IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

ITA No. 1032/KOL/2014
Assessment Year: 2009-10

Swift Vintrade Pvt. Ltd. Janta Flat No. 99-Y, Block-E, situated at Jahagirpuri North West, Delhi, Pin-110033 (PAN: AAMCS6460R)	Vs.	CIT, Kolkata-II, Kolkata.
(Appellant)		**(Respondent)**

Present for:

Appellant by : N o n e
Respondent by : Shri A. Kundu, CIT, DR

Date of Hearing : 19.09.2024
Date of Pronouncement : 21.11.2024

O R D E R

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the revision order of the Ld. Pr. Commissioner of Income Tax, Kolkata-II, Kolkata (hereinafter referred to as "the Ld. Pr. CIT") passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2009-10 dated 05.03.2014.

2. The background of the case as mentioned in the order of the Ld. Pr. CIT is as under:

> *"Before going into the merits of the instant case, it is necessary to highlight the background which led to it, so that the facts are viewed in correct perspective. Firstly, this particular case should not be viewed in isolation. In fact, as in the immediately preceding year, this year too, on identical facts and under similar circumstances, in a very large number of cases, orders*

under section 148 of the IT Act were passed under different corporate CSIT charges in Kolkata. In all these cases, completed assessments were re-opened at the request of the assessee. The assesses offered paltry amounts as income which had escaped assessment and requested the A.O to tax it by passing order under section 148 of the 11 Act. However, manifestly the real motive was not the sudden awakening of the fiscal honesty of the assessees, but to get the stamp of scrutiny on the huge amount of share capital and share premium which all these assessees have brought in the books. Unfortunately, the Assessing Officers seem to have missed the wood for the trees. It is pertinent to mention here that in all these cases huge amount of share capital and surprisingly, unbelievably high amount of share premium have come in the books. It does not stand the test of reasoning and defies all principles of preponderance of probability that an unknown private limited company which apparently does nothing, sells its share of Rs.1/- to Rs.10/- at a premium in the range of Rs.90/- to Rs. 900/-. Anybody who has even a rudimentary knowledge of Capital Market knows that even blue chip companies do not command such premium on the bourse. It is also very intriguing that so many assessees (nearly 250 odd in my charge), all with huge share capital/premium whose assessments were accepted summarily u/s 143(1) of the IT Act, suddenly realized that petty amounts had escaped assessments and all of them file request for re-opening the assessment within a short span of time. All these circumstances clearly indicate that what is apparent is probably not real and it needs further examination. The Apex court in the case of Sumati Dayal –vs- CIT [214 ITR 801] held that the true nature of a transaction has to be ascertained in the light of surrounding circumstances. Thus, it is now well settled that tax authorities are entitled to look into surrounding circumstances to find out the reality of a transaction by applying the test of human probability. This order under section 263 in this case and in many other similar cases should be viewed in this background so that the larger picture is not lost in the nitty gitty of the individual case."

2.1. The Ld. Pr. CIT has also further discussed the modus operandi as under:

"There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue."

The aforementioned quote is the observation of Hon'ble Justice B N Kripal while delivering the judgement in the case of CIT vs. Divine Leasing 299 ITR 268 Delhi. The pernicious practice referred to by Justice Kripal, of late has acquired such enormous proportion that effort for excoriation is found wanting. There has been a mushrooming growth of professional entry operators who provide such share capital for a commission. The commission ranges from 2% to 10% of the capital given Kolkata rates are reported to be

cheapest in the country which is why a major portion of block money from throughout the country is routed via the paper companies of the Kolkata entry operators and are shown as genuine share capital in the beneficiary companies. These entry operators register a large number of companies with the ROC with their employees or acquaintances as directors. There are professional directors who are willing to sign as director for a fee. These companies then issue nominal share capitol with huge premium. The huge shore premium is just to save on the fees charged by the ROC. The shares are subscribed by the own companies of the operator. The capital of the companies are raised artificially by circular transaction. For example, if one cheque of 25 lakhs is rotated through a bank account 10 times it raises the capital to Rs.2.5 crores. If there are 100 companies operated by the entry operator the total artificial capital would be Rs. 250 crores. The balance sheet of such companies would typically show share capital and reserve (premium) on the liability side and fictitious assets like investment in unquoted shares on the asset side. The investments are also in the shares of the own companies of the operator. Once this basic ground work is over, the operator is ready to give entries. Anyone can approach with cash, which is deposited in a proprietorship account and then transferred through cheque to one of the companies of the operator. After that the cheque is routed through a maze of own companies and finally given as share capital by cheque to the beneficiary company. This is a typical one time entry transaction. Alternatively, the beneficiary can buy a company in which case, the share holders change, the fictitious investments liquidated by cash provided by the buyer. The Bank account of the company has proceeds from the liquidation of investments, which the buyer uses as white money, without payment of tax. The commission to be paid to the operator typically depends on the due diligence done by the operator in respect of his companies. The rate of a company in which scrutiny assessment has been done is higher than a company where the return has been merely accepted. Similarly, commission is higher for entry from a company in which order u/s. 148 has been passed."

2.2. The facts of the case as culled out in the order of the Ld. Pr. CIT are reproduced as under:

"In the instant case the return of income was filed declaring income of Rs.260/-. The Balance Sheet of the company shows share capital of Rs.4.97,00,000/- and Reserve (Share premium) of Rs.4,77,12,000/-. Subsequently, the assessee filed a letter before the A.O. on 18.07.2011 stating that intimation u/s 143(1) had not been received and that income of Rs.50,000/- had not been shown in its return of income by mistake.

The Assessing Officer, on receipt of this letter issued notice u/s.148 and subsequently, passed order u/s.147/143(3) on 09.09.2011 determining the total income of Rs. 50,260/-.

In view of the background mentioned at the beginning of this order a show-cause notice u/s. 263 of the Act was issued vide letter dated 31.01.2014. The assessee was asked to show cause as to why the impugned (order) under section u/s 148 not be revised u/s . 263 of the IT Act, 1961 in view of the fact that requisite and proper inquiries were not conducted regarding the identity and creditworthiness of the share holders and the impugned order was passed mechanically without application of mind which rendered the assessment order erroneous and prejudicial to the interest of revenue.

The assessee filed a written submission on 21.02.2014. The gist of the written submission made by the assessee is as follows:

i) That the assessee had voluntarily offered income for tax and that the A.O. had passed the order after applying his mind.

ii) That the shares were subscribed at a premium on the basis of mutual understanding and faith between closely knit persons and the amendment to section 56 (2) of the IT Act had come into effect only from assessment year 2013-14 that there was no yard stick either in the Company's Act or in the Income tax Act to fix or regulate share premium.

iii) That the A.O. had conducted proper inquiry regarding the identity and creditworthiness of the shareholders. Confirmation letters along with PAN, copy of bank statement & Balance Sheet of the subscribing companies had been filed before the A.O.

iv) That share capital could not be added under section 68 of the I T Act where the identity of the share holder was established.

v) Reliance was placed on several authorities in support of the submissions which are dealt with later in this order.

It was accordingly, requested that in view of the aforementioned submissions, the proceeding u/s.263 should be dropped.

I have considered the submissions of the assessee and the facts on record. As regards the submission of the assessee regarding voluntary offer of income is concerned, there is no dispute. It is a fact that the assessee had offered a paltry amount voluntarily to tax but this fact is not relevant to the issue under consideration, which is, whether or not the impugned assessment order u/s. 148 of the I. T. Act is erroneous and prejudicial to the interest of the revenue, which is discussed in detail later in this order."

2.3. The Ld. Pr. CIT placed reliance upon the following judicial pronouncements:

i) Rampyari Devi Saraogi Vs. CIT 67 ITR 84 (SC),

ii) Tara Devi Agarwal Vs. CIT 88 ITR 323 (SC),

iii) Gee Vee Enterprises Vs. Addl. CIT 99 ITR 375, 386 (Del.),

iv) CIT Vs. Sophia finance Ltd. 205 ITR 98 (Del),

v) CIT Vs. Active Traders P. Ltd. 214 ITR 583 (Cal),

vi) CIT Vs. Nivedan Vanijya Niyojan Ltd. 263 ITR 623 (Cal),

vii) CIT V. Bhagwati Jewels Ltd. 201 ITR 461 (Del.).

2.4. He was of the view that the Ld. AO has power to investigate the identity of the shareholders to satisfy that they exist. The genuineness of the investment has to be examined to the extent that the shareholders have invested the money and the corporate veil can be lifted and the argument that the shareholders and corporate are two different legal entities can no longer hold good in view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Nova Promoters & Finlease Pvt. ltd. 342 ITR 169. As regards conduction of proper enquiry by the Ld. AO, the Ld. Pr. CIT has mentioned that –

i) The notices u/s. 133(6) have been sent only on a test check basis.

ii) It is further seen that only extract of the bank statement has been submitted which reflects only the impugned transaction and is not for the whole year, making it impossible to make any analysis of the source of the funds and whether shareholders had the financial capability to invest such substantial amounts. The A.O. should have called for the bank statement of the full financial year for proper analysis & verification.

iii) The replies were just placed on record and no independent inquiries were carried out regarding the fact whether the subscribing companies were available at the given address, and whether they were genuine corporate entities.

iv) The A.O. did not examine any Director of the assessee company or of the subscribing companies.

2.5. He was accordingly of the view that mere verification by sending letters by post has no meaning in such cases of paper companies floated by entry operators as the letters for hundreds of companies are collected from just one desk at one address and only when actual physical verification is done that it can be found out whether or not the company exists. No such exercise was carried out and merely the replies which are often sent by the assessee were accepted on the face value. He was of the view that no enquiry has been conducted and set aside the order u/s. 148/147 read with sec. 143(3) of the Act to examine the following.

3. During the course of hearing of the appeal, none appeared on behalf of the assessee. The Ld. AR filed a written submission that he was placing reliance on the decision of Subhlakshmi Vanijya Pvt. Ltd. [2015] 60 taxmann.com 60 and requested that the order of the Ld. Pr. CIT may be confirmed. The relevant findings of the Coordinate bench in the decision relied upon are reproduced below:

> *"Whether the provisions of section 68 can be attracted if share capital with premium is not properly explained by the assessee company?*
>
> *As per section 68 where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. This section has received the attention of the Supreme Court and almost all the High Courts in numerous cases. It has been almost unanimously held that the burden under this section is discharged by the assessee only when the assessee proves three things to the satisfaction of the Assessing Officer, viz., identity of the creditor, capacity of the creditor and genuineness of the transaction. Onus under section 68 can be said to have been discharged only when the assessee proves identity and capacity of the creditor along with the genuineness of transaction to the satisfaction of the Assessing Officer. All the three constituents are required to be cumulatively satisfied. If one or more of them is absent, then the Assessing Officer can lawfully make addition.*

In case of a closely held company where the shares are issued to the family members or close friends/relatives, the burden of proof rests on the company to properly explain the identity and capacity of shareholders along with the genuineness of the transactions. Ex consequenti, the argument of the assessee that he was-not obliged to explain the genuineness of share capital after having furnished preliminary details about the shareholders etc., is not capable of acceptance and hence rejected. In all cases, where the assessee fails to cumulatively prove to the satisfaction of the Assessing Officer, the identity and capacity of the shareholders along with the genuineness of the transactions there can be no escape from section 68.

Whether insertion of proviso to section 68 by the Finance Act,2012 with effect from 1-4-2013 empowering the Assessing Officer to examine the genuineness of the share capital in the case of a company in which public are not substantially interested, is prospective?

As per this proviso where any share capital etc. is credited in the case of closely held company, the explanation given by such company shall be deemed to be not satisfactory, unless the resident shareholder offers an explanation about the nature and source of such sum so credited and such explanation is found to be satisfactory by the Assessing Officer. The essence of this amendment is that a closely held company is required to satisfy the Assessing Officer about the share capital etc. issued by it, in the absence of which, an addition under section 68 can be made in the hands of the company. If the amendment is accepted to be prospective, then it would mean precluding the Assessing Officer from examining the genuineness of transactions of receipt of share capital with premium under consideration and hence prohibiting him from making any addition under section 68 notwithstanding the same being non-genuine. In the oppugnation, if the amendment is held to be retrospective, then it would mean that the Assessing Officer would have all the powers to examine the genuineness of share capital and share premium received by the assessee company on the touchstone of section 68. If the assessee fails to satisfy him on the identity and capacity of the subscribers and genuineness of transactions, then addition will be called for under section 68.

It is settled rule of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Ordinarily the courts are required to gather the intention of the legislature from the overt language of the provision as to whether it has been made prospective or retrospective, and if retrospective, then from which date. However, some times what happens is that the substantive provision, as originally enacted or later amended, fails to clarify the intention of the legislature. In such a situation if subsequently some amendment is carried out to clarify the real intent, such amendment has to be considered as retrospective from the date when the earlier provision was made effective. Such clarificatory or explanatory amendment is declaratory. As the later amendment clarifies the real intent and declares

the position as was originally intended, it takes retroactive effect from the date when the original provision was made effective. Normally .such clarificatory amendment is made retrospectively effective from the earlier date. It may also happen that the clarificatory or explanatory provision introduced later to depict the real intention of the legislature is not specifically made retrospective by the statute. Notwithstanding the fact that such amendment to the substantive provision has been given prospective effect, the judicial or quasi-judicial authorities, on a challenge made to it, can justifiably hold such amendment to be retrospective. The justification behind giving retrospective effect to such amendment is to apply the real intention of the legislature from the date such provision was initially introduced. The intention of the legislature while introducing the provision is gathered, inter alia, from the Finance Bill, Memorandum explaining the provision of the Finance Bill etc.

Any amendment to the substantive provision which is aimed at clarifying the existing position or removing unintended consequences to make the provision workable has to be treated as retrospective On adverting to the language of section 68, it transpires that it refers to 'any sum credited' in the books of an assessee maintained for any previous year. The expression 'any sum credited' has not been specifically defined in the provision. Thus, it would extend to all the amounts credited in the books of account. A sum can, be credited in the books of account, which would invariably either find its place either on the income side of the Profit and loss account or in the liability side of the balance sheet. Items credited to the Profit and loss account are themselves income and hence there can be no reason to make addition once again for them. Items appearing on the liability side of the balance sheet can be loans or share capital etc. Once a provision has been given retrospective effect by the legislature, it shall continue to be retrospective. If on the other hand, the statute does not amend it retrospectively, then one has to dig out the intention of the Parliament at the time when the original provision was incorporated and also the new amendment. If the later amendment simply clarifies the intention of the original provision, then it will always be considered as retrospective.

On adverting to the language of section 68, it transpires that it refers to 'any sum credited' in the books of an assessee maintained for any previous year. The expression 'any sum credited' has not been specifically defined in the provision. Thus, it would extend to all the amounts credited in the books of account. A sum can be credited in the books of account, which would invariably either find its place either on the income side of the Profit and loss account or in the liability side of the balance sheet. Items credited to the Profit and loss account are themselves income and hence there can be no reason to make addition once again for them. Items appearing on the liability side of the balance sheet can be loans or share capital etc. Once there is specific reference in section 68 for applying it to any sum credited', there can be no reason to restrict its application only to 'loans' and not to 'share capital'. The burden of proof under section 68 can be no different in respect of issue of share capital by closely held companies vis-a-vis loans or

gifts. The High Court in CIT v. Maithan International [2015] 375 ITR 123/231 Taxman 381156 taxmann.com ?83 (Cal.)J CIT v. Active Traders (P.) Ltd.[1995] 214 ITR 583/[1993] 69 Taxman ?81 (Ca1.), Mimec (India) (P.) Ltd. v. Dy. CIT [2013] 353 ITR 2841216 Taxman 157 (Mag/35 taxmann.com 319 (Ca1.) and CIT v. Nivedan Vanijya Niyojan Ltd. [2003] 263 ITR 623/130 Taxman 153 (Cal.}a has specifically held that the three ingredients, viz, identity and capacity of creditor and genuineness of transaction are required to be satisfied even in case of issue of share capital by a closely held company. It shows that the intention of the legislature, as interpreted by the High Court, is always to cast duty on the assessee to prove the satisfaction of the three ingredients in case of transaction of issue of share capital by a closely held company in the same way as is in the case of transaction of loans.

A careful perusal of the first para of the Memorandum brings out that the onus of satisfactorily explaining issue of share capital with premium etc. by a closely held company is on the company. Next para recognizes that judicial pronouncements, while considering that the pernicious practice of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be prevented, have advised a balance to be maintained regarding onus of proof to be placed on the company. After going through the above parts of the Memorandum explaining provisions of the Finance Bill, there remains no doubt whatsoever that the onus has always been on the closely held companies to prove the issue of share capital ete. by the company in terms of section 68. Thus, the amendment makes it manifest that the intention of the legislature was always to cast obligation on the closely held companies to prove receipt of share capital etc. to the satisfaction of the Assessing Officer and it was only with the aim of setting to naught certain contrary judgments which 'created doubts' about the onus of proof by holding that there was no requirement on the company to prove the share capital ete. and as such no addition could be made in the hands of company even if such shareholders are bogus. As the amendment aims at clarifying the position of law which always existed, but was not properly construed in certain judgments, there can be no doubt about the same being retrospective in operation.

Therefore, the amendment to section 68 by insertion of proviso is clarificatory and hence retrospective. The contrary arguments advanced by the assessee being devoid of any merit, are hereby jettisoned.

Thus, the contention of the assessee that since the Assessing Officer of the assessee-company is not empowered to examine or make any addition on account of receipt of share capital with or without premium before amendment by the Finance Act, 2012 with effect from assessment year 2013-14 and hence the Commissioner by means of impugned order under section 263 could not have directed the Assessing Officer to do so, is unsustainable.

Validity of orders passed under section 263

Whether the enquiry conducted by the Assessing Officer in such cases can be as a proper enquiry?

Though the Assessing Officer issued notices under section133(6) but it failed to comprehend the rationale or logic behind issuing shares at such a high premium, nor to examine any of the directors of the companies which were subscribers to share capital. It is highly improbable for any person having sound mind to purchase at arm's length the shares of a private limited company, hardly having any worth, with face value of Rs.10 at a premium of Rs.190. This mere fact should have been cornerstone for the Assessing Officer to embark upon further enquiry to unearth the truth. The genuineness of transactions of issue of share at such hefty premium in this background of the matter was under dark cloud and it skipped the attention of the Assessing Officer.

Upon analysis of the business model of the assessee it was noted that shareholder companies of one company become investee companies of other companies and in turn, such later company, whose shares are purchased, further invest in the shares of other companies, so on and so forth. This is a striking example of circulation of capital from one company to another and the rotation is continuing in all the companies under consideration. It cannot be a sheer coincidence that hundreds of companies brought into existence, having link with each other and none of them doing any worthwhile business activity, come together to issue shares at such a huge premium. At best, this argument could have been taken into consideration if these companies had issued shares to its related companies at premium and invested the proceeds in some other business activity and not purchasing the shares of other related companies such a circular route. This shows that the transactions of issuing shares at a premium to related companies and then purchasing the shares of other related companies at a huge market price and none of the companies has any worthwhile business activity, when considered on an overall basis, is nothing but a smokescreen.

There remains no doubt whatsoever that in the given circumstances, the Assessing Officer conducted half-baked enquiry ignoring vital aspects which were required to be examined. If a company recently incorporated without carrying out any worthwhile business activity issues shares with face value of Rs.10 at a premium of Rs.190, the immediate concern of the Assessing Officer ought to have been to find out as to whether the receipt of such a premium was justified and whether the parameters of section 68 stood complied with. In the instant case, the Assessing Officer merely issued notices under section 133(6) to some of the shareholders whose replies, indicating that they overtly purchased the shares at Rs.200 each, were kept on record. Putting a lid at the matter at that stage only, the Assessing Officer did not consider it prudent to examine such shareholders as to their capacity and genuineness of the transactions. Confronted with such peculiar and hair-raising circumstances, the Assessing Officer should have got alerted and dug the matter deep for unearthing the reality of the transaction. Unfortunately, nothing of this son was done by him. It is a

perfect citation for a complete non-application of mind by the Assessing Officer and of passing the assessment order in undue haste.

Thus, there can be no escape from an axiomatic conclusion that in all these cases the enquiry conducted by the Assessing Officer's is exceedingly inadequate and hence fall in the category of 'no enquiry' conducted by the Assessing Officer, what to talk of charactering it as an 'inadequate enquiry'. The highly inadequate enquiry conducted by the Assessing Officer resulting in drawing incorrect assumption of facts, makes the orders erroneous and prejudicial to the interests of the revenue.

Whether Commissioner can set aside the assessment order and direct the Assessing Officer to conduct a thorough enquiry, thereby interfering with the jurisdiction of the Assessing Officer conferred on him in terms of sections 142(1) and 143(2) of the Act?

A careful perusal of the provisions of section 142(1)/ 143(2) unveils that it is the prerogative of the Assessing Officer to require the information 'on such points or matters' as he may require. Ordinarily it is not possible for the Assessing Officer to inquire into each and every entry recorded in the books of account of the assessee. He has to exercise his acumen in extracting out the relevant points or matters on which he wants to concentrate. But, what is important in this regard is that the operation of section 142(1)/ 143(2) comes to an end when an assessment is completed after examining such point or matters which the Assessing Officer feels to inquire before finalizing the assessment. It is only thereafter that the revisional powers of the Commissioner under section 263 can come into play for ascertaining if the Assessing Officer examined all the relevant points, which ought to have been examined. If the Commissioner, on examination of records of assessment, comes to the conclusion that the Assessing Officer failed to enquire into certain other relevant aspects which, in fact, necessitated thorough investigation, then he has all the power to revise the assessment order. In the instant case, the assessment already stands finalized and now the Commissioner is examining whether the Assessing Officer properly examined the facts of the case. In such circumstances, it is impermissible to have a recourse to the provisions of sections 142(1) and 143(2) for demolishing the order under section 263.

Whether inadequate inquiry conducted by the Assessing Officer empowers the Commissioner to revise the assessment order?

It is imperative for the Assessing Officer to conduct enquiry to satisfy himself about the genuineness of transactions. Scope of the term 'enquiry' can be diverse in different circumstances. There cannot be straitjacket formula to positively conclude as to conducting or non-conducting of 'enquiry' by the Assessing Officer. It depends on the facts and circumstances of each case. Where the facts are just ordinary and prima facie there is nothing untoward the recorded transaction, in such circumstances, the obtaining of the documents and the application of mind thereon, without a further outside enquiry, may mean that the Assessing

Officer did conduct enquiry, leaving the question open as to whether it was a proper or an improper enquiry. But, where the factual scenario of a case prima facie indicates abnormalities and cry for looking deep into it, then a mere collection of documents cannot be held as conducting enquiry, leave aside, adequate or inadequate. In such later cases, only when the Assessing Officer, after collection of the initial documents, embarks upon further investigation, that it can be said that he initiated enquiry. Where the facts of a particular transaction cry hoarse about its non-genuineness and even a casual look at such facts, prima facie, divulges foul play, then the alarm bell must ring in the mind of the Assessing Officer for making further examination. Collection of papers on record in such circumstances cannot be construed as conducting a proper enquiry. If in such circumstances, the Assessing Officer simply gathers documents and keeps them on record, then such nominal enquiry falls within the overall category of 'no enquiry' because of the inaction on the part of the Assessing Officer to read a writing on the wall.

Thus, the instant case is a glaring example of not making relevant enquiry, which amounts to 'no enquiry' and hence it becomes a case of non-application of mind by the Assessing Officer.

Whether the order of the Commissioner was based on irrelevant consideration and was he supposed to point out specifically where the Assessing Officer went wrong in not properly examining the issue of share capital?

Where the Assessing Officer has made proper enquiry and still comes to a wrong conclusion, which renders the assessment order erroneous and prejudicial to the interest of the revenue, it becomes the duty of the Commissioner to expressly point out where the Assessing Officer went wrong on merits. But in a case, where no enquiry has been conducted at all or the so-called enquiry conducted by the Assessing Officer is as good as no enquiry, as is the case under consideration, in such circumstances, the Commissioner simply needs to point out those relevant aspects of assessment, which the Assessing Officer lost sight of, but were required to be properly probed. There can be no way for the Commissioner to tell erroneous approach of the Assessing Officer on merits in such circumstances because the view of the Assessing Officer on merits is not available. Requiring the Commissioner to indicate where the Assessing Officer went wrong on merits in the cases of no enquiry cases, is like requiring an impossible thing to be done. It is axiomatic that the law does not require an impossible to be complied with. In the instant case the extent of enquiry conducted by the Assessing Officer, being as good as no enquiry, is sufficient in itself to empower the Commissioner for invoking his jurisdiction under section 263. Under such circumstances, no impossible burden can be cast on the Commissioner to show the positive leakage of income in concrete terms, when he has simply set aside the assessment order and restored this the assessment to the file of the Assessing Officer for making a proper enquiry and then deciding.

If the Assessing Officer has taken a possible view, can still the revision be ordered?

Where the Assessing Officer fails to conduct an enquiry or proper enquiry, which is called for in the given circumstances, the Commissioner is empowered to set aside the assessment order by treating it as erroneous and prejudicial to the interests of the revenue. In such circumstances, the Assessing Officer can't be said to have taken a possible view and it is not further required on the part of the Commissioner to expressly show where the assessment order went wrong. The very fact that no enquiry was conducted or no proper enquiry was conducted in the required circumstances, is sufficient in itself to invoke the provisions of section 263."

4. Respectfully following the order of the Coordinate bench in the case of Subhlakshmi Vanijya Pvt. Ltd (supra), all the grounds of appeal of the assessee is hereby dismissed and the order of the Ld. Pr. CIT is upheld as there was lack of enquiry which necessitated setting aside the order of the AO.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 21st November, 2024.

Sd/-	Sd/-
(Sonjoy Sarma)	(Rakesh Mishra)
Judicial Member	Accountant Member

Dated: 21st November, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. ITO, Ward-5(1), Kolkata
4. DR, ITAT, Kolkata Bench, Kolkata

//True Copy// By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

1. Date of dictation- 13/11/2024
2. Date on which the typed draft order is placed before the Dictating Member and Other member 18/11/2024
3. Date on which the approved order comes to the Sr. P.S./P.S. -/11/2024
4. Date on which the file goes to the Bench Clerk /11/2024
5. Date on which the file goes to the O.S. .....
6. Date of Dispatch of the Order.....