

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

|                                  |
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| <b>ITA No. 438/Bang/2022</b>     |
| <b>Assessment Year : 2017-18</b> |

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| M/s. Avant Garde<br>Fashion Wear Pvt. Ltd.<br>for and on behalf of<br>merged company<br>Chandelier Tracon Pvt.<br>Ltd.,<br>54/3, Ejipura Main<br>Road,<br>Vivek Nagar,<br>Bengaluru – 560 047.<br><b>PAN: AABCC1624N</b> | <b>Vs.</b> | The Income Tax<br>Officer,<br>Ward 2 (1)(1),<br>Bengaluru. |
| <b>APPELLANT</b>   |            | <b>RESPONDENT</b>  |

|             |   |                             |
|-------------|---|-----------------------------|
| Assessee by | : | Shri H. Ganpatlal Kawad, CA |
| Revenue by  | : | Shri D.K. Mishra, CIT-DR    |

|                       |   |            |
|-----------------------|---|------------|
| Date of Hearing       | : | 23-03-2023 |
| Date of Pronouncement | : | 30-03-2023 |

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against the order dated 27.03.2022 passed by the Ld.PCIT, Bengaluru-2 for A.Y. 2017-18 on the following grounds:

*“1. The impugned order passed by Principal Commissioner of Income tax, Bengaluru-2, Bengaluru is bad in law, without jurisdiction and void ab-initio and is therefore liable to be quashed.*

2. Without prejudice, the order passed on and in the name of ersewhile company Chandelier Tracon Private Limited after its merger is bad in law, erroneous and liable to be quashed.

3. Without prejudice, the very assumption of jurisdiction U/s. 263 of I.T. Act, 1961 by Principal Commissioner of Income tax was not correct and therefore the consequential impugned order passed being bad in law is liable to be quashed.

4. There was no erroneous order at all so as to cause any prejudice to the interest of revenue. There being no earlier erroneous order, the impugned order passed U/s. 263 of I.T. Act, 1961 has no legs to stand and is to be quashed.

5. The Assessing Officer having passed the original order on application of mind and after considering all the issues, the present impugned order passed by Principal Commissioner of Income tax is only passed on account of change of opinion and merely change of opinion does not give any jurisdiction U/s. 263 of I.T. Act, 1961 and therefore also the impugned order deserves to be quashed.

6. The conclusion of the Principal Commissioner of Income tax that no inquiries were made by the Assessing Officer while passing the original order is also against the facts of the case and evidence available. Therefore also the impugned order is liable to be quashed.

7. The very fact that the Principal Commissioner of Income tax has set aside the assessment order with a direction to redo the assessment afresh, without giving any conclusive finding on the error if any shows that there was no case for passing an order U/s. 263 of I.T. Act, 1961 and therefore also the impugned assessment order is liable to be quashed.

8. In any case the appellant was Non-Banking Financial Company during that period and in normal course of business had taken advance from Avant Grade Fashion Wear P ltd for making the tax payment. The advance taken is clearly shown in the balance sheet of the company. The amount taken is used for making payment of Income Tax which is also clearly shown in the balance sheet of the company. The provision of section 2(22)(e) are not at all applicable to the this transaction. The details was submitted to AO during the course of scrutiny and was erified by the AO, therefore on fact of the case there is no deemed dividend and there being no error and/or erroneous assessment order, the impugned order U/s. 263 of I.T. Act, 1%1 setting aside the original assessment order is bad in law and is liable to be quashed.

9. In any case the appellant had deposited Rs.5,00,000-00 to bank account during the FY 2014-15. The deposit was made out of opening cash balance. The cash balance as on

*31-03-2016 was reflected in the balance as on 31-03-2016 as well as previous year figure on 15-16 in the balance sheet as on 31-03-2017 as required by companies schedule III. The fact %as examined by AO during the course of scrutiny with both the years balance sheet. This fact is also reflected in notes forming part of Financial statement as on 31-03-2017, therefore there beine, no unexplained cash deposit and there being no error and/or erroneous assessment order. the impugned order U/s. 263 of I.T. Act, 1961 setting aside the original assessment order is bad in law and is liable to be quashed.*

*10. In view of the above and on other grounds to be adduced at the time of hearing. it is requested that the impugned order be quashed or at least it be held that provision of section 2(22)(e) are not applicable as well the cash deposit is out of the opening balance and not liable to tax.”*

2. The Ld.AR submitted that ground nos. 1, 2 and 3 are not pressed by assessee.

3. **Ground nos. 4 to 7** are general in nature and therefore do not require any adjudication.

**4. Brief facts of the case are as under:**

4.1 The assessee filed its return of income on 17.10.2017 declaring total income at Nil. The return was selected for scrutiny and notice u/s. 143(2) was issued to assessee in response to which assessee had filed details of investment and source of investment and other details with regard to investment in share by the assessee.

4.2 The Ld.AO after examining the details accepted the return of income filed by assessee. Subsequently, the Ld.PCIT issued notice u/s. 263 of the act on 28.02.2022. For sake of convenience, the same is scanned and reproduced as under:



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX  
PCIT, Bengaluru-2

AR  
23/3/23

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|--|--|
| To,<br>CHANDELIER TRACON PRIVATE LIMITED<br>#15, GROUND FLOOR, KALAKAR<br>STREET KALAKAR<br>KOLKATA 700007, West Bengal<br>India |  |
|--|--|

|                        |                |  |                      |
|------------------------|----------------|--|----------------------|
| PAN/TAN:<br>AABCC1624N | AY:<br>2017-18 | DIN & Notice No :<br>ITBA/REV/F/REV1/2021-<br>22/1040166108(1) | Dated:<br>28/02/2022 |
|------------------------|----------------|--|----------------------|

**NOTICE FOR THE HEARING**

**M/s/Mr/Ms**

**Subject:** Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961 – Assessment Year 2017-18.

In this regard, a hearing in the matter is fixed on **04/03/2022 at 10:45 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)

**Sub:** Show cause notice for passing order u/s 263 of the Income-Tax Act in respect of the assessment order u/s 143(3) for A.Y. 2017-18 in your case.

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Please refer to the assessment order u/s 143(3) for AY 2017-18 in your case. The scrutiny assessment was completed u/s 143(3) of the IT Act on 20.11.2019 accepting the income at NIL as shown in your return.

It is observed that your case has been selected for scrutiny for the A.Y 2017-18 to verify "expenses incurred for earning exempt income" and "investments/advances and loans". On perusal of the details available on record, it is noticed that:

- i. You have filed the Return of Income for A.Y 2017-18 showing NIL income. The AO completed the scrutiny assessment accepting the returned income.
- ii. On perusal of the bank account, it is noticed that you had made payment of

Note: If digitally signed, the date of digital signature may be taken as date of document.  
BMTc BUILDING, 88 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095  
Email: BANGALORE.PCIT2@INCOMETAX.GOV.IN

Note:- The website address of the e-filing portal has been changed from [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) to [www.incometax.gov.in](http://www.incometax.gov.in)  
\* DIN- Document Identification No.

Rs.18,06,650/- on 03.09.2016 to a party viz M/s Valmark Realty Holdings which was not reflecting in the Balance Sheet or Profit and Loss Account of your company for the year ending 31.03.2017. Further, it is noticed that you had received an amount of Rs.18,10,000/- from M/s Avant Grade Fashionwear Pvt Ltd on 01.09.2016 as loan/advance and credited to Corporation Bank Account, out of which, an amount of Rs.18,06,650 was transferred to M/s Valmark Realty Holding on 03.09.2016. Further it is noticed from financials of M/s Avant Grade Fashionwear Pvt Ltd that you hold 62,240 shares of M/s Avant Grade Fashionwear Pvt Ltd being 32.02% of shareholdings. Hence the provisions of Sec 2(22) (e) of the Income Tax Act are attracted in your case. In the instant case M/s Avant Grade Fashionwear Pvt Ltd has given loan/advance of Rs.18,10,000 on 01.09.2016 out of the accumulated profit.

iii. Hence the amount of Rs.18,10,000 received by you is required to be taxed as Deemed dividend in the hands of the company u/s 2(22) (e) of the Income Tax Act, 1961. However, no such addition has been made in the assessment order and the issue has apparently not been examined.

iv. Further on the perusal of the Bank statement of Corporation Bank available on record, it is noticed that there is cash deposits of Rs.5,00,000/- by you on 21.12.2016. As per facts available on record, you have given explanation that the said cash deposit is out of cash on hand as on 31.03.2016. However it is noticed from Point No.2D(iii) of assets Schedule in the return of income filed for the A.Y 2016-17 that cash on hand is shown at NIL. Hence the cash deposited during demonetization period remains unexplained and unverified.

In view of the above, it appears that the above assessment order is erroneous in so far as it is prejudicial to the interests of the revenue, in terms of section 263. It is therefore proposed to pass an order u/s. 263 in this case. You are given an opportunity of filing your submission in this regard by 04.03.2022. You may file your submissions online through the e-filing portal ([incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)). Personal hearing is not required but in case you wish to attend in person, you are given an opportunity to attend personally, or through authorized representative, on 04.03.2022 at 10.45 a.m. It would not be possible to allow further time in view of the statutory time limitation. In case no reply is filed by 04.03.22, it will be presumed that you do not wish to make any submissions in this regard and the matter will be decided based on the material available on record.

RAJ TANDON  
PCIT, Bengaluru-2

4.3 The Ld.AR submitted that the 263 proceedings were initiated on two grounds:

- 1) To verify the payment made by assessee amounting to Rs.18,06,650/- to a party by the name M/s. Valmark Realty Holding on 03.09.2016 that was not reflecting in the

balance sheet or P&L account of the assessee. Also that assessee had received a sum of Rs.18,10,000/- from M/s. Avant Garde Fashion wear Pvt. Ltd. on 01.09.2016 as loans and advances out of which the amount of Rs.18,06,650/- was transferred to M/s. Valmark Realty Holding. It was also observed by the Ld.PCIT that assessee holds 62,240 shares of M/s. Avant Garde Fashion wear Pvt. Ltd. being 32.02% of share holdings. The Ld.PCIT was of the view that applicability of provisions of section 2(22e) has not been verified by the Ld.AO in respect of the above transaction.

- 2) The next issue is in respect of the cash deposits made by assessee during the demonetisation period which has not been verified by the Ld.AO.

4.4 The Ld.PCIT called for evidences in support of the above issues. After verifying the submissions of the assessee, the Ld.PCIT was of the view that the assessment order dated 20.11.2019 was erroneous insofar as prejudicial to the interest of revenue in terms of section 263 and therefore after considering various decisions observed and held as under:

*“14. In view of the above discussion, the assessment order u/s 143(3) is erroneous and prejudicial to the interests of Revenue in terms of section 263. The assessment order is accordingly, set aside for this purpose and the AO is directed under section 263. to make a fresh assessment in accordance with law, after considering the above. The AO shall examine the issues discussed above and conduct necessary inquiries in accordance with law and CBDT guidelines on this subject. He shall give the assessee an opportunity to furnish necessary evidence to establish his claim and explain why the proposed additions be not made to income. The AO shall consider the facts, and the results of any enquiries made, as well as the explanation furnished by the assessee, and make a fresh assessment in accordance with law.”*

4.5 Aggrieved by the order of the Ld.PCIT, assessee is in appeal before this *Tribunal*.

5. The Ld.AR submitted that during the assessment proceedings, the Ld.AO issued notice dated 23.05.2019, 22.07.2019 and 05.11.2019, wherein the submissions were made by the assessee. He submitted that, the Ld.AO had called for the annual reports of M/s. Avant Garde Fashion wear Pvt. Ltd. It was also submitted by the Ld.AR, that various details were required by the Ld.AO orally at the time of assessment proceedings and assessee had furnished all the relevant details. It was the contention of the Ld.AR that the issues considered by the Ld.PCIT to exercise the jurisdiction u/s. 263 of the act has already been looked upon by the Ld.AO and therefore the proceedings initiated is bad in law.

6. On the contrary, the Ld.DR submitted that there is no specific query raised by the Ld.AO in the questionnaires issued to the assessee, which has been raised in the notice issued u/s. 263 of the act. He submitted that, merely filing of various details like financials, annual reports would not constitute or lead to the conclusion that there has been application of mind by the Ld.AO. He thus submitted that the 263 proceedings initiated is in accordance with law. It is also submitted by the Ld.DR that no prejudice is caused to the assessee as the Ld.PCIT has directed the Ld.AO to verify and carry out necessary enquiries based on the explanation furnished by the assessee.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that admittedly no specific query has been raised by the Ld.AO on the two issues that are subject matter of 263 proceedings. We also note that in respect of the cash deposits during the demonetisation period, the Ld.AO has not followed the circulars issued by the CBDT to carry out necessary verifications in respect of the genuineness of cash deposited by the assessee during the relevant time.

7.1 Admittedly, the assessee accepted the SBNs which were no longer a legal tender and were to be explained in accordance with the relevant circular mentioned hereinabove.

These instructions gives a hint regarding what kind of investigation, enquiry, evidences that the assessing officer is required to take into consideration for the purpose of assessing such cases.

7.2 Instructions dated 09/08/2019 speaks about the comparative analysis of cash deposits, cash sales, month wise cash sales and cash deposits. It also provides that whether in such cases the books of accounts have been rejected or not where substantial evidences of wide variation be found between these statistical analyses. Therefore, it is very important to note that whether the case of the assessee falls into statistical analysis, which suggests that there is a booking of sales, which is non-existent and thereby unaccounted money of the assessee in old currency notes (SBN) have been pumped into as unaccounted money.

7.3 The instruction dated 21/02/2017 requires the assessing officer to verify basic relevant information *e.g.* monthly sales summary, relevant stock register entries and bank statement to

identify cases with preliminary suspicion of back dating of cash and is or fictitious sales. The instruction has also suggested some indicators for suspicion of back dating of cash else or fictitious sales where there is an abnormal jump in the cases during the period November to December 2016 as compared to earlier year. It also suggests that, abnormal jump in percentage of cash trails to on identifiable persons as compared to earlier histories will also give some indication for suspicion. Non-availability of stock or attempts to inflate stock by introducing fictitious purchases is also some indication for suspicion of fictitious sales. Transfer of deposit of cash to another account or entity, which is not in line with the earlier history. Therefore, it is important to examine whether the case of the assessee falls into any of the above parameters are not.

7.4 The assessee is directed to establish all relevant details to substantiate its claim in line with the above applicable instructions. We are aware of the fact that not every deposit during the demonetisation period would fall under category of unaccounted cash. However the burden is on the assessee to establish the genuineness of the deposit in order to fall outside the scope of unaccounted cash.

7.5 The Ld.AO shall verify all the details / evidences filed by the assessee based on the above direction and to consider the claim in accordance with law. Needless to say that proper opportunity of being heard must be granted to the assessee. The assessee may be granted physical hearing in order to justify its claim.

Accordingly, we direct the Ld.AO to verify the cash deposited in the light of the above circular by granting proper opportunity of being heard to the assessee.

7.6 Insofar as the issue of applicability of provisions of section 2(22e) is concerned, the queries raised by the Ld.AO do not indicate that there is an application of mind in respect of the money paid by assessee to M/s. Valmark Realty Holding and the money deposited by M/s. Avant Garde Fashion wear Pvt. Ltd. with assessee. The share holding of assessee in M/s. Avant Garde Fashion wear Pvt. Ltd. is also not been a subject matter of verification by the Ld.AO. The Ld.AR submitted that assessee is a NBFC and therefore advancing of loans is a regular activity on day-to-day basis. It was thus submitted that provisions of section 2(22e) will not attract to a NBFC company. Very pertinently the Ld.AO has also not looked into whether assessee is a NBFC or not.

7.7 We direct the Ld.AO to verify the documents relating to assessee being a NBFC and to consider the issue in respect of applicability of provisions of section 2(22e) in accordance with law.

7.8 In our considered opinion, we therefore do not find any infirmity in the 263 proceedings initiated in the present facts of the case.

With these above modified directions, we uphold the order passed by the Ld.PCIT u/s. 263 of the act.

8. On enquiry being raised by the bench in respect of status of the assessment pursuant to 263 order, the Ld.AR submitted that the assessment is presently going on. We therefore do not find

reason to interfere with the proceedings. However direct the Ld.AO to carry out the verifications and examine the documents in accordance with law.

**Accordingly, the grounds raised by the assessee stands dismissed.**

**In the result, the appeal filed by the assessee stands dismissed.**

**Order pronounced in the open court on 30<sup>th</sup> March, 2023.**

Sd/-  
(PADMAVATHY S)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 30<sup>th</sup> March, 2023.  
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file |                        |

By order

Assistant Registrar,  
ITAT, Bangalore