

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

[Before Shri Rajesh Kumar, AM & Shri Sonjoy Sarma, JM]

I.T.A. No. 1173/Kol/2024

Assessment Year: 2010-11

Regal Vincom Pvt. Ltd. 6/7A, A.J.C. Bose Road, Cabin No. 4, Kolkata-700017. (PAN: AADCR9366C)	Vs.	DCIT, Central Circle-2(2), Kolkata
Appellant		Respondent

Date of conclusion of Hearing	16.05.2025 & 27.01.2025
Date of Pronouncement	22.05.2025
For the Appellant	Shri A. K. Tulsyan, AR
For the Respondent	Shri Satyanarayan Raju, DR

ORDER

Per Shri Rajesh Kumar, AM

The appeal filed by the assessee is against the revisionary order of Ld. Pr. CIT (Central), Kolkata-1 dated 26.03.2024 for AY 2010-11 arising out of assessment order passed u/s. 263/147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) by DCIT, Central Circle-2(2), Kolkata dated 27.08.2021.

2. The only issue raised by the assessee in the grounds of appeal is against the invalid exercise of jurisdiction by Ld. Pr. CIT u/s. 263 of the Act which is invalid for two reasons – (i) the proceedings are time barred in terms of section 263(2) of the Act and (ii) that the order passed by the Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue.

3. The facts in brief are that the assessee filed its return of income on 05.05.2017 in compliance to notice issued u/s. 148 of the Act declaring total income at nil with current year’s loss of Rs.42,434/-. The case of the assessee was reopened u/s. 147 of the Act on the ground that there has been credible information with the Assessing Officer that there has been deposit of huge cash to the tune of Rs.2,85,46,000/- in the bank account of various non-existent companies which was transferred ultimately to the assessee and, therefore, the

assessee is beneficiary of the same. The Assessing Officer framed the assessment u/s. 143(3)/147 of the Act vide order dated 29.12.2017 accepting the returned income after calling for the details and evidences from the assessee during the re-assessment proceedings and after doing necessary examination and verification of the same. Thereafter, the Ld. Pr. CIT revised the said assessment order framed u/s. 147/143(3) dated 29.12.2017 vide order dated 17.03.2020 passed u/s. 263 of the Act directing the Assessing Officer to frame the assessment afresh by noting that the Assessing Officer has framed the re-assessment order without making proper verification of source of amount credited to the account of the assessee. Accordingly, the assessment order framed in the set aside proceeding u/s. 263/147/143(3) of the act dated 27.08.2021 after calling for the details from the assessee and after doing necessary verification. The Assessing Officer assessed the income at nil again accepting the returned income of the assessee.

4. Thereafter, again on the examination of the assessment records, Ld. Pr. CIT observed that the assessee had issued fresh shares and received premium in excess of fair market value of shares thereby violating provisions of sec. 56(2)(viib) of the Act. Ld. Pr. CIT noted that during the financial year, the assessee has issued 19,69,500 equity shares at face value of Rs. 10/- each at a premium of Rs.490/- thereby raising Rs.98,47,50,000/- comprising Rs.1,95,95,000/- as share capital and Rs.96,50,55,000/- as share premium. According to Ld. Pr. CIT, the said premium is required to be added to the income of the assessee and taxed accordingly. However, the Assessing Officer did not verify the issue during the course of assessment proceedings and the assessment was framed without application of mind as no enquiries or verifications were made in the light of sec. 56(2)(viib) of the Act. Accordingly, the order passed u/s. 263/147/143(3) of the Act dated 27.08.2021 was erroneous in so far as prejudicial to the interest of the revenue in terms of clause (a) of Explanation (2) to sec. 263 of the Act as amended and inserted w.e.f. 01.06.2015. The Ld. Pr. CIT issued show cause notice u/s. 263 of the Act on 20.02.2024, which was duly complied and assessee filed the reply vide submission dated 12.03.2024 which has been extracted by the Ld. Pr. CIT in the revisionary order in para 5. Finally, the Ld. Pr. CIT revised the assessment order passed u/s. 263/147/143(3) of the Act dated 27.08.2021 on the ground of being erroneous and

prejudicial to the interest of the revenue as the Assessing Officer has failed to make the necessary enquiry and failed to add the excess consideration u/s. 56(2)(viib) of the Act and directed the Assessing Officer to frame the assessment afresh after making proper enquiries on the issue and also after affording reasonable opportunity of hearing to the assessee.

5. The Ld. AR vehemently submitted before us that the revisionary order passed u/s. 263 is hopelessly barred by limitation in terms of provisions of sec. 263(2) of the Act. Besides, the revisionary jurisdiction is invalid as the assessment framed u/s. 263/147/143(3) of the Act dated 27.08.2021 is neither erroneous nor prejudicial to the interest of the revenue as in the said set aside proceedings in the first round, the Id. Pr. CIT has directed the Assessing Officer to verify the source of accommodation entries received by the assessee of Rs.2,85,46,000/-, which was duly examined by the Assessing Officer during the set aside assessment proceedings after calling for details/evidences from the assessee and found the same to be correct and accepted the returned income. The Ld. AR submitted that if at all, the revision of any assessment was to be made, that could have been done of the order passed u/s. 143(1) of the Act but since a considerable time have elapsed since the passing of the order u/s. 143(1), therefore, the same is barred by limitation in terms of provisions of section 263(2) of the Act. The Ld. AR in defense of his argument relied on the decision of Hon'ble Apex Court in PCIT Vs. Alegendran Finance Ltd. (2007) 293 ITR 1(SC). The Ld. AR submitted that on this account the revisionary jurisdiction is barred by limitation.

6. Secondly, the Ld. AR submitted that the assessment framed u/s. 263/147/143(3) of the Act dated 20.02.2024 is neither erroneous nor prejudicial to the interest of the revenue and, therefore, the exercise of jurisdiction u/s. 263 is invalid and cannot be sustained. The Ld. AR relied on the decision of Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC). The Ld. AR even submitted that the revisionary jurisdiction was exercised and invoked by the Ld. PCIT on the ground that the assessee has received excess share premium on the shares issued during the year. The Ld. AR submitted that since the case pertains to the AY 2010-11 and, therefore, the plea of the Ld. Pr. CIT that assessee has received excess

premium is not valid plea during the impugned assessment year. The Ld. AR submitted that the provisions of section 56(2)(viib) of the Act, which provides for the addition of excess consideration received over the fair market value of the shares would be added to the income of the assessee, was inserted vide Finance Act, 2013 w.e.f. 01.04.2013 and was accordingly applicable from AY 2013-14 onwards. The Ld. AR, therefore, submitted that even on this ground, the exercise of jurisdiction u/s 263 of the Act is invalid, wrong and against the provisions of the Act. The Ld. AR, therefore, prayed that the revisionary order passed u/s. 263 of the Act may kindly be quashed on the above grounds.

7. The Ld. DR, on the other hand, relied on heavily on the order of the Ld. Pr. CIT passed u/s. 263 of the Act on the ground that there would be no prejudice caused to the assessee in the set aside assessment proceeding as the assessee would be given a fair and reasonable opportunity to present its case on merit and, therefore, the appeal of the assessee may kindly be dismissed.

8. After hearing the rival contentions and perusing the material available on record, we find that in this case the Ld. Pr. CIT revised the assessment order passed u/s. 263/147/143(3) dated 27.08.2021 vide revisionary order dated 20.02.2024. The ld. Pr. CIT invoked the jurisdiction on the ground that the Assessing Officer has not examined the issue of the equity shares of face value of Rs. 10/- at a premium of Rs.490/- i.e. excess premium which comes to Rs.96,50,55,000/- and is in violation of provisions of sec. 56(2)(viib) of the Act. We note that in this case the assessment was framed u/s. 147/143(3) vide order dated 29.12.2017. The case of the assessee was reopened for the reason that assessee was beneficiary of Rs.2,85,46,000/- which was transferred from the bank accounts of non-existing companies in whose accounts the money was

deposited in cash. However, the Assessing Officer after calling for the information/details from the assessee accepted the plea of the assessee and assessed the income at returned income. Thereafter, the Ld. Pr. CIT, on perusal of the assessment records, observed that the order passed u/s. 147/143(3) of the Act was erroneous and prejudicial to the interest of the revenue on the ground that the Assessing Officer has not made proper verification about the source of credit into the assessee's bank account amounting to Rs.2,85,46,000/- and thus, revised assessment vide order dated 17.03.2020. Again, the assessment was framed u/s. 263/147/143(3) of the Act dated 27.08.2021 accepting return. The PCIT revised the said order on the ground that the Assessing Officer has not examined the issue of receipt of excess premium and therefore the same is in violation of provisions of section 56(2)(viib) of the Act. Therefore, the assessment framed is erroneous and prejudicial to the interest of the revenue and revised the same by directing the Assessing Officer to frame the assessment afresh after making necessary enquiries and after giving reasonable opportunity to the assessee of hearing. Now, the issue before us is whether the Ld. Pr. CIT could have revised the assessment framed u/s. 263/147/143(3) of the Act dated 27.08.2021 validly. In our opinion, the only issue raked by Ld. Pr. CIT while exercising the revisional jurisdiction for the first time was with respect to non-verification of source of credit of Rs.2,85,46,000/- into the assessee's bank account only and the issue of receipt of excess share premium in violation of section 56(2)(viib) of the Act was not there. Therefore, in the set aside proceeding, the Assessing Officer framed the assessment re-examining the said issue and accepting the returned income. In our opinion, the said assessment framed vide order dated 27.08.2021 accepting the returned income is neither erroneous nor prejudicial to the interest of the revenue and, therefore, the revisional jurisdiction exercised by the Ld. Pr. CIT setting aside and revising the

assessment dated 27.08.2021 is invalid and nullity. The case of the assessee finds support from the decision of Hon'ble Apex Court in the case of CIT Vs. Malabar Industries Ltd. (supra), wherein the Hon'ble Apex Court has held that in order to invoke the jurisdiction u/s. 263 of the Act the twin conditions as envisaged u/s. 263 of the Act have to be satisfied simultaneously otherwise the jurisdiction u/s. 263 is not available. The Hon'ble Court held that it is not enough if one of the two conditions is satisfied. therefore, even on this score the order passed by the Id. Pr. CIT is unsustainable in the eyes of law. Secondly, the Id. Pr. CIT could have revised the assessment passed u/s. 143(1) or u/s. 147/143(3) dated 29.12.2017. We find that the reassessment proceeding was initiated by the Assessing Officer on the ground that the assessee was beneficiary of Rs.2,85,46,000/- received from the non-existent companies in so far as the said amount was deposited in cash, however, in the reassessment proceeding the Assessing Officer has reexamined the issue and accepted the plea of the assessee and the returned income was accepted. Therefore, the Assessing Officer did not make addition in respect of item of addition which was subject matter in the reason recorded u/s. 148(2) and, therefore, once the item which is subject matter of reason recorded is not added by the Assessing Officer no other addition could be made in the assessment framed u/s. 147/143(3) of the Act. Even, therefore, the assessment framed u/s. 147/143(3) was neither erroneous nor prejudicial to the interest of the revenue. Moreover, the invocation of jurisdiction u/s. 263 to the other assessment u/s 143(1) is hopelessly barred by limitation and the same is beyond the time limit provided u/s. 263(2) of the Act as has been held by the Hon'ble Apex Court in PCIT Vs. Alegendran Finance Ltd. (Supra). Thirdly, even the assessment proposed by the Id. Pr. CIT in the show cause notice issued u/s. 263 of the Act was with respect to receipt of excess share premium by issuing equity shares to the tune of

Rs.96,50,55,000/- in violation of provisions of sec. 56(2)(viib) which was not applicable to the instant assessment year and was brought on the statute book by the Finance Act, 2012 w.e.f. 01.04.2013 meaning thereby that the same is applicable from AY 2013-14 onwards. Therefore, even the very basis of initiation of revisionary proceeding is invalid and against the provisions of the Act. Consequently, we quash the revisionary proceeding initiated by the Ld. Pr. CIT and also the consequent order framed u/s. 263 of the Act dated 26.03.2024.

9. In the result, appeal of the assessee stands allowed.

Order is pronounced in the open court on 22nd May, 2025

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated:22nd May, 2025

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–M/s. Regal Vincom Pvt. Ltd.
2. Respondent – DCIT, Central Circle-2(2), Kolkata
3. Pr. CIT
4. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata