

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.10/Coch/2021 : Asst.Year 2016-2017

M/s.Armajaro Trading India (P) Limited, Ward No.3, Room No.495 Near Besleham Church, Karukutty PO, Ankamaly, Ernakulam – 683 576. PAN : AALCA5235H.	v.	The Income Tax Officer Corporate Ward 1(1) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.Mohit Ashok Parmar, CA
Respondent by : Sri.Shantham Bose, CIT-DR

Date of Hearing : 17.05.2022	Date of Pronouncement : 18.05.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against PCIT's order dated 23.11.2020 passed u/s 263 of the I.T.Act. The relevant assessment year is 2016-2017.

2. The grounds raised read as follows:-

“General ground

1. *The Principal Commissioner of Income Tax, Kochi-1, Kochi (Pr.CIT) has erred in passing the order under section 263 of the Income Tax Act ('the Act') by contending the order passed by the Income Tax Officer, Corporate Ward 1(1), Kochi ('AO') as erroneous and prejudicial to the interest of the revenue. The order passed under section 263 is bad in law and liable to be quashed.*

Grounds relating to section 263

2. *The learned Pri. CIT erred in revising the order under 263 contending that the assessment order passed U/S 143(3) was erroneous and prejudicial to the interests of revenue.*

3. *The learned Pri. CIT has erred in concluding that the learned AO has passed the order under section 143(3) without application of mind, incorrect assumption of facts and incorrect application of law.*

4. *The learned Pri. CIT has erred in not appreciating the fact that the learned AO had made enquiries regarding the share application money during the assessment proceedings for A Y 2016-17.*

5. *Without prejudice, the learned Pri. CIT has failed to appreciate that inadequate inquiry, if any, cannot lead to revision under section 263.*

6. *Without prejudice, the learned Pri. CIT has erred in not appreciating that revision under section 263 cannot be made on a debatable issue where two views are possible and the AO has accepted one of the possible views while passing the assessment order.*

7. *Without prejudice, the learned Pr. CIT erred in not appreciating that revision under section 263 cannot be made to substitute the views of the AO.*

8. *Without prejudice, the learned Pr. CIT has erred in not appreciating the fact that the share application money was received during the FY 2013-14 and FY 2014-15 from its holding company Armajaro Trading limited, UK (also known as Ecom Agrotrade Limited, UK) and did not relate to FY 2015-16.*

9. *Without prejudice, the learned Pr. CIT has erred in not appreciating that there has been allotment of shares in April 2017 in respect of share application money, therefore it is a capital receipt and not a revenue receipt.*

Grounds relating to Share application money

10. *The learned Pro CIT has erred in concluding that the share application money amounting to Rs 2,55,49,110/- as on 31.03.2016 was towards service fee (for management related advisory) and were liable to be assessed as income chargeable to tax in the hands of the Appellant.*

11. *The learned Pr. CIT erred in not appreciating the fact that the learned AO had examined the details relating to share application money including the FIRC's during the course of assessment for A Y 2016-17*

12. *The learned Pr. CIT erred in not appreciating the efforts taken by the Appellant to rectify the inadvertent error of reporting the share application money service fee instead of equity shares by the Bank while reporting in the FIRC.*

13. *The learned Pr.CIT erred in not considering the submission of details relating to allotment of shares in respect of share application money.*

14. *The learned Pr. CIT erred in not appreciating that the learned AO has examined the details relating to share application money during the course of assessment for AY 2015-16 and AY 2017-18.*

15. *The learned Pr.CIT erred in not appreciating the fact that share application money was received during the FY 2013-14 and FY 2014-15 but not in FY 2015-16.*

16. *On facts and circumstances of the case and law applicable, share application money be considered as capital receipt towards equity shares.*

Prayer

17. *In the view of above and other grounds to be adducted at the time of hearing, the appellant prays that the order passed under section 263 be quashed or in the alternative, share application money be considered as capital receipt towards equity shares. The appellant prays accordingly.”*

3. The brief facts of the case are as follows:

The assessee is a company engaged in the business of trading in cashew. For the assessment year 2016-2017, the return of income was filed on 30.11.2016 declaring total loss of Rs.36,97,730. The assessment was selected for scrutiny through CASS for verification of lower amount disallowed u/s 40(a)(ia) of the I.T.Act and large increase in share application money pending for more than one year. The assessment was completed vide order dated 03.12.2018 u/s 143(3) of the I.T.Act, wherein the total income assessed was at Rs.11,94,830.

4. The PCIT issued show cause notice u/s 263 of the I.T.Act directing the assessee to explain why the share application money received by the assessee ought not to be treated as taxable receipt, since foreign inward remittance certificate revealed that the said amounts were received by the assessee as “service fees (for management related advisory)”.

5. The assessee filed objection to show cause notice vide letter dated 02.11.2020. It was submitted that the assessment order is not erroneous or prejudicial to the interest of the revenue, since the issue raised by the PCIT in the show cause notice u/s 263 of the I.T.Act was considered in the scrutiny assessment completed vide order dated 03.12.2018. Further, it was submitted that the equity shares were actually allotted to the payers and the details of the same were furnished.

6. The PCIT rejected the contentions of the assessee. The PCIT was of the view that the Assessing Officer has not made an inquiry with regard to the receipts of money, whether it is actually for share application or for services rendered by the assessee-company to its parent company in UK. It was held by the PCIT that failure to make inquiries by the A.O. would render the assessment order as erroneous and prejudicial to the interest of the revenue. As regards the issue on merits, it was stated by the PCIT that though the assessee has contended that the concerned bank had mistakenly labelled the foreign receipts as towards service fees instead of share application money, no clarification from bank was brought on record.

7. Aggrieved by the order passed by the PCIT, u/s 263 of the I.T.Act, the assessee has filed this appeal before the ITAT. The learned AR has filed a paper book comprising of 105 pages inter alia enclosing therein the communication the assessee had undertaken with Standard Chartered Bank, the detailed replies during the course of scrutiny assessment, the details of share allotment, etc. The learned AR reiterated the submissions made before the PCIT.

8. The learned Departmental Representative supported the order of the PCIT.

9. We have heard rival submissions and perused the material on record. The PCIT's order u/s 263 of the I.T.Act needs to be quashed for more than one reason.

9.1 Firstly, it is not correct to state that the assessee has not examined the issue in question. In the instant case, one of the reasons for limited scrutiny was for the purpose of examining whether the share application money received by the assessee was genuine and was from disclosed sources. It is seen that the assessee had shown an amount of Rs.2,55,94,110 as liability on account of share application money in the Balance Sheet as on 31.03.2016. The assessee-company had furnished details of the share application money received, FIRC's, bank statements regarding the credit of share application money received, share application general ledger account extracts during the course of assessment proceedings to prove the genuineness of the amount received. The details

and documents furnished were verified during the course of scrutiny proceedings. The total amount in foreign exchange towards allotment of equity shares is USD 395637.35. The foreign exchange loss of Rs.11,94,826 was recognized by the assessee in the Profit and Loss account and credited to the share application money pending allotment to match with the dollar rate as on 31.03.,2016. The Assessing Officer had treated the said foreign exchange loss as unexplained cash credit and brought the same to tax net. The assessee had preferred an appeal for treating the foreign exchange loss as unexplained cash credit and the appeal filed before the first appellate authority (filed on 02.01.2019) was pending adjudication. Therefore, from the above factual position, it is not correct on the part of the PCIT to come to a conclusion that the A.O. not examined the issue in question.

9.2 Secondly, the assessee had submitted that the bank had inadvertently mentioned in FIRC's that the amount received were for service management related advisories. It was stated that the assessee had not noticed the said reference in the FIRC's. On noticing the inadvertent error, the assessee had requested the bank officials and brought the matter to the notice of the bank. The assessee had sent communication to the bank requesting for correction of FIRC's deleting purpose as service and to mention as towards equity shares. The bank has also sent a confirmatory mail dated 29.09.2015 stating that the bank is working on the said request and shall update the assessee shortly. Copies of the emails communications dated 22.09.2015 and 29.09.2015 are placed on record from

pages 168 and 169 of the paper book submitted by the assessee. However, the bank has not updated the request of the assessee inspite of repeated communications.

9.3 Thirdly, from evidence on record (refer pages 110 to 142 of the paper book), it is clear that the assessee had actually allotted equity shares to the holding company in UK on 07.04.2017 pertaining to the assessment year 2018-2019. The assessee has also furnished evidences to prove how the shares have been actually allotted and name and details of the allottees.

9.4 Lastly, even assuming the amounts received are for “service fees (for management related advisories)”, the same cannot be brought to tax during the relevant assessment year, since the amounts were received in assessment years 2014-2015 and 2015-2016 (Rs.1,50,68,858 received in assessment year 2014-2015 and Rs.95,78,702 received in assessment year 2015-2016). For the aforesaid reasons, we quash the order passed by the PCIT u/s 263 of the I.T.Act. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 18th day of May, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 18th May, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT-1, Cochin.
4. The CIT Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin