

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No. 316/Kol/2022  
Assessment Year: 2010-11

<b>Wonder Laminates Pvt. Ltd.</b> C/o. Subash Agrawal & Associates, Advocates Siddha Gibson 1, Gibson Lane, Suite 213 2 <sup>nd</sup> Floor Kolkata - 700069 [PAN : AAACW2197D]	Vs	<b>Pr. Commissioner of Income Tax-5, Kolkata</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Siddarth Agarwal, Advocate	
Revenue by :	Shri Biswanath Das, CIT D/R	

सुनवाई की तारीख/Date of Hearing : 21/11/2022  
घोषणा की तारीख /Date of Pronouncement: 16 /12/2022

**आदेश/O R D E R**

**PER SHRI RAJESH KUMAR, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the Learned Principal Commissioner of Income Tax - 5, Kolkata (hereinafter the "Id. CIT(A)") dt. 30/06/2020, passed u/s 263 of the Income Tax Act, 1961 ("the Act'), for Assessment Year 2010-11.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in the case of *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020*, the period of filing appeal during the COVID-19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The only issue raised by the assessee is against the invalid exercise of revisionary jurisdiction by the Id. Pr. CIT u/s 263 of the Act without fulfilling the conditions as envisaged u/s 263 of the Act.

4. The facts in brief are that the assessee filed the return of income on 01/10/2010 declaring total income of Rs.12,11,824/-. The return of the assessee was processed u/s 143(1) of the Act on 23/05/2011. Thereafter the case was reopened u/s 147 of the Act on the ground that the assessee is a beneficiary of Rs.10,00,000/- received from M/s. Hemlata Creation Pvt. Ltd., on 16/01/2010. Accordingly, a notice u/s 148 of the Act was issued and duly served on the assessee. During the course of assessment proceedings, the Assessing Officer examined the issue by calling for details/evidences from the assessee as well as from M/S Hemlata Creations Pvt Ltd. and other share subscribers. namely, Canny Properties Pvt. Ltd., M/s. Elize International Pvt. Ltd., M/s. Gurukul Commotrade Pvt. Ltd. & M/s. Irabati tie-up Pvt. Ltd. by issuing notices u/s 133(6) of the Act. The questionnaire issued to the assessee was duly responded by the assessee by furnishing all the information/details as required by the AO. Likewise, notices u/s 133(6) of the Act were duly responded by the subscribers by furnishing all the details as called for by the AO. Finally the assessment was framed u/s 143(3)/147 of the Act accepting the contention of the assessee as to the genuineness of the share capital/share premium raised and no addition was made meaning thereby creditworthiness and identity of the share subscriber companies and genuineness of the transactions were accepted by the Assessing Officer based on the replies of

the assessee as well as the compliances made to the notices u/s 133(6) of the Act by the share subscribers.

3.1. Thereafter the Id. Pr.CIT, on perusal of the assessment records, observed that notice issued u/s 133(6) of the Act to M/s. Hemlata Creation Pvt. Ltd. was returned unserved resulting in non-verification of the genuineness of the share subscription of Rs.10,00,000/- during the assessment proceedings. The Id. Pr. CIT further observed that the assessee had taken a loan of Rs.5,30,88,766/- during the year and repaid the same. However, the Assessing Officer has not conducted any enquiry in respect of the identity, creditworthiness of the loan creditors and genuineness of the transactions along with its repayment. The Id. Pr. CIT issued a showcause notice u/s 263 of the Act to the assessee requiring to showcause as to why the assessment framed u/s 143(3)/147 of the Act should not be revised on the ground of being erroneous and prejudicial to the interest of revenue. Finally, the Id. Pr. CIT revised the assessment only with respect to share capital received of Rs.10,00,000/- from M/s. Hemlata Creation Pvt. Ltd., for non-verification while the second item of loan of Rs.5,30,88,766/- and repayment thereof by the assessee was duly accepted.

4. The Id. A/R argued before us that the Id. Pr. CIT has grossly erred in not appreciating the facts on record, as the Id. Pr. CIT has failed to appreciate that reply dt. 17/07/2007 (copy of which is filed at page no. 26 to 27) and annexures (from pages 28 to 35) comprising of allotment advice, bank statement, share transfer form, share certificate, share application form and certificate of incorporation of the investors. The Id. A/R also referred to the assessment order dt. 26/12/2017 passed u/s 147/143(3) of the Act and

pointed out by referring to para 5 to 12 that the issue of receipt of share capital has been specifically discussed by the Assessing Officer and though in the initial stage, the notice was returned unserved. The Id. AR argued that the Id. Pr. CIT has not stated as to how the evidences adduced by the assessee before the Id. Assessing Officer as well as the Id. Pr. CIT were not correct or deficient and, therefore, the revisionary jurisdiction has been exercised without fulfilling the conditions envisaged in Section 263 of the Act. In defense of his arguments, the Id. Counsel for the assessee relied upon a series of decisions as under:-

- *Malabar Industries Co. Ltd. vs. CIT 243 ITR 83*
- *CIT vs. Max India Ltd. 295 ITR 282 (SC)*
- *J.L. Morrison 366 ITR 593 (Calcutta)*
- *Gabriel India Ltd. 203 ITR 108 (Bom.)*

5. The Id. D/R relied on the order of the Id. Pr. CIT.

6. We have heard rival contentions and perused the material available on record. The undisputed fact is that the issue was examined in the original assessment proceedings by calling for explanations from the assessee as well as from the investor parties which are available on record. We note that the Id. Pr. CIT has invoked jurisdiction u/s. 263 of the Act on two points whereas in the revisionary order only one issue was raised with respect to Rs. 10,00,000/- was received from M/s. Hemlata Creation Pvt. Ltd. which according to the Id Pr CIT remained unverified as the said party has failed to respond to the notice received u/s 133(6) of the Act. We have examined the assessment order and find that the Assessing Officer accepted the transaction after due verification and, therefore, the allegation of the Id. Pr.

CIT that the verification in respect of share subscription of Rs.10,00,000/- remained unverified, is devoid of merit. 7. The case of the assessee finds strength from various decision relied upon by the Id. Counsel for the assessee during the course of assessment proceedings.

7.1. The Hon'ble Supreme Court in the case of *Malabar Industries Co. Ltd (supra)* has held that where the Assessing Officer has adopted one of the courses permissible in law and which has resulted in loss to the revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, then the assessment cannot be treated as erroneous insofar as it is prejudicial to the interest of the revenue, unless the view taken by the Assessing Officer is not sustainable in law.

7.2. Similarly in the case of *Max India Ltd. (supra)*, the Hon'ble Supreme Court has held that when the Assessing Officer has adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, the assessment order cannot be treated as erroneous order prejudicial to the interest of the revenue, unless the view taken by the Assessing Officer is unsustainable in law.

7.3. In the case of *Gabriel India Ltd. (supra)*, the Hon'ble Apex Court has held that, the Id. Pr. CIT cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded.

8. In view of the facts and circumstances as discussed above and respectfully following the ratio laid down in the above decisions , we hold

that the revisionary jurisdiction was invalidly invoked by the Id Pr CIT and consequently quash the order passed u/s 263 of the Act. The appeal of the assessee is allowed.

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

**Order pronounced in the Court on 16<sup>th</sup> December, 2022 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated 16/12/2022

*SC S.P.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata