

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

**(Before Sri Sanjay Garg, Judicial Member & Sri Manish Borad, Accountant Member)**

**I.T.A. No.: 418/Kol/2020  
Assessment Year: 2015-16**

***Komal Vinimay Private Limited.....Appellant***  
***[PAN: AADCK 4641 H]***

***Vs.***

***ITO, Ward-4(4), Kolkata.....Respondent***

**Appearances by:**

*None appeared on behalf of the Assessee.*

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

Date of concluding the hearing : February 28<sup>th</sup>, 2022

Date of pronouncing the order : May 17<sup>th</sup>, 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 Id. Pr. Commissioner of Income-tax-2, Kolkata [in short Id. "PCIT"] dated 23.03.2020 vide Document No. (DIN) ITBA/COM/F/17/2020-21/1027175297(1).

2. This case was first fixed for hearing on 21.09.2021. Thereafter, on three occasions the case was adjourned since the Bench was not functioning. On 20.12.2021 none appeared on behalf of the assessee. Directions were given to issue a registered post with AD through Departmental Representative. On next date of hearing i.e. 02.02.2022 again there was no appearance. One more opportunity was given by issuing a notice through "RPAD" through D/R as well as e-mail. On 28.02.2022 when the case was called up again there was no appearance on behalf of the assessee. In the case records no power of attorney has been filed. All efforts have been made by the Registry to communicate with the assessee but there is no response from the assessee. It seems that the assessee is not interested in pursuing the appeal. Therefore,

we are proceeding ahead to adjudicate the issue raised in this appeal with the assistance of ld. D/R and the available records.

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

*“1. For that the order of the Ld. CIT is arbitrary, illegal and bad in law.*

*2. For that the revision proceedings initiated at the instance of the proposal made before him is bad in law.*

*3. For that the order of the Ld. Pr. CIT is bad in law since there is no specific finding that the order passed by the AO was erroneous and therefore prejudicial to the interest of revenue when the AO made enquiries in the proceedings u/s. 143(3) and the assessment cannot be cancelled simply because sufficient enquiry as contemplated by the Ld. Pr. CIT was not made.*

*4. For that the Ld. Pr. CIT erred invoking the provisions of sec. 263 when the assessment order was passed after carrying out proper inquiries including examination of books of account and supporting bills and vouchers.*

*5. For that the Ld. Pr. CIT erred in invoking the provision of sec. 263 of the act, whereas the source of investment in unlisted equities were realization of advances made in earlier year.*

*6. For that the Pr. CIT erred in invoking the provisions of sec. 263 when full evidences with regard to the investment in unlisted equities and source of such investment were called for by the AO, examined by him.*

*7. For that the Ld. PCIT should not have invoked the provisions of sec. 263 without himself examining the details and evidences but no such examination was made and no lack of enquiry was found in the order of the Ld. AO.*

*8. For that on the facts and circumstances the order the Ld. PCIT may be set aside.*

*9. For that the appellant craves leave to add, alter or withdraw any ground/s of appeal on or before hearing of the appeal.”*

4. Brief facts of the case as per the records are that the assessee is a private limited company. Income of Rs.16,620/- declared in the return of filed on 18.01.2016. Case selected for scrutiny through CASS and during the course of assessment proceedings the assessee was asked to explain books of accounts and bills and vouchers and the same were supplied along with the hard copy of income tax return and audited grounds. Ld. Assessing Officer (in short ld. “AO”) concluded the assessment on 25.08.2017 accepting the return of income as assessed income at Rs.16,620/-.

5. In the meantime. Ld. PCIT invoked the powers u/s 263 of the Act and examined the assessment records. On perusal of the same, ld. PCIT observed

that the assessee has made fresh investment of Rs.1.93 Cr. in unlisted equity shares of two companies. Further, he observed that though the source of fund is out of business receipt, but the officer has not conducted any verification/enquiry to verify the veracity of the claim. It was also observed that the primary reason for scrutiny was large increase in investment in unlisted equity shares. All these observations have incorporated in the notice u/s 263 of the Act dated 06.03.2020 which reads as follows:

*“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 I T 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 I T 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](mailto:kolkata.pcit1@incometar.gov.in) and it will be treated as compliance to this notice u/s 263(1).”*

6. During the course of revisionary proceedings, the assessee replied to the show cause notice u/s 263 of the Act submitted that all the relevant details and documents as stated in the notice u/s 142(1) of the Act and also in respect of investment in unlisted equity shares were filed along with confirmation of accounts from whom the refund of advances was received during the said financial year (in short “FY”). However, ld. PCIT was not satisfied with the submissions given by the assessee and in view of the settled judicial precedence as referred to in the impugned order held the assessment order to be erroneous and prejudicial to the interests of the Revenue and

accordingly restored to the file of ld. AO with the direction to the ld. AO to verify the issue as discussed in page 3, para 6 of the impugned order.

7. Aggrieved, the assessee is in appeal before the Tribunal. There is no presentation on behalf of the assessee. However, ld. D/R vehemently argued supporting the order of the ld. PCIT.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the impugned order as well as the assessment order.

9. We find that the case of the assessee was selected for limited scrutiny for two issues namely “*sales turnover mismatch*” and “*investment in unlisted equity shares*”. In the body of the assessment order there is no discussion about the reasons for selection for limited scrutiny nor there is any discussion of the issues raised before us. Though there is a reply filed by the assessee before the ld. PCIT stating that the required information were filed but they are not sufficient to prove that whether ld. AO raised sufficient enquiry about the investment in unlisted equity shares. In the case of limited scrutiny assessment, ld. AO is duty bound to examine the details minutely which are linked to the reasons for limited scrutiny. Records do not contain the copy of notice issued u/s 142(1) of the Act, replies filed by the assessee, specific questions raised by the ld. AO referring to the investment in unlisted equity shares and the source of such investment.

9.1. In the impugned order, ld. PCIT has restored the issue to the file of the ld. AO for examining the above referred issue of investment in unlisted equity shares by invoking the powers u/s 263 of the Act and restoring the file back to the ld. AO for examining the same in light of the documentary evidences to be filed by the assessee.

9.2. We, therefore, under the given facts and circumstances of the case are of the considered view that the ld. PCIT has rightly assumed jurisdiction u/s 263 of the Act and restored the issue of examination of investment in unlisted

equity shares of Rs.1.93 Cr of two companies to the file of ld. AO. Accordingly, all the grounds raised by the assessee are dismissed.

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

**Kolkata, the 17<sup>th</sup> May, 2022.**

Sd/-  
[Sanjay Garg]  
Judicial Member

Sd/-  
[Manish Borad]  
Accountant Member

Dated: 17.05.2022

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Komal Vinimay Private Limited, A-92, Priyadarshni Vihar, Delhi-110 092.**
2. **ITO, Ward-4(4), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata