on merits.

3. The assessee is in appeal before the Tribunal raising the following grounds:

"1. That on the facts and in the circumstances of the case and in law, the order made by the Ld. Pr.CIT under section 263 of the Income-tax Act, 1961 [IT Act] is illegal, invalid and not sustainable in law.

2. That on the facts and in the circumstances of the case and in law, the Ld. Pr.CIT grossly erred in passing the order under section 263 even though the assessment order under section 143(3) dated 15.09.2017 passed by the Assessing Officer (AO) was neither erroneous nor prejudicial to the interest of the Revenue.

3. That on the facts and in the circumstances of the case and in law, the AO after due examination of the relevant facts had passed assessment order, the Ld. Pr. CIT was unjustified in setting aside the assessment on the issue of alleged unexplained investment of Rs. 1,25,00,000/- and directing the AO to re-adjudicate the same issue after re-examination of the facts.

4. For that on the facts and in the circumstances of the case, the order of the CIT passed u/s 263 be cancelled since the assessment order u/s 143(3) dated 15.09.2017 was neither erroneous nor prejudicial to the interest of the revenue.

5. The Appellant craves leave to add, alter, amend and/or withdraw any of the grounds or ground of appeal either before or at the time of appeal hearing."

4. From perusal of the grounds we find that the substantive issue raised in the instant appeal is challenging the order u/s 263 of the Act being illegal, faulty and not sustainable in law and challenging that the ld. Pr. CIT erred in holding that the order u/s 143(3) of the Act dated 15.09.2017 passed by the ld. Assessing Officer (in short ld. "AO") is erroneous and prejudicial to the interest of the Revenue. Ld. Pr. CIT invoked the provision of Section 263 of the Act and issued the following show cause notice:

"Whereas the undersigned had called for and examined the record of your case and it is considered that the impugned assessment order passed u/s 143(3) of the IT Act, 1961 by the DCIT, Circle - 7(1), Kolkata on 15.09.2017 for A.Y. 2015-16 is, prima facie, erroneous in so far as it is prejudicial to the interests of the revenue for the following reasons:

In the instant case it was observed that the unexplained investment worth Rs.1,20,00,000/- in unquoted equity shares purchased from Rajendra Kumar Mishra on 14.05.2014 and unquoted shares worth Rs.5,00,000/- from Vasia Mathew on 24.11.2014 has not been disclosed by the assessee company in its books and thereby had a effect of underassessment of Rs.1,25,00,000/- with consequential tax effect of Rs.38,62,500/-.

AO has passed the impugned assessment order without any application of mind nor conducting any enquiries or verifications which should have been made in this case.

2. Having regard to the facts and circumstances of the case and in law and in accordance with the provisions of Sec. 263(1) of IT Act, 1961 you are hereby given an opportunity of being heard to show cause as to why the impugned assessment order passed u/s 143(3) by DCIT, Circle - 7(1), Kolkata on 15.09.2017 for A.Y. 2015-16 should not be held as erroneous in so far as it is prejudicial to the interests of the revenue. You may accordingly furnish your written submissions u/s 263(1) of I.T.Act, 1961 by 24.03.2021 in this regard, elaborating and/or evidencing your contentions/submissions. Considering the pandemic situations arising due to COVID-19, physical attendance is not considered necessary and you are requested to make written submissions with necessary details through E-mail ID: kolkata.pcit1@incometar.gov.in and it will be treated as compliance to this notice u/s 263(1).”

5. In reply to the show cause notice the assessee filed the detailed submissions stating that the alleged investment in equity share of Rs. 1.25 crore is disclosed in the Audited Balance Sheet, and the same has been accepted by the ld. AO in the assessment proceedings which were found to be correct and, therefore, since a detailed enquiry has been conducted, thus, no order can be said to be erroneous and prejudicial to the interest of the Revenue. Reference has been made at page-1 to 7 of the paper book and the following documents placed in the paper book dated 11.02.2022:

1. Written submission.
2. Copy of Certificate of Incorporation consequent upon change of name dated 18.12.2013.
3. Copy of Notice u/s 142(1) dated 31.07.2017.
4. Copy of the reply duly acknowledged by the Department dated 09.08.2017.
5. Copy of Notice u/s 142(1) dated 11.08.2017.
6. Copy of Notice u/s 143(2) dated 28.07.2016.
7. Copy of the reply duly acknowledged by the Department on 19.08.2016.
8. Copy of Notice u/s 263 dated 19.03.2021.
9. Judgment of Hon'ble Supreme Court in re: Cognizance for extension of limitation-Miscellaneous Application No. 21 of 2022.
10. Power of Attorney.

6. Per contra, ld. D/R vehemently argued supporting the order of the ld. Pr. CIT.

7. We have heard rival contentions and perused the records place before us. In the impugned order u/s 263 of the Act, ld. Pr. CIT held the assessment order dated 15.09.2017 as erroneous and prejudicial to the interest of the Revenue is in challenge before us through various grounds of appeal raise by the assessee. In the show cause notice dated 19.03.2021 ld. Pr. CIT has observed that the assessee has not disclosed the investment worth Rs.1.20 crore in unquoted equity shares purchased from Rajendra Kumar Mishra on 14.05.2014 and unquoted shares worth Rs.5,00,000/- from Vasla Mathew on 24.11.2014 in its books of account and thereby had an effect of under assessment of Rs.1.25 crore. During the course of proceedings u/s 263 of the Act it was specifically submitted that the investment was made towards purchase of shares of M/s. Prolifics Corporation Ltd. (erstwhile Semantic Space Technologies Ltd.) and the said investment is appearing in Schedule-9(ii) of the audited Balance Sheet and copy of purchase bills and confirmation of account were filed but still ld. Pr. CIT in the finding given at para 5 of the impugned order stated as follows:

"I have considered the facts of the case and submission of the assessee. The assessee has claimed that since the assessment order for the AY 2015-16 was passed on 15.09.2017, hence, as per the provision of Section 263(2), an order of revision u/s 263(1) in respect of captioned order could be passed only by 31.03.2020. In this regard, it is informed that as per section 3(1)(a) of chapter II of taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020, whereas the time limit of completion of any proceedings or passing of any order or issuance of any notice falls during the period from the 20th day of March, 2020 to 31st day of December, 2020, the time limit for completion or compliance of such actions stand extended to the 31st day of March, 2021. Hence, the case would be time barred on 31.03.2021 as per the above Act. Scrutiny or assessment records revealed that the unexplained investment worth Rs.1,20,00,000/- in unquoted equity shares purchased from Rajendra Kumar Mishra on 14.05.2014 and unquoted shares worth Rs.5,00,000/- from Vasla Mathew on 24.11.2014 have not been disclosed by the assessee company in its books. The AO has passed the assessment order without making enquiries or verification which should have been made in the instant case. Clause (a) and (b) of Explanation-2 to Section 263(1) is attracted in this case. Accordingly, it is held that the assessment order is erroneous in so far as it is prejudicial to the interest of the Revenue."

7.1. Ld. Pr. CIT firstly observed that the order u/s 263 of the Act will not be time barred even if passed upto 31.03.2021 in view of Section 3(1)(a) of chapter II of taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020. Secondly, on the issue of alleged unexplained investment and unquoted shares worth Rs.1.25 crore, the finding was that the assessee has not disclosed the said investment in its books and the ld. AO has passed the assessment order without making enquiry or verification.

7.2. On perusal of the paper book dated 12.02.2022, we find that the ld. AO issued a notice u/s 142(1) of the Act on 31.07.2017 asking the assessee to furnish various information including the one asked in Point No.-5 of Annexure-A (paper book page-10) to file scrip-wise details of investments made in unlisted equities during the financial year 2014-15 relevant to AY 2015-16, with explanation regarding source of funds. This query was replied vide letter dated 09.08.2017 enclosing the details of purchase from Rajendra Kumar Mishra on 05.05.2014 of 60,000 equity shares of Semantic Space Technologies Ltd. worth Rs.1.20 crore and the purchase of 5,000 equity shares of Semantic Space Technologies Ltd. on 24.11.2014 costing Rs.5,00,000/- from Vasla Mathew. The total of such investment in unquoted equity shares is Rs.1.25 crore.

7.3. Again on 11.08.2017 ld. AO in connection with the online assessment proceedings asked the assessee to furnish the source of funds with relevant documents for the investment made in 65,000 equity shares of Semantic Space Technologies Ltd. and the same was again replied by the assessee referring to the audited balance sheet with the respective Schedules, copy of purchase bill, confirmation of Mr. Rajendra Kumar Mishra of having received the consideration for sale of equity shares to assessee against the sale of 60,000 equity shares of Semantic Space Technologies Ltd. to the assessee. This fact was also placed before the ld. AO that the name of Semantic Space Technologies Ltd. has been changed to M/s. Prolifics Corporation Ltd. and the same is verifiable from the audited balance sheet placed at page-33 of the paper book in Schedule-9 as on 31.03.2015 that under the head non-current investment, investment in unquoted fully paid

up equity shares of M/s. Prolifics Corporation Ltd. has been disclosed. The assessee was holding 20,000 shares as on 31.03.2014 and after purchasing another 65,000 equity shares (60,000 from Rajendra Kumar Mishra and 5,000 from Vasla Mathew) total quantity held by the assessee is 85,000 equity shares as on 31.03.2015. All these facts are clear to prove that the ld. AO has conducted a detailed and adequate enquiry regarding the investment in 65,000 unquoted equity shares of M/s. Prolifics Corporation Ltd. (erstwhile Semantic Space Technologies Ltd.).

7.4. We also notice that the finding of the ld. Pr. CIT is only to the extent that the assessee has not disclosed investment in said unquoted equity shares in its balance sheet. No other observation has been made by the ld. Pr. CIT about any other enquiry conducted at his own end finding something fishy in the said transaction which the ld. AO ought to have been examined. Since the finding is only to the extent that the alleged investment is not disclosed in the balance sheet and the ld. AO has not examined this aspect, we are of the considered view that the alleged investment in unquoted equity shares has been duly disclosed in the audited balance sheet, and there already stood investment in the share of the said company in the preceding financial year and during the year the assessee added further 65,000 equity shares purchased from Rajendra Kumar Mishra and Vasla Mathew and all supporting documents were filed before the ld. AO as well as before us. Thus, since the ld. AO has conducted adequate enquiry and taken a plausible view after going through the relevant documents and not finding any error in such documents accepted that the assessee has made a genuine investment in the unquoted equity shares of Semantic Space Technologies Ltd.

8. We, therefore, under the given facts and circumstances of the case, are of the considered view that ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act on the issue raised in the show cause notice, which in our view, stands already examined by the ld. AO in light of the facts brought before him in the course of assessment proceedings and, therefore, the assessment order is neither erroneous nor prejudicial to the interest of the

Revenue and also Id. Pr. CIT did not brought any new fact on record by conducting any independent enquiry on the issue raised in the show cause notice except stating that the alleged investment is not recorded in the books of account and this finding of the Id. Pr. CIT is found to be factually incorrect and, thus, the very basis of invoking the jurisdiction u/s 263 of the Act declines. We, therefore, quash the impugned order, allow the grounds raised by the assessee and restore the assessment order u/s 143(3) of the Act dated 15.09.2017.

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

Kolkata, the 7th April, 2022.

Sd/-
[Aby T. Varkey]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 07.04.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Avro Commercial Co. Private Limited, 906, Shubham, 1, Sarojini Naidu Sarani, Park Street, Kolkata-700 017.**
2. **Pr. Commissioner of Income Tax-1, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata

Date of Dictation	31.03.2022
Date on which the typed order is placed before the dictating Member and other Member	07.04.2022
Date on which the order came back to Sr. P.S.	08.04.2022
Date on which file(s) go(es) to the Bench Clerk	08.04.2022
Date on which file(s) go(es) to the O.S.	
Date of despatch of the order	