

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1223/DEL/2023 [A.Y. 2018-19]

Karamveer Electronics Ltd  
Railway Road, Kishan Flour Mills  
Compound, Meerut

Vs.

The Pr. C.I.T.  
Ghaziabad

PAN - AAACK 7606 D

(Applicant)

(Respondent)

Assessee By : Shri Devashish Bhadauria, Adv  
Shri Shamsheer Singh, Adv

Department By : Shri Subhra Jyoti Chakraborty, CIT-DR

Date of Hearing : 30.01.2024

Date of Pronouncement : 05.02.2024

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the  
ld. PCIT, Ghaziabad dated 21.03.2023 pertaining to A.Y. 2018-19.

2. The sum and substance of the grievance of the assessee is that the PCIT erred in assuming jurisdiction u/s 263 of the Income-tax Act, 1961 [the Act, for short], and holding that the assessment order dated 18.03.2021 framed u/s 143(3) of the Act is not only erroneous but also prejudicial to the interest of the revenue.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee filed its return of income electronically on 29.09.2018, declaring total income of Rs. 73,88,620/-. Return was selected for limited scrutiny and, accordingly, statutory notices were issued and served upon the assessee. Reason for scrutiny selection was issue of share premium.

5. Returned income was assessed as such vide order dated 18.03.2021. Assuming jurisdiction conferred upon him, the PCIT issued notice dated 14.02.2023. Notice is exhibited at pgs 20 to 24 of the PB.

6. The sum and substance of the notice assuming jurisdiction u/s 263 of the Act relates to the valuation of goodwill worked out by the

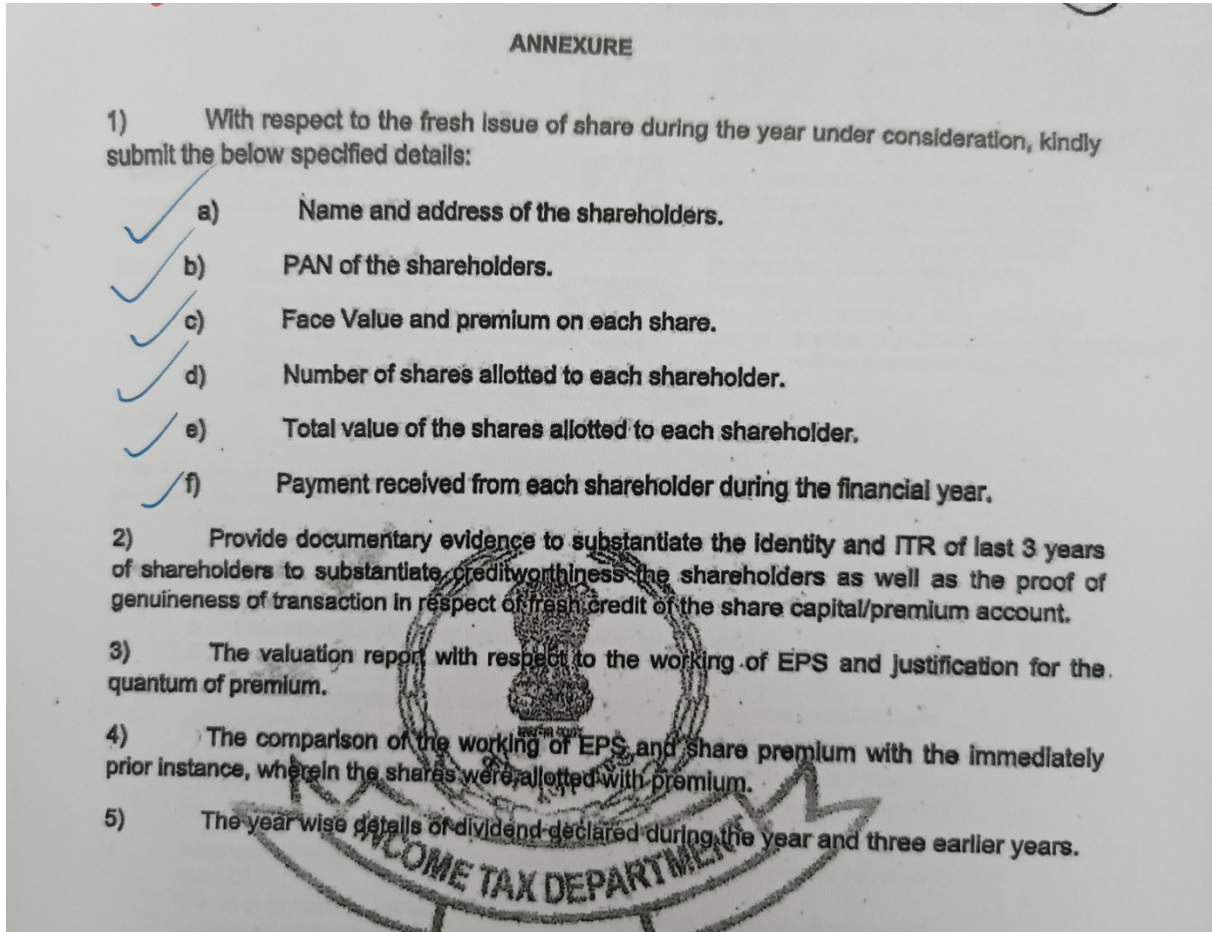
assessee by taking net profit for the A.Ys 2015-16, 2016-17 and 2017-18 and estimated net profit for the future year, i.e, 2018-19 and 2019-20.

7. The Id. PCIT was of the strong belief that the assessee has over valued its goodwill, thereby over valuing the fair market value of shares in view of Explanation 2(a) to section 56(2)viib of the Act. The PCIT was further of the strong belief that excess amount received for 3000 shares should have been disallowed and added to the total income of the assessee u/s 56(2)viib of the Act.

8. The assessee filed detailed reply to the observations made by the PCIT, which were dismissed by the PCIT, who treated the assessment order dated 18.03.2021 as prejudicial to the interest of the revenue, holding that the Assessing Officer failed to examine the case on account of valuation of goodwill to arrive at fair market value of existing equity shares.

9. We have given thoughtful consideration to the orders of the Id. PCIT. We find that the return of income was selected for limited scrutiny for issue of share premium. Notice u/s 142(1) of the Act served upon the assessee during the course of original assessment proceedings was accompanied by a questionnaire, which reads as

under:



10. The assessee filed a detailed reply which is exhibited at pages 7 to 17 of the paper book. We find that the assessee has given complete detail of valuation of share premium.

11. Calculation of fair market value of equity shares was furnished as under:

ANNEXURE BCalculation of Fair Market Value of Existing Equity Shares as on 31.10.2017 according to Rule No.11 UA (1) (c) (b) of Income Tax Rules

1. As per rules Formula of calculation of Fair Market Value (FMV) of Unquoted Equity Shares is as under –

$$\text{FMV} = (\text{A} + \text{B} + \text{C} + \text{D} - \text{L}) \times (\text{PV}) / (\text{PE})$$

Where :

- A = Book value of all assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet;
- B = The price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;
- C = Fair market value of shares and securities as determined in the manner provided in this rule;
- D = The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;
- L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:-
- (i) the paid-up capital in respect of equity shares;
  - (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
  - (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
  - (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
  - (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
  - (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV = the paid up value of such equity shares;

PE =total amount of paid up equity share capital as shown in the balance sheet;]

- (c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.]

Contd....2

: 2 :

2. Based on above formula Calculation of Fair Market Value of Equity Shares based on Financial Statement as on 31.10.2017 is as under -

(A)	Book Value of all Assets other than assets mentioned in (B), (C) & (D)		
	(1) Non Current Assets	14755755	
	Less : Immovable Property		
	(6681200 + 2738061)	9419261	5336514
		-----	
	(2) Current Assets		241890888
			-----
	TOTAL A		247227402
			-----
(B)	NIL		
(C)	NIL		
(D)	Stamp duty value of Immovable Property		
	(See valuation report enclosed in Annexure E)		
	(23142168 + 7340952)		30983120
			-----
	TOTAL D		30983120
			-----
(L)	Book Value of Liabilities –		
	Non Current Liabilities		54445975
	Current Liabilities		150953810
			-----
	TOTAL L		205399785
			-----
(PV)	Rs.100/-		
(PE)	Rs.3000000/-		

3. FAIR MARKET VALUE OF EQUITY SHARES AS ON 31.10.2017

$$\begin{aligned}
 \text{FMV} &= \frac{(A+B+C+D-L) \times 100}{3000000} \\
 &= \frac{\{(247227402 + 30983120) - 205399785\} \times 100}{3000000} \\
 &= \frac{72810737 \times 100}{3000000} = \text{Rs.2427 per share}
 \end{aligned}$$

HOWEVER ASSESSEE HAS NOT ISSUED SHARES ON THIS FAIR MARKET VALUE BECAUSE FAIR MARKET VALUE CALCULATED AS PER PROVISION OF Explanation (a) (ii) of Section 56(2) (viib) was greater than this FMV.

ANNEXURE CCalculation of Fair Market Value of Existing Equity Shares  
as on 31.10.2017 for Share Premium

1. Refer to Balance Sheet, Statement of Profit & Loss and Schedule of Fixed Assets as on 31.10.2017 which are enclosed as Annexure D

2. Refer to Annexure C-1 enclosed for valuation of Intangible Assets-Goodwill

3. Total Assets of company as on 31.10.2017- (Non Current + Current Assets)		Rs.256646663
Less : Cost of Land	6681200	
Cost of Building	<u>2738061</u>	<u>Rs. 9419261</u>
(See schedule of Fixed Assets)		Rs.247227402
Add : Stamp Duty value of Land & Building as per valuation already on file, again enclosed as Annexure <del>E</del> E.		Rs. 30983120
		-----
		Rs.278210522
Value of Intangible Assets as per Annexure C-1		Rs. 20269285
		-----
		Rs.298479807
Less : Non Current Liabilities	54445975	
Current Liabilities	<u>150953810</u>	<u>Rs.205399785</u>
		-----
Total 3		Rs. 93080022
		-----

4. Calculation of FMV

Total 3 x amount paid up on each share  
Amount share capital

$$5. \frac{93080022 \times 100}{3000000} = 3102.66$$

$$6. \text{Share Issued for } = \text{Rs.3100/-}$$

12. The Goodwill was valued as under:

ANNEXURE C-1CALCULATION OF GOODWILL AS ON 31.10.2017

1. Goodwill has been calculated on the basis of 5 years purchase of Average Profit of five years out of which 3 years are past three years and two are next two years

2. Past Net Profit after tax of three years are as under -

	<u>Turnover</u>	<u>Net Profit</u>	<u>Total</u>
F.Y. 2014-2015	323000247	3414109	
F.Y. 2015-2016	279592024	3407953	
F.Y. 2016-2017	231374168	3147225	9969287

3. Future Net Profit after tax of next two years are estimated as under -

F.Y. 2017-2018			
Estimated Sales	360000000		
Estimated Profit after tax		5000000	
F.Y. 2018-2019			
Estimated Sales	390000000		
Estimated Profit after tax		5300000	10300000

4. Total Profit of 5 years - 20269285

5. Average of 5 years

Total 4+5  
20269285+5 4053857

6. Value of Good will :

Total 5 x 5 20269285

Note on Valuation of Good will

- Goodwill has been valued at 5 years purchase of Net Profit after tax out of which 3 years has been taken as per actual profit of preceding three years and 2 years has been taken as future profit of F.Y.2017-18 and next year i.e. F.Y. 2018-19.
- Sales of F.Y. 2017-2018 and F.Y. 2018-2019 has been estimated on the basis of purchase order in hand of assessee (Copies are enclosed as Annexure C-2)
- Net Profit after tax of F.Y. 2017-2018 and 2018-2019 has been estimated on the basis of past performance taking into account of variable and fixed cost.
- In fact, Assessee meet out the amount of projected sales and net profit after tax for F.Y. 2017-2018 and F.Y. 2018-2019. Audited Statement of Profit and Loss of F.Y. 2017-2018 and F.Y. 2018-2019 are enclosed for verification as Annexure C-3.
- Actual Audited P & L account of Assessee for F.Y. 2014-2015, 2015-2016 and 2016-2017 are also enclosed for verification as Annexure C-4.
- Valuation of good will which is thus very realistic has been taken for calculation of Fair Market Value of Existing Equity Shares.

Assessee

( )

13. Certificate of the Chartered Accountant reads as under:

**CERTIFICATE**

This is to certify that we have checked attached statement showing Calculation of Goodwill of Karamveer Electronics Ltd. as on 31.10.2017 from the records produced before us and certify that from above calculation based on assumptions given in notes value of Goodwill of Karamveer Electronics Ltd. is Rs.20269285/- (Rupees Two crore two lacs sixty nine thousand two hundred eighty five only)



31 OCT 2017

For KKJ & ASSOCIATES  
Chartered Accountants

(C.A. K.K. JAIN)  
Partner  
M.No.:071281

14. Thus, it can be seen that to the specific queries raised during assessment proceedings, the assessee has filed point-wise reply supported by documentary evidences.

15. A perusal of the assessment order, when considered with the statutory notice issued u/s 142(1) and 143(2) of the Act, along with the

questionnaire clearly shows that the Assessing Officer has made enquiry in respect of issue of shares.

16. In the light of the afore-stated facts the Hon'ble Supreme Court in Malabar Industrial Co. Ltd., 243 ITR 83, has laid down the following ratio:

"A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent--if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-- recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous".

17. The Hon'ble Bombay High Court in the case of Gabriel India Ltd 203 ITR 108 has held as under:

"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous judgment" means "one rendered according to course and 8 practice of court, but contrary to law, upon mistaken view of law; or upon erroneous application of legal principles". 12. From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualised where the Income-tax Officer while making an assessment examines the accounts, makes enquiries,

applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled. There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. We, therefore, hold that in order to exercise power under sub-section (1) of section 263 of the Act there must be material before the Commissioner to consider that the order passed

by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the 10 record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision. Exercise of power of suo motu revision under such circumstances will amount to arbitrary exercise of power. It is well-settled that when exercise of statutory power is dependent upon the existence of certain objective facts, the authority before exercising such power must have materials on record to satisfy it in that regard. If the action of the authority is challenged before the court it would be open to the courts to examine whether the relevant objective factors were available from the records called for and examined by such authority. The Income-tax Officer in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part of the record of the case. Evidently, the claim was allowed by the Income-tax Officer on being satisfied with the explanation of the assessee. Such decision of the Income tax Officer cannot be held to be "erroneous" simply because in his order he did not make an elaborate discussion in that regard. Moreover, in

the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the Income- 11 tax Officer to re-examine the matter. That, in our opinion, is not permissible. Hence the provisions of section 263 of the Act were not applicable to the instant case and, therefore, the commissioner was not justified in setting aside the assessment order."

18. It is a settled position of law that powers u/s 263 of the Act can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by

the decision of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 Taxmann.com 272 (Bombay)".

19. The Hon'ble High Court of Gujarat in the case of CIT vs. Nirma Chemical Works Ltd. 309 ITR 67 has observed as under:

"if assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment order. In this case, during the assessment proceedings for both the Assessment Years, the Assessing . A.Y. 2009-10 Officer issued a query memo to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the creditworthiness/capacity of the donors, the source from where these funds have come and also the creditworthiness/ capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Order passed thereon. Thus, this objection on the part of the Revenue cannot be accepted."

20. We find that the Hon'ble Delhi High Court in the case of CIT Vs Sunbeam Auto reported in 332 ITR 167 has held as 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 CIT under s. 263 of the IT Act. As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the AO 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 AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessing 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 14 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 CIT to pass orders under s. 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".

21. Considering the facts of the case in totality, in light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the assessment order which could make it erroneous and prejudicial to the interest of the revenue. Therefore, we set aside the order of the PCIT dated 21.03.2023, and restore that of the Assessing Officer dated 18.03.2021.

22. In the result, the appeal of the assessee in ITA No. 1223/DEL/2023 is allowed.

The order is pronounced in the open court on 05.02.2024.

Sd/-

[SAKTIJIT DEY]  
VICE PRESIDENT

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 05<sup>th</sup> FEBRUARY, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	