

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 659/Del/2021, A.Y. 2015-16

M/s. Aman Growth Fund Private Limited L-4, Green Park Extension New Delhi PAN : AAACA0525B	Vs.	Pr. CIT(Central), Delhi-2
Appellant		Respondent

Assessee by	Sh. Sahil Sharma, Adv. & Sh. Saurav Nandy, Adv.
Revenue by	Sh. Kanv Bali, Sr. DR

Date of hearing:	24.08.2023
Date of Pronouncement:	31.08.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 31.03.2021 of Pr.CIT(Central), Delhi-2 (hereinafter referred as Ld. PCIT or Revisional Authority) in Order No. ITBA/REV /F/REV5/2020-21/1032122527(1) arising out of an assessment order dated 28.08.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ACIT, New Delhi (hereinafter referred as the Ld. AO).

2. The assessment u/s 143 of the Act was completed on 28.08.2017 wherein declared return income was accepted however, Ld. PCIT was not satisfied with

the assessment order and re-examined the same for the purpose of Section 263 of the Act and concluded that during the previous year assessee had received shares of various companies in which the public are not substantially interested, for a consideration which was less than the aggregate fair market value (hereinafter referred to as FMV). In all, assessee had acquired 26 companies and in 20 instances the consideration paid was below the FMV of the property. Ld. PCIT observed that the Id. AO has failed to make the inquiries and based on information available. Ld. AO should have expanded the scope of assessment to convert the limited scrutiny into complete scrutiny. Accordingly, Ld. PCIT had directed the Id. AO to make fresh assessment keeping in mind the observations.

3. At the time of hearing, Ld. AR pointed out that the facts of the matter are completely identical to the group companies M/s. Nutan Growth Fund Pvt. Ltd. and in regard to the case of Nutan Growth Fund Pvt. Ltd., the matter has been considered by the Co-ordinate Bench at Delhi in ITA no. 658/Del/2021 for the same assessment year 2015-16 and the order u/s 263 was quashed. It was pointed out by Ld. AR that the Ld. AO and the Ld. PCIT in the case of assessee and also the other group entities including Nutan Growth Fund Pvt. Ltd. were same. He also provided that infact the orders are verbatim similar.

3.1 Ld. DR could not dispute the aforesaid fact but defended the impugned order.

4. The Bench has taken into consideration the order of Co-ordinate Bench in the case of Group entity Nutan Growth Fund Pvt. Ltd. order dated 28.02.2023 (supra). The background and the issues under dispute being same except for the entity involved, there is no reason to differ with the findings of Co-ordinate Bench. It will be beneficial to reproduce the relevant findings in para 19 to 32 as follows :-

“19. We have gone through the various infirmities viz.,

- That in the initial SCN dated 03.02.2020, Id. PCIT had placed reliance on the assessment order in the case of Rajsheela to hold that income had escaped assessment amounting to Rs. 135.11 Cr. under Section 56(2)(viib) on account of deemed dividend;
- That subsequently, Id. PCIT shifted its stand reflecting a mere change of opinion by issuing another SCN dated 17.03.2020 Rs. 106.78 crores had escaped assessment during the relevant AY. Pertinent to note that in the said SCN, Id. PCIT did not draw any reference to Rajsheela assessment order and also removed the specific reference to Section 56(2)(viib) of the Act and stated the generic and boarder provision of Section 56.
- Subsequently, in the order passed u/s 263, Id. PCIT states that the fate of the assessment in the case of Rajsheela was immaterial. The Id. PCIT categorically records and accepts that the details in respect of FMV were duly furnished during the course of assessment proceedings. Pertinent to note that contrary to the amount of Rs. 106.78 crores stated in the earlier notice (supra), PCIT states an arbitrary income escapement to the tune of Rs. 136.62 crores in the said order.
- That most importantly the Id. PCIT failed to appreciate that the AO had carried out a due inquiry within limited scrutiny parameters which reflected application of mind and hence the PCIT had no jurisdiction in passing a de novo assessment order as per settled law.

20. On the contrary to the above infirmities and lack of enquiry by the PCIT, a due enquiry was conducted by the AO during the course of assessment proceedings, reference is drawn to pages 3-4 of paper book wherein the AO vide notice dated 25.04.2017 issued u/s 142(1) of the Act put forward the following queries/examination during the assessment proceedings. The relevant excerpts reads as under:

"The case has been selected under CASS for a limited scrutiny. The reasons of selection are:

- i) Large share premium received during the year (verify applicability of section 56(2) (viib).*
- ii) Low income in comparison to very high investment.*

- iii) *Low income in comparison to high loans/advances/investment in shares.*
iv) *Large increase in investment in unlisted equities during the year.*

Please furnish explanation regarding the above reasons of selection."

21. In response, Assessee vide submission dated 21.08.2017 (refer page 101 of Paper book) stated that in pursuance to the discussion in relation to the ongoing assessment proceedings, Assessee has submitted details of source of investment, copy of ledger account along with bank statements of the concerned parties. Furthermore, the Assessee also provided a copy of the valuation report under Rule 11UA depicting the FMV of investments made in unlisted shares and supporting balance sheet of the relevant companies. Therefore, it is clearly evident that AO has undertaken an inquiry within the parameter of the scrutiny which involved examination of the FMV of investment in unlisted equity shares, and hence it cannot be said that there was any absence of an inquiry resulting in invocation of Section 263 in the instant matter.

22. A detailed chart in relation to date wise notices and responses which represents detailed inquiry and due application of mind by the AO is as under:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Date of issue/sub mission</i>	<i>Description</i>	<i>Paper book</i>
1.	Notice issued u/s 142(1)	25.04.2016	Detailed questionnaire	2-4
2.	Reply to notice	20.07.2017	Written submission filed to duly comply with information requested	5-100
3.	Reply in response to ongoing assessment proceedings	21.08.2017	Written submission containing valuation report under Rule 11UA, chart of FMV of investments, audited accounts.	101-454
4.	Assessment order passed u/s 143(3)	28.08.2017	Order sought to be revised by PCIT u/s 263 of the Act	

"23. Therefore, on the basis of the above notices and responses thereof, the PCIT has failed to appreciate that a due inquiry and application of mind was in fact exercised by the AO to arrive at its conclusion that no income had escaped assessment.

24. At this juncture, it is crucial to note that the PCIT in its impugned order, contrary to the above stated facts, made the observation that even when the assessee had submitted details of FMV of the shares in question, showing that there was no income arising there from. The AO had examined and accepted the same, there was no error in the Assessment Order to that extent.

25. We find that the Id. PCIT has failed to consider that Section 263 of the Act vests revisionary power in a superior officer and, therefore by the very inherent nature of such power, it does not allow for substitution of the view taken by the AO. The appreciation of the material placed on record before the AO is exclusively within the four corners of its domain and it cannot overlap with exercising revisionary powers under Section 263 of the Act, on the ground that the AO should have arrived at a different conclusion basis the material on record.

26. Reliance is being placed on the judgment of Hon'ble Delhi High Court in PCIT vs. M/s. Brahma Centre Development Pvt. Ltd (ITA No.116 & 118/2021) dated 05.07.2021, wherein the High Court has laid down that the benchmark to be adopted whilst dealing with the issue as to whether or not an AO has carried out enquiry or verification, all that the Court is required to ascertain is whether AO applied his mind. Relevant para reads as under:

"10. The standard to be adopted while dealing with the issue as to whether or not an AO has carried out an enquiry or verification, all that the Court is required to ascertain is as to whether the AO applied his mind.

10.1. The fact that the AO has not given reasons in the assessment order is not indicative, always, of whether or not he has applied his mind. Therefore, scrutiny of the record, is necessary and while scrutinizing the record the Court has to keep in mind the difference between lack of enquiry and perceived inadequacy in enquiry. Inadequacy in conduct of enquiry cannot be the reason based on which powers under Section 263 of the Act can be invoked to interdict an assessment order."

27. Further reliance is placed on the decision of Delhi High Court in CIT v Sunbeam Auto Ltd 332 ITR 167, wherein the jurisdictional Delhi High Court held as under:

"12. We have considered the rival submissions of the counsel on the other side and have gone through the records. The first issue that arises for our consideration is about the exercise of power by the Commissioner of Income-tax under section 263 of the Income-tax Act. As noted above, the submission of learned counsel for the revenue was that while passing the assessment order, the Assessing Officer did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the Assessing Officer had not applied his mind on the issue. There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. Learned counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in cases of "lack of inquiry", that such a course of action would be open."

28. Further, we find that the case of the Assessee is squarely covered by the coordinate bench decision in the case of *Pawansuit Media Services vs. PCIT* (ITA No.534/Del/2021) wherein on near identical facts, the Tribunal quashed the revisionary order u/s 263 of the Act.

29. In that case, the *Id. PCIT* intervened and invoked Section 263 to hold that the issue of applicability of Section 56(2)(viiia) was not examined by the AO. The Tribunal following the various jurisdictional Delhi High Court decisions held that the AO within the parameter of scrutiny had undertaken a due inquiry which reflected application of mind, and hence the *Id. PCIT* order setting aside the assessment order was quashed.

30. The instant case of the Assessee is also akin to the decision of the Delhi Tribunal in *Pushp Steel and Mining Private Ltd. vs. PCIT* (ITA No.811/Del/2021) dated 22.12.2021 has followed the decision of Delhi Tribunal to quash revisionary order u/s 263 of the Act. Relevant excerpts are as under:

"14.It is an undisputed fact that during the year under consideration assessee had made Investment in 2500 equity shares of Mukund Coalfields Pvt. Ltd. @ Rs. 10 per share. (Investment Rs. 25,000/-) and Investment in 7,70,000 equity shares of Indian Steel & Power Pvt. Ltd. @ Rs. 10 per share (Investment Rs. 77,00,000/-). We find that to examine the issue for which the case of the assessee was selected for limited scrutiny, notice u/s 143(2) and 142(1) of the Act was issued by AO along with questionnaire and the assessee was also asked to submit the various details contained therein. The paper book filed by the assessee reveals that in response to the notice issued by AO, assessee had made submissions on various dates wherein assessee had interalia filed the details of the shares purchased, from whom the shares were purchased, copies of bank account evidencing payment to sellers, contract note for purchase note, computation of the book value of shares that were purchased. In view of the aforesaid facts we are of the view that AO had applied his mind to the information and details furnished by the assessee and after considering the information, the AO did not proceed to make any addition on account of purchase of unlisted equity shares, which according to us is a possible view. Further, before us, no material has been placed by the Revenue to demonstrate that the view taken by the AO was wholly unsustainable in law or the AO has not examined the issue which he was required to examine in a limited scrutiny matter. Further, it is a settled law that the order of the AO cannot be branded as erroneous if the Commissioner is not satisfied with the conclusion arrived by the Assessing Officer. The order can be brought within the purview of an erroneous order only if it involves an error by deviating from law or upon erroneous application of the legal principle. It is a settled law that the power of revision can be exercised only where no inquiry as required under the law is done and it is not open to enquire in cases of inadequate inquiry. In the present case, as noted above, the AO had raised various queries and the same were also replied by the Assessee. In such a situation it cannot be said that there was lack of inquiry from the end of AO."

31. After going through the entire factum of the examination of the pertinent issues and after examining the Explanation 2 to Section 263, submission of the Id. DR, ratio given by the Id. PCIT to treat the Assessment Order as erroneous so far it is prejudicial to the interest of the Revenue in the present case is concerned, we are of the view that the revisionary powers so conferred cannot be exercised to invalidate the action of AO and the Ld. PCIT was not justified in invoking the provisions of Section 263 of the Act to set aside the assessment order passed

by AO u/s 143(3) of the Act. Ergo, the order of Id. PCIT passed u/s 263 is hereby quashed.

32. In the result, the appeal of the assessee is allowed."

5. Very apparently in the impugned order the Ld. Pr CIT has approached the issue with very general observations of the transactions so as to cover the group cases together. Thus the aforesaid conclusion of Coordinate Bench squarely applies qua the facts in the present appeal. Therefore the findings of the Id. Ld. PCIT, that assessment order was erroneous and prejudicial to the interest of Revenue cannot be sustained. Grounds are sustained. **Accordingly, the appeal of assessee is allowed** and the impugned order of Ld. Pr.CIT u/s 263 of the Act is quashed.

Order pronounced in the open court on 31st August, 2023.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-31st.08.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI