

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: A: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.732/Del/2021  
Assessment Year: 2010-11

M/s. Bonjour Estates (P) Ltd., C-444, Defence Colony, New Delhi 110024 <b>PAN AAECN 4851 H</b>	vs.	The PCIT (1), New Delhi 110002
(Appellant)		(Respondent)

For Assessee :	Shri Neeraj Mangla, CA
For Revenue :	Shri P. Praveen Sidharth, CIT DR

Date of Hearing :	15.02.2023
Date of Pronouncement :	11.04.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal filed by the assessee is directed against the order dated 28.03.2021 of the Ld. PCIT(1), New Delhi relating to Assessment Year 2010-11.

2. First of all, we have heard arguments of learned representatives of both the sides on ground no. 7 which read as follows:-

*7. That on the facts and circumstances of the case, the Learned Pr. Commissioner of Income Tax, Delhi-1, New Delhi, has erred, both on facts and in law in directing the Assessing Officer to reframe the assessment, despite the fact that the matter has become time-barred as per the ratio laid down by the Apex Court in the case of CIT Chennai U Alagendran Finance Ltd in Appeal (Civil) 3301 of 2007 vide order dated 27.07.2007.*

3. This ground of appeal relates to validity of revisionary proceedings initiated by Ld. PCIT-1, New Delhi u/s. 263 of the Income Tax Act 1961 (for short the Act). The learned counsel submitted some factual aspects that the assessee for A.Y. 2010-11 filed its return of income u/s. 139 of the Act on 24.09.2010 which was processed u/s. 143(1) on 11.02.2011. The learned counsel further submitted that subsequently the AO initiated reassessment proceedings by issuing notice u/s. 148 of the Act on 24.03.2017 and passed reassessment order u/s. 143(3) r.w.s 147 of the Act on 13.12.2017. Drawing our attention towards copy of the reasons recorded for reopening of reassessment proceedings available at pages 1 to 5 of assessee paper book. The learned counsel submitted

that the reopening was based on information received from DCIT, CC-2(2), Mumbai wherein the AO challenged genuineness of share capital received by the assessee company from two entities viz. Advanced Technology Ltd. and Yantra Natural Resources Ltd. The assessee company during the reassessment proceedings to avoid litigation and to buy piece of mind surrendered the stated transaction and paid due taxes etc thereon. The learned counsel vehemently pointed out that reassessment proceedings were initiated pertaining to said two parties and closed on 31.12.2017 after passing reassessment order by the AO.

4. The learned counsel further stated that the assessee received notice u/s. 263 of the Act on 09.02.2021 and the learned PCIT passed order u/s. 263 of the Act on 28.03.2021, wherein it was alleged that the AO has not made proper inquiries in respect of share capital received by the assessee company from other entities. The learned counsel also contended that the above facts pertaining to reassessment proceedings clearly show that the transactions pertaining two entities for which reassessment proceedings u/s. 148 of the Act were initiated were added to the income of the

assessee and issue of genuineness of shares capital received from other entities do not arise from the order of AO dated 31.12.2017 passed u/s. 143(3) r.w.s. 147 of the Act.

5. The learned counsel submitted that therefore the time limit for issuance of notice u/s. 263 of the Act must be reckoned from the date intimation u/s. 143(1) of the Act i.e. 11.02.2011 and the time limit for reopening of assessment has to be reckoned from the said date. The learned counsel has placed reliance on following judgments and orders:-

1. *CIT, Chennai Vs. Alagendran Finance Limited [2007] 162 Taxman 465 (SC)*
2. *Ashoka Buildcon Limited Vs. Asst. Commissioner of Income tax Circle 2, Nashik [2010] 191 Taxman 29 (Bombay)*
3. *Indira Industries Vs. Pr. Commissioner of Income tax, Chennai - 8 [2018] 95 taxmann.com 292 (Madras)*
4. *Century Textiles & Industries Ltd Vs. DCIT [2012] 20 taxmann.com 231 (Mumbai)*
5. *CIT Vs. Lark Chemicals Ltd [2015] 55 taxmann.com 446 (Bom.)*
6. *Commissioner of Income tax Vs. ICICI Bank Ltd. [2012] 19 taxmann.com 142 (Bombay)*
7. *Skyline Builders Vs. Commissioner of Income tax, Cochin [2019] 105 taxmann.com 207 (Kerala)*
8. *L.G. Electronics India (P) Ltd. Vs. Pr. CIT [2017] 79 taxmann.com 418 (Allahabad)*

9. *Louis Berger Group Inc. Vs. Asst. Director of Income tax (International Taxation), Hyderabad [2014] 51 taxmann.com 121 (Hyderabad - Trib.)*

6. Drawing our attention towards judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs Alagendran Finance Limited (supra) the learned counsel submitted that the Ld. PCIT while exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalisation fund which, was not the subject of reassessment proceedings, the period of limitation provided under sub section (2) of section 263 of the Act would begun to run from the date of the order of original assessment and not from the order of reassessment and in such a situation the order of Ld. PCIT has to be held as without valid jurisdiction rendering the entire proceedings a nullity.

7. The learned counsel has also placed vehement reliance on the judgment of Hon'ble High Court of Bombay in the case of Ashoka Buildcon Ltd., vs ACIT (supra), judgment of Hon'ble High Court of Madras in the case of Indira Industries vs. PCIT (supra) and submitted that when a notice u/s. 263 of the Act raises new issues,

which were not subject matter of reassessment proceedings, then the two years period contemplated under sub section (2) of section 263 of the Act would begun to run from the date of original assessment and not from the date of reassessment order dated 31.12.2017. He further submitted that for A.Y. 2010-11 when the ITR was processed u/s. 143(1) of the Act by order dated 11.02.2011 then issuing notice on the different issue which was not subject matter of reassessment proceedings, to revise reassessment order dated 31.12.2017 by issuing notice u/s. 148 of the Act on 09.02.2021 has to be held as barred by limitation as the time limit for initiating revisional proceedings u/s. 263 of the Act by issuing notice has expired on 31.03.2013 and thereafter all revisionary proceedings, notice and orders has to be held as barred by limitation and a nullity.

8. Replying to the above the learned CIT (DR) strongly supported the revisionary order passed on 28.03.2021 by Ld. PCIT-1, Delhi.

9. On careful consideration of above submissions first of all we note following factual positions which have not been controverted by the Ld. CIT(DR):-

(i) the assessee filed return of income for A.Y. 2010-11 on 24.09.2010 which was processed u/s. 143(1) of the Act by order dated 11.02.2011.

(ii) subsequently, the Assessing Officer initiated reassessment proceedings based on information received from DCIT, CC-2(2) Mumbai challenging the genuineness of transaction of share capital received by the assessee company from two entities i.e. Advanced Technology Ltd. and Yantra Natural Resources Ltd. The AO accepted the surrendered made by the AO and the taxed the entire amount of Rs. 95 lakhs u/s. 68 of the Act, and the assessee paid due taxes etc thereon.

(iii) thereafter the learned PCIT Delhi issued notice u/s. 263 of the Act, on 09.02.2021 and passed impugned revisionary order u/s. 263 of the Act on 28.03.2021.

(iv) based on above factual position it is the legal contention of the assessee that when the AO picket up only two entities while initiating reassessment proceedings and made addition u/s. 68 of the Act in the hands of the assessee and assessee had paid all due taxes etc thereon then such order cannot be alleged as erroneous and prejudicial to the interest of revenue entitling the Ld. PCIT to invoke revisionary proceedings u/s. 263 of the Act. It is the bottom line contention of the learned counsel of the assessee that when a notice u/s. 263 of the Act raises new issues, which were not subject matter of reassessment proceedings, then two year period contemplated under sub section 2 of section 263 of the Act would begun to run from the date of original assessment and not from the date of reassessment.

10. In view of above noted factual position, which has not been controverted by the learned CIT(DR), we note that for A.Y. 2010-11 the proceedings u/s. 143(1) of the Act were closed on 11.02.2011 after process of return of income filed by the assessee. Thereafter the Assessing Officer initiating reassessment proceedings

challenging the genuineness of transaction of share capital received by the assessee from two entities, which was closed by making addition in the hands of the assessee u/s. 68 of the Act.

11. From the copy of the from para 2 and 3 of show cause notice dated 09.02.2021 issued by the Ld. PCIT to the assessee clearly reveals that the Ld. PCIT firstly noted that as per information DCIT, Central Circle 2(2), Mumbai it was informed by the AO of assessee that assessee company has received accommodation entries through two companies viz. Advanced Technology Ltd. and Yantra Natural Resources Ltd. As we have noted above the AO has made addition of entire Rs. 95 lakhs in the hands of assessee u/s. 68 of the Act concluded the reassessment proceedings and passing reassessment order on 31.12.2017. No other issue was picked up by AO for initiation of reassessment proceedings which could entitle the Ld. PCIT for alleging the reassessment order as erroneous and prejudicial to the interest of revenue. The impugned notice u/s. 263 of the Act as well as impugned revisionary order dated 28.03.2021 clearly reveals that the PCIT intended to revise reassessment order dated 31.12.2017 and he set aside the same by directing the AO to

conduct necessary verification enquiry and to make a fresh denovo assessment order. At this juncture it is relevant and appropriate to take respectful cognizance of the judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs Alagendran Finance Ltd. (supra), judgment of Hon'ble Bombay High Court in the case of Ashoka Buildcon Ltd vs ACIT (supra) and judgment of Hon'ble Madras High Court in the case of Indira Industries vs PCIT.

The Hon'ble Supreme Court in para 15 held as follows:-

*15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity.*

12. In view of above preposition of Hon'ble Supreme Court when we analyse the factual position of present case then we find that when the processed of return was completed u/s. 143(1) of the Act on 11.02.2011 and subsequently the AO initiated reassessment

proceedings calling the assessee to established genuineness of transaction with two entities, which was concluded by making addition u/s. 68 of the Act in the hands of assessee on 31.12.2017 and no issue was left un-adjudicated or adjudicated in favour of the assessee then the said reassessment order cannot be revised u/s. 263 of the Act by alleging the same as erroneous and prejudicial to the interest of revenue. So far as raising new issue by Ld. PCIT regarding other entities is concerned which was not subject matter of reassessment proceedings, then the limitation period of two years as per requirement sub section 2 of section 263 of the Act would reckoned or run from the date of original order which was passed on 11.02.2011 and not from subsequent reassessment order. Therefore as per preposition rendered by Hon'ble Supreme Court and various High Courts as noted above the initiation of reassessment proceedings to revise assessment order dated 11.02.2011 would reckoned from said dated would and on 31.03.2013 and beyond this period revisionary proceedings u/s. 236 of the Act is not permissible as being barred by limitation. Therefore in view of foregoing discussion we reach a conclusion that

the Ld. PCIT was not validly entitled to assume revisionary jurisdiction u/s. 263 of the Act to issue notice and to pass impugned order for alleging the same as erroneous and prejudicial to the interest of revenue. At the cost of repetition we again point out that when the Assessing Officer has initiated reassessment proceedings of two entities and made addition of entire amount then the purpose of reassessment proceedings was fully satisfied as the AO did not provide any relief to the assessee and taxed the entire amount picked by him for initiation of reassessment proceedings. So far as other entities are concerned the Ld. PCIT was entitled to initiate revisionary proceedings alleging the order dated 11.02.2011 is making as erroneous and prejudicial to the interest of revenue but the limitation period which was expired on 31.03.2013 does not permit the Ld. PCIT to invoke revisionary proceedings belatedly beyond prescribed time limit. Accordingly ground no. 7 of assessee is allowed and impugned revisionary order u/s. 263 of the Act is set aside being a nullity.

**Ground no. 4 & 5 read as follows:-**

4. *Learned Pr. Commissioner of Income Tax, Delhi-1, New Delhi, was not justified in holding that the assessment order*

*passed by Assessing Officer is erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income Tax and cancelling the aforesaid order and in directing the Assessing Officer to reframe the assessment.*

*5 That on the facts and circumstances of the case, the Learned Pr. Commissioner of Income Tax, Delhi-1, New Delhi, has not appreciated that the Assessing Officer has examined the issue and completed the assessment and thus the assessment order passed by Assessing Officer is not erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Income Tax.*

13. Apropos these grounds the learned counsel submitted that the reassessment proceedings u/s 147 of the Act were initiated based on information challenging the genuineness of receipts from two entities and in respect of both the entities the AO made addition u/s. 68 of the Act. However the learned PCIT in para 6.7 of impugned revisionary order held that the AO was not satisfied with the creditworthiness of all shareholders as well as vide order sheet entry dated 18.12.2017 asked the assessee company to furnish current date confirmation of all investor. The learned counsel submitted that the assessee during the reassessment proceedings duly furnished all necessary evidences to discharge onus cast upon the assessee as per requirement of section 68 of the Act, which is

available at page 20 to 332 of the assessee paper book and summary of evidences furnished by the assessee in the tabular form has been placed at pages 374 of assessee's paper book which is sufficient to establish identity of investors, their capacity and creditworthiness along with genuineness of transaction therefore the assessment order even on the other issues cannot be alleged as erroneous and prejudicial to the interest of revenue. The learned counsel submitted that the AO during reassessment proceedings called for details of other shares subscribers and the assessee company duly furnished details as desired by the AO which is available from pages 20 to 332 of assessee paper book. He further explained that the said evidences tabulated at pages 370 to 374 were duly verified and accepted by the AO as correct thus it is evident that the order passed by the AO cannot be termed to be erroneous as per provisions of section 263 of the Act, and various judgement of Hon'ble High Court including judgement of Hon'ble jurisdictional High Court of Delhi in the case of **CIT vs. Kelvinator of India Ltd. 12 taxmann.com 445 (Del)** and judgment of in the case of **CIT vs. DLF Ltd. reported as 350 ITR 555 (Del)**. The

learned counsel as also placed reliance on the judgments of Hon'ble Bombay High Court in the case of **CIT vs. Reliance Communication Ltd. 396 ITR 217 (Bom)** and **CIT vs. Nirav Modi 390 ITR 292 (Bom)**.

14. Replying to the above the learned CIT(DR) drawing our attention towards impugned notice and order u/s. 263 of the Act submitted that the assessment order was rightly alleged as erroneous and prejudicial to the interest of revenue as the shares were allotted by the assessee company as huge premium, the assessee was not able to discharge the onus which lay on it regarding the identity, creditworthiness of investor and genuineness of transaction, the documents submitted by the assessee were not sufficient to establish such requirement and the assessee was not able to furnish even the current date confirmation from the alleged investors. The learned CIT(DR) also pointed out that the notices issued u/s. 133(6) of the Act, two investors were returned and thus the identity of two entities/investor was only on the paper and they were not having any genuine existence. Therefore the revisionary order may kindly be upheld.

15. Placing rejoinder to the above the learned counsel of the assessee submitted that the learned PCIT has only examined the issue pertaining to two entities for which the AO has made addition of entire amount of Rs. 95 lakhs in the reassessment order. So far as other entities are concerned the learned PCIT without any examination of voluminous documentary evidences filed by the assessee before the AO during reassessment proceedings which was again filed before the learned PCIT was sufficient to discharge onus lay on the shoulders of assessee as per requirement of section 68 of the Act, and in such a situation the reassessment order cannot be alleged as erroneous and prejudicial to the interest of revenue in a particularly when the Assessing Officer after taking into consideration entire documentary evidences submitted by the assessee pertaining to all investors has taken a view and allowed taxing the two entities u/s. 68 of the Act. Therefore revisionary order deserve to be set aside on both the accounts that is on account of barred by limitation on account of sufficient and adequate enquiry by the AO and plausible view taken by the AO. The learned counsel also pleaded that the investments were made

during FY 2009-10 and the learned PCIT initiated revisionary proceedings by issuing notice on 09.02.2021 and in such a situation if one or two document could not be furnished due to lapse of time then without raising any doubt or dismissing the voluminous documentary evidence of the assessee. The assessment order cannot be alleged as erroneous and prejudicial to the interest of revenue especially when the AO has taken a plausible view excepting the explanation of assessee pertaining to other entities and taxing the two entities. In such a situation the learned PCIT is not entitled to invoked revisionary powers u/s. 263 of the Act.

16. On careful consideration of above submissions first of all we reiterate that while adjudicating ground no. 7 of assessee. We have recorded a conclusion that the impugned revisionary order setting aside the reassessment order dated 31.12.2017 as barred by limitation as the PCIT has ignored a very important fact that the AO to initiate reassessment proceedings to examine two entities has made addition in the hands of assessee u/s. 68 of the Act, pertaining to entire amount received by the assessee from two entities. Therefore if the learned PCIT proceeds to invoke revisionary

proceedings regarding other entities which were not subject matter of reassessment proceedings then the limitation as per requirement of sub section 2 of section 263 of the Act, will run from the date of first assessment order which was passed after process of return u/s. 143(1) of the Act on 11.02.2011. However if we further logically evaluate the impugned revisionary order passed by the learned PCIT u/s. 263 of the Act, then we all find that in para 6.3 the learned PCIT alleged that in some cases financial statements was not furnished. Further he alleges the copy of return of income was not furnished in any case and thereafter he further noted a contradictory stand that only copy of acknowledgment of ITR was furnished. In our humble understanding the assessee furnished all possible evidence under his command before the AO during the reassessment proceedings and also before learned PCIT during revisionary proceedings but without pointing out any particular defects and examination the learned PCIT proceeded to alleged the assessment order as erroneous and prejudicial to the interest of revenue. In the present case the Assessing Officer has called documentary evidences which was furnished by the assessee and

the Assessing Officer after being satisfied with the documentary evidence filed by the assessee found himself satisfied regarding other entities except two entities for which he made a addition in the hands of assessee u/s. 68 of the Act, which were also subject matter of initiation of reassessment proceedings. Therefore when the Assessing Officer has taken a plausible and sustainable view then the view taken by the AO cannot be alleged as erroneous and prejudicial to the interest of revenue. In the case of CIT vs. Kelvinator of India Ltd. the Hon'ble jurisdictional High Court of Delhi held that when Assessing Officer has adopted one courses permissible in law, where two views are possible and the AO has taken one view with which the learned PCIT does not agree, it cannot be treated as erroneous order prejudicial to the interest of revenue unless view taken by the AO is unsustainable in law. The similar view has been reiterated by Hon'ble jurisdictional High Court in its subsequent judgment in the case of CIT vs. DLF Ltd. (supra).

17. In view of foregoing discussion we are compelled to hold that when the Assessing Officer enlarging the scope of reassessment

proceedings from two entities to all entities and after considering and verifying the documentary evidences filed by the assessee has taken a causable view u/s. 68 of the Act, taxing the entire amount received by the assessee from two entities and accepting that the assessee has discharged onus as per requirement of section 68 of the Act, pertaining to other entities. In such a situation the learned PCIT is not empowered to invoke revisionary proceedings u/s. 263 of the Act, merely because he is not agree with the view taken by the AO thus, the assessment cannot be treated as erroneous and prejudicial to the interest of revenue unless he establishes that view taken by the AO is unsustainable in law. Therefore impugned revisionary notice, revisionary order u/s. 263 of the Act is hereby quashed being bad in law. Accordingly, grounds no. 4 & 5 of assessee are also allowed.

18. Since the learned representative of both the sides have not placed any arguments pertaining to other grounds of assessee and keeping in view conclusion recorded by us pertaining to ground no. 4, 5 & 7 of assessee, we do not find it necessary to dwell upon other grounds of assessee as having become academic.

19. In the result appeal of the assessee partly allowed.

Order pronounced in the open court on 11.04.2023.

Sd/-  
(B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated: 11<sup>th</sup> April, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi