

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
MS MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos. 3225 & 3226/Del/2017**  
(Assessment Years: 2011-12 & 2012-13)

<b>M/s. Garden View Foods Pvt. Ltd,</b> F-6, Vijay Chowck, Laxmi Nagar,- 110092	Vs.	Pr. CIT, Central-3, New Delhi
(Appellant)		(Respondent)
<b>PAN:AACCG5224D</b>		

Assessee by :	Shri Sachin Jain, Adv
Revenue by:	Shri Dayainder Singh Sidhu, CIT DR
Date of Hearing	10/03/2025
Date of pronouncement	10/03/2025

**ORDER**

**PER M. BALAGANESH, A. M.:**

1. The appeals in ITA No. 3225 & 3226/Del/2017 for AYs 2011-12 and 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-3, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] dated 21.03.2017 against the order of assessment passed u/s 153A/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 22.02.2013 by the Assessing Officer, DCIT, Central Circle-28, New Delhi (hereinafter referred to as 'Id. AO').

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. The only identical issue to be decided in both these appeals is validity of assumption of revision jurisdiction u/s 263 of the Act by the Id PCIT.

4. We have heard the rival submissions and perused the material available on record. A search and seizure action u/s 132 of the Act was carried out in Ocus Group of cases on 12.02.2013 including the assessee. The case of the assessee was centralized u/s 127 of the Act dated 26.04.2013 passed by the Id CIT-IV, Delhi. Notice u/s 153A of the Act was issued on 25.08.2014 requiring the assessee to file its return of income. The assessee company replied that earlier return already filed on 22.02.2012 declaring income of Rs. 6,160/- for AY 2011-12 be treated as a return in response to notice issued u/s 153A of the Act. During the year under consideration, the assessee company was in receipt of share capital of Rs. 14,70,000/- and share premium of Rs. 1,32,30,000/- totaling to Rs. 1,45,00,000/- from 30 investor companies. The Id AO sought to examine the veracity of receipt of share capital and share premium. During the course of assessment proceedings, details were called for from the assessee by way of notice u/s 142(1) of the Act together with detailed questionnaire. In response to the said notice, the assessee did not file any reply and merely kept on asking the copies of seized documents from the Income Tax Department. In fact the Id AO had even stated in his assessment order that seized documents had already been handed over to the assessee, which fact was also confirmed by Smt. Bindu Tyagi W/o. Shri Ashok Kumar Tyagi, director of the assessee company. This fact is mentioned in para 7 page 3 of the

assessment order. Despite non furnishing of any details by the assessee, the Id AO strangely concluded that assessee company is merely a conduit company not carrying on any business activity thereon and hence, proceeded not to add the receipt of share capital and share premium in the hands of the assessee company and completed the assessment. Since, the said transaction was considered as accommodation entry obtained by Shri Ashok Kumar Tyagi in his individual capacity for and on behalf of the assessee company, commission income was added for the very same transaction in his hands. In other words, the assessee company was merely treated as pass through entity by the Id AO wherein assessee had received funds from certain parties and handed over the same to another party.

5. This assessment was sought to be revised by the Id PCIT by assuming revision jurisdiction u/s 263 of the Act by treating the order of the Id AO as erroneous in as much as it is prejudicial to the interest of the revenue on the ground that the Id AO ought to have examined the veracity of share capital and share premium received by the assessee in the context of provisions of Section 68 of the Act. In response to the show cause notice, the assessee filed a reply before the Id PCIT, wherein, it was stated that monies were received from Ocus Group by the assessee company and the same were immediately passed on to another company of Ocus Group. Hence, there is no case of making any addition in the hands of the assessee as it was only a pass through entity. This explanation was not accepted by the Id PCIT on the ground that the monies were found credited in the books of account of the assessee company. Hence, the assessee company has to pass the test of rigors of Section 68 of the Act in respect of such sums credited.

Subsequent utilization of the said fund is completely irrelevant for the purpose of determination of nature and source of credit within the meaning of Section 68 of the Act. Further, the assessee company except making a bald statement had not provided any documentary evidences to prove the fund received from 30 companies of Ocus Group and passed on to another company of Ocus Group. The Id PCIT had also observed that assessee company had not justified the share premium collected with supporting evidences. With these observations, the Id PCIT disturbed the finding recorded by the Id AO that assessee company was a conduit company. In other words, the Id PCIT held that the assessee company cannot be construed as a conduit company. The Id PCIT concluded that absolutely no enquiry whatsoever was conducted by the Id AO with regard to the receipt of share capital and share premium by the assessee company. Since, it is lack of enquiry, assumption of revision jurisdiction u/s 263 of the Act would be valid and in accordance with law. Hence, we have no hesitation in upholding assumption of revision jurisdiction u/s 263 of the Act of the Id PCIT in the facts and circumstances of the instant case. We find that the Id PCIT had merely directed the Id AO to make a de novo assessment after providing a reasonable opportunity of being heard to the assessee. In view of this, there is no need to go into the merits of the issue as it would tantamount to pre-empting that the Id AO would make an addition u/s 68 of the Act towards share capital and share premium. Accordingly, the grounds raised by the assessee are hereby dismissed for AY 2011-12. The facts being identical in AY 2012-13 except with variance in figures, the decision rendered for AY 2011-12 shall apply for AY 2012-13 also.

6. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 10/03/2025.

-Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

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

Dated:10/03/2025  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi