

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.249/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Indospace Park Chakan 1 Phase 2A Private Limited, Office No.8 & 9, Pradeep Chambers, 813, Bhandarkar Road, Pune – 411 004, Maharashtra PAN : AADCR7199D	Vs.	Pr.CIT (Central), Pune
Appellant		Respondent

Assessee by Shri Ankit Gattani &
Ms. Shreya Aikal
Revenue by Shri Keyur Patel, CIT-DR
Date of hearing 20-06-2023
Date of pronouncement 21-06-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 03-01-2023 passed by the Pr.CIT under section 263 of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2018-19.

2. Pithily put, the factual matrix of the case is that the assessee is engaged in the business of developing and operating industrial and logistics park. The case of the assessee was selected for limited scrutiny on the ground of "Large share premium received

during the year”. During the course of assessment proceedings, the Assessing Officer (AO) required the assessee to furnish necessary details through ITBA portal in respect of share premium received. In response, the assessee furnished its reply along with the details electronically stating that during the year under consideration, it issued 1554 Equity shares of face value of Rs.10/- to Rohan Builders and Developers Pvt. Ltd. at Rs.6,526.96 per share. In addition, 8406 Equity shares of face value of Rs.10/- were issued to Indospace Ventures II, a company incorporated in Mauritius, also at Rs.6,526.96 per share. All the necessary details in respect of the share transactions, namely, Income-tax returns, Bank statements, Share Valuation Certificates, Share Certificates and justification for the quantum of share premium were furnished before the AO. It was also submitted that the assessee had *suo motu* offered to tax a sum of Rs.1,84,305/- u/s.56(2)(viib) of the Act, being, excess amount received on allotment of shares *vis-à-vis* the fair market value in the case of shares allotted to Rohan Builders and Developers Pvt. Ltd. As regards the allotment of share to Indospace Ventures II, the assessee submitted that this company was a non-resident and hence, the provisions of section 56(2)(viib) of the Act were not

applicable. After examination of all the details/documents and verification of the facts, the AO got satisfied and completed the assessment u/s.143(3) of the Act on 17-02-2021 determining total income at Rs.11,99,000/-, being, the same amount as was offered for taxation. The Id. PCIT, on perusal of the record, observed that the AO merely accepted the assessee's contention by reproducing the same in the assessment order. In his opinion, no analysis whatsoever was done on the submissions made by the assessee. He further observed that the valuation report of KCPL and Associates LLP contained value at Rs.1,591.94 per share under the Net Asset Value – Book value method and at Rs.6,408.36 under the Discounted Free Cash Flow (DFCF) method. Such latter value was determined on the basis of projected cash flow for the period 01-10-2016 to 30-06-2018. He observed that the cash flow statement was based on the estimates provided by the assessee company. In his opinion, the AO did not verify the justification for excess share premium and there were no follow up queries. He, therefore, held the assessment order to be erroneous and prejudicial to the interest of the Revenue. Consequently, he set-aside the assessment order and directed the AO to frame the assessment afresh after applying his mind.

Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

3. We have heard the rival submissions and gone through the relevant material on record. The assessee issued right shares to its two existing shareholders, namely, Rohan Builders and Developers Pvt. Ltd. and Indospace Ventures II, Mauritius. The shares with face value of Rs.10/- each were issued at Rs.6,526.96 per share. Such amount was worked out on the basis of the valuation report, determining the value of each share at Rs.6,408.36. The difference between the value determined in the valuation report at Rs.6,408.36 per share and the issue price of Rs.6,526.96 per share, to the extent of shares issued to the resident shareholder, was *suo motu* offered for taxation u/s 56(2)(viib). Since the case was selected under limited scrutiny for verifying the higher amount of share premium, the AO raised queries in this regard, which were properly answered by the assessee. A copy of the AO's notice dated 23-09-2019 issued u/s 143(2) of the Act is available at page 1 of the paper book, through which the necessary details in respect of share premium were called for. The assessee furnished relevant details, firstly, on 03-10-2019 and then, on 10-01-2020. Copy of replies have been

placed at pages 5 and 6 onwards of the paper book. Notice u/s 142(1) was issued by National e-Assessment Centre on 09-11-2020 seeking details of share premium, such as, Name and address of the shareholders; PAN of the shareholders; Face Value and Premium on each share; Number of shares allotted to each shareholder; Total value of the shares allotted to each shareholder; and Payment received from each shareholder during the financial year. The assessee was further required to furnish documentary evidence to substantiate the Identity and Income-tax returns of the shareholders along with the valuation report. The assessee replied on 24-11-2020, whose copy is available at page 10 onwards of the paper book, submitting details with respect to fresh issue of Equity shares during the year. The details included Name and Address of the shareholders; PAN Numbers; Face Value; Premium on each share; No. of shares allotted; Total value of shares allotted; and Premium received from each shareholder. The assessee also furnished documentary evidence, such as, Income-tax returns, Audit report of the parties, Bank statements etc. to substantiate the Identity and Creditworthiness of the share-applicants as well as proof of genuineness of the transactions. The assessee also supplied a copy of valuation report to the AO

and justification for quantum of share premium on issue of equity shares. Thereafter, the assessee also discussed applicability of section 56(2)(viib) on the issue of shares by the company by stating that this section applied only to the residents and not to the non-residents. In that view of the matter, the transaction with Indospace Ventures II, Mauritius was claimed to be outside the purview of section 56(2)(viib) of the Act. The assessee also placed on record computation of working of earning per share and share premium. All the necessary documents and evidence in this regard were enclosed with such letter. The assessee also submitted before the AO the valuation report submitted by KCPL and Associates LLP, whose copy is available at page 19 onwards of the paper book, computing the value of Equity shares of the company under NAV - Book Value method at Rs.1,591.94 per share and under the DCFC method at Rs.6,408.36 on the basis of projected cash flow statements for the period 01-01-2016 to 30-06-2018. It is on the basis of such detailed submissions made before the AO that the Officer got convinced. After discussing the relevant issue in the assessment order, the AO did not choose to make any addition on this count. The ld. PCIT made out a case for revision on the ground that the AO failed to conduct enquiries,

examine and verify the reasonableness of the share premium. That is how, he held the assessment order to be erroneous and prejudicial to the interest of the revenue. In opposition, it is evident from the assessment order passed u/s.143(3) of the Act that the AO did call for all the necessary details, which were duly submitted by the assessee. The AO got satisfied with such a detailed information submitted by the assessee and recorded:

“After examination of details/documents and verification of the facts, vis-à-vis reason for scrutiny, returned income is accepted”.

It is palpable that there is an apparent contradiction between the view point of the Id. PCIT about the AO not conducting any enquiry to examine and verify the reasonableness of share premium and the point of view of the AO getting satisfied about the amount of share premium after examination of details/documents. However, such contradiction does not require any specific resolution as the key to the contradiction is evident from the above discussion about the AO conducting thorough enquiry, seeking necessary details, getting the information and then getting satisfied about the appropriateness of the amount of share premium.

4. Proceedings u/s.263 can be invoked when the assessment order is erroneous and prejudicial to the interest of the Revenue. In the present context, there can be two broad situations, viz., one, where the AO does not initiate the taking up of an issue which apparently requires consideration at his end during the course of the assessment proceedings or where he initiates and seeks information but the assessee fails to supply the same and still the claim of the assessee gets accepted; and two, where the AO initiates the taking up of the issue which requires consideration at his end by calling for necessary details from the assessee and such details are also filed by the assessee. The second situation can have further two sub-situations, viz., one, where the assessee files reply and the AO allows the claim silently without considering the necessary material filed by the assessee or without making any discussion in the assessment order and two, where the assessee files reply and the AO decides the issue expressly after properly considering the merits by dealing with the issue in the assessment order. There is no bar on revising an assessment order at the threshold on the ground that the AO did not make proper verification in the first broad situation. However, in the second sub-situation of the second situation, where the assessee justifies

his claim by filing necessary evidence and the AO, on examination of such evidence, gets satisfied and allows the claim after discussing the issue in the assessment order, the revision can be validly done only by pointing out distinctively where the AO went wrong in allowing the claim and how the action of the AO was erroneous and prejudicial to the interest of the Revenue. Revision in such circumstances cannot be ordered simply by saying that the AO failed to make proper enquiry and thereafter directing the AO to make necessary verification. Unlike the first situation, the Pr. CIT needs to expressly set up a case that the view taken by the AO was erroneous, which caused prejudice to the revenue. Simply saying that the AO did not apply his mind to the issue, without elaborating the flaws in the approach of the AO, does not clothe the Pr. CIT to revise the assessment order.

5. The Id. DR relied on the judgment in *PCIT vs. Trimex Fiscal Service Pvt. Ltd. (2022) 449 ITR 407 (Cal)* to justify the revisionary order. In our opinion, this judgment does not advance the case of the Revenue. It was a case in which the revisionary order was upheld when the relevant information was not filed by the assessee before the AO. This transpires from para 3 of the judgment, recording that: `the assessing officer has not verified

the computation of fair market value of the shares *since relevant and tangible material was not placed before the assessing officer by the assessee during the course of assessment proceedings under section 143(3) of the Act.* This deciphers that the case of *Trimex (supra)* falls within the first situation discussed above of the AO having not made any enquiry on the relevant issue or the assessee not supplying the relevant information and still the claim getting accepted. In such a situation, there can be no fetters on the Pr. CIT to revise the assessment order by holding the AO failed to make proper verification. However, the extant case falls in the second sub-situation of the second situation discussed *supra*, where the AO did initiate the taking up of the issue of share premium, which was properly replied by the assessee furnishing all the necessary details including the particulars of the shareholders and valuation report etc. and the AO accepting the claim by expressly getting satisfied with a specific mention of the same in the assessment order. At this juncture, it is pertinent to mention that the share premium was realized by the assessee from the existing shareholders on right issue of shares. Further, it is nobody's case that either the assessee or the shareholders are penny stock companies. The AO having received and considered

the relevant details and passed a speaking order, could have been subjected to revision only on specifically pointing out the mistake in the assessment order. *Au contraire*, the Id. PCIT proceeded on incorrect assumption of fact that: 'the AO, while framing assessment failed to conduct enquiries to examine and verify the reasonableness and genuineness of share premium receipt of Rs.1,01,27,356/- from M/s Rohan Builders ...as the claim of share premium receipt of Rs.1,01,27,356/- has been allowed without verification & examination'. This assertion is contrary to the record inasmuch as the AO did conduct enquiries and the necessary details/evidence were also filed by the assessee, whose copies have been placed on record. Then, at the end of the revisionary order, the Id. PCIT has reiterated the above incorrect assumption of fact: 'The AO, while framing assessment, has failed to conduct enquiries to examine and verify the issues involved and the AO has failed to apply his mind and verify the issues involved'. It is explicitly manifest that the Id. PCIT, except for harping on the fact that the AO did not make proper enquiry, which is factually incorrect, failed to specifically point out where the AO went awry, thereby failing the first jurisdictional condition of showing the assessment order to be erroneous. On

the contrary, we are confronted with a situation in which the AO did make enquiry and the assessee also furnished replies along with the necessary evidence, which were duly examined by the AO before accepting the genuineness of the transaction. In such circumstances, it was incumbent upon the Id. PCIT to specifically point out where the AO went wrong in accepting the assessee's explanation. His action in generalizing the issue to the effect that the AO failed to make enquiry to examine and verify the reasonableness and genuineness of share premium, cannot be accorded our imprimatur when all such details were already on record and examined by the AO. If the view point of the Id. PCIT is approved, it would give a licence to Pr. CITs to revise any assessment order in the second situation category cases without first satisfying the jurisdictional condition of showing the defect in the approach of the AO in accepting the assessee's claim.

6. Here is a case in which the assessee issued shares with face value of Rs.10/- at a price of Rs. 6,526.96 per share. The shares were right issued to the existing shareholders. The assessee justified the receipt of share premium at this level with the help of report of a valuer. Such report was drawn on 05-12-2016, when the assessee issued shares at the same amount of premium in the

immediately preceding assessment year 2017-18 to Indospace Ventures II, Mauritius. Assessment for the A.Y. 2017-18 was completed u/s.143(3) without casting any doubt or aspersion over the reasonableness of the amount of premium charged on the shares. It is the same amount of premium which has been charged by the assessee during the year under consideration on fresh issue of shares within a gap of six months from the last issue of shares, that has been doubted by the ld. PCIT in the present case.

7. In view of the foregoing discussion, we are satisfied that the ld. PCIT was not justified in revising the assessment order passed u/s 143(3) of the Act. The revisionary order is hereby set aside and quashed.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 21st June, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 21st June, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr. CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	20-06-2023	Sr.PS
2.	Draft placed before author	21-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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