

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA Nos.2494 & 2495/Del/2017
Assessment Years: 2009-10 & 2010-11

Soaltee Finance & Leasing Ltd., Chamber No. 1, 307, Sharp Bhawan, Commercial Complex, Azadpur, New Delhi	Vs.	Pr. CIT-8, New Delhi
PAN :AAACS2386N		
(Appellant)		(Respondent)

Appellant by	Sh. KVS Gupta, Advocate
Respondent by	Sh. H.K. Choudhary, CIT-DR

Date of hearing	08.06.2022
Date of pronouncement	07.09.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned appeals have been filed by the assessee assailing the order passed by learned Principal Commissioner of Income Tax-8, New Delhi under section 263 of the Income-tax Act, 1961 (in short 'the Act') pertaining to assessment years 2009-10 and 2010-11. Since, the facts and issues involved in both the appeals are, more or less, identical, except variance in quantum, we propose to

discuss the facts involved in ITA No. 2494/Del/2017 pertaining to assessment year 2009-10.

ITA No. 2494/Del/2017
Assessment Year: 2009-10

2. Briefly the facts are, the assessee is a resident corporate entity. For assessment year 2009-10, the assessee had filed its return of income on 29.09.2009 declaring income of Rs.74,960/-. Initially, the return of income was processed under section 143(1) of the Act. Subsequently, a search and seizure operation under section 132 of the Act was conducted at the premises of one Sh. Surender Jain and Sh. Virender Jain on 14.09.2010. In course of such search and seizure operation, it was found that the concerned persons were providing accommodation entries to various other persons. The seized materials indicated that the assessee is a beneficiary of accommodation entries provided by Sh. Surender Jain and Group entities for an amount of Rs.31,40,000/-. This information along with the seized material as well as the appraisal report was forwarded by the Investigation Wing of the Department to the Assessing Officer of the present assessee through jurisdictional administrative head. Based on the information and materials received from the Investigation Wing, the Assessing

Officer formed a belief that the income chargeable to tax for the year under consideration has escaped assessment. Accordingly, after recording reason to belief and obtaining approval from the competent authority, the Assessing Officer reopened the assessment under section 147 of the Act by issuing a notice under section 148 of the Act. In response to the notice issued under section 148 of the Act, the assessee participated in the assessment proceeding and raised objections against the reopening of the assessment. Though, the Assessing Officer rejected the objections of the assessee, however, he proceeded to complete the assessment under section 147/148/143(3) of the Act, accepting the income returned by the assessee.

3. Post completion of assessment, learned PCIT called for the assessee records for review and while doing so, he found that the Assessing Officer has not at all made inquiry on the issue of accommodation entry availed by the assessee from Sh. Surender Jain and Group. Therefore, being of the view that the assessment order is erroneous and prejudicial to the interest of Revenue, learned PCIT issued a show-cause notice under section 263 of the Act to the assessee seeking his explanation, as to why, the assessment order should not be set aside. In reply to the show-

cause notice, the assessee objected to the initiation of proceeding under section 263 of the Act by stating that in course of assessment proceeding, the Assessing Officer has made full blown inquiry on the issue, on which, the assessment was reopened and being satisfied with the submissions made by the assessee and evidences furnished, has completed the assessment accepting the return of income. Thus, it was submitted, the assessment order, having been passed after thorough inquiry, cannot be considered to be erroneous and prejudicial to the interest of Revenue. Learned PCIT, however, was not convinced with the reply of the assessee. He held that the Assessing Officer has neither himself analyzed the seized materials, which prima facie indicated that the assessee had availed accommodation entry from the group entities of Sh. Surender Jain on payment of cash, nor the seized documents were confronted to the assessee seeking his explanation. He observed, without making any inquiry with reference to the seized materials available with him, the Assessing Officer accepted the return of income, which resulted in non-assessment of Rs.31,40,000/- received by the assessee by way of accommodation entry. On the aforesaid premises learned PCIT, ultimately, concluded that due to complete non-inquiry by the Assessing Officer with regard to

accommodation entry availed by the assessee, the assessment order is erroneous and prejudicial to the interest of Revenue. Accordingly, he set aside the assessment order with a direction to the Assessing Officer to frame the assessment afresh after examining the seized material and confronting them to the assessee.

4. Before the Tribunal, in addition to the grounds raised in the memorandum of appeal, the assessee has raised a number of additional grounds in two separate letters filed on 28.08.2019 and 02.09.2019. The additional grounds raised in letter dated 28.08.2019 are as under:

- 1. Without prejudice to other Grounds of Appeal, whether the lower Authorities erred in law, on facts available on records in not issuing a specific notice u/s 153A r/w section 153C and framing the impugned assessment u/s 147/143(3) of the Act which is without jurisdiction and consequently null and void.*
- 2. Without prejudice to other Grounds of Appeal, whether the lower Authorities erred in law, on facts available on records in not holding the impugned assessment u/s 147/143(3) without issue/service of notice u/s 143(2) of the Act is illegal, arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*
- 3. Without prejudice the other grounds of Appeal, whether the Pr. CIT erred in law and on facts available on records in invoking his jurisdiction u/s 263 based on proposal forwarded by ld. AO as is clear from the order sheet dated 12.01.2017 rendering 263 proceedings without jurisdiction and as such the order passed is null and void.*
- 4. Without prejudice to other Grounds of Appeal, whether the Ld. AO erred in law and - facts available on records in invoking the provisions of sections 147/148/151(2) based on report from the investigation wing being borrowed satisfaction and without any application of mind, reopening of assessment is invalid, non-est, null and void being without jurisdiction.*

5. In letter dated 02.09.2019, the assessee has raised the following additional grounds:

1. *Without prejudice to other Grounds of Appeal, whether the Ld. AO erred in not passing any speaking order in disposing of Appellant's objections raised challenging the validity of 148 before proceeding with assessment, renders assessment framed u/s. 147/148(3) as bad in law and deserves to be quashed.*

6. Besides the additional grounds, the main grounds raised by the assessee are as under:

1. *On the facts and circumstances of the case, the order passed by the learned Pr Commissioner of Income Tax (CIT) under Section 263 of the Act is bad, both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the order passed by the learned Pr CIT cancelling the assessment order passed by the A.O. under section 148/143(3) is untenable in the absence of order of the A.O. being erroneous as well as prejudicial to the interest of the Revenue.*
3. *On the facts and circumstances of the case, the learned Pr CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice under Section 263 was before the A.O. and as such the jurisdiction on this issue under Section 263 cannot be assumed.*
- 4(i). *On the facts and circumstances of the case, the order passed by Pr CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of lack of enquiry, not in the case of inadequate enquiry.*
- 4(ii) *On the facts and circumstances of the case, Pr. CIT has erred both on facts and in laws in invoking the provision of explanations (a) of section 263, ignoring the fact that this is not a case of no enquiry, as the A.O. has examined each & every aspect during the assessment proceedings.*
5. *On the facts and circumstances of the case, Pr CIT has erred both on facts and in law in setting aside the issue of share capital amounting to Rs.31,40,000/- to the file of the A.O. without properly appreciated the explanation of assessee brought on record.*
6. *On the facts and circumstances of the case, the learned CIT has erred both on facts and in law in ignoring the contention of the appellant that the proceeding under Section 263 cannot be used for substituting option of the A.O. by that of the CIT.*
7. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in invoking revisionary power under Section 263 of the Act despite the fact that even after thorough*

examination, no specific findings have been given on the issue of how the order is erroneous and prejudicial to the interest of Revenue.

8. *The above grounds of appeal are without prejudice to each other.*
9. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.*

7. At the time of hearing, learned counsel appearing for the assessee did not press ground no. 1 of additional grounds dated 28.08.2019. Accordingly, this ground is dismissed as not pressed.

8. In ground nos. 2 and 4 of additional ground dated 28.08.2019, the assessee has challenged the order passed under section 263 of the Act on the ground that when the assessment order itself is invalid, no proceeding under section 263 of the Act can lie against such an invalid assessment order. Drawing our attention to the additional grounds raised, learned counsel submitted, the assessment order, which was subjected to proceeding under section 263 of the Act suffers from various jurisdictional errors as the Assessing Officer while completing the assessment under section 147 read with section 143(3) of the Act has not issued any notice under section 143(2) of the Act. Proceeding further, he submitted, reopening of assessment was simply on the basis of report received from Investigation Wing without independent application of mind by the Assessing Officer. He submitted, reopening of assessment on such borrowed

satisfaction is invalid. As regards additional ground no. 3, he submitted, the proceedings under section 263 of the Act has been initiated at the behest of the Assessing Officer. Therefore, the Revisionary Authority has not applied his mind independently. Further, referring to additional ground raised in letter dated 02.09.2019, he submitted, the Assessing Officer, while disposing of the objections filed by the assessee challenging the validity of reopening of assessment, has not passed a speaking order. Therefore, the assessment order is invalid. Seeking admission and adjudication of these additional grounds, learned counsel submitted, in a proceeding under section 263 of the Act, the assessee can challenge the validity of the assessment order, which is sought to be revised. He submitted, if the primary proceeding itself is without jurisdiction, the revisionary proceeding to revise an order arising out of such an invalid proceeding would also be invalid. For such proposition, learned counsel relied upon the following decision:

- 1. M/s. SBS Realtors Private Ltd. Vs. ITO, ITA No. 2996/Del/2017, dated 06.04.2021.*

9. On the proposition that the assessment cannot be reopened on borrowed satisfaction, learned counsel relied upon the following decision:

1. M/s. SBS Realtors (P) Ltd. vs. ITO, ITA No.7791/Del/2018, dated 01.04.2019.

10. In support of his proposition that the disposal of objection by non-speaking order makes the assessment order invalid, learned counsel for the assessee relied upon decisions submitted in case law compilation.

11. Strongly opposing the additional grounds raised by the assessee challenging the validity of the assessment order at this stage, learned Departmental Representative submitted, the assessee had accepted the assessment order without raising any issues on its validity. Therefore, at this stage of appeal proceeding arising out of an order passed under section 263 of the Act, the assessee cannot be permitted to challenge the validity of the assessment order. Further, drawing our attention to additional ground no. 2 dated 28.08.2019, he submitted, whether the Assessing Officer has issued notice under section 143(2) of the Act or not is a purely factual issue which has to be verified with reference to the facts available in the assessment record. He

submitted, if the assessee alleges non-issuance of notice under section 143(2) of the Act, it is for the assessee to prove such fact through proper evidence. He submitted, having accepted the assessment order, the assessee cannot be permitted to rake up the issue of non-issuance of notice under section 143(2) of the Act at this belated stage, that too, on assumption and presumption. He submitted, admittedly, assessee did not raise these jurisdictional issues in course of proceeding before the revisionary authority. Therefore, since, the issue raised by the assessee requires investigation into fresh facts, the assessee cannot be allowed to raise such issues at this stage.

12. As regards the contention of assessee that the reopening of assessment was on borrowed satisfaction, he submitted, the reasons recorded by the Assessing Officer reveals independent application of mind. Therefore, it cannot be said that the reopening of assessment was on borrowed satisfaction. As regards the issue relating to disposal of objection filed by the assessee before the Assessing Officer, learned Departmental Representative submitted, it is a fact on record that the Assessing Officer has disposed of the objection of the assessee before completion of assessment. If the assessee was aggrieved with the order of the Assessing Officer, he

should have challenged the order before the appropriate forum. He submitted, the assessee having accepted the order passed by the Assessing Officer, cannot challenged the same at this stage. As regards the submission of learned counsel that the initiation of proceeding under section 263 of the Act was at the behest of the Assessing Officer, learned Departmental Representative strongly denied such allegation. He submitted, the Revisionary Authority has examined the assessment record and has come to an independent conclusion that the assessment order passed and is erroneous and prejudicial to the Revenue. He submitted, such conclusion drawn by the revisionary authority was backed up by proper reasoning, as mentioned in the order passed by him.

13. We have considered rival submissions on the additional grounds in the light of decisions relied upon. Insofar as additional ground no. 2 , dated 28.09.2019 is concerned, the assessee has challenged the validity of the impugned order on the ground that the assessment order itself is without jurisdiction due to non-issuance of notice under section 143(2) of the Act. Admittedly, the assessee did not raise this issue in course of proceeding under section 263 of the Act before learned PCIT. No material has been placed on record before us which can conclusively establish

assessee's claim that the Assessing Officer did not issue any notice under section 143(2) of the Act before completion of assessment. In fact, learned Departmental Representative has strongly opposed assessee's contention regarding non-issuance of notice under section 143(2) of the Act. Therefore, the issue whether notice under section 143(2) was actually issued or not, is in the realm of disputed facts, which requires fresh investigation, hence, cannot be decided based on the facts and materials available on record. Therefore, we are unable to admit additional ground no. 2, dated 28.09.2019. However, rest of the additional grounds are admitted for adjudication, as, they can be decided based on facts available on record.

14. Insofar as additional ground no. 3, dated 28.09.2019 is concerned, it is the say of the assessee that learned PCIT has initiated proceeding under section 263 of the Act at the recommendation of the Assessing Officer. In this context, he has drawn our attention to a copy of order-sheet kept in the assessment folder. However, on perusal of the show-cause notice dated 16.01.2017 issued under section 263 of the Act as well as the impugned order passed under section 263 of the Act, it is very much clear that learned PCIT, on examining the assessment record

and analyzing the materials available therein, has come to a prima facie conclusion that the assessment order passed is erroneous and prejudicial to the interest of Revenue. There is nothing either in the show-cause notice issued under section 263 of the Act or the revision order passed, which can provide an inkling to the fact that the proceeding under section 263 of the Act was initiated on the recommendation of the Assessing Officer. Thus, we are unable to accept assessee's contention in this regard. Additional ground no. 3, being devoid of merits, is dismissed.

15. In additional ground no. 4, the assessee has challenged the order passed under section 263 of the Act on the ground that reopening of assessment, having been made on borrowed satisfaction, the assessment order itself is invalid. As already discussed earlier, it is the contention of the assessee that simply referring to the report received from the Investigation Wing, the Assessing Officer has reopened the assessment. It was submitted, before initiating action under section 147 of the Act neither the Assessing Officer applied his mind independently to the information received, nor made any inquiry before reopening the assessment. Thus, it is submitted that reopening of assessment made on such borrowed satisfaction is invalid.

16. Having considered submissions of the parties on this issue, it is observed that while reopening the assessment, the Assessing Officer has recorded the following reasons:

FORM FOR RECORDING THE REASONS FOR INITIATING PROCEEDINGS U/S 147/148 OF THE INCOME TAX ACT, 1961	
1	Name & Address of the Assessee M/s Soaltee Finance & Leasing Ltd. CHAMBER NO 1 307 SHARP BHAWAN COMMERCIAL COMPLEX AZADPUR, DELHI-110033.
2	PAN AAACS2386N
3	Assessment Year 2009-10

1. Information has been passed by the office of DIT(Inv.)-II, New Delhi vide letter F No.DIT-(Inv)-II/U/s148/2012-13/196 dated 12.03.2013 stating that a search was conducted in the case of Shri Surender Kumar Jain Group of cases (Entry Operator) and further enquiries were conducted by DDIT(Inv.)-Unit-VI(2), New Delhi and passed the said information in the case of M/s Soaltee Finance & Leasing Ltd. has taken accommodation entries to the tune of Rs.3140000/- from Shri Surender Kumar Jain Group of companies in the name of M/s VIP Leasing & Finance Pvt. Ltd., M/s Mani Mala Delhi Pro. Pvt. Ltd., M/s Humtum Marketing Pvt. Ltd., M/s Attractive Finlease Pvt. Ltd., M/s Aasheesh Capital Services Pvt. Ltd., M/s Shalini Holdings Ltd., M/s Sunny Cast & Forge Ltd. and M/s Lotus Realcon Pvt. Ltd. After extensive verification of the documents seized by the Investigation team during the course of search / survey operations conducted it is found that Shri Surendra Kumar Jain was engaged in the business of providing of accommodation entries by providing RTGS / Cheques / PO / DD in view of cash through various papers and dummy company run & control by him.

2. On the basis of the information/documents received, it is seen that Shri Surender Kumar Jain and Shri Virendra Jain were providing accommodation entries to a large number of companies. The modus operandi is revealed from various documents seized during the course of search. For example, no documents were found at the addresses of the dummy companies in Patel Nagar and Paharganj areas of Delhi. The mobile number of Shri Surender Kumar Jain and Shri Virendra Jain were provided to the banks for the purposes of operating various company accounts with Axis Bank. The Annexure seized from the residence of Shri Surender Kumar Jain contains one account in respect of commission calculation for a period spread over three financial years from April 2007 to March 2010. Date wise entries have been made in respect of various accommodation entry related transactions. For example page no 28 of Annexure A-13 shows such entries for one date i.e. 02.03.2010. Various other seized annexures including A-53, etc also clearly indicate to the fact that the assessee has been providing accommodation entries regularly.

3. In the case of the above assessee, the following accommodation entries have been taken:-

Sl. No.	Assessee Company	Entry Provider	Bank	Cheque / DD / PO	Date	Amount
1	M/s Soaltee Finance & Leasing Ltd	VIP Leasing & Finance P. Ltd	AXIS	163815	15.12.2008	500000
2	M/s Soaltee Finance & Leasing Ltd	Mani Mala Delhi Pro Pvt. Ltd	AXIS	004614	06.01.2009	400000
3	M/s Soaltee Finance & Leasing Ltd	Humtum Marketing Pvt. Ltd	AXIS	120299	06.01.2009	450000
4	M/s Soaltee Finance & Leasing Ltd	Humtum Marketing Pvt. Ltd	AXIS	120287	11.02.2009	550000
5	M/s Soaltee Finance & Leasing Ltd	Mani Mala Delhi Pro Pvt. Ltd	AXIS	192413	17.02.2009	640000
6	M/s Soaltee Finance & Leasing Ltd	Lotus Realcon Pvt. Ltd.	UTI	192517	26.02.2009	600000
Total						3140000

4. I have perused the above information and considered the facts of the case. In view of the above considered facts and the specific information as mentioned in the table above, I have reasons to believe that income of the assessee to the tune of Rs.3140000/- chargeable to tax has escaped assessment within the meaning of section 147 of Income Tax Act for A.Y.2009-10, the escapement of assessment is due to failure on the part of the assessee company to disclose material facts truly and fully all the material facts necessary for the assessment / determination of its income chargeable to tax. Since the case has not been assessed originally to tax u/s 143(3)/147 but four year elapsed. Therefore, the case is fit for re-opened u/s 151(2) is solicited for issuance of the notice u/s 148 of Income Tax Act,1961.

For Soaltee Finance & Leasing Ltd.

I.T.O. Ward-9(1), New Delhi

(Signature)
 Director

17. On a careful reading of the reasons recorded, it becomes very much clear that the Assessing Officer has analyzed the report of the Investigation Wing as well as the documents received and has thereafter formed an opinion that the income to the extent of Rs.31,40,000/- has escaped assessment. Therefore, prima facie, it is evident, the Assessing Officer not only had tangible material in his possession to form a belief regarding escapement of assessment, but has also applied his mind to such material before recording reasons. That being the factual position emerging on record, it cannot be said that the reopening of assessment is on borrowed satisfaction. In this context, we may refer to the following observations of the Hon'ble Jurisdictional High Court in case of PCIT Vs. Paramount Communication (P.) Ltd., [2017] 79 taxmann.com 409 (Delhi):

".....At the same time, the court notices that for both AYs 2004-05 and 2005-06, the note discloses the source of the information, i.e. DR1 Local Unit at Jaipur, sending information based upon the Commissioner of Central Excise's investigations. To require the Revenue to disclose further details regarding the nature of documents or contents thereof would be virtually rewriting the conditions in section 147. After all, Section 147 merely authorizes the issuance of notice to reopen with conditions. If the Court were to dictate the manner and contents of what is to be written, the statutory conditions would be added as it were. In this context, it needs to be emphasized that the court would interpret the statute as they stand in their own terms, but at the same time being conscious of the rights of the citizens. So viewed, Kelvinator of India (supra) strikes just balance. To add further conditions to the

nature of discussion/reasons that the officer authorising the notice would have to discuss in the note or decision would be beyond the purview of the Courts and would not be justified.....”

18. That being the legal principle laid down by Hon’ble Jurisdictional High Court, which has been upheld by Hon’ble Supreme Court, we cannot accept assessee’s plea. Accordingly, this ground is dismissed.

19. As regards the additional grounds raised in letter dated 02.09.2019, it is patent and obvious, the Assessing Officer has disposed of the objections raised by the assessee in a separate order. If the assessee was not satisfied with the order passed by the Assessing Officer, he was free to approach the appropriate forum for redressal of his grievance. The assessee having accepted the order of the Assessing Officer at that stage, cannot be permitted to challenge the same at this stage in another proceeding. In any case of the matter, improper disposal of objection is a curable defect, which can be rectified by directing the Assessing Officer to do so and thereafter complete the assessment. The non-disposal of objection will not make the assessment order void. Accordingly, this ground is dismissed. For the sake of completeness, we must observe, we have carefully applied our mind to various decisions cited before us by the learned counsel. However, we do not find the

necessity to discuss them in detail. Suffice to say, the decision cited are factually distinguishable, hence, are of no help to the assessee.

20. Having dealt with the objections on reopening on its merits, we also consider it expedient to deal with larger issue raised on behalf of the Assessee. It is contended on behalf of the assessee that where the reassessment order passed in itself is found to be without jurisdiction and thus void, the exercise of revisional jurisdiction on a non est order is apparently without sanction of law. In this regard, a reference to the decision of co-ordinate bench in SBS Realtors (P) Ltd. Vs. ITO (supra) was made.

20.2 We have given our thoughtful consideration to this aspect.

20.2 To begin with, it may be pertinent to delineate on a few salient contours of section 263 to appreciate the issue in perspective.

20.3 The object of the enactment of section 263 is to correct an order which is prejudicial to the interest of revenue. The purpose behind incorporating the said provision in the statute is to ensure that interests of the revenue are safeguarded. Section 263 can be possibly invoked and employed only for the purpose of setting right distortions and prejudice caused to the revenue on account of impugned order passed, which is a unique conception and needs to be understood in the context of and in the interest of revenue

administration. Such power cannot, in any manner, be equated to an ordinary appellate jurisdiction. The revisional proceedings are supervisory in nature and not like that of appellate authority. As a corollary, doctrine of merger would not thus apply. A reference may be made to the judgment rendered in the case of B.C. Nawn and Bros P. Ltd. vs. CIT [1977] 109 ITR 632 (Cal)(HC). Where the revisional proceedings are initiated, the Assessee retains the statutory right to seek remedy on issues adverse to it qua the assessment, unaffected by the later revisional proceedings. The superior appellate authority can express view on the assessment order passed unaffected by the revisional order. Besides, the powers of the revisional authority is limited to the issue which are not the subject matter of appeal and simultaneously operates adverse to the revenue.

20.4 The revisional power under Section 263 is a quasi judicial power hedged with limitation and conditions and has to be exercised subject to the same within its scope and ambit. The mandate given under Section 263(1) is to set right the erroneous orders which has an adverse bearing on the interest of revenue in contrast to section 264, where, the revisionary power can be undertaken to the benefit of Assessee. The revisional jurisdiction

under section 263 can be exercised broadly in following circumstances namely; to (a) enhance (b) modify or (c) cancel the assessment and directing a fresh assessment. The re-birth of order by way of fresh assessment is thus incumbent on cancellation of existing assessment. As can be seen, in all specified circumstances, the assessment would essentially survive with or without modification or be replaced by a fresh assessment. The complete annulment of order and creation of a complete void is inherently opposed to demonstrative criteria for invoking section 263 on two counts (i) such revisional action would rather cause prejudice instead of setting right the prejudice resulted to revenue (ii) revisional order leading to complete abolition and effacing of order itself is outside the clear mandate of jurisdiction vested with revisional authority. The revisional proceedings under section 263 is enacted solely from the perspective of safeguarding interest of revenue and to set right the error which are subversive of the administration of the revenue.

20.5 Thus, as can be culled out, the provisions of section 263 do not permit the revisionary authority to put the revenue administration in a worse position. The revisional order cannot be passed for the benefit of assessee in the garb of revision. Hence the

remedy towards allegation of nullity owing to lack of jurisdiction, if any, lies elsewhere.

20.6 In this backdrop, where the revisional authority itself is not competent to demolish the reassessment on the ground of lack of jurisdiction, the appellate tribunal naturally cannot find fault with such order, besides the fact that such lack of jurisdiction does not emanate from the revisional order.

20.7 The Assessee has attempted to base its plea on the decision of co-ordinate bench rendered in SBS Realtors (P) Ltd. (supra) and seeks to contend that the assessee is entitled to challenge the inherent lack of jurisdiction in any proceedings including collateral proceedings of present type. We do not agree for the plain reasons indicated in the preceding paragraphs. Such determination of lack of jurisdiction resulting in effacing of subject order runs contrary to the statutory scheme of revision itself. The line of reasoning noted above were not placed before the Co-ordinate bench for examination and thus are of no moment. Hence, the arguments placed on the issue are not found to be persuasive and thus discarded.

21. As regards the main grounds, learned counsel for the assessee submitted that the assumption of jurisdiction under

section 263 of the Act is unjustified as the assessment order cannot be considered to be erroneous and prejudicial to the interest of Revenue. Drawing our attention to the reasons recorded for reopening of assessment, learned counsel submitted, the assessment was reopened for examining the genuineness of investment made by some parties in share capital of the assessee company. He submitted, in course of assessment proceeding, the Assessing Officer made specific and detailed inquiry with regard to investment of Rs.31,40,000/- in share capital of the assessee. In this context, learned counsel drew our attention to notice dated 11.06.2014 issued under section 142(1) of the Act and reply made by the assessee to the queries raised by the Assessing Officer. Drawing our attention to this submissions filed before the Assessing Officer, learned counsel submitted, the assessee furnished all the necessary details relating to the investment of Rs.31,40,000/- made by certain entities in the share capital of the assessee company. He submitted, the entire transaction was carried out through banking channel and the Assessing Officer inquired into and examined the issue with reference to the seized materials. Thus, he submitted, the allegation of learned PCIT that the Assessing Officer failed to make proper inquiry with reference

to the seized material is unfounded. Thus, he submitted, the Assessing Officer, having accepted the investment of Rs.31,40,000/- to be genuine after due inquiry and proper application of mind, the assessment order cannot be considered to be erroneous and prejudicial to the interest of Revenue. He submitted, the allegation of learned PCIT that the Assessing Officer has not examined the issue by analyzing the seized materials is incorrect as the Assessing Officer has examined appraisal report, which is based on seized material. Thus, he submitted, the order passed under section 263 of the Act is unsustainable.

22. Strongly relying upon the observations of learned PCIT, learned Departmental Representative submitted, reading of the assessment order would reveal that the Assessing Officer has not conducted any inquiry with regard to the investment of Rs.31,40,000/- made by certain entities in the share capital of the assessee. He submitted, the assessment was reopened for this very purpose and the Assessing Officer had in his possession the entire seized material. However, he failed to make any inquiry with the assessee regarding the genuineness of the investment made by confronting the seized material. He submitted, simply relying upon the submissions made by the assessee, the Assessing Officer has

completed the assessment by accepting the income returned by the Assessing. He submitted, when the seized material, prima facie, established that cash payment made by the assessee was routed back again by way of accommodation entry, the Assessing Officer should have made inquiry to ascertain the real fact. He submitted, there is nothing on record to suggest that the Assessing Officer has made any such inquiry with reference to the seized material. Thus, he submitted, since the Assessing Officer passed the assessment order without making proper inquiry, the order passed is erroneous and prejudicial to the interest of Revenue necessitating initiation of proceeding under section 263 of the Act.

23. We have considered rival submissions and perused the materials on record. We have also applied our mind to the decisions cited before us. Undisputedly, in course of a search and seizure operation conducted in case of Sh. Surender Jain and group entities certain incriminating materials were found indicating that the assessee has availed accommodation entries from certain group entities of Sh. Surender Jain Group towards investment in share capital. As could be seen from detailed discussion made by learned PCIT in the impugned order, the seized materials indicated that the assessee, through one of its persons paid cash to Sh. Surender Jain

and group entities and the cash was again routed back through banking channel to the assessee by way of investment in share capital. As observed by learned PCIT, though, the Assessing Officer had in his possession the entire seized material, however, neither he analyzed the contents of such seized materials with reference to the amount received by assessee from the group entities of Sh. Surender Jain, nor he confronted the seized material to the assessee to elicit its response regarding the genuineness of the investment received.

24. Though, in course of hearing before us, learned counsel appearing for the assessee has vehemently submitted that the Assessing Officer had examined the seized material and made specific inquiry with the assessee with reference to the seized material, however, he was unable to establish such fact through material available on record. On factual examination, we find that except a single show-cause notice issued under section 142(1) of the Act on 11.06.2014, there is no other notice from the Assessing Officer which could indicate that any fruitful inquiry was made to establish genuineness of the investments made of Rs.31,40,000/-. Even, in the notice issued under section 142(1) of the Act, as mentioned above, the Assessing Officer has simply made a general

inquiry by calling upon the assessee to justify the quantum of income of Rs.31,40,000/- from Sh. Surender Kumar Jain group. Neither there is any questionnaire nor any other communication from the Assessing Officer to the assessee which could indicate that the Assessing Officer either confronted the seized material to the assessee to elicit his response on the particular amount received by the assessee, nor there is any query from the Assessing Officer to the assessee with reference to the seized material. Copy of the order-sheet entries made by the Assessing Officer placed in the paper-book also do not throw much light on this aspect.

25. A perusal of the assessment order would reveal that the Assessing Officer has passed a very cryptic and non-speaking order without discussing anything on the issue of Rs.31,40,000/- received by the assessee from certain entities, which are alleged to be accommodation entry providers. There is no other cogent evidence on record to corroborate assessee's claim that the Assessing Officer has made specific inquiry with reference to the seized materials, which prima facie establish the fact that the assessee is one of the beneficiaries of accommodation entry provided by Sh. Surender Kumar Jain and group.

26. As could be seen from the observations of learned PCIT, the analysis of seized material indicated that the concerned entities issued cheques to the assessee after receipt of cash through some intermediary of the assessee. Various details relating to such circular transaction was found mentioned in the seized material. When the assessment was reopened for the very purpose of examining the said transaction between the assessee and the entities belong to Sh. Surender Kumar Jain group, the Assessing Officer was expected to be more circumspect and conduct a thorough and full blown inquiry by examining in details the seized material and confronting them to the assessee. There is nothing on record to suggest that the Assessing Officer has conducted any such inquiry. The so called inquiry conducted by the Assessing Officer is simply an eye wash and more of a routine and general nature, just for the sake of inquiry. That being the factual position emerging on record, in our view, the assessment order passed is not only erroneous but also prejudicial to the interest of Revenue. Since, both the conditions of section 263(1) of the Act are satisfied in the present case, learned PCIT was justified in exercising powers under section 263 of the Act. We refrain from discussing in detail the decisions cited by learned counsel, as, on careful analysis, we

have found them not applicable to assessee's case. More so, when facts on record clearly establish that the Assessing Officer has not made any fruitful enquiry to ascertain the genuineness of investment received. In view of the aforesaid, we do not find any infirmity in the impugned order of learned PCIT passed under section 263 of the Act. Accordingly, grounds are dismissed.

27. In the result, the appeal is dismissed.

ITA No.2495/Del/2017
Assessment Year:2010-11

28. Insofar as ITA No. 2495/Del/2017 is concerned, since, the facts are identical, except variance in figure, our decision in ITA No. 2494/Del/2017 in the earlier part of the order would apply mutatis mutandis. Accordingly, we uphold the order passed under section 263 of the Act by dismissing the grounds raised. Hence, appeal is dismissed.

29. In the result, both the appeals are dismissed.

Order pronounced in the open court on 7th September, 2022

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 7th September, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi