

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, "B", CHANDIGARH

BEFORE  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
& SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 505/CHD/2018  
निर्धारणवर्ष / Assessment Year :2013-14

M/s Sudhir Forgings (P) Ltd, 74-A, Tagore Nagar, Civil Lines, Ludhiana	बनाम	The Pr. Commissioner of Income Tax-3, Ludhiana
स्थायी लेखा सं./PAN NO: AABCB7822M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : None (Adj. Application)  
राजस्व की ओर से/ Revenue by : Sh. Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 14.09.2022  
उदघोषणा की तारीख/Date of Pronouncement : 28.09.2022

**आदेश/Order**

**Per Sudhanshu Srivastava, Judicial Member:**

1. This appeal is preferred by the assessee against order dated 30.03.2018 passed by the Ld. Principal Commissioner of Income Tax-3, Ludhiana [hereinafter referred to as 'PCIT'] for assessment year 2013-14.

2.0 The brief facts of the case are that during the year under consideration the assessee firm derived income from manufacturing steel forgings. The return of income for the captioned assessment year was filed declaring net taxable

income at Nil after setting off income of Rs. 1,59,88,455/- against the brought forward losses of Rs. 81,53,228/-. The assessee's case was selected for scrutiny under the CASS guidelines and during the assessment proceedings, the assessee was required to file comparative chart of gross turn over, gross profit and net profit ratio, details of secured and unsecured loans, additions made to the fixed assets, confirmed copies of accounts of current assets, current liabilities and comparative details of various expenses debited to the profit and loss account. The assessee was also required to file the details of closing stock and the basis of its valuation. Thereafter, the assessment was completed by making an addition of Rs. 1,11,512/- under section 14A of the Income Tax Act, 1961 [in short 'the Act'] and a further addition of Rs. 50,000/-, being ad hoc disallowance on account of car expenses, computer expenses, electric repair expense and fuel on the ground that some of the expenses were not properly vouched and no proper documentation was available. The income was computed at Rs. 17,59,970/- and after giving the benefit of set off of brought forward losses of Rs. 81,53,228/-, the net taxable income was computed at Rs. Nil.

2.1 Subsequently, the Ld. PCIT issued notice under section 263 of the Act. As per the Show Cause Notice, the case was selected for scrutiny through CASS on the following parameters:-

- a) Large share premium received
- b) Difference in opening stock in current year with the closing stock of previous year
- c) Low income shown by large contractors.

2.2 As per the show cause notice, a perusal of the assessment record revealed that the issue of share premium receipt by the company had not been examined thoroughly. The Ld. PCIT pointed out various deficiencies in the assessment order in this regard and required the assessee to show cause as to why the assessment order not be set aside as being erroneous as well as prejudicial to the interest of the Revenue.

2.3 In response to the show cause notice issued u/s 263 of the Act, the Ld. AR submitted that the share premium was not large or excessive and that the intrinsic value had been calculated as per Rule 11 UA of the Income Tax Rules, 1962 (herein after called 'the Rules') and also submitted that the AO had carried a thorough investigation on the issue.

2.4 However, the submissions of the assessee did not find favour with the Ld. PCIT and he noted that although the AO had called for some of the details relating to share capital during the course of assessment proceedings but the AO had neither sought specific details nor had caused any inquiry or verification with reference to the issues pointed out in the Show Cause Notice issued u/s 263 of the Act. The Ld. PCIT noted that the AO, except for placing the information / details filed by the assessee on record, had not carried out even elementary verification of the information so supplied and, thus, the issue of share capital had not been examined / investigated / inquired into by the AO. It was further noted by the Ld. PCIT that the AO had even overlooked the proviso to section 68 of the Act which had been brought into effect from 01.04.2013 which empowered the AO to look into the source of source of the persons investing in companies in which public were not substantially interested. It was further noted by the Ld. PCIT that the issue of share premium had also not been examined by the AO with reference to Rule 11 UA of the Rules. The Ld. PCIT also invoked Explanation 2 to section 263 of the Act and held that the assessment order was erroneous and prejudicial to the interest of the Revenue as the assessment order had

been made without making inquires or verification which should have been made as required in accordance with the provisions of section 68 of the Act and Rule 11 UA of the Rules. The assessment order was set aside and the AO was directed to decide the issue afresh.

2.5 Aggrieved, the assessee has now approached this Tribunal challenging the action of the Ld. PCIT by raising the following grounds of appeal:-

*1. The Ld. Pr. CIT-3 Ludhiana has erred in perfunctorily passing an Order u/s.263 of the Income Tax Act, 1961.*

*1.1 The Commissioner of Income tax failed to appreciate that the conditions precedent to passing an Order under the said section were not satisfied and hence the Order U/s. 263 of the Income-tax act, 1961 is ultra vires and void.*

*1.2 The Commissioner of Income tax has erred in holding that the Assessment Order dated 11.03.2016 passed by the Assessing Officer was erroneous and prejudicial to the interests of revenue and hence erred in passing an Order u/s.263 of the Income-tax Act in respect of the same.*

*1.3 The appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the assessment framed by the Assessing Officer was after due*

*consideration of the facts and the law by the Assessing Officer and hence the setting aside of the same by the Commissioner of Income tax u/s 263 of the Income tax act, 1961 is erroneous, in excess of jurisdiction and bad in law.*

*2. That the Ld. Pr. CIT-3 has erred by not taking into account the fact that the genuineness and creditworthiness of the share application money received by the Assessee from M/s. Bhole Baba Vanijya (P) Ltd. was examined by the Assessing Officer.*

*2.1 The order of the Ld. Pr. CIT-3 was passed without giving a reasonable and fair opportunity to the Assessee to respond to the issue of genuineness and creditworthiness of share application money received by the Assessee from M/s. Bhole Baba Vanijya (P) Ltd and regarding issue of "source of source" as this issue was neither mentioned in the Show Cause Notice nor during the proceedings under Section 263 before the Ld. Pr. CIT-3.*

*2.2 The order of the Ld. Pr. CIT-3 is erroneous and based upon wrong appreciation of facts as the shares were not issued at "Excess Premium", but were issued at intrinsic value calculated on historical cost or NAV basis.*

*3. That the order of Ld. Pr. CIT-3 is erroneous as intact there is no difference between closing stock of preceding year viz-a-viz opening stock of the relevant year. That the Ld. Pr. CIT-3 proceeded to pass the order u/s 263 without even pointing out a single rupee difference between the both.*

*4. The Order of learned Pr. CIT-3 is against the weight of evidence, equity and natural justice.*

3.0 When the appeal was called for hearing, an adjournment application dated 14.09.2022 from Shri Pankaj Bhalla, the Ld. AR for the assessee was placed before us stating that adjournment was being sought for the reason that the consequential order u/s 143(3) read with section 263 of the Act was still awaited. We, thereafter, perused the entire file and we note that earlier this appeal was fixed for hearing on 12.07.2022 and the reason for seeking adjournment on that date was that the consequential order u/s 143(3) r.w.s. 263 of the Act was still awaited. Before that, the appeal was fixed for hearing on 17.05.2022 and on that day, an application had been moved for adjournment on the ground that the Ld. AR Shri Pankaj Bhalla was travelling to Goa. Earlier, when the appeal was fixed for hearing on 22.02.2022, adjournment had been sought by the assessee on the ground that the Ld. AR Shri Pankaj Bhalla was out of station. Still earlier, when the appeal was fixed for hearing on 24.11.2021, the adjournment was sought by the Ld. AR on the ground that the consequential order u/s 143(3) r.w.s. 263 of the Act was still awaited.

3.1 We further note that this appeal was first fixed for hearing on 26.07.2018 and on that day the hearing was adjourned at the request of the assessee's counsel. Subsequently, the hearings were fixed on the following dates:

- i) 26.11.2018
- ii) 13.03.2019
- iii) 19.08.2019
- iv) 26.09.2019
- v) 18.11.2019
- vi) 20.11.2019
- vii) 05.07.2021
- viii) 20.09.2021

3.2 The record shows that on all the above eight dates, the Ld. AR had sought adjournment for one reason or the other. We would also like to note that the reason mentioned in today's adjournment application that the consequential order u/s 143(3) r.w.s. 263 of the Act is still awaited, to our mind is not a valid reason for seeking adjournment. Further, it is also to be noted that the impugned order was passed on 30.03.2018 and more than four years have elapsed since the passing of the impugned order and it is hard accept the contention of the Ld. AR that the assessee had not yet

received a copy of the consequential assessment order passed u/s 143(3) r.w.s. section 263 of the Act.

3.3 In our considered opinion, it is a clear case of the assessee / Ld. AR resorting to dilatory tactics. Therefore, on an overall view of the facts as stated above and as appearing from the case record before us, we are of the considered opinion that any further accommodation to the assessee / Ld. AR by granting another adjournment would be an exercise in futility as the assessee / the Ld.AR is clearly not interested in pursuing this appeal before the Tribunal. It is settled law that an adjournment is not a matter of right but an accommodation granted by the Court, if circumstances so warrant. However, in the present case, the assessee / Ld.AR have failed to demonstrate any such requirement of accommodation and, therefore, we deem it appropriate to reject the adjournment application and we proceed with the hearing of the case ex-parte qua the assessee.

4.0 The Ld. CIT DR submitted that the reason for selection of the assessee's case for limited scrutiny was for the reason of large share premium having been received by the assessee company and that a perusal of the assessment order would show that the AO has not even mentioned such fact in the

body of the assessment order. The Ld. CIT DR relied upon the various observations of the Ld. PCIT, as contained in the impugned order, and submitted that as the AO had failed to raise the necessary queries vis-a-vis the share premium received, the Ld. PCIT had rightly invoked his revisionary powers u/s 263 of the Act. The Ld. CIT DR submitted that the order of the Ld. PCIT be upheld and the appeal of the assessee be dismissed.

5.0 We have heard the Ld. CIT DR and have also perused the impugned order. We note that the assessee has not even bothered to file any paper book containing relevant documents connected with the assessment proceedings and /or 263 proceedings in support of its grounds of appeal challenging the action of the Ld. PCIT in invoking the revisionary powers u/s 263 of the Act.

5.1 At this juncture, it will be worthwhile to reproduce the contents of the show cause notice dated 12.02.2018 issued u/s 263 of the Act. The same is being reproduced as under:-

*"Assessment order in your case was framed u/s 143(3) of I.T. Act, 1961 on 11.03.2016 in which total disallowances of Rs.1,61,512/- were made by the then AO, on account of disallowance u/s 14A and untouched expenses. The case was selected for scrutiny through CASS on the following parameters:*

- (a) *Large Share Premium received.*
- (b) *Difference in opening stock in current year with the closing stock of previous year.*
- (c) *Low income shown by large contractors.*

*Perusal of assessment record reveals the issue of Share Premium received by your company has not been examined thoroughly, as the following deficiencies have been noticed :-*

*(i) Your company i.e., M/s Sudhir Forgings Pvt. Ltd., had issued Rs.8,12,500/- shares with face value of Rs.10/- per share. The shares were subscribed by M/s Bhole Baba Vanjiya Pvt. Ltd., During the course of assessment proceedings, Your Company produced copy of bank account statement, Audit Report and ITR of the investor company. Perusal of the same reveals that the creditworthiness, genuineness of transactions involved does not stand explained from the material available on record, because of the following reasons:*

*(a) The return of income was filed by investor company for A.Y. 2013-14 declaring NIL income. The gross receipts of the investor company for the F.Y. 2012-13 relevant to A.Y. 2013-14 were merely Rs.20,000/- whereas, the investor company has invested Rs.1,62,50,000/- towards 8,12,500.- shares. The total amount invested involves Share premium of Rs.81,25,000/-*

*(b) The financial position of the investor company as on 31.03.2013 vis-a-vis 31.03.2012 as per the Audit Report filed by you are as under: -*

<i>Particulars</i>	<i>As on 31.03.2013</i>	<i>As on 31.03.2012</i>
<i>Share Capital</i>	<i>Rs.21,15,000/-</i>	<i>Rs. 21,15,000/-</i>
<i>Reserves &amp; Surplus</i>	<i>Rs.4,51,00,255/-</i>	<i>Rs.4,51,02,859/-</i>

*Non-Current Investments: Rs.1,84,11,056/- Rs.3,54,00,000/-*

*Short term loans and advances: Rs.1,84,11,056/- Rs.1,71,61,056/-*

*(c) The investor company i.e. M/s Bhole Baba Vanijya Pvt. Ltd., is Registered with ROC, Kolkata with Registered Office address at : 4B, Madan Mohan Burman Street, Kolkata, West Bengal, whereas, it is filing its return at the address 74-A. Tagore Nagar, Civil Lines, Ludhiana, which is the address of your company i.e. M/s Sudhir Forgings Pvt. Ltd.*

*(d) Perusal of bank account reveals that the bank account of investor company, from which the shares have been subscribed, is jointly owned by the following parties:*

*(i) M/s Bhole Baba Vanijya Pvt. Ltd. - Primary Holder.*

*(ii) Sh. Dhruv Garg, S/o Rameshwar Ray- Joint Holder 1*

*(iii) Sh. Shyam Babu Ray, S/o Rameshwar Ray -  
Joint Holder 2*

*(iv) Sh. Jagdish Chand Garg, S/o Achru Ram Garg -  
Joint Holder 3*

*Further examination of the assessment record reveals that Sh. Dhruv Garg( Joint Holder 1) is one of the Directors of assessee Company i.e. M/s Sudhir Forgings Pvt. Ltd. The Directors of M/s Bhole Baba \ Vanijya Pvt. Ltd. are Sh. Shyam Babu Ray, Sh. Ram Krishan Rana, Sh. Ranesh Singh and Sh. Nandan Singh Bisht. The co-relation between Sh. Dhruv Garg with M/s Bhole Baba Vanijya Pvt. Ltd., is not established as to why he is a joint holder of their bank account.*

*(e) Further, as regards difference in opening stock in current year with the closing stock of previous year, the reconciliation of the same has not been taken on record.*

*Thus, in view of the foregoing, the assessment order appears to be erroneous and prejudicial to the interest of the*

*revenue on the part of the then AO and it appears that it is a fit case for revision u/s 263 of the Income Tax Act, 1961."*

5.2 A perusal of the show cause notice, as reproduced above, would show that the Ld. PCIT has pointed out that the perusal of the bank account statement, audit report and ITR of the investor company i.e. M/s Bhole Baba Vanijya Pvt. Ltd. does not establish the creditworthiness and genuineness of the transactions for the reason that the ITR of the investor company for the captioned assessment year was filed declaring NIL income and further the gross receipts of the investor company was only Rs. 20,000/- whereas, the investor company had invested Rs. 1,62,50,000/- (including share premium) in the assessee company. It was pointed out by the Ld. PCIT that the investor company was having its registered office at Kolkata whereas, the return was being filed from the address of 74-A, Tagore Nagar, Civil Lines, Ludhiana which was the address of the assessee company. The Ld. PCIT has also pointed out that the bank account of the investor company had one Shri Dhruv Garg as the joint holder of the account and that Shri Dhruv Garg was one of the directors of the assessee company.

5.3 It is further seen that in response to the show cause notice, the contention of the assessee before the Ld. PCIT

was that the assessee had submitted the following before the AO:-

- a) *"Date wise details of Share Capital received are enclosed.*
- b) *The amount of Share Application Money was received by cheque / RTGS.*
- c) *Confirmation certificate of the share holder Bhole Baba Vanijya Pvt. Ltd is enclosed.*
- d) *Copy of Income Tax Return with Computation Chart & Balance Sheet of the share holder is enclosed. The above share holder is assessed to tax vide PAN No. AADCB6294P.*
- e) *Relevant bank statement of the share holder is enclosed.*
- f) *The above share holder is a private limited company and has filed up to date return of income the amount has been invested through regular banking channel out of funds available with the parties from time to time. Hence identity and creditworthiness of the share holder and genuineness of the transaction is beyond doubt."*

5.4 It was the contention of the assessee before the Ld. PCIT that, thus, all the documents have been given and the issue was with respect to genuineness, creditworthiness and identity. It was contended by the assessee that that creditworthiness was proved by the net worth of the subscriber which was evident from the balance sheet of the investor and that the genuineness also was beyond doubt and that further the provisions of section 263 of the Act could not be resorted to make fishing inquiries.

5.5 A perusal of the impugned order further shows that the Ld. PCIT, after considering the various contentions of the assessee, observed that the issue of share capital had not been examined / investigated / inquired into by the AO. It was further noted that when the AO had information regarding the share application money including substantial premium, then he should have examined the net worth of the assessee. The Ld. PCIT further noted that the profitability of the assessee company ever since its incorporation does not show such results so as to impress unconnected corporate entities to invest in the shares at a premium. It was further noted that no returns in terms of dividend on the shares were seen to have been declared by the assessee company to the investors. The Ld. PCIT also referred to the proviso to section 68 inserted w.e.f 01.04.2013 empowering the AO to look into source of source of the persons investing in companies in which public are not substantially interested. The Ld. PCIT returned a clear finding that the AO did not carry out the required examination in the light of this amendment and that further the valuation of premium had also not been examined by the AO in terms of Rule 11 UA of the Rules.

5.6 We have also perused the assessment order and we note that in page 2 of the said assessment order, the AO has mentioned that the assessee was required to file comparative chart of gross turnover, gross profit and net profit ratio, details of secured and unsecured loans, additions made in the fixed assets, confirmed copies of account of Current Assets, Current Liabilities and comparative details of the expenses debited under various heads. Besides, the assessee was also required to file details of closing stock and the basis of valuation. However, it is note worthy that the Assessing Officer does not mention as to what details regarding share premium were called for and as to what details were submitted by the assessee.

5.7 Thus, a combined reading of the orders of the AO as well as the Ld. PCIT would show that although, the assessee's case had been picked up for limited scrutiny for the reason that the assessee had received large share premium, this aspect was apparently not inquired into by the AO as has been rightly pointed out by the Ld. PCIT. Although, the assessee did submit some details before the AO but again as the Ld. PCIT has rightly pointed out, the AO only accepted these details but did not examine them in

correct perspective which was expected of him for the simple reason that the case had been picked up for scrutiny for that very reason. In our considered view, simply calling for details and taking such details on record would not be termed as due application of mind by the AO in as much as the AO was duty bound to inquire into the creditworthiness as well as into the genuineness of the transactions and also verify the valuation of shares in terms of Rule 11 UA of the Income Tax Rules. The Ld. PCIT has pointed out that the AO had failed in doing so and we also have no document or evidence before us which would refute such observation of the Ld. PCIT. Thus, on an overall view of the facts, as emanating from the record before us, it is established that the AO had merely asked the assessee for filing information in respect of share premium but apparently no meaningful inquiry had been carried out by the AO on such information filed by the assessee.

5.8 The Hon'ble Delhi High Court has emphasized in the case of ITO Vs. DG Housing Projects Ltd. [345 ITR 153 (Del)] that where there is complete lack of inquiry on the part of the AO, the assessment order would be erroneous. We also find that in terms of Explanation 2 below section 263 of the

Act, which has been made effective from assessment year 2015-16 w.e.f. 01.04.2016, an assessment order is deemed to be erroneous in so far as prejudicial to the interest of the Revenue if the AO fails to carry out the inquiries which ought to have been carried out on the facts and circumstances of the case. In the present case, the Ld. PCIT has rightly observed that the AO was required to inquire and verify the basis of valuation in terms of Rule 11UA as large share premium was one of the reasons for which the assessee's case had been selected for scrutiny. However, the AO has, apparently, not done so and the same is also borne out from the reply of the assessee which has been reproduced by the Ld. PCIT in the impugned order wherein the assessee has mentioned the various documents submitted before the AO but there is no mention of any valuation report having been submitted which would be in terms of Rule 11UA of the Income Tax Rules.

5.9 It will be relevant at this juncture to refer to some of the judicial precedents on the powers of the Commissioner u/s 263 of the Act. In the case of Gee Vee Enterprises Vs. ACIT (1975) 99 ITR 375, speaking for High Court of Delhi, their Lordships made a clear distinction between the cases of

"inadequate inquiry" and "lack of inquiry" by also considering the ratio of the decision of Hon'ble Apex Court in the case of Rampyari Devi Sarogi vs CIT (1968) 67 ITR 84 (SC) and Tara Devi Aggarwal vs CIT (1973) 88 ITR 323 (SC) and held that it is incumbent upon the ITO to further investigate the facts stated in the return when circumstances would make such an inquiry prudent and the word "erroneous" in Section 263 includes failure to make such an inquiry. It was further held that the order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. The relevant operative part of this decision reads as under:-

*"In Rampyari Devi Saraogi v. Commissioner of Income-tax, the Income-tax Officer accepted the return of the assessee in respect of the initial capital, the gift received and the sale of jewellery, the income from business, etc., without any inquiry or evidence whatsoever. For this reason the Commissioner held the order to be erroneous. In revision, he cancelled the order and ordered the Income-tax Officer to make a fresh assessment. In his order the Commissioner had used certain new grounds which had not been disclosed to the assessee in the notice given to him to show cause why the order of the Income-tax Officer should not be revised. But, apart from these new grounds, the Supreme Court observed at page 88 of the report that:*

*"There was ample material to show that the Income-tax Officer made the assessments in undue hurry ... the assessee made a declaration giving the facts regarding initial capital, the ornaments and presents received at the time of marriage, other gifts received from her father-in-law, etc., which should have put any Income-tax Officer on his guard. But the Income tax Officer without making any inquiries to satisfy himself passed the assessment order. A short stereo-typed assessment order was made for each assessment year No evidence whatsoever was produced in respect of the money- lending business done ....No names were given as to the parties to whom the loans were advanced....."*

*In Tara Devi Aggarwal v. Commissioner of Income-tax also the Income-tax officer, Howrah, while remarking that the source of income of the assessee was income from speculation and interest on investments stated that neither the assessee was able to produce the details and vouchers of the speculative transactions made during the accounting year nor was there evidence regarding the interest received by the assessee from different parties on her investments. Notwithstanding these defects the Income Tax Officer did not investigate into the various sources but assessed the assessee on a total income of Rs.9,037. The inquiries made by the Commissioner revealed that the assessee did not reside or carry on business at the address given in the return. The Commissioner was also of the view that the Income-tax Officer was not justified in accepting the initial capital, the sale of ornaments, the income from business, the investments etc., without any inquiry or evidence whatsoever and that the order of assessment*

*was erroneous and prejudicial to the interests of the revenue. The High Court held that there were materials to justify the Commissioner's finding that the order of assessment was erroneous in so far as it was prejudicial to the interests of the revenue. Shri Sharma tried to distinguish this decision on the ground that the address of the assessee in that case was given incorrectly. The decision of the High Court and that of the Supreme Court were not, however, based on that ground at all. On the contrary, the Supreme Court followed their previous decision in Rampyari Devi's case and upheld the decision of the High Court precisely on the same grounds. These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return.*

*The reason is obvious. The position and function of the Income Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. 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 an inquiry. The*

*meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent and the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."*

5.10 In the case of CIT vs. Nagesh Knitwears 345 ITR 135 (Del), the Hon'ble Delhi High Court after considering the ratio of its earlier decisions including its decision in the case of ITO vs DG Housing Projects Ltd. (345 ITR 153) held as under:-

*"36. As far as Section 263 is concerned, we have examined the said Section in depth and detail in ITO Vs. D G Housing Projects Ltd. decided on 1st March, 2012, in ITA No. 179/2011 and observed as under:-*

*"10. Revenue does not have any right to appeal to the first appellate authority against an order passed by the Assessing Officer. Section 263 has been enacted to empower the CIT to exercise power of revision and revise any order passed by the Assessing Officer, if two cumulative conditions are satisfied. Firstly, the order sought to be revised should be erroneous and secondly, it should be prejudicial to the interest of the Revenue. The expression prejudicial to the interest of the Revenue" is of wide import and is not confined to merely loss of tax. The term "erroneous" means a wrong/incorrect decision*

*deviating from law. This expression postulates an error which makes an order unsustainable in law.*

*11. The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word "erroneous" includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.*

*12. Delhi High Court in Gee Vee Enterprises v. Additional Commission of Income-Tax, Delhi-1, (1975) 99 ITR 375, has observed as under:-*

*"The reason is obvious. The position and function of the Income-tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. 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 an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent and the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."*

13. *In the said judgment, Delhi High Court had referred to earlier decisions of the Supreme Court in Rampyari Devi Sarogi. CIT (1968) 67 ITR 84 (SC) and Tara Devi Aggarwal v. CIT (1973) 88 ITR 323 (SC), wherein it has been held that where Assessing Officer has accepted a particular contention/issue without any enquiry or evidence whatsoever, the order is erroneous and prejudicial to the interest of the Revenue. After reference to these two decisions, the Delhi High Court observed:-*

*"These two decisions show that it is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the Income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return."*

5.11 In view of the above cited judicial precedents and on facts of the case, we are of the considered view, that there was a complete lack of inquiry on the part of the AO on the issue of share premium and, therefore, in view of complete lack of inquiry by the AO, we have no option but to hold that the order of the Ld. PCIT deserves to be upheld. We would like to emphasize that it is clearly being brought out from the records that the assessee had submitted details like date-wise details of share capital receipts, confirmation certificates from the investor, copy of ITR along with computation chart and the balance sheet of the investor etc., bank statement of the investor but no explanation was called for regarding valuation of shares or the genuineness and creditworthiness of the investors. Therefore, in our considered opinion it is a case where the AO did not make any inquiry vis-a-vis the share premium and simply accepted the details filed by the assessee and, thus, the AO had failed miserably to carry out the duty cast upon him. Therefore, it is our considered view that it is a case of complete lack of inquiry by the AO and, therefore, we hold that the Ld. PCIT was absolutely correct in invoking the revisionary powers u/s 263 of the Act. Therefore, in view of the above discussion, we hold that the impugned order passed u/s 263

of the Act needs to be sustained and no interference is called for.

6.0 In the final result, the appeal of the assessee stand dismissed.

Order pronounced on 28<sup>th</sup> September, 2022.

Sd/-  
**( VIKRAM SINGH YADAV )**  
**Accountant Member**  
**Dated : 28.09.2022**  
“आर.के.”

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**Judicial Member**

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar