

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

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 1085/MUM/2021
Assessment Year: 2011-12**

M/s Concise Exim Ltd.,
Room No. 16, Jogeshwari (E),
Mumbai-401 101.

Pr. CIT, Thane-1,
Vs. Maharashtra-401 101.

PAN No. AADCC 5668 A
Appellant

Respondent

Assessee by	:	Mr. Ashwini Kumar & Mr. Adity Kumar, ARs
Revenue by	:	Mr. Ashok Kumar Kardam, CIT-DR
Date of Hearing	:	28/03/2022
Date of pronouncement	:	28/03/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against the revision order dated 26/03/2021 passed by the Ld. Principal Commissioner of Income-Tax, Thane -1 (in short 'the PCIT') for assessment year 2011-12. The grounds raised by the assessee are reproduced as under:

1. *That the order dated 26-03-2021 passed u/s 263 of the Income-tax Act, 1961 (hereinafter called "the Act") passed by the Ld. Pr. Commissioner of*

Income-Tax- 1, Thane is against law and facts on the file in as much as he was not justified to set aside the order dated 28.12.2018 passed u/s 143(3) r.w.s. 147 of the Act for the A/Y 2011-12 by the Ld. Assessing Officer, Ward -2(1), Thane on the ground that the same is allegedly erroneous and prejudicial to the interests of the Revenue in as much as the twin conditions as laid out in Section 263 of the Income-tax Act, 1961 were not fulfilled.

2. *That the order dated 26-03-2021 passed u/s 263 of the Income-tax Act, 1961 (hereinafter called "the Act") passed by the Ld. Pr. Commissioner of Income-Tax-1, Thane is against law and facts on the file in as much as he was not justified to set aside the order dated 28.12.2018 passed u/s 143(3) r.w.s. 147 of the Act for the A/Y 2011-12 by the Ld. Assessing Officer, Ward -2 (1), Thane and direct the Assessing Officer to inquire into the issue of partly paid shares of ₹1,60,00,000/- by the Appellant Company on the ground that genuineness of source of this receipt from whom it was received is not found on the records by ignoring the fact that the same amount had already been added back in the assessment order dated 28.12.2018 and which fact had also been brought to his notice vide submission filed on 16.03,2021.*

3. *That the order dated 26-03-2021 passed u/s 263 of the Income-tax Act, 1961 (hereinafter called "the Act") passed by the Ld. Pr. Commissioner of Income-Tax- 1, Thane is against law and facts on the file in as much as he was not justified to hold that the order dated 28.12.2018 is erroneous and prejudicial to the interests of revenue on the ground that the investment made by the Appellant Company in the various entities which are reflected in the Balance Sheet have not been examined to ascertain source of the investments as well as genuineness of the investments which are expected from the Assessing Officer before finalizing the assessment order.*

4. *That the order dated 26-03-2021 passed u/s 263 of the Income-tax Act, 1961 (hereinafter called "the Act"), passed by the Ld. Pr. Commissioner of Income-Tax- 1, Thane is against the principles of natural justice in as much as*

*the submissions dated 24.03.2021 were not taken into consideration by the Ld.
Pr. Commissioner of Income-Tax - 1, Thane while passing the impugned order.*

2. Briefly stated facts of the case are that original assessment under section 143(3) of the Income-Tax Act (in short 'the Act') was completed on 07/03/2014 determining total income at ₹3,71,200/-as against total income of ₹3,534/- declared in the return of income filed on 29/09/2011. Subsequently, the Assessing Officer received an information from the investigation wing of the Mumbai that the assessee issued shares at a premium of ₹190 per share to the shareholders/subscribers which were not found to be operating from their given addresses. The Assessing Officer recorded reason to believe that income escaped assessment and thereafter issued notice under section 148 of the Act on 28/03/2018. In response, the assessee filed return of income on 18/10/2018 declaring income of ₹3,534/-. The Assessing Officer held the fully paid shares capital of ₹15.00 crores and partly paid shares capital of ₹16 crores including the share premium received, totalling to ₹31 crores as unexplained cash credit and made the addition of the same in the reassessment order dated 28/12/2018 passed in terms of section 143(3) read with section 147 of the Act.

3. Thereafter, the Ld. PCIT called for the record and after examination, he was of the opinion that order passed by the Assessing Officer was erroneous insofar as prejudicial to the interest of the revenue due two the reasons, Firstly,

that details/genuineness of the source of the receipt for partly paid shares was not examined by the Assessing Officer, secondly that the investment made in various entities reflected in the balance sheet was not examined by the Assessing Officer. Accordingly, the Ld. PCIT issued notice under section 263 of the Act on above two issues. In response the assessee submitted that addition for partly paid shares capital of ₹16 crores was already made by the Assessing Officer after carrying out due inquiries. The Ld. PCIT, however held the assessment order as erroneous insofar as prejudicial to the interest of the revenue and set aside the order of the Assessing Officer with the direction to reassess, observing as under:

“5. As discussed above that on perusal of the records it is noticed that the assessee had issued partly paid shares of ₹1,60,00,000/-. However, the documents regarding genuineness of source of this receipt from whom it was received is not found on the records. Therefore, there is requirement of further verification to examine the record. Further, investment made in the various entities which are reflected in the Balance Sheet were also found not to have been examined in order to ascertain source of the investments as well as genuineness of the investments, which was expected from the A.O before finalizing the assessment order.

6. Considering the above mentioned facts, I am of the considered opinion that the assessment made by the A.O. u/s 143(3) r.w.s 147 of the Act on dated 28.12.2018 is erroneous in so far as it is prejudicial to the interests of the Revenue. I therefore, set aside the order of the AO with the direction to

examine the above discussed issues and to redo the assessment after affording adequate opportunity to the assessee.”

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. We find that for verifying the source of share capital subscribed by the partly paid shares subscriber, the Assessing Officer issued show cause notice under section 142(1) of the Act dated 25/10/2018. Further, *vide* notice under section 142(1) dated 13/11/2018, the Assessing Officer asked for various details in respect of subscriber parties, inter-alia name and address, balance sheet and profit and loss account and return of income filed by those parties, registrar of company's record including annual return of all the shareholders etc. The Assessing Officer also asked the assessee to justify receiving of share application money at higher premium. The Assessing Officer also issued summon under section 131 of the Act to the shares subscriber companies, which were returned back. The inspector of the office of the Assessing Officer was deputed to locate share subscribers, but he also could not locate those persons at the address provided. In view of the failure on the part of the assessee in establishing identity, creditworthiness of the subscriber parties and genuineness of the transaction, the Assessing Officer made the addition for the party paid shares subscriber of ₹ 16 crores observing as under:

“19. After carefully going through the submissions of the assessee as well as the data/details/documents available on record, it becomes crystal clear that :

(a) The primary onus is on the assessee to establish the genuineness of the transaction recorded by it in its books of account:

(b) Since the primary facts are in the knowledge of the assessee, it is the duty of the assessee to provide the correct details with regard to the impugned transactions;

(c) if the investigation done by the Department leads to doubt regarding the genuineness of the transactions, it is incumbent on the assessee to produce the parties along with the necessary documents to establish the genuineness of the transaction which the assessee fails to do so in the instant case and

(d) Payment by account payee cheque is not sacrosanct.

20. From the various details filed by the assessee, it is apparent that all the transactions carried out by the assessee company are nothing but layering of their unaccounted funds and lacks genuinenity and creditworthiness. The assessee has made investments in share application money amounting Rs. 16,10,00,000/- details of which not furnished, Further, it is also seen that share application amount and share premium received has been invested in the unquoted capital of (1) M/s. Vertical Power Pvt. Ltd., (2) Pace Iron & Steel Pvt. Ltd., (3) Janitor Infrastructure Pvt. Ltd. (4) Super Natural Resource Pvt. Ltd. The purpose of receipts of share capital of ₹7,50,00,000 from M/s. Janitor Infrastructure Pvt. Ltd and investment of Rs.7,00,50,125/- again in M/s. Janitor Infrastructure Pvt. Ltd. and receipt of share capital of ₹7,50,00,000 from M/s. Super Natural Resource Pvt. Ltd and investing Rs.6,50,50,125/- again in M/s. Super Natural Resource Pvt. Ltd., cannot be acceptable as genuine transactions. It appears that the intention of the assessee company in such investment is nothing but to rotate the unaccounted money to give color of genuineness. Moreover, it is also seen that the Directors of all these companies from whom share money is received and invested are common.

21. It is further noted from the MOA of the assessee placed on the assessment record that the main object of the company is to carry on the business of buying, selling, reselling, importing, exporting and trading of all kind of good finished, raw material items, articles, merchandise, products such as agricultural, Industrial chemical, or marine, stones, pieces of arts, antiques, handicrafts, machinery, equipments, capital good and item capable of purchasing selling, importing, exporting & trading and to be appointed as agents and / or distributors and commission, allowance, retainer ship, incentive basis and also to act as an Import & Export house and to perform all the functions and undertake all the activities connect herewith including obtaining and dealing in licenses, quotas, certificates and other rights. However, the documents placed on record: do not show that any such genuine activity is being carried out by the assessee. The assessee has shown receipts of Rs.58,181/- only for A.Y. 2011-12. However total investment is 30,77,64,375/- and compare to these investments the income is negligible indicating no real business activities carried out by the assessee company.

22. In the light above mentioned facts and circumstances, the assessee company failed to prove the identity, creditworthiness of the investor and genuineness of the transaction. Hence, the amount of Rs.16,00,00,000/- received. in the form share premium from the following parties is added back to the total income of the assessee company u/s.68 of Income Tax Act, 1961 as unexplained cash credit.

Sr. No.	Name	Share Premium ₹
1.	Terrific Steel Pvt. Ltd.	4,00,00,000/-
2.	Venus Recruiters Pvt. Ltd.	4,00,00,000/-
3.	Navjyoti Farming Pvt. Ltd.	4,00,00,000/-
4.	Prominent Hospitals Pvt. Ltd.	4,00,00,000/-
	Total	16,00,00,000/-

Similarly, the amount of Rs.15,00,00,000/- received in the form share capital from the following parties is added back to the total income of the assessee company u/s.68 of Income Tax Act, 1961 as unexplained cash credit.

DETAIL OF INCREASE IN SHARE CAPITAL FULLY

		Share Capital ₹	Total ₹	Date of Payment
1	Janitor Infrastructure Pvt. Ltd.	7,50,00,000/-	7,50,00,000/-	16.11.2010
2	Superb Natural Resources Pvt. Ltd.	7,50,00,000/-	7,50,00,000/-	16.11.2010
		15,00,00,000/-	15,00,00,000/-	

Thus, the total addition on account of share premium and share capital works out to ₹31,00,00,000/- (Rupees Thirty One Crore Only) is added back to the total income of the assessee company W/s.68 of Income Tax Act, 1961 as unexplained cash credit. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is initiated separately for filing of inaccurate particulars of income.

4.1 In view of the detailed enquiries made by the Assessing Officer, the finding of the Ld. PCIT that Assessing Officer has not examined the details in respect of introduction of partly paid share subscription of ₹16/- crore, is without any basis and in complete ignorance of the facts on record. Therefore, finding of the Ld. PCIT on the first issue of non-examination of details in respect of share subscription are rejected. The Ld. PCIT has not only failed to point out any error in the assessment order on this issue, but he has also failed to substantiate that order was prejudicial to the interest of the revenue.

4.2 The second ground for revising the order is that source of investment in the balance sheet has not been examined by the Assessing Officer. We are of the view that source of investment on the asset side of the balance sheet stand explained by way share capital and other items on the liability side of the

balance sheet. When the Assessing Officer has already made addition for holding the share capital as unexplained cash credit, no addition in respect of investment made out of said capital is called for in the facts of the case. The Ld. PCIT has failed to point out any investment outside the sources mentioned in the balance sheet. Thus there was no error in the assessment order on this issue. The finding of the Ld. PCIT for revising the assessment order on this ground is also rejected.

4.3 In view of above discussion, we are of the opinion that order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue and therefore the order passed under section 263 of the Act by the Ld. PCIT dated 26/03/2021 setting aside the order of the Assessing Officer is hereby quashed. The grounds of the appeal of the assessee accordingly allowed.

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

Order pronounced in the open Court.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: **28/03/2022**

Dragon Legal Software/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai