

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.2098/Del/2018
Assessment Year: 2013-14

Shring construction Company Pvt. Ltd., D-245, Nehru Colony, Haridwar Road, Dehradun	Vs.	ACIT, Circle-2, Muzaffarnagar
PAN :AABCR4560L		
(Appellant)		(Respondent)

Assessee by	Sh. Ankit Gupta, Advocate
Department by	Sh. T James Singson, CIT(DR)

Date of hearing	30.05.2024
Date of pronouncement	11.06.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

The present appeal has been filed by the assessee assailing the order dated 31.01.2018 passed under section 263 of the Income-tax Act, 1961 (In short 'the Act') by learned Principal Commissioner of Income Tax (PCIT), Muzaffarnagar, for the assessment year 2013-14.

2. Briefly the facts are, the assessee is a domestic company stated to be engaged in the business of civil contract works. For the assessment year under dispute, assessee filed its return of income on 30.09.2013 declaring income of Rs.59,14,000/-. Assessee's case was selected for scrutiny. In course of assessment proceedings, the Assessing Officer called upon the assessee to file various details/evidences along with books of account. In compliance, the assessee furnished books of account and other details called for. After examining the books of account and other details, the Assessing Officer completed the assessment making various additions, which resulted in determination of total income of Rs.2,13,48,460/-. The additions made by the Assessing Officer are as under:

<i>i.</i>	<i>Unexplained cash credit in the form of share application money received during the year</i>	<i>Rs. 58,90,0000/-</i>
<i>ii.</i>	<i>Disallowance under Section 40(a)(ia) of the Act</i>	<i>Rs. 20,21,879/-</i>
<i>iii.</i>	<i>Disallowance under Section 40A(3)</i>	<i>Rs.22,500/-</i>
<i>iv</i>	<i>Unexplained unsecured loan</i>	<i>Rs.75,00,000/-</i>

2. Against the assessment order so passed, the assessee filed appeal before learned first appellate authority. However, for the

purpose of present appeal, we are not concerned with that. Post completion of assessment, learned PCIT, in exercise of powers conferred under section 263 of the Act, called for and examined the assessment records. Upon examining the assessment record, learned PCIT was of the view that while completing the assessment, the Assessing Officer has not examined the case properly. Therefore, a notice under section 263 of the Act was issued pointing out the following errors in the assessment order, which made it prejudicial to the interest of Revenue:

- i. The assessee has authorized share capital of Rs.2.00 crores, against which Rs. 1.95 crore is paid up. Thus, the amount of shares available for issue was only Rs.5 lacs. Perusal of balance sheet reveals that as on 1.4.2012, share application money was pending for allotment of shares of Rs. 9.03 crores and as on 31.3.2013 same stood at Rs. 9.49 crores. In this way during the year under consideration the assessee had received an amount of Rs. 46 Lacs as share application money. The A.O. did not raise any query regarding pending share application money, particularly when the authorized share capital was of only Rs 2 crores, of which Rs. 1.95 crores was paid up and only Rs. 5 Lacs could have been issued. The provisions of Company Law were also not considered by the A.O.*
- ii. As per balance sheet, there is investment of Rs. 3.21 crores in shares of other companies. In the Profit & Loss a/c amount of Rs. 1.94 crores has been debited under the head "Finance Charges". Therefore, the provisions of section 144 were clearly applicable. The A.O. has allowed the interest claimed by the assessee without examining and invoking provisions of section 144 read with rule 8D.*

3. In response to the show-cause notice, the assessee furnished its reply objecting to initiation of proceedings under

section 263 of the Act. It was submitted by the assessee that in course of assessment proceedings, the Assessing Officer has specifically examined the issue of share application money received during the year and has, in fact, made addition on that account. Insofar as the second issue of disallowance under section 14A is concerned, the assessee submitted that since in the year under consideration, it has not earned any exempt income, no disallowance under section 14A could be made. The reply furnished by the assessee, however, did not find favour with learned PCIT. Ultimately, she passed an order, purportedly, under section 263 of the Act setting aside the assessment order with a direction to pass a fresh assessment order in accordance with the provisions of law.

4. Before us, learned counsel appearing for the assessee reiterated the stand taken before the revisionary authority. Drawing our attention to the balance-sheet for the year ended 31.03.2013, learned counsel submitted, in the year under consideration, the assessee has received fresh share application money, amounting to Rs.58,90,000/- from three persons. Drawing our attention to the assessment order, he submitted, the

entire shares application money received during the year has been added by the Assessing Officer. Thus, he submitted there is no prejudice caused to the Revenue.

5. As far as the issue of disallowance under section 14A is concerned, learned counsel submitted, since, the assessee has not earned any exempt income during the year; there is no question of disallowance under section 14A of the Act. Thus, he submitted, exercise of revisionary jurisdiction under section 263 of the Act in the present case, is invalid.

6. Learned Departmental Representative relied upon the observations of learned PCIT.

7. We have considered rival submissions and perused the materials on record. As discussed earlier, learned PCIT has considered the assessment order to be erroneous and prejudicial to the interest of Revenue on two counts. Firstly, the Assessing Officer has not raised any query regarding the share application money received during the year as well as the pending share application money. Secondly, the Assessing Officer has not examined applicability of section 14A of the Act.

8. On perusal of the assessment order, it is observed that the Assessing Officer has specifically inquired the issue of share application received during the year, being an amount of Rs. 58,90,000/-, from three persons. After examining the issue in the context of facts and materials brought on record, he has held such share application money to be non-genuine and added under section 68 of the Act. Therefore, the allegation of learned PCIT that the Assessing Officer has not examined the issue of share application money is contrary to the facts and materials available on record.

9. When the Assessing Officer has added the entire fresh share application money received during the year, neither there can be error in the assessment order, nor it can be prejudicial to the interest of Revenue.

10. Insofar as applicability of section 14A is concerned, the fact that the assessee has not earned any exempt income during the year, has not been controverted by the Revenue. That being the case, as per the settled legal principles, provisions of section 14A are not applicable. Thus, viewed in the aforesaid perspective, the issues, on which learned PCIT invoked powers under section 263

of the Act, are really not issues on which the assessment order can be held to be erroneous and prejudicial to the interest of Revenue.

11. In view of the aforesaid, we have no hesitation in holding that the exercise of power under section 263 of the Act in the facts of the present appeal is invalid. Therefore, we reverse the impugned order of learned PCIT and restore the order of assessment.

12. In the result, appeal is allowed.

Order pronounced in the open court on 11th June, 2024

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 11th June, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi