

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 147/JP/2022
निर्धारण वर्ष/Assessment Year : 2017-18

M/s. Chambal Alums (P) Ltd 41, Behind Muilmetal Large Industrial Area, Kota – 324 003	बनाम Vs.	The ACIT Circle-2 Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCC 1944 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal, CA
राजस्व की ओर से / Revenue by: Shri Sanjay Dhariwal, CIT

सुनवाई की तारीख / Date of Hearing : 02/08/2022
उदघोषणा की तारीख / Date of Pronouncement: 16/08/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This is an appeal filed by the assessee against the order passed u/s 263 of the Act by ld. Pr. CIT, Udaipur dated 29-03-2022 for the assessment year 2017-18 wherein the assessee has raised the following grounds of appeal.

“1. On the facts and the circumstances of the case and in law the impugned order passed u/s 263 of the Income Tax Act dated 29-03-2022 by the ld. PR. CIT, Udaipur is bad in law for want of jurisdiction and for various reasons, void ab initio and hence the same may kindly be quashed.

2. On the facts and in the circumstances of the case and in law the Id. PR. CIT, Udaipur erred in exercising the power of revision directing to re-examine the issue of share capital and share premium and to pass afresh order after further inquiries and verification more so when the AO has considered all the materials and there has been a proper examination and verification by him, demonstrating application of mind, in adopting a considered view and thus eschew the change of non-application of mind.

3. On the facts and in the circumstances of the case and in the Id. PR. CIT, Udaipur is not justified in holding that the AO has passed assessment order without proper verification/adequate enquiry and without applying his mind whereas assessee has submitted documents to the satisfaction of the AO by establishing the identity, creditworthiness and genuineness of share capital money.

4. On the facts and in the circumstances of the case and in law the Id. PR. CIT, Udaipur is not justified in holding that creditworthiness of the shareholders from whom share capital money was received in the year remains to be verified though the AO completed the assessment after making proper verification.

5. On the facts and the circumstances of the case and in law the order of the AO was neither erroneous nor prejudicial to the interest of the Revenue and, therefore, the Id. PCIT, Udaipur erred in exercising the power of revision for the purpose of directing the AO on the basis of suspicion more so when the source of the share capital and premium was disclosed money of the group concerns.’’

2.1 Apropos Ground No. 1 to 5 of the assessee, brief facts of the case are that the assessee is a Private Limited Company and it has filed a return through online dated 28-10-2017, declaring loss of Rs.25,93,828/- which has been processed u/s

143(1) of the Act. The Case of the assessee company was picked up for limited scrutiny through CASS and the notice u/s 143(2) of the Act was issued on 13-08-2018 which was served upon the assessee by e-mail. Thereafter, notice u/s 142(1) of the Act alongwith query letter was issued to the assessee on 15-04-2019 for hearing on 22-04-2019. The AO noted in the assessment order that the assessee complied with the notices online and submitted the reply. The AO examined the documents produced by the assessee and did not find any controversy in the submissions filed by the assessee. Taking into consideration the, facts of the case, documents as well as reply filed by the assessee as to the query raised by the AO, the AO assessed the loss of Rs.25,93,828/- u/s 143(3) of the Act as per the return filed by the assessee. Thus the AO did not find any ambiguity in the submissions of the assessee.

2.2 It is pertinent to mention that on completion of the scrutiny assessment of the assessee u/s 143(3) of the Act on 23-05-2019 accepting the return of income by the AO, the ld. Pr.CIT thereafter called for the records of the assessee for the A.Y. 2017-18 and examined them wherein the ld. Pr. CIT noticed the following points:-

“(i) The assessee derives income from manufacturing of metal, chemical and transport business. This case was selected for scrutiny for the year under consideration on the issue of share capital / share premium. As per Valuation report of CA, fair market value of share under Rule 11UA of Act shown at Rs. 90/- per share (includes premium of Rs. 80/- per share) for the year under consideration. From assessee's balance sheet (AY. 2017-18),

it is noticed that the assessee has issued 112500 shares during the year at the face value of Rs. 10 per share and premium per share is Rs 80/- to the two Kolkata based companies. Hence, the assessee company has received share capital, share premium during the year at Rs. 11,20,000/-, Rs. 90,08,000/- respectively. Details of above companies and share capital/share premium received to the assessee are as under:-

S.N.	Name of the company to whom share issued	No. of share allotted	Face value of the shares @ 10 per share	Share premium of the shares @ 80 per share	Total share capital
1	Mahavat Holding Private Ltd. Kolkata	71590	715900	5727200	Rs.64,43,100
2.	Naseeb Holding Private Ltd. Kolkata	41010	410100	3280800	Rs.36,90,900
	Total	112600	1126000	9008000	Rs.1,01,34,000

Thus, the assessee has received Rs. 1,01,34,000/- during the year on account of share capital/share premium from Kolkata based shell companies.

(ii) Income tax department has provided a list of shell companies in India, and the names of said both companies are included in the list of shell companies.

(iii) On perusal ITR for the A.Y. 2017-18 of both said companies and some facts are noticed, which are as under:-

(a) Both said companies filed its ITR on the same address of Kolkata.

(b) Both said companies, had shown negligible returned income in its ITRs for the AY 2017-18 and details of which are as under:-

S.N.	Name of the Company	A.Y.	Returned income	Source of income
1	Mahavat Holding Pvt. Ltd.	2017-18	Rs.17,680/-	Interest income only
2	Naseeb Holding Pvt. Ltd.	2017-18	Rs.13,390	Interest income only

(c) On perusal of P&L A/c of both companies it is noticed that the both companies were not claimed any expenses on account of salary, office expenses, rent, electricity expenses and day-to-day expenses relating to staff/employees etc.

(d) Registered office of both said companies are at Kolkata. The assessee company is maintaining its bank a/c at HDFC bank at Kota. However, bank accounts of said Kolkata based companies are opened at Kota on the same branch of the HDFC.

(e) On examination of bank statement of HDFC a/c of M/s Naseeb Holding Pvt. Ltd (A/c No-01672320003206) and bank statement of Mahavat Holding Pvt. Ltd. (A/c No. 01672320003137), it is seen that amount is credited in the bank account of both said companies from the associated companies of the assessee and amount is immediately transferred on the same day of the credit to the assessee company.

2.2.1 Taking into consideration the points mentioned above, the Id. Pr CIT(A) has observed in depth and set aside the assessment order passed by the AO on the issue of share capital and share premium. She has also indicated that the order of the AO is, therefore, liable to revision under the Explanation (2) clause (b) and Clause (a) of Section 263 of the Act. Thus the observation of the Id. Pr.CIT to the issue of Section 263 of the Act is elaborately discussed reversing the assessment order of the AO with following directions.

“From the sequence of events, it is clear that both above shell companies having nominal returned income, no business activity and have no capacity to make investment of Rs. 1,01,34,000/-in shares with the assessee during the year.

In view of the facts as mentioned in preceding paragraphs, it is clear that the A.O. has failed to examine the issue of share capital, share premium and the assessment order has been passed in the case of assessee without making necessary inquiries and verification which should have been made. Hence assessment order passed by the AO is erroneous and prejudicial to the interest of revenue. Therefore, the order was proposed to be suitably modified/enhanced/ cancelled by invoking the provisions of the section 203 of the IT Act. However before doing so, a notice u/s 263 of the IT Act was issued on 31.01.2022 to the assessee through ITBA vide DIN, for giving opportunity of being heard as well as requiring the assessee to furnish its submissions on the issue of share capital/share premium received by the assessee company Hearing was fixed for furnishing online submission in the above notice on 11.02.2022 at 11:30 AM. and said notice was duly delivered through ITBA/ E-mail to the assessee on the even date.

3 In compliance thereto assessee filed written submissions on 11.02.2022 which are as under:-

(i) During the assessment proceedings all the details regarding issue of shares capital wa submitted and details of the same are as below:-

Name & address of the share holder with pan number	Number of share issued	Face value of the shares ! 10 each
Mahawat Holding Private Ltd. PAN AABCM 9293 M	71590	715900
Naseeb Holding Private Ltd. PAN AAACN9863 D	41010	410100
Total	112600	1126000

(ii) The assessee company engaged in trading & Manufacturing of metals and chemicals and also engaged in transportation activities and for expansion of the business of the company required, hence the capital therefore, company issued share capital to the above companies.

Both above companies are having license of Non- Banking Financial company (NBFC) issued by Reserve Bank of India (RBI) and as per RBI NBSC's are Non-Banking Financial Company (NEFC) is a company registered under the Companies Act, 1956 engaged in the business of loans and advances, acquisition of shares/stocks/bonds/debentures/securities issued by Government on local authority or other marketable securities of a like nature, leasing hire-purchase, insurance business, chit business but does not include any institution whose principal business is that of agriculture activity/ industrial activity, purchase or sale of any goods (other than securities) or providing any services and sale / purchase/ construction of immovable property. A non-banking institution which is a company and has principal business of receiving deposits under any scheme or arrangement in none lump sum or in instalment by way of contributions in any other manner, is also a non banking financial company (Residuary non-banking company)''

As the both companies was Group companies and having same directors and management and to fulfill the investment requirement of assessee company both the companies subscribe the share capital. We further mentioned that source of funds invested in assessee company was also from other group companies i.e. Jammu Pigments Ltd and Mittal Pigments Pvt. Ltd. which is also proved that source of investment was also genuine land recognized and there was no involvement of any outsider or unknown party. It was internal matter of the Group to provide capital to assessee company.

(iii) As mentioned in your letter that both the companies are in the list of Shell companies of the investments wings but in respect of this there was no communication or information was provided to us. Both the companies are regular in filing the

compliances related to income tax, Ministry of Company Affairs (MCA) and RBI. All transactions are genuine and recognized and there was no involvement any outsider or unknown party, therefore, both companies are genuine after considering all the facts and requires the learned Assessing Officer passed order.

(iv) During the assessment proceeding balance sheets of both the companies was submitted where it was clearly mentioned that the companies was doing regular business and earned income from interest and investment activities and also paid interest on borrowings and deduct and collect TDS on interest received/ paid summary of transactions during the year under consideration are as below:-

Particulars	Naseeb Holding Pvt Ltd.	Mahavat Holding Pvt Ltd.
Income from interest & finance activities	1473863	907965
II. Expenses		
Finance Cost	1451227	881904
Other expenses	9246	8385
Total Expenses	1460473	890289
III. Profit/Loss before tax (I-II)	1339-	17676

During the assessment proceedings the assessee had filed all the documents to substantiate the identity, creditworthiness and genuineness of the share subscription. The source of source of the share subscription was also brought the notice of the AO as discussed and the assessee company is a private limited company and it is closely held and has raised share subscription from its own group companies which are regular income tax assessee;s and all the money has come through banking channel and their creditworthiness has also been proved by the documents produced, therefore, assessing officer passed order was not erroneous.

(v) As per Section 263 for recourse to Section 261(1), the twin conditions are required to be satisfied simultaneously

1. Assessment order is erroneous
2. The assessment order is prejudicial to the interest of revenue

Recourse to Section 263(1) cannot be taken when both the conditions are not satisfied simultaneously. Malbar Industrial Co. Ltd. vs CIT (2000) 243 ITR 83 (SC), CIT vs Vikash Polymers (2010) 194 Taxman 57 (Delhi) (HC). In absence of any finding that

there is no loss of revenue, interference u/s 263 is not justified. CIT vs G.R. Thangamaligai (2003) 259 ITR 129 (Mad-HC)

We further mentioned that in various cases it was held that where the Assessing Officer made proper enquiry and examined accounts, it could not be said that there was non-application of mind by him. Hence, the action u/s 263 was held invalid. Few cases are also reproduced as below.

Antala Sanjay Kumar Ravjibhai vs CIT (2012) 135 ITD 506 (Rajkot – Trib)

Roshan Lal Vegetable Products (P) Ltd. vs ITC (2012) 51 SOT 1 (URO) (Asr-Trib)

Fine Jewellery (India) Ltd. vs ACIT (2012) 19 ITR 746 (Mum-Trib)

From above it has been clarified the assessment order was not erroneous and also not prejudicial to the interest of revenue. All the details was filed before the AO at the time of assessment u/s 143(3) and after considering all the details the order was passed u/s 143(3) as such to look into all these details again to change the opinion which is not allow us 263 of Income Tax Act 1961 Therefore I am request to you please drop the proceeding

4. I have carefully considered the written submissions of Ld, A/R of the assessee as well as the facts of the case and my observations are as under:-

(i) The assessee stated in its reply that both Kolkata based company are NBFC Companies but no supporting evidence/certificate are enclosed with the reply of the assessee. In absence of supporting evidence/certificate, it cannot be said that said companies are NBFC companies. Hence, reply of the assessee is not acceptable on the issue.

(ii) The Financial Intelligence Unit(FIU) of the Ministry has drawn up a list of companies suspected to be involved in money laundering or tax evasion. The name of these companies figures in the list of shell companies issued by the Department in which names of both companies namely M/s Mahavat Holding Pvt. Ltd &M/s Naseeb Holding Pvt. Ltd. are included as shell company is important to mention here that both shell companies have been black listed Sh. Jitendra Goyal and Sh. Virendra Kumar Goyal are directors which are included in the list of the Director of the both said companies Above both directors Sh. Jitendra Goyal & Sh. Virendra Kumar Goyal have been identified in the investigation as dummy directors of the both companies stated supra.

(iii) Besides above certain other important facts are also noted in respect of said companies.

(a) Both companies are Kolkata based companies whose registered office is at Kolkata and filed its returns of income on same address in Kolkata:-

(b) Bank accounts of the M/s Mahavat Holding Pvt. Ltd and M/s Naseeb Holding Pvt. Ltd., Kolkata are being maintained in the HDFC Bank at Kota and in the same bank & same branch, the assessee company is also maintaining its bank accounts. Brief details of bank accounts of said both companies are as under:-

1. On examination of the bank statement of the HDFC of M/s Naseeb Holding Pvt. Ltd. (A/c No. 01672320003206), it is seen that amount of Rs. 35,88,950/- was credited on 13.02.2017 in the said bank account from the Associated Company [ie. Mittal Pigment Pvt. Ltd. (MPPL)], which is closely related to the assessee company and further same amount has been transferred to the assessee company on the same day immediately after credit.

2. On examination of the bank statement of the HDFC of M/s Mahavat Holding Pvt. Ltd. (A/c No. 01672320003137), it is seen that amount of Rs. 64,43,311/- was credited on 13.02.2017 in the said bank account from the Associated Company e. Jammu Pigment Ltd. (JPL)], which is closely related to the assessee company and further same amount has been transferred to the assessee company on the same day immediately after credit

3. Shri Ramesh Mittal & Smt. Asha Mittal are the directors in the assessee company and same persons are also directors in the both share holding company of Kolkata which have purchased shares on premium from the assessee company. Above mentioned both directors are residing at Kota as on date.

(iv) Main source of income of the both Kolkata based company are from interest only. Details of the returned income of said companies are as under

S.N.	Name of the Company	A.Y.	Total receipt	Returned income
1	Mahavat Holding Pvt. Ltd.	2017-18	Rs.907965	17680
2	Naseeb Holding Pvt. Ltd.	2017-18	1473863	13,390

It is clear from above that the returned income of both said companies are very nominal and there is no business activity in the said companies in real terms.

(v) Both companies are not incurring any expenses on account of office expenses. staff salary, rent, electricity expense & telephone expense, etc. which are the basic requirement

for running a business. On the basis of nominal returned income, it is improbable to make such a huge investment in shares with the assessee company during the year, whereas the returned income of the companies are Rs. 17,680/- or 13,390/-.

In the light of above discussion, it is clear that M/s Mahavat Holding Pvt. Ltd. & M/s Naseeb Holding Pvt. Ltd. Kolkata shell companies and these companies appear to have been used by the assessee to take accommodation entries from them.

Considering the above facts in totality it is held that as per information with the Department the assessee's transactions with these companies needed to be thoroughly verified. The AO simply accepted the documents submitted by the assessee and no proper verification of the same was carried out.

(vi) The assessee cited following case laws in support of its claim

- 1 Malabar Industrial Co.Ltd Vs CIT (243 ITR 83)
2. CIT Vs. G.R. Thangamalgai (259 ITR 129) Madras
3. Antala Sanjay Kumar Ravjibhai Vs. CIT (135 ITD 506) ITAT. Rajkot
4. Roshan Lal Vegetable Products Pvt Ltd. Vs. ITO, 51 SOT 1 (Asr. Tribunal)
5. Fine Jewellery (India) Ltd. Vs. ACIT (19 ITR 746) ITAT. Mumbai

I have gone through the said judgments of the Hon'ble Apex Court, Hon'ble High Courts, various Benches of the ITATS and found that Hon'ble Courts has held that if assessment order is erroneous and prejudicial to the interest of revenue and there is loss of revenue involved, then the CIT can exercise the power vested in him to pass revision order u/s 263 of the IT Act, in respect of order passed by the AO.

As per FIU information the department has issued list of the shell companies which are involved in providing accommodation entries to the beneficiary parties. In the said list of shell companies, name of M/s Mahavat Holding Pvt. Ltd. and M/s Naseeb Holding Pvt. Ltd. are included. In spite of that the AO did not conduct any enquiry in respect of activities of the shell companies and their creditworthiness for making huge investment in the shares with the assessee company. Without making proper verification/adequate enquiry the AO has passed assessment order without applying his mind. Hence, the facts of the cited cases and instant case are entirely different from each other. Consequently, cited judgment of Hon'ble Apex Court/High Court/ITATS are not applicable here. Therefore, argument of the assessee is not found tenable and same is hereby rejected.

On this issue it is further stated that Hon'ble Supreme Court in the case of Rampyari Devi Saraogi Vs. CIT (67 ITR 84) has held as under:

Unlike the Civil Court which is neutral to give a decision on the basis of evidence produce before it, an Assessing Officer is not only an adjudicator but is also an investigator. He can not remain passive on the face of a return which is apparently in order but calls for further query. It is his duty to ascertain the truth of the facts stated in the return, when the circumstances of the case are such as to provoke enquiry. If there is failure to make such enquiry, order is erroneous and prejudicial to the revenue. The CIT can revise the order passed by the AO u/s 263 of the IT Act, 1961.

Considering the above facts as well as the said judicial pronouncement it is held that order passed by the AO u/s 143(3) of the L.T. Act dated 23.05.2019 is suffering from the specific defects, hence order so passed by the AO is erroneous and also prejudicial to the interest of the revenue.

In the light of above discussion, assessment order passed by the AO in the case of the assessee is set aside to the file of the AO on the issue of share capital and share premium. The order of the Assessing Officer is, therefore, liable to revision under the explanation (2) clause (b) and clause (a) of section 283 of the Income Tax Act. The AO is directed to conduct proper verification and enquiries with regard to the above mentioned issues and thereafter based on outcome of such enquiries and verification necessary additions, wherever required, may be made to the total income of the assessee as per law by modifying the assessment order u/s 143(3) of the I.T. Act. However, the AO is directed to ensure that ample opportunity should be provided to the assessee before passing the order.”

2.3 During the course of hearing, the ld. AR of the assessee supported the assessment order and further submitted that the ld. Pr. CIT has erred in passing the order u/s 263 of the Act which is neither erroneous nor prejudicial to the interest of the Revenue. To this effect, the ld. AR of the assessee has filed the following written submissions.

“Ground No 1 to 5 Regarding the Holding the order passed by AO erroneous and prejudicial to the interest of revenue.

3.1.1 Case was selected for Limited Scrutiny. At the outset we would like to submit that current assessment proceeding was selected for limited scrutiny (Copy at PB Page 37 to 38) to examine the following issues.

(1) Share Premium

(ii) Other Income reported in Schedule A.01

Thus, the assessing officer was only empowered to examine only these two issues and was not empowered to travel beyond to that

Since the first issues was to examine the share premium only and not the entire share capital, therefore the Id AO was only empowered to examine that whether the share premium received by the assessee was as per the provisions of section 56(2xviiib) of the Act and the same was did by the Id. AO (Copy query at PB page 40 & Reply at PB 49 to 50). The assessee company issued 1,12,600 equity shares to the above named investor companies @ Rs 90 per share which includes the share premium of Rs. 80 per share. The issue price of the share is commensurate with the existing value of shares and in support of valuation of price of shares of the assessee company the copy of certificate dated 28.02.2017 issued by a Chartered Accountant, wherein he certified the value of shares of the Appellant Company (Copy at PB Page 49 to 50).

The second issue was only to examine the Other Income reported in Schedule A-OI. The Id AO made the necessary inquiry in this regard (Query at PB 40). In this case the reported item was on account of share capital and share premium, which are capital receipt of the assessee and after considering the reply of the assessee the Id. AO accepted the same. (Reply at PB page 42).

Thus, the Id. AO duly examined the issues within the parameters of issues identified for limited scrutiny. However, in addition to that the complete documents w.r.t. to identity, creditworthiness and genuineness of the share capital were filed and the same were examined and verified by the AO.

3.1.2 The complete details were called for, examined and verified. During the course of assessment proceeding the Id AO issued the notice us 142dy of the Act along with query letter (Copy at P Page 39 to 40, and the assessee filed the reply of the same (Copy at PB Page 41 to 48), thus, due inquiry was made from the assessee, which is apparent from the query letter and reply filed by the assessee and such documents reply was duly verified, which is apparent from the assessment order In this regard we would like to draw your kind attention towards the last line of para 1 of the assessment order (Copy at Pl Page 35), wherein it is

mentioned that "The issue was examined through his documents produce by him and no controversy found.

3.1.3 The complete documents to prove the identity, creditworthiness and genuineness of the share application was filed.

1. During the year under consideration the assessee company issued 1,12,600/-of Rs 10 each at premium of Rs 80 per share to the following investor companies

Name & PAN of Investor shareholder	No. of share issued	Face value of the shares @ 10 each	Share premium @ 80 per share	Total amount	Source of funds in the hands of investor shareholder
Mahavat Holding Private Ltd. Kolkata PAN : AABCM 9293 M	71590	7,15,900	57,27,200	Rs.64,43,100	Received the funds in its bank a/c on 13-02-2017 from the company naming Jammu Pigments Ltd. PAN: AABCJ 6000H
Naseeb Holding Private Ltd. Kolkata	41010	4,10,100	32,80,800	Rs.36,90,900	Received the funds in its bank a/c on 13-02-2017 from the company naming Mittal Pigments Private Ltd. PAN: AABCM1418N
Total	112600	11,26,000	90,08,000	Rs.1,01,34,000	

Both above companies are having license of Non- Banking Financial company (NBFC) issued by Reserve Bank of India (RBI).

Shri Ramesh Kumar Agarwal and Smt. Asha Devi Mittal were main directors in the both the investor companies much before the commencement of Year under consideration ie AY 2017-18 and before issuing the share capital to both the investor companies Both these directors are also having full control on all the transaction made by the companies. Both persons are also directors of the assessee's company as well as other group companies therefore both the companies are having same directors and are the group companies Hence to fulfill capital requirement to expansion of the business of the assessee company both the investor

companies subscribed share capital. As both investor companies were Group companies and having same directors and management and to fulfill the Investment requirement of assessee company both the companies subscribed the share capital.

2.As an evidence of allotment of these shares to above investor company the following documents were filed during the course of assessment proceeding:-

i) Copy of certified true copy of board resolution passed for allotment of shares of Mahavat Holding Private Limited and Naseeb Holdings Private Limited (Copy at PB Page 51 to 52).

ii) Copy of Form No. PAS-3 (Return of allotment) filed with Registrar of Companies regarding the new allotment of shares (Copy at PB Page 53 to 59)

3.As an evidence of identity, creditworthiness and genuineness of transaction of with investor company, we are submitting herewith the following documents: -

Name of shareholder	Particulars of documents submitted	Copy enclosed at PB Page No.
Mahavat Holding Private Ltd.	(a) Copy of master data of the company in the record of Registrar of company wherein the status of company is appearing as Active.	60
	(b) Copy of acknowledgement of return and computation of total income of A.Y. 2017-18	61 to 62
	(c) Copy of audited balance sheet of the Company of 31-03-2017	63 to 68
	(d) Copy of relevant page of Bank statement showing the entry of payment made to appellant company and source of funds in the hands of investor company	69
Naseeb Holding Private Ltd.	(a) Copy of master data of the company in the record of Registrar of company wherein the status of company is appearing as Active.	70
	(b) Copy of acknowledgement of return and computation of total income of A.Y. 2017-18	71 to 72
	(c) Copy of audited balance sheet of the Company of 31-03-2017.	73 to 82
	(d) Copy of ledger a/c of company in	83

	books of account of appellant (e) Copy of relevant page of Bank statement showing the entry of payment made to appellant company and source of funds in the hands of investor company	84-85
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4. All the share capital share application was received through banking channels and verifiable from bank statement of assessee as well as bank statement of the investor company. The onus us 68 of the assessee is to prove the identity, capacity and genuineness of the transactions has been discharged which may be seen from the followings:

I) Identity: The assessee proved the identity of both the companies by filing the copy of their Income Tax return and copy of ROC master data.

II) Genuineness: The assessee submitted the board resolution and evidence of allotment of shares to the investor companies. The proper returns were filed before the ROC against allotment of the shares to these companies. The assessee company issued 1,12,600 equity shares to the above named investor companies @ Rs 90 per share which includes the share premium of Rs 80 per share The issue price of the share is commensurate with the existing value of shares and in support of valuation of price of shares of the assessee company the copy of certificate dated 28 02 2017 issued by a Chartered Accountant, wherein he certified the value of shares of the Appellant Company (Copy at PB Page 49 to 50)

III) Creditworthiness:-

(i) Both the investor companies are Income Tax assessee and duly filing their Income Tax returns and Balance sheets

(ii) The assessee submitted the copies of bank account of the investor companies to prove source of funds in the hands of investor companies. The immediate source of funds with the investor companies, which they received in their bank are for making the payment to assessee company was from the associated companies of the assessee group and the same fact is admitted by Id. PCIT at page 7 (para 4iiib-1 & 2). The source of funds with both the investor companies was as under:

a) Ms Mahawat Holdings Private Ltd received the funds in its bank are on 13.02.2017 from the company naming Jammu Pigments Ltd (PAN:

AABCJ6000H). Thus, the funds with Mahawat Holdings Private Limited for investment in shares of the assessee company were origin from Jammu Pigments Ltd, which is a group company and was engaged in Manufacturing & Transportation Business Jammu Pigments Ltd not identified as shell company or involving in money laundering.

Jammu Pigment Ltd is regular assessee of Income Tax. It filed return for AY 2017-18 declaring total income at Rs. 2,49,07,460. Further, the assessment of this company was made us 143(3), The copy of acknowledgment of Income Tax return, Computation of Total Income and copy of Assessment Order is enclosed herewith (E-1 to E-11).

b) M/s Naseeb Holdings Private Ltd received the funds in its bank are on 13.02.2017 from the company naming Mittal Pigments Private Limited (PAN:- AABCM1418N). Therefore, funds with Naseeb Holdings Pvt Ltd for investment in shares of the assessee company were origin from Mittal Pigments Private Limited, which is a group company This company is not identified as shell company or involving in money laundering.

Mittal Pigment Pvt Ltd is regular assessee of Income Tax. It filed return for AY 2017-18 declaring total income at Rs. 79,28,330 The copy of acknowledgment of Income Tax return and Computation of Total Income is placed at PBP (E-12 to E-17).

The chart showing the amount invested by the above named companies in assessee company viz a viz worth of the investor company capart from its own borrowings) are as under:-

Name of the Investor Company	Amount invested in assessee company	Share capital and reserve & surplus with investor companies as on 31-03-2017	Share capital and reserve & surplus with investor companies as on 31-03-2016
Mahavat Holding Private Ltd.	64,43,100	2,98,29,255	2,93,72,185
Naseeb Holding Private Ltd.	36,90,900	3,46,54,034	3,45,34,167

From the above chart it is clear that both the Investor companies, apart from their own borrowing, were having their own share capital and Reserve & surplus which was much more than to the amount invested in the assessee company. The above chart shows that. the investor companies were having their own independent

funds and having their independent source to invest in the shares of the assessee company. Apart from the investment made in the shares of assessee companies, the investor companies were also having investments in shares of other companies or loans & advances to parties which is much more than to the amount invested in the assessee company. therefore from the bank statement as well as financials statements of the investor companies their creditworthiness is duly proved

5. In view of these facts and circumstances, the identity, and creditworthiness of the investor companies and genuineness of transaction is well established and therefore all the investment in share capital of the assessee should be treated as genuine. The assessee has also proved the source of source te source of funds with the investor companies and their identity creditworthiness and genuineness too. The share capital was issued and subscribed by the grang companies and also out of the funds received by them from the group concerns of the assessee company, hence question of accommodation entry does not arise, It is relevant to mention here that the allegation of accommodation entry will be suffice if any funds from dubious sources are credited in the bank ac of the investor companies. However, in the case in hand the funds were received to the investor companies from the genuine sources and if the source of funds with the investor companies are genuine its application no way can be an accommodation entry.

3.1.4 Whether PCIT can set aside the assessment order and direct the AO to conduct proper verification and enquiry, thereby interfering with the jurisdiction of the AO conferred on him in terms of section 142(1) and 143(2) of the Act.?

1. The Id. PCIT was wholly unjustified in directing the AO to conduct proper verification and enquiry with regard to share capital and share premium. It is further relevant to mention here that the power vested u/s 263 of the Act cannot be used for giving the direction to Id. AO to complete the assessment onler in the way the PCIT considered it expedient. The order u/s 263 of the Act was deemed as liable for revision under the explanation (2) clause (b) and clause (a) of section 263. As per these clauses the order passed by Id. AO shall be deemed to be erroneous so far as it is prejudicial to the interest of the revenue if in the opinion of the Principal [Chief Commission or Chief Commissioner or Principal] Commissioner or Commissioner:-

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim.

The case of the assessee is not covered in both the clauses because the Id. AO made the inquiries from the assessee, examined and verified the documents and thereafter the share capital & premium received thereon was accepted as genuine. The Id. PCIT set aside the order for conducting the proper verification and enquiries, which is not the scope of section 263 of the Act. The scope of section 263 as per above explanation is triggered where no inquiry has been made by Id. AO. If the Id. AO has made any short of inquiry in whatsoever manner as per his own satisfaction, then the revisionary power given in section 263 of the Act cannot be applied. It is relevant to mention here that section 263 of the Act or any other provision of the Act does not prescribe the extent of enquirers to be conducted by the Id. AO and it is own wisdom of Id. AO to decide the extent to enquiry is to be made by him for completing the assessment proceeding. The revisionary power u/s 263 of the Act cannot be used just for the reason that in view point of PCIT the enquiry and verification was not proper and Id. PCIT cannot step into the shoes of Id. AO.

2. In this case the details and evidences regarding the issue of share capital was filed to AO and after examination and verification of the same it was accepted as genuine by Id. AO and Id. PCIT has not specifically pointed out any credible defects in that. The Id. AO satisfied himself about the genuineness of the transactions, then, it was not possible for the Id. PCIT to step into the shoes of the AO and direct him to conduct an inquiry in the way she considered it adequate. When the legislature has empowered the AO to conduct the inquiry on the points which the AO may require and deemed fit and Id. PCIT cannot be allowed to interfere by imposing his opinion upon the AO. Section 142(1) unequivocally provides that for the purposes of making an assessment under this Act, the AO may serve a notice on any person who has made a return requiring him to produce or cause to be produced such accounts and documents as he may require or "to furnish in writing and verified in the prescribed manner information in such format on such points or matters (including a statement of all assets and liabilities of the assessee whether included in the accounts or not) as the AO may require." Language of section 143(2) also gives discretion to the AO to serve on the assessee a notice specifying particulars of claim of loss, exemption, deduction, allowance or relief and require him, where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible". A careful perusal of these provisions unveils that it is the prerogative of the AO to require the information "on such points or matters" as he may require. It is the AO who has to conduct an inquiry in the way he feels like. It cannot be expected of the AO to examine each and every detail concerning the return of income.

3. Merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by Assessing Officer while making assessment The assessment order cannot be declared to be erroneous and prejudicial to interest of revenue.

4. In the following cases, it was held that assessment framed under section 143(3) cannot be revised on ground that desired inquiry was not made.

(a) CIT vs Ganpat Ram Vishnoi (2008) 296 ITR 292 Raj - Held Undoubtedly, the jurisdiction under s 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the AO, the CIT can cancel that order and require the concerned AO to pass a fresh order in accordance with law after holding a detailed enquiry But when enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the AO was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside Jurisdiction under s 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

(b) CIT-1 Jaipur ss MS Green Triveni Developer on 24 October, 2017. HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT D.B Income Tax Appeal No 114/2015.

(c) ITAT Jaipur Smt. Sangeeta Agarwal Vs The Pr.CIT ITA No 261/JP-2020 Date of Pronouncement: 17/09/2020

(d) ITAT Jaipur Shri Vinay Kumar Sogani, Vs. The Pr. CIT, - ITA No. 444/JP 2018 Date of Pronouncement 26.07/2018.

(E) ITAT Jaipur Sh Akhil Modi Vs Pr CIT. ITA No 239 IP 2020 Date of Pronouncement 08 04/2021.

(f) Malabar Industrial Co Ltd vs. CIT (2000, 243 TT 83 SC)

(g) Vesuvius India Ltd vs CIT 2002:54 SOT 172 .ITAT-Kolkata

5. Lack of enquiry/no enquiry is different from inadequate enquiry and it is only in case of no enquiry by the AO, Pr. CIT/CIT can exercise

jurisdiction u/s 263 of the Act and not in case where the AO has made enquiries as seems appropriate in the facts and circumstances of the case. Similar proposition was upheld in the following rulings:

- (i) ITAT Delhi in the case of Braham Dev Gupta v. PCTT- [2017] 88 taxmann.com 831
- (ii) Bombay High Court in the case of CIT v. Nirav Modi - [2016] 71 taxmann.com 272 (Bombay) [SLP dismissed by SC]
- (iii) Supreme Court in the case of PCIT vs. Sumati chand Tolamal Gouti [2019] 111 taxmann.com 287 (SC) Where High Court upheld Tribunal's order holding that AO had made detailed enquiries while allowing assessee's claim for deduction of business expenditure and,thus, provisional order passed by Commissioner was not sustainable, SLP filed against High Court's order dismissed.

3.1.5 Whether the assessment order can be held as erroneous for not making proper verification/adequate enquiry.

1. The Id. PCIT held the assessment order erroneous on the ground that the AO has not made proper verification/adequate inquiry. The expressions 'erroneous' erroneous assessment and erroneous judgment have been defined in Black's Law Dictionary, Sixth Edition, page 542. According to the definition, 'erroneous' means 'involving error; deviating from the law. Erroneous assessment' refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature. Similarly, 'erroneous judgment means 'one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles."

From the aforesaid definitions, it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Assessing Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because the AO has not made the inquires upto his desired level. In the garh of exercising power under section 263, the Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings and the issues should not be reactivated beyond a particular stage.

2. It is also relevant to mention here that before passing the order u/s 263 of the Act. If Pr. CIT/CIT is of the view that any inquiry is necessary in the matter, then he should either himself make such enquiry or may get such enquiry conducted. For the purpose of exercising jurisdiction u/s 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interest of the revenue has to be preceded by some minimal enquiry by Pr. CIT/CIT. If the Pr. CIT/CIT is of the view that the AO did not undertake any enquiry, it becomes incumbent on the Pr. CIT/CIT to conduct such enquiry. If the Pr. CIT/CIT does not conduct such basic exercise, then the Pr. CIT/CIT is not justified in setting aside the order u/s. 263 of the Act.

In this regard the reliance is place on the decision of Delhi ITAT in the case of Dwarkadhis Buildwell Pvt. Ltd. v. CIT – ITA No.3097/Del/2014 dated July 2019.

3. Reliance is also placed on the following decisions: -

a) CIT Vs Hastings Properties (2002) 253 ITR 124 (Cal). It has been held that the assessment order having been made after due verification and all relevant material was collected by the AO, the assessment orders cannot be said to be erroneous and prejudicial to the interest of revenue.

b) CIT Vs Smt. D Valliammal (1998) 230 ITR 695 (Mad). It has been held that setting aside the ITO's order on the ground that verification of account was needed after obtaining clarification from the assessee is not a valid ground for invoking the jurisdiction under section 263.

4. If an order is passed after making inquiry on an issue and after having examined the replies of the Assessee with due application of mind, it is not the case where no inquiry was made. Therefore, such a case cannot be treated as a case of "no inquiry" and thus proceedings u/s 263 of the Act cannot be initiated in such a case. Further, an assessment order should not be subject to revision u/s 263 merely because another view is possible on the issue decided by the AO. Following judgments including that of the Supreme Court has decided this issue in favour of Assessee:

(i) Supreme Court in the case of Greenworld Corporation - [2009] 181Taxman 111 (SC)

(ii) Delhi High Court in the case of CIT v. Vodafone Essar South Ltd. - [2012] 28 taxmann.com 273 (Delhi)

(iii) Delhi High Court in the case of CIT v. Anil Kumar Sharma - [2010] 194 Taxman 504 (Delhi)

3.1.6 Submission of the assessee on the observations of ld. PCIT

The funding of ld. PCIT, in the light of which she passed the order u/s 263 of the Act, are at page 7-Para 4 of the order. The submission of assessee on each of such finding is as under: -

(i) No supporting evidence/certificate has been submitted with reply to prove that both the investor companies are NBFC.

The ld. PCIT held that in support of the claim that both the investor companies are NBFC no supporting evidence/certificate has been submitted with reply. In this regard it is submitted that ld PCIT never asked to submit the certificate and the assessee cannot perceive what further document may be required by Income Tax Authority. The ld PCIT could have ask the assessee to submit the certificate of NBFC more so when the fact that both the companies are NBFC is also evident by the computation of total income (PB Page 62 and 72), wherein the Particular of business is mentioned NBFC and Notes to financial statements (Page 68 and 78), wherein is mentioned that both the companies are NBFC. Further, if the certificate of NBFC were indeed required to decide the matter into fair & justice manner then the ld. PCIT could called the same from the assessee hut instead of doing so she passed the order. In this regard we would like to draw your kind attention towards the provisions of section 263 and as clause 1 of this section provides that: -

(1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner Jar 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."

Thus, as per provisions of this section the PCIT before passing the order should have been made the inquiries if she deems necessary. Therefore, if the certificate of NBFC was that much important to decide the matter in fair & justice

manner then the Id PCIT had to call such documents from the assessee but the same were not called for. Hon'ble Supreme Court in the case of Sreelekha Banerjee Vs CIT (1963) 49 ITR 112 (SC); 120 observed that the Income Tax Department cannot by merely rejecting unreasonably a good explanation, convert good "proof into no proof":

2. Allegation of shell companies are not based on inquiries but only suspicion and also immediate source of the funds in the hands of investor companies are flow of funds from other group companies:-

It has been alleged that both the investor companies are shell companies but in support of this allegation no evidence whatsoever has been provided by Id. PCIT, therefore in absence of any credible evidence the allegation posed by your honour have no legs to stand. Even the relied upon list is also not provided with the order. Further, from the revision order it is not apparent that whether such relied upon list was available with the Id AO or not, because if such list was not available with the Id. AO, then in the light of any fresh material, which is not part of assessment record, it cannot be said that the assessment order so passed is erroneous.

It is also submitted that in her order Id. PCIT herself stated that the list prepared by the Financial Intelligence Unit of the Ministry was list of suspected companies and on the basis of suspicious no conclusion can be drawn and no action can be taken. The suspicious can only be a triggered point for commencing the inquiries investigation but such suspicious alone is not sufficient to draw a final conclusion. In this case the assessee submitted ample documents to substantiate that both the investor companies are genuine companies and source of funds with them to make the investment in assessee company was also genuine. In this case, the funds were flowed from other group companies which are regularly filing their returns. There was no cash deposit in the hands of the investor companies or source of the funds for investment was not tinted money coming from dummy companies. Then merely on the basis of unsustainable, unverified and suspected allegation that the companies are shell companies the transaction with them cannot be treated as non-genuine.

It is pertinent to mention here that both the investor companies have not received any communication regarding the inquiries carried out by any of the authority regarding the genuineness of the transactions carried out by them. It is also relevant to mention here that had these companies finally would be find to be shell companies and would have been involved in the money laundering tax evasion, then some action from the competent authority must have been taken

against both the investor companies, which has not been taken till date. This proves that the allegation of being shell companies of both the investor companies are baseless and merely on suspicion.

Suspicion however strong cannot take place of proof as held by Hon'ble Supreme Court in the case of Uma Charan Shaw & Bros Co. Vs CIT 37 FTR 271.

3. The Id. PICT also alleged that both the investor companies have been black listed. The Id PICT also alleged that both the investor companies have been black listed also but it is not clear that which authority have black listed to these companies and on which ground it black listed in support of this no evidence has been submitted and in absence of that it is only an oral allegation, which is not sufficient in the Income Tax proceeding and more particularly in the interest) of natural justice. It is relevant to mention here that both the investor companies. are registered with ROC. Ring its TTR with Income Tax Department and issued the certificate of registration by RII. None of these three authorities ie ROC Income Tax Department and RIM, never take an adverse action against both the investor companies on the ground of dubious activities. Both the companies are active & functioning in the record of the authorities and regularly filing their returns with the relevant authority. Thus, the allegation that both the companies has been black listed is baseless and dehors the actual facts supported by evidences.

4. Allegation of Shri Jitendra Goyal and Shri Virendra Kumar Goyal are dummy director of both the companies:

(i) Both the companies are controlled and managed by Shri Ramesh Kumar Agarwal and Smt Asha Devi Mittal and not by Shri Jitendra Goyal and Shri Virendra Kumar Goyal.

As on the date of investment in the assessee company Shri Ramesh Kumar Agarwal and Smt. Asha Devi Mittal was also director of both the investor companies as well of the assessee company and other group companies. The working of the investor companies as well as of assessee company was actively being controlled and managed by these both directors and the same are not alleged to be dummy director.

(ii) No inquiry or report shared by Id PCIT to support the allegation that Shri Jitendra Goyal and Shri Virendra Kumar Goyal are dummy directors:

So far as allegation of Shri Jitendra Goyal and Shri Virendra Kumar Goyal as dummy director of both the companies we submit that the nature of investigation made in this regard and evidences collected in such investigation are not shared

with the assessee Therefore in absence of any evidence the allegation is baseless and not in accordance with the intent of law. It is relevant to mention here that these persons were director of the investor companies till May-2018 and after that they resigned from company

(iii) The issue of dummy directors is also irrelevant here because the funds for investment in shares of appellant company were originated and immediate source of fund was flow of funds from another group companies which are regular companies and regularly filing their returns in all the departments.

At the cost of repetition we submit that source of funds with both the investor companies was as under:

(a) M/s Mahawat Holdings Private Ltd received the funds in its bank are on 13.02. 2017 from the company naming Jammu Pigments Ltd PAN-AABCJ6000H Thus, the funds with Mahawat Holdings Private Limited for investment in shares of the assessee company were origin from Jammu Pigments Ltd, which is a group company and was engaged in Manufacturing & Transportation Business Jammu Pigments Ltd not identified as shell company or involving in money laundering.

(b) Ms Naseeb Holdings Private Ltd received the funds in its bank ac on 13.02.2017 from the company naming Mittal Pigments Private Limited (PAN AABCM1418N). Therefore, funds with Naseeb Holdings Pvt Ltd for investment in shares of the assessee company were origin from Mittal Pigments Private Limited, which is a group company This company is not identified as shell company or involving in money laundering.

There was no cash deposit in the hands of the investor companies or source of the funds for investment was not tinted money coming from dummy companies. Then merely on the basis of unsustainable, unverified and suspected allegation that Shri Jitendra Goyal and Shri Virendra Kumar Goyal are dummy directors the transaction cannot be treated as non-genuine

The Id. PCIT at page 7 para 4(iii)b-1 & 2) of the order herself admitted that the source of funds with the investor companies for making the payment to assessee company was from the associated companies of the assessee group. Such associates companies are not alleged in any manner as shell companies or companies involved in money laundering. Once such companies are treated as genuine and activities of such companies are also genuine, then the investment of

money received from such companies cannot be treated as accommodation entry in any manner.

It is also relevant to mention that there is nothing on record which can prove that the transaction made by the assessee company with the investor companies are not genuine and only accommodation entry. Since, the director of the assessee company as well as investor companies are same, therefore making of the investment in share of the assessee company was an internal matter of the company and there was no involvement of outsider in the issue of share capital hence question of accommodated entry is not arise.

5. **Bank account at Kota in same bank and in same branch:** - So far as maintaining the bank a/c of both the investor companies in Kota in same bank and same branch in which the bank a/c of the assessee company is maintained it is submitted that both the investor companies as well as assessee company is managed by the same director Shri Ramesh Kumar Agarwal and Smt. Asha Devi Mittal who are residing at Kota. Therefore, for better, smooth and effective management and control of the affairs of the investor companies their bank a/c's were opened in Kota. Further it is not possible for the persons who residing at Kota to operate at manage the bank a/c maintained in any branch at Kolkata, therefore it is obvious that if the directors are residing at Kota, they will prefer to open the bank a/c in any bank branch of Kota.

6. **Since both the companies are NBFC companies and main source of the generation of revenue with them obviously would be interest income:-** Since both the companies are NBFC companies and main source of the generation of revenue with them obviously would be interest income. Such companies are not allowed to carry out any other business activities, therefore no other source of revenue can be in their hands. Further, merely because in the year under consideration, the investor company has earned meager income would not mean that the investor company has no creditworthiness. If the investor company is able to demonstrate from the balance sheet that it had sufficient funds available with it to invest, then creditworthiness can be said to have been established. The Hon'ble Delhi High Court in case of CIT vs. Ms. Mayawati-338 ITR 0563 (Del) has held that the capacity of any person does not mean how much they earn monthly or annually, but the term capacity has wide meaning and the same can be perceived by how wealthy a person is.

So far as not incurring the expenses by the investor companies such as office expenses, staff salary, rent, electricity etc. we may submit that the only business of both the companies was NBFC for which no formal business set up is required

and the minimal requirements are fulfilling from the existing establishment of the directors or other group companies so no separate expenses was incurred on these heads by both the investor companies.

7) List of shell companies, dummy directors

The department has filed a Paper books giving the list of shell companies and dummy directors.

- (a) The date has been not mentioned over the list, therefore, it cannot be ascertained whether this list was available with AO at assessment stage.
- (b) b) As per the list the source of information was ITD. What inquires the department has carried out to hold these companies as shell companies have not been brought to notice and material if any available should be confronted with assessee before passing order us 263 of Tax Act. Ld PCIT herself held that in para 4s that it is suspected list so it is not based on enquires and investigation.
- (c) The basis to hold that the investor companies are shell companies is not disclosed.
- (d) Similarly in the list of dummy directors at DPB page 4 the basis inquires/investigation carried out if any was not brought to notice of the assessee.
- (e) The investor companies are filing regular returns in ITax, ROC and RBI, As per master data of ROC, these companies are active. Therefore, these companies cannot be held as shell companies.
- (f) Here in the case of the assessee the source of funds in the hands of investor companies are flow of funds from the other regular companies of the assessee group Therefore, there cannot be money laundering, or flow of funds from tinted sources

In view of the above submission, it is clear that the identity, creditworthiness and genuineness of the transactions were beyond doubt established from the documents already available in the assessment record. Thus, Id, PCIT has no material to hold that the assessment order passed by the AO was erroneous and prejudicial to the interest of revenue and therefore the order passed by ld PCIT us 263 of 1.Tax Act deserves to be quashed and set aside.”

2.4 Ld CIT DR vehemently argued and submitted that ld Pr.CIT has rightly invoked section 263 of Income Tax Act as the AO has not conducted necessary enquires and verification while passing order u/s 143(3) of I.Tax Act. The AO had information of shell companies and dummy directors but he did not deeply examine the share capital received from the companies particularly when the name of these companies was also appearing in the list of shell companies. He drew our attention towards the Annexure attached to notice issued u/s 142(1) of I.T. Act. He submitted that the AO has not asked documents and supporting evidence in respect to share capital received by the assessee company from M/s Mahawat Holdings Pvt Ltd and M/s Naseeb Holdings Pvt Ltd. He simply confined his enquiry in respect to value of share to examine the same taxation in the context of section 56(2)(viib) of I.T.Act. He submitted that Explanation 2 to section 263 was inserted w.e.f. 01-06-2015 and ld PCIT has rightly directed the AO to conduct proper verification and enquires with regard to the share capital and thereafter based on outcome of such enquires and verification, necessary addition may be made. He relied upon the findings of ld Pr. CIT.

2.5 The ld AR in rejoinder said that the AO has made necessary enquires in respect to share capital. The ld AR drawn our attention towards Para 2 of Annexure

enclosed with the notice issued u/s 142(1) of I.Tax Act which was in respect to share capital and the assessee submitted the reply and documents as mentioned at APB page 42-46. The ld AR submitted that in view of his detailed submission and case law cited, the order of ld Pr. CIT is not sustainable in the eyes of law.

2.6 We have heard the ld counsels for both the parties and we have also perused the material available on record, deliberated upon judgments cited by the parties as well as the orders of Revenue Authorities. From the fact, we noticed that the assessee is a private limited company and filed return for the year under consideration on 28-10-2017 declaring total loss of Rs. 25,93,828/-. The case of the assessee was selected for limited scrutiny and the AO issued notice u/s 143(2) and 142(1) of I.T. Act. The assessee filed required documents and replies. The assessment was completed u/s 143(3) of I.T. Act dated 23-05-2019 on the same income. Subsequently, the Ld Pr. CIT – Udaipur issued notice u/s 263 of the Act on 31-01-2022 for which assessee filed reply (Copy at APB Page 91-93). However the Ld Pr. CIT was not convinced with the reply filed by the assessee and, therefore, set aside the order passed the AO dated 23-05-2019. The assessee submitted that the investor companies are NBFC and ld Pr. CIT has rejected this claim of the assessee on the ground that no supporting evidence or certificate has been furnished by the assessee. Ld AR submitted that ld Pr. CIT never asked the

assessee to submit the certificate of NBFC. He draw our attention to computation of total income of these investor companies (PB Page 62 and 72), wherein the Particular of business is mentioned NBFC. He further drew our attention towards “Notes to audited financial statements” (Page 68 and 78), wherein necessary disclosure in other Notes has been made which is required in the case of ‘Non Banking Financial Companies. However, the Id AR submitted before us the copy of certificate issued by RBI (submitted as E 18-E19 with written submission). We find that the assessee has discharged its primary onus to prove that the investor companies are NBFC and if Id Pr. CIT required further supporting evidence/certificate, she could have asked the assessee to submit the same, but instead of asking the further details, she opted short cut method and rejected the assessee’s claim.. Ld AR further submitted that allegation of Id PCIT against the investor companies is suspected shell companies. We find that merely on the basis of suspicion, these companies cannot be held as shell companies. No any enquiry/ investigation was brought on record to hold that these companies are shell companies or to hold that these companies are black listed companies or engaged in money laundering. The Id AR submitted that these companies are group companies of Shri Ramesh Kumar Agarwal, well known person of Kota, who has several other companies engaged in the business of metal, chemicals and transportation. He has drawn our attention towards list of shareholders at APB pg

66 and 76 and submitted that all the shareholders of these companies are group companies or family members of Shri Ramesh Kumar Agarwal. He submitted that these companies are regularly filing their income tax returns, ROC returns, and ROC, Income Tax department, RBI, DRI and ED never initiated any action against these companies. He has drawn our attention towards the master data of the company obtained from ROC site which shows the status of these companies as "Active". We find from the material submitted by Id AR of assessee that these investor companies are group companies of Shri Ramesh Kumar Agarwal and Smt Asha Mittal without having any involvement of outsider persons and these companies cannot be held as shell companies, without having any enquiry or positive material against the said companies. The Id AR submitted that these companies received money from other sister companies of the group. M/s Mahawat Holdings Pvt Ltd received money from M/s Jammu Pigments Ltd (JPL) and out of that money Mahawat Holding Pvt Ltd invested in shares of the assessee company. Shri Ramesh Kumar Agarwal and Smt Asha Mittal are common director in assessee company, in the investor company M/s Mahawat Holdings Pvt Ltd as well as in the fund giving company Jammu Pigments Ltd (JPL). The Id AR drew our attention towards the bank statement of Mahawat Holdings Pvt Ltd. filed to AO (APB pg 69) which shows receipt of Rs. 64,43,311/- from JPL and the same amount was transferred to assessee company (CAPL). The Id AR submitted the

copy of assessment order passed u/s 143(3) of I.T Act by DCIT, Circle 13(1), Delhi on 16/12/2019 in the case of Jammu Pigments Ltd for AY 2017-18 wherein the Income of this company was assessed at Rs. 2,49,80,330/-. Similarly Naseeb Holdings Pvt Ltd received money from Mittal Pigments Pvt Ltd (MPPL) and out of that money Naseeb Holding Pvt Ltd invested in the shares of the assessee company. Shri Ramesh Kumar Agarwal and Smt Asha Mittal are also common director in assessee company, in investor company M/s Naseeb Holdings Pvt Ltd as well as in the fund giving company Mittal Pigments Pvt Ltd (MPPL). The ld AR drew our attention towards the bank statement of Naseeb Holdings Pvt Ltd filed to AO (APB pg 84-85) which shows receipt of Rs. 35,88,950/-, Rs. 1,00,00,000/-, Rs. 1,00,00,000/-, and Rs. 1,00,00,000/- totalling to Rs. 3,35,88,950/- on 13-02-2017, from MPPL and out of this amount Rs. 36,90,900/- transferred to share capital to assessee company (CAPL). The ld AR submitted the copy of ledger account of Naseeb Holding Pvt. Ltd in the books of account of M/s Chambal Alums Pvt Ltd (Assessee) at APB page 83. We find that this ledger account shows receipt of Rs. 3,35,88,950/- to assessee company from Naseeb Holding Pvt. Ltd out of which Rs. 36,90,900/- transferred to share capital account of assessee company. There is credit of Rs. 4,14,477/- on account of interest in the account on which TDS of Rs. 41448/- was deducted. The account shows the net credit balance of Rs. 3,02,71,079/- as on 31-03-2017 . The ld AR also submitted the copy of

acknowledgement Income tax return and Computation of Total income of the company M/s Mittal Pigments Pvt. Ltd wherein the total income declared was Rs. 79,28,330/-. We find that the origin flow of the funds invested in share capital of the assessee company was other group company namely Jammu Pigments Ltd and Mittal Pigments Pvt Ltd. As regard dummy director namely Shri Jitendra Kumar Goyal and Virendra Kumar Goyal, the Id AR submitted that both the investor companies are controlled and managed by Shri Ramesh Kumar Agarwal and Smt Asha Devi Mittal who are directors of assessee company and not by Shri Jitendra Goyal and Shri Virendra Kumar Goyal. We find from audited annual accounts of these companies that the audited annual accounts of these two companies were signed by Shri Ramesh Kumar Agarwal and Smt Asha Mittal. We find that no inquiry, report, investigation, was shared by Id Pr. CIT to support the allegation that Shri Jitendra Goyal and Shri Virendra Kumar Goyal are dummy directors. Further the issue of dummy directors is also irrelevant here because the funds for investment in shares of appellant company were originated and immediate source of fund was flow of funds from another group companies which are regular companies and regularly filing their returns in all the departments. We noticed from the record that during the assessment proceedings the AO had made all necessary enquires which were necessary to complete the assessment. During the assessment proceedings, the AO had issued notice u/s 143(1) and 142(1) of I.T.

Act and questioner. Notice issued u/s 142(1) dated 15-04-2019 was replied by the assessee vide copy placed at APB page 41-48 and 49-50. The assessee submitted several documents in support of share capital as under:-

S. No.	Particulars	APB Page No.
1.	Copy of certified true copy of board resolution passed for allotment of shares of Mahawat Holding Private Limited and Naseeb Holdings Private Limited.	51 to 52
2.	Copy of Form No. PAS-3 (Return of allotment) filed with Registrar of Companies regarding the new allotment of shares.	53 to 59
3.	<p>Copy of following documents filed along with the reply dated 23.04.2019 to substantiate the identity, creditworthiness and genuineness of the share capital issued during the year to <u>Mahawat Holding Private Limited</u>: -</p> <p>i) Copy of master data of the Company in the record of Registrar of Company, wherein the status of company is appearing as <u>Active</u>.</p> <p>ii) Copy of Acknowledgement of return and computation of total income.</p> <p>iii) Copy of Audited Balance Sheet of the Company.</p> <p>iv) Copy of relevant Page of Bank Statement showing the entry of payment made to Appellant Company.</p>	<p>60</p> <p>61 to 62</p> <p>63 to 68</p> <p>69</p>

4.	<p>Copy of following documents filed along with the reply dated 23.04.2019 to substantiate the identity, creditworthiness and genuineness of the share capital issued during the year to <u>Naseeb Holding Private Limited</u>:-</p> <p>i) Copy of master data of the Company in the record of Registrar of Company, wherein the status of company is appearing as <u>Active</u>.</p> <p>ii) Copy of Acknowledgement of return and computation of total income.</p> <p>iii) Copy of Audited Balance Sheet of the Company.</p> <p>iv) Copy of ledger a/c of company in books of account of Appellant.</p> <p>v) Copy of relevant Page of Bank Statement showing the entry of payment made to Appellant Company.</p>	<p>70</p> <p>71 to 72</p> <p>73 to 82</p> <p>83</p> <p>84 to 85</p>
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So, the assessment was completed after making complete enquiry and there was no lack of enquiry or investigation by the AO on this account. Therefore the findings of Ld Pr. CIT that order passed by AO on 23-05-2019 was passed without conducting necessary enquires and without verifying necessary details was without any basis or without any evidence on record.. In view of above facts, circumstances, case laws relied upon by the assessee (supra), we find that it is not a fit case for passing the order u/s 263 of the I.Tax Act by the Ld Pr. CIT. The order passed u/s 143(3) dated 23/05/2019 by the AO was neither erroneous nor

prejudicial to the interest of the revenue. Thus, the order passed by the AO is confirmed and grounds of the assessee are allowed.

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

Order pronounced in the open court on 16/08/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 16/08/2022

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Chambal Alums Private Ltd., Kota
2. प्रत्यर्थी / The Respondent- ACIT. Circle-2, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 147/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar