

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

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No.: 1372/Kol/2019

Assessment Year: 2012-13

M/s. Lotus Dealmark Pvt. Ltd.....Appellant
[PAN: AABCL 8721 H]

Vs.

PCIT, Kolkata-4, Kolkata.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Sh. Amol Kamat, CIT, D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : August 4th, 2022

Date of pronouncing the order : August 31st, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 263 of the Income Tax Act, 1961 (in short the "Act") by ld. Pr. Commissioner of Income-tax, Kolkata-4, Kolkata [in short ld. "PCIT"] dated 12.03.2019.

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

"1. For that the Ld. Pr. CIT erred in invoking the provisions of Sec. 263 in the second round when the assessment order passed on 17.10.2016 was not erroneous and accordingly cannot be considered as prejudicial to the interest of revenue.

2. For that the Ld. Pr. CIT erred invoking the provisions of Sec. 263 when the assessment order dated 17.10.2016 was passed in accordance with the directions of the Pr. Commissioner of Income Tax as per his order passed on 26.09.2016 and therefore such order cannot be treated as erroneous and accordingly prejudicial to the interest of revenue.

3. For that the Ld. PCIT erred in invoking the provision of Sec. 263 by citing various case laws on Section 68 of the Income Tax Act, 1961 whereas section 68 does not apply in this case as there is no cash credit so as to invoke section 68 of the I T Act, 1961.

4. For that the Ld. Pr. CIT erred in invoking the provisions of Sec. 263 when all the enquiries as directed in the order u/s 263 were made by the AO and the Ld. PCIT has not pointed out any error of not following the directions in the said order.

5. For that the Ld. Pr. CIT erred in invoking the provisions of Sec. 263 of the IT Act, 1961 where as LD. AO himself mentioned in assessment order that "The identity, Source of Fund, genuineness and creditworthiness of the investors were verified and the source of source i.e. the second layer of source of fund were verified" and the Ld. PCIT has not pointed out any error for not following the directions in the said order.

6. For that the Ld. PCIT should not have invoked the provisions of sec. 263 for making rowing and fishing enquiry and should have himself examined the details and evidences but no such examination was made and no lack of enquiry was found in the order of the Ld. AO.

7. For that the Ld. PCIT erred in issuing directions for making the reassessment on all together fresh issues which were not the subject matter of the earlier order u/s. 263 which shows that there was no end of litigation, each time raising fresh issues which is not contemplated under sec. 263 as well as under the provisions of the I.T. Act, 1961.

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."

3. When case was called, none appeared on behalf of the assessee. On perusal of records, we find that multiple

opportunities have been given to the assessee and notices have also been issued by RPAD. But, there is no compliance on behalf of the assessee. We have no option left except to proceed to adjudicate the issues in the instant appeal with the assistance of ld. D/R and available records.

4. Brief facts of the case as culled out from the records are that the assessee is a private limited company. Return for AY 2012-13 was filed on 27.09.2013 declaring income of Rs. 12,100/-. Case selected for scrutiny and assessment order u/s 143(3) of the Act was passed on 29.03.2016. Ld. Pr. CIT-4, Kolkata invoked the revisionary powers u/s 263 of the Act vide order dated 26.09.2016 setting aside the assessment order passed u/s 143(3) of the Act dated 29.03.2016 giving direction to the ld. AO to carry out proper examination of books of accounts and bank accounts to investigate the case of the assessee and also to examine the source of share application money, identity of the investors and its genuineness. In compliance thereto, assessment proceedings u/s 143(3) r.w.s. 263 of the Act were carried out and vide order dated 17.10.2016 returned income of Rs. 12,100/- was accepted as assessed income and no additions were made.

5. Subsequently, ld. Pr. CIT-4, Kolkata again invoked the revisionary powers and in the second round, examining the assessment order dated 17.10.2016, again framed revisionary order u/s 263 of the Act dated 26.09.2016 observing that the said order is prejudicial to the interests of the Revenue on account of the following grounds which have been mentioned in the show cause notice issued u/s 263 of the Act:

“2. Subsequently, the assessment records of the assessee were called for & on the basis of the verification of the material available on records, it was found that the order of assessment was erroneous so far as it is prejudicial to the interest of revenue on the following grounds:-

(i) The A.O passed the order without carrying out detailed investigation/ verification/ independent enquiry regarding identity, creditworthiness of the shareholders & also the genuineness of transactions relating to share capital that was intended to be carried out and merely accepted the submission of the assessee in this regard.

(ii) That A.O has also failed to carryout detailed investigation of the shareholders on the very issue that how they decided to invest in such a company which was never known for its line of business and also they invested at huge premium without verifying the financial position.

(iii) The A.O further failed to examine the rationale behind raising the said share premium and also did not verily the method adopted by assessee for determining such abnormally huge premium specially keeping in view that prima facie there was no material in the balance sheet of the assessee warranting/justifying such huge premium.

(iv) The A.O failed to collect the relevant evidences in order to reach a logical conclusion regarding the genuineness of controlling interest.

(v) The A.O failed to examine all the bank accounts for the entire period in the course of verification to find out the money trail of the share capital.

(vi) The A.O' failed to adequately trace out the money trail to ascertain the genuineness of source of fund invested by share holders in the assessee company.

(vii) On the whole the impugned order dated 17-10-2016 passed u/s 143(3)/263 of the Income Tax Act, 1961 prima facie suffers from lack of independent and adequate enquiry on the aforesaid issues.”

6. The assessee failed to make any compliance to the show cause notice dated 19.02.2018 issued u/s 263 of the Act and even after being provided sufficient opportunities on multiple occasions, the assessee failed to reply or furnish any submission. Therefore,

it was presumed by the ld. Pr. CIT that the assessee has no explanation to offer. Accordingly, ld. Pr. CIT again set aside the assessment order dated 17.10.2016 giving specific directions to ld. AO to carry out the assessment proceedings and call for relevant materials/evidences in order to examine the facts of the case, genuineness of the source of funds invested by share holders in the assessee company, rationale behind raising the said share premium, and other details observing the following in para 4, 4.1 & 4.3 of the impugned order:

“4. I have carefully considered that the details and documents available on assessment records and it was found that those were not examined judiciously. The A.O. in assessment order had not discussed about the details of share issued and subscribed and also has not worked out the number of shares issued with premium and number of shares issued on face value without premium and as per Para 2. The assessment order was passed without carrying out examination and verification of facts as called for. Prima facie, it appears that A.O. did nothing except waiting for the disposal in a hasty manner and without making dent in the case after making conclusive enquiry. The facts, figures, evidences available on records to decide the case on merits did not find place in assessment order. The A.O. also failed to examine the veracity of the reason that weighted with the Investors in absence of any history of the concern to generate substantial return on capital to prompt them to pay usually high share premium. How the share premium has been fixed at high value is not forthcoming. By not conducting any enquiry to ascertain and examine' the crucial facts as above, severe prejudice to revenue has been caused and also the assessment order suffers from infirmity due to lack of proper and adequate enquiry. Further, the A.O. failed to make enquiry to ascertain authenticity of the said transactions. While the A.O. made certain enquiries, it was restricted to ascertaining the claim of transaction; no enquiry was made to ascertain whether the investors had the capacity to make impugned investments and whether the transactions were genuine. No enquiry was made to rule out the possibility of the transaction being illusive and sham and the activity being an attempt to launder black unaccounted income. No enquiry had been made to ascertain whether the investors had sufficient income of their own to enable them to have

the capacity to make impugned investment. The A.O. has not even examined the bank a/c of the share subscribers to find out whether there was any deposit immediately before issuing cheques to the assessee and if so genuineness of such deposit immediately before issuing cheques to the assessee and if so genuineness of such deposit. By not doing so, the assessment order suffers from infirmity as above which has made the assessment order erroneous in so far as prejudicial to the interest of revenue.

4.1 Thus from the above facts, I am of the opinion that the impugned Assessment order passed u/s-143(3) / 263 of the Act is erroneous so far as prejudicial to the interests of revenue. The interests of the revenue are not to be equated to superficially examine the inflow and outgo of money but to go much deeper to unearth the true colour and contour of transaction. Further, it is clear enough to say that the order passed by the A.O. shall be prejudicial to the interest of revenue (Revenue Administration). Therefore the impugned Assessment order stands erroneous so far as prejudicial to the interest of revenue. The Assessing Officer is required to carry out proper examination of the books of accounts including bank accounts of assessee as well as investors and make a fresh assessment. A.O. is also required to examine the genuineness of source of fund appearing in the nomenclature of share capital including premium and nature of transactions, identity of investor and its genuineness.

4.3 The facts have been examined. In my considered opinion, this is a case of lack of enquiry on the part of the AO. The decision on this issue could be taken only after examining and verifying the facts / submission of the AR on this score. Not collecting the full facts and not taking enquiry to logical end which could enable AO to take decision based on the totality of facts makes this order erroneous in so far as prejudicial to the interest of revenue. After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(c) below section 263 (1) of the Act. Accordingly, the issue is set aside to the table of A.O. The A.O. is directed to provide reasonable opportunity to the assessee company to produce documents & evidences which it may choose to rely upon for substantiating its own claim. Thereafter a fresh assessment order may be passed in accordance with the relevant provisions of law.”

6.1. Further, finding of the Id. Pr. CIT in para 4.4 of the impugned order is also worth observing:

“4.4 1st Assessment Order in this case was found erroneous and prejudicial to interest of revenue by PCIT-4, Kolkata. Hence PCIT-4 vide his order u/s 263 directed AO to conduct sufficient amount of enquiries and finalize the order accordingly. Intention of said order u/s. 263 of the Act was to strengthen the assessment order passed dtd. 29.3.2016, as possibly because of possible paucity of time, AO could not conduct all the required enquiries. But subsequent order passed by AO u/s 143(3) was made without conducting proper enquiries of transactions and creditworthiness of investors that the A.O ought to have. Any order passed subsequent to order u/s 263 must be in favor of revenue. Either earlier assessed income should be enhanced or could be same as earlier order, but with enhanced enquiries so that addition should be strengthened to pass the test of appellate proceedings. But here the assessment order passed u/s 143(3) r.w.s 263 was erroneous as addition made u/s 68 on account of unexplained share capital/premium as the same were not added back.”

6.2. However, Id. Pr. CIT concluded the proceedings u/s 263 of the Act observing the following in para 7 of the impugned order:

“7. I have carefully considered and perused that the material available on record and found that the issues pointed out in the show cause needs verification as merely accepting submission without calling for logically relevant material/evidences in order to have an overview of totality of fact and circumstances, during the course of assessment proceedings the A.O. failed to examine the above referred issue rendering the assessment order erroneous on the ground of lack of enquiry. After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(c) below section 263 (1) of the Act on the ground of lack of enquiry. Accordingly, the assessment order dated 17-10-2016 passed u/s 143(3)/263 is set aside de-novo to the table of AO, on specific issue as outlined in above para 2 with a direction to Assessing Officer to cause adequate and effective enquiry. The A.O. is directed to provide reasonable opportunity to the assessee company to produce documents & evidences which it may choose to rely upon for

substantiating its own claim. The AO is further directed to adjudicate the said issue de-novo and pass a fresh assessment order in accordance with the relevant provisions of law.”

7. Now, aggrieved the assessee is before this Tribunal. Except filing the instant appeal, there is no compliance on behalf of the assessee. No written submissions have been filed. No paper book has been submitted.

8. On the other hand, ld. D/R vehemently argued supporting the impugned order and, further, stated that ld. AO failed to comply to the directions of ld. Pr. CIT given in the order u/s 263 of the Act dated 26.09.2016.

9. We have heard rival contentions and perused the records placed before us.

10. In the instant case, the assessee which is a private limited company, declared income of Rs. 12,100/- in the return filed on 27.09.2013. In the first round of assessment proceedings, no additions were made. In the second round of assessment proceedings carried out in direction to the order u/s 263 of the Act dated 26.09.2016, ld. AO has stated to have examined the financial statements of the assessee and other documents relating the investments made in the company. However, no such details are placed on record. There is no information before us as to what was the amount of share application money, credit entries, details of identity of the share applicants, documents supporting the genuineness and creditworthiness of such transactions. The finding of ld. AO in the assessment order dated 17.10.2016 is in a summary manner which is not indicating the details in a correct manner. Also, the order u/s 263 of the Act dated 26.09.2016 is not

placed before us which would have helped us to know about the directions given by ld. Pr. CIT and whether such directions have been complied by the ld. AO.

11. Under these given facts and circumstances, where the assessee has opted not to appear before the ld. Pr. CIT nor before this Tribunal and has merely filed the appeal but has not pursued the appeal so filed by it and in the given situation where we are unable to lay our hands on any of the details of the financial transactions carried out by the assessee during the year and whether such transactions have been examined by ld. AO in the manner directed by ld. Pr. CIT in the order dated 26.09.2016 passed u/s 263 of the Act, we fail to find any infirmity in the finding of the ld. Pr. CIT in the impugned order dated 12.03.2019. We, accordingly confirm the said finding setting aside the assessment order dated 17.10.2016 passed u/s 143(3) of the Act which is, thus, rightly held to be erroneous and prejudicial to the interests of the Revenue. Accordingly, all the grounds raised by the assessee in the instant appeal are dismissed.

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

Kolkata, the 31st August, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 31.08.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. M/s. Lotus Dealmark Pvt. Ltd., 78, Bentick Street, 4th Floor,
Unit No. 5D, Block-B, Kolkata-700 001.**
- 2. PCIT, Kolkata-4, Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata