

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

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.2562/Del/2024**  
**(ASSESSMENT YEAR-2014-15)**

M/S KANDY GOLD PRIVATE LIMITED, R R SINGLA AND CO., 106-107, MAHARAJA AGRASEN SHOPPING COMPLEX, SECTOR-9, ROHINI, DELHI-110085	Vs.	PCIT, ROHTAK
<b>(Appellant)</b> <b>AADCR4278F</b>		<b>(Respondent)</b>

Assessee by	Shri R R Singhla, CA
Respondent by	Shri Mukesh Kumar Jha, CIT(DR)

Date of Hearing	10/09/2024
Date of Pronouncement	12/11/2024

**ORDER**

**PER VIMAL KUMAR, JM:**

The appeal filed by assessee is against order dated 28.03.2024 of the Learned Principal Commissioner of Income Tax, Rohtak, [hereinafter referred to as ('PCIT')] under Section 263 of the Income Tax Act, 1961 (hereinafter referred as " the Act") arising out of Assessment Order dated 02.08.2016 of the Income

Tax Officer, Ward-3(5), Gurgaon (hereinafter referred as "Ld.AO) for Assessment Year 2014-15.

2. Brief facts of the case are that on 01.11.2014 assessee e-filed return of income declaring income of Rs. 2,51,990/-. The case was selected for Limited Scrutiny through CASS. Notice under Section 143(2) of the Act dated 18.09.2015 was issued. The case was received on transfer after 16.05.2016 due to change in jurisdiction. Notice under Section 142(1) of the Act dated 01.06.2016 was issued. Shri R R Singhla, Chartered Accountant filed Power of Attorney, attended proceedings from time to time and filed requisite documents. During course of assessment, it was found that assessee company was dealing in shares. The details were furnished and examined. The return income was accepted vide order dated 02.08.2016 by the Learned A.O.

3. Under Section 263 of the Act assessment order dated 02.08.2016 was set aside by Learned PCIT, Gurgaon on 11.03.2019 with the directions to Learned A.O. to pass an order afresh. Assessee preferred appeal before ITAT, which was dismissed vide order dated 13.06.2022. Hon'ble High Court of Punjab and Haryana through order dated 09.05.2023 set aside order dated 13.06.2022 of ITAT, New Delhi, remanded the matter to Learned PCIT to pass a well reasoned order. Learned PCIT vide order dated 28.03.2024 set aside the order of Learned A.O. and directed Learned A.O to pass an order afresh.

4. Being aggrieved, appellant/assessee preferred present appeal.

5. Learned authorized representative for appellant/assessee submitted that Learned PCIT failed to appreciate that in response

to notice under Section 263 of the Act the assessee had filed its detailed reply on 09.01.2024. Learned PCIT failed to mention any reason or basis as directed by the Hon'ble High Court i.e. *"how share premium received by the appellant in the year 2013-14 can be taken as escaped income to initiate reassessment proceedings for the assessment year 2014-15"*.

6. The Learned authorized representative for appellant/assessee submitted that Ld. PCIT erred in setting aside the assessment order of Ld. AO and directing the assessment *de novo* illegally. Learned PCIT gave no reasons for error in the order of Ld. AO. The Ld. PCIT has not taken any exercise of enquiry verification but has only directed AO to undertake enquiry. Ld. PCIT without establishing any error in the order of Ld. AO which is fundamental and preliminary condition for invoking the jurisdiction u/s 263 is bad in law. Ld. PCIT erred in not appreciating that there cannot be parallel proceeding u/s 263 of the Act. The following case laws are in favour of the assessee.

(i) Green World Corporation (2009) 181 Taxman (SC), CIT v. Vodafone, Essar South India Ltd. (2012) 28 Taxman.com 273 (Del), CIT v. Anil Kumar Sharma (2010) 194 Taxman 504(Delhi) provide as:

*"No Inquiry" is different from "inadequate Inquiry" and where the Id. AO makes enquiries as it seems appropriate on the facts and in the circumstances of the case, assumption of jurisdiction u/s 263 of the Act is not warranted.*

(ii) In CIT v. DG Housing 343 ITR 239 (Del), it is held that:

*In case where the allegation is of "proper inquiries" the burden is on the Id. PCIT to conduct further inquiries by himself and he cannot simply set aside the order of the Id. AO for further enquiries.*

(iii) In Delhi High Court in DIT vs. Jyoti Foundation [2013] 357 ITR 388 (Delhi), it is observed that:

*"Thus, in cases of wrong opinion or finding on the merits, the Commissioner of Income-tax has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order u/s 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. The Commissioner of Income-tax cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous.."*

(iv) CIT vs. Sunbeam Auto Ltd. (2011) 332 ITR 167 (Delhi), provides that:

*"CIT cannot remand matter to the AO to decide whether findings recorded are erroneous. In case there are inadequate inquiry but not lack of inquiry, again the CIT must give and record the finding let the order/inquiry made is erroneous."*

7. The Learned authorized representative for revenue relied on order of Learned PCIT.

8. From the examination of record in the light of aforesaid rival contention it is crystal clear that appellant/assessee company has filed its return of income for the year 2014-15 on 01.11.2014 declaring an income of Rs. 2,51,990/-. Assessment order dated 02.08.2016 mentions that the case was selected for limited scrutiny through CASS. As per notice assessee furnished required information and reply on the basis of which the return income was accepted and assessed on return income. Learned

PCIT vide order dated 11.03.2019 set aside order dated 02.08.2016 and directed Learned A.O. to pass an order afresh. Appeal of the assessee was dismissed by ITAT, Delhi on 13.06.2022. Hon'ble High Court of Punjab and Haryana in order dated 09.05.2023 set aside order dated 13.06.2022 and remanded the matter back to PCIT to pass a well reasoned order. Learned PCIT issued notice under Section 263 of the Act. Assessee filed reply on 09.01.2024.

9. Learned PCIT after perusing balance sheet as on 31.03.2013 observed that the assessee received Rs.2,64,10,000/- as share application money pending for share allotment during Financial Year 2012-13, however, no allotment of share was made during the Financial Year 2012-13. As per balance sheet as on 31.03.2014, the 2,11,280 share @ 125/- per share were issued to various parties against the face value of Rs.10/- each and added/diverted Rs.2,42,97,200/- as Securities Premium Reserve during the Financial Year 2013-14 relevant to Assessment Year 2014-15.

10. As per ratio of judgment in Malabar Industrial Co. Ltd. vs. CIT 243 ITR 83 (SC) and Sun Beam Auto Limited (2009) TOIL-552-HC-Del-IT, it is well settled that where the Assessing Officer passed an order after conducting necessary inquiry and on due application of mind, the CIT could not assume jurisdiction to revise such an order simply because the CIT wanted inquiries to be conducted in a particular manner or the CIT was of the opinion that some or more inquiries needed to be conducted.

11. From perusal of above material facts in light of aforesaid well settled principle of law, it is apparent on record that the

issue regarding allotment of shares was examined by Ld. A.O. and decided in favour of assessee in original assessment proceedings. Learned PCIT failed to clarify as to how share premium received by assessee in year 2013-14 can be taken as escaped income to initiate re-assessment proceedings for Assessment Year 2014-15. Learned PCIT had nowhere found any flaw in the documents. Learned PCIT had not undertaken any enquiry or given reasons for coming to conclusion that assessment order was erroneous and prejudicial to interest of revenue. Explanation 2 to section 263 of the act does not give unfettered power to Ld. PCIT to revise each and every order to re-examine the issues already examined by the AO during assessment proceedings. Therefore, the impugned order is beyond jurisdiction, bad in law and void *ab initio*. Consequently, the impugned order is set aside.

12. In the result, appeal of the Assessee is allowed.

Order pronounced on 12<sup>th</sup> November, 2024.

Sd/-  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 12 / 11 / 2024

DP/sps

Copy forwarded to:

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

sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI