

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

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.903/Del/2020
Assessment Year: 2014-15

Adit Infrapower & Multitrading
Pvt. Ltd.,
DA-08, 2nd Floor, Vikas Marg,
Shakarpur,
New Delhi.

Vs ITO,
Ward-1(3),
Gurgaon.

PAN: AAHCA5582H

(Appellant)

(Respondent)

Assessee by	: None
Revenue by	: Shri Aasish Mohanty, CIT-DR
Date of Hearing	: 30.11.2023
Date of Pronouncement	: 28.02.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the assessee against the order dated 10.12.2019 of the Assessing Officer, Ward 1(3), New Delhi (hereinafter referred to as 'the ld. AO') u/s 263/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') arising out of the order of the Pr.

Commissioner of Income Tax (Appeals)-4, New Delhi (hereinafter referred to as the Ld. PCIT) dated 30.03.2019 u/s 263 of the Act.

2. The facts, in brief, are that the assessee filed its return of income declaring an income of Rs.1,49,470/- on 27.09.2014. The case was assessed u/s 143(3) of the Act at an income of Rs.1,49,470/- on 08.12.2016 by ITO, Ward 1(1), Gurgaon. After examining the records, the ld. PCIT, Gurgaon, passed an order u/s 263 of the Act on 30.03.2019 vide which it examined the issue that during the year under consideration, the assessee company had issued total 1000000 Compulsorily Convertible Debentures at Rs.249 per share/debenture against the face value of Rs.10/- each and received premium of Rs.24,90,00,000/-. The AO was required to examine and verify the justification of share premium with regard to the FMV and creditworthiness of the subscriber to whom the said shares/CCDs have been allotted at premium. The AO had simply placed the submission on record without verifying the ITR of the subscriber from the concerned AO or issued any notice u/s 133(6) to cross verify the genuineness of the transactions. Hence, the assessment order passed by the AO was found erroneous and prejudicial to the interests of the Revenue. Vide the said order, the AO was directed to frame the assessment order afresh w.r.t. the applicability of section 56(viib)/68 of the Act after affording the assessee an opportunity of being heard.

3. As per the above directions of the Id. PCIT, the AO vide his order dated 10th December, 2019, passed a fresh assessment order making an addition of Rs.1,60,00,000/- to the returned income against which the assessee is in appeal before us raising the following grounds:-

“1) That having regards to the facts and circumstances of the case, Ld. AO has erred in law in making addition of Rs.1,60,00,000/- in the income of the assessee at the time of passing order u/s 143(3) r.w.s 147.

2) That having regard to the facts and circumstances of the case, the Ld. AO has erred in law in invoking jurisdiction while giving effect to the order of section 263 without giving opportunity of being heard to the assessee as assessee has a jurisdiction of Gurgaon, order u/s 143(3) passed by Ld. AO, Ward 1(1), Gurgaon, order u/s 263 passed by the Hon’ble Pr. Commissioner, Gurgaon but order u/s 143(3) r.w.s to 263 is passed by ITO, Ward 1(3), New Delhi.

3) That on the basis of facts and circumstances of the case, Hon’ble CIT has erred in law in invoking the section 263 on the mere basis of audit objections.

4) On the facts and circumstances of the case, the learned CIT has erred in law and facts ignoring the fact that the proceeding u/s 263 cannot be used for substituting opinion of the Id. AO by that of CIT.

5) That on the facts and circumstances of the case, the order passed by the learned Pr. Commissioner of Income Tax (CIT) under section 263 of the Act is non-application of mind of Hon’ble Pr. CIT as Hon’ble Pr. CIT is on the wrong facts i.e the assessee company has issued 10,00,000/- Compulsory Convertible Debentures (CCDs) at Rs. 249 per shares against face value of Rs. 10 each and received premium of Rs.24,90,00,000. But the correct facts are that assessee has issued 10,00,000 CCDs of face value of Rs. 10 at a premium of Rs. 10 and received Rs.2,00,00,000. These debentures has re-paid also after the year under consideration and not converted into the equity shares.

6) On the facts and circumstances of the case, the learned CIT has erred in law assuming jurisdiction under Sec 263 in the absence of twin condition of the order passed by the Ld. A.O being erroneous as well as prejudicial to the interest of the Revenue, being satisfied.

7) On the facts and circumstances of the case, the Ld. AO has erred in invoking the section 56(2)(viib) of the Income Tax Act and rule 11UA

of the Income Tax rules as this section is not applicable on the debentures. And also erred in law in rejecting the FMV calculation by the assessee on the basis of Discounted Cash Flows (DCF).

8) On the facts and circumstances of the case, the order passed by the learned CIT under section 263 of the Act is unsustainable as power to revise can be invoked in the case of lack on inquiry, not in the case of inadequate enquiry.

9) That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

4. Heard and perused the record. None has appeared on behalf of the assessee and the notices have been issued repeatedly. It is reported on the notice that ‘there is no such person at the address.’ Notices have also been issued by e-mail. No more opportunity is justified. The ld. DR has supported the orders of the ld. tax authorities below.

5. Appreciating the matter on record, it comes up that the assessment order dated 08.12.2016 u/s 143(3) does not have a word with regard to what was the nature of scrutiny assessment, what query, if any, were raised and based upon what material the returned income was accepted. The ld.PCIT has thoroughly examined the transaction of issuance of the shares/convertible debentures and found that the AO has not examined any aspect of the genuineness of this investment in the assessee company. In fact, in proceedings u/s 263 also none appeared for the assessee company. The record shows that in proceedings u/s 263/143(3) the AO had issued a notice on 31.03.2019 upon which the assessee

company had furnished replies on e-filing portal and considering the same the assessment order u/s 143(3)/263 has been passed making the addition. There is no material before us to draw a conclusion that the valuation taken by the assessee company was correct and there is no error in discrediting the DCF method adopted by the assessee company. Thus there is no error in invoking the provisions of section 56(2)(viib) of the Act r.w.r. 11UA(1)(c)(b) of the IT Rules by the AO. The ground raised in the appeal have no substance. **The appeal is dismissed.**

Order pronounced in the open court on 28.02.2024.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Dated: 28th February, 2024.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi