



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
AND  
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.300/RJT/2024

Assessment Year: 2018-19

Sparten Granito P. Ltd. S.No.277/ B/h. Siyaram Granito Jetpur Road, Rangpar Morbi. PAN : AAXCS 7650 J	बनाम Vs.	Pr.Commissioner of IncomeTax-1 Rajkot.
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारितीकीओरसे/Assessee by : Shri S.N. Soparkar, Sr.Adv-AR

राजस्वकीओरसे/Revenue by : Shri Sanjay Punglia, Id.CIT-DR

सुनवाईकीतारीख/Date of Hearing : 03/03/2025

घोषणाकीतारीख/Date of Pronouncement : 02/06/2025

**ORDER**

**Per Dr. A. L. Saini, AM:**

By way of this appeal, the assessee has challenged the correctness of the order dated 31.03.2024, passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2018-19. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:

*1. Ld. Pr. CIT, Rajkot - 1 erred in law and on facts revising a scrutiny assessment order which is neither erroneous nor prejudicial to the interest of revenue.*



*2. This action of Id. Pr. CIT revising an order passed by assessing officer raising relevant queries and extensive verification of the details submitted during assessment by the appellant is without any justification to invoke revisional jurisdiction.*

*3. Ld. Pr. CIT erred in law and on facts holding that assessment completed without any inquiry on the points for which case was selected for scrutiny as erroneous and prejudicial to the interest of revenue failed to appreciate clear difference between "Lack of inquiry" and "Inadequate inquiry."*

*4. Ld. Pr. CIT erred in law and on facts invoking revisional jurisdiction just because of assessing officer not elaborating in assessment order responses to the queries raised that was properly responded by the appellant during the assessment proceedings.*

*5. Ld. Pr. CIT erred in law and on facts revising scrutiny assessment order relying on judgments of Hon'ble apex court rendered on completely different set of facts.*

*6. Ld. Pr. CIT erred in law and on facts revising scrutiny assessment order merely because he held a different opinion than assessing officer in the matter.*

*7. Ld. Pr. CIT erred in law and on facts holding assessment order as erroneous and prejudicial to the interest of revenue since assessing officer failed to inquire source of source of investment made in share capital of the appellant company.*

*8. Ld. Pr. CIT erred in law and on facts in setting aside scrutiny assessment order with direction to assessing officer to pass fresh assessment order after making necessary inquiry and to make additions under the relevant sections without specifying what was the error in the order passed by assessing officer verifying relevant documents submitted during the proceedings raising pertinent queries.*

3. The facts of the case which can be stated quite shortly are as follows: The assessee, before us, is a private limited company and had filed its return of income for assessment year (A.Y.) 2018-19, on 31/10/2018, declaring total income of Rs.NIL. The assessee's case was selected for limited scrutiny by "CASS" for the following reasons, viz: (1) substantial increase in share capital in a year and (2) Purchases shown in the ITR is less than the invoice value of imports shown in the export- import data. The Assessment was finalised u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Income-tax Act, 1961, on 01/04/2021, accepting returned income of Rs.NIL.



4. Later on, Learned Principal Commissioner of Income-tax (in short “Ld PCIT”), has exercised his jurisdiction under section 263 of the Income-tax Act, 1961. On perusal of case records, it was observed by the ld. PCIT that the share capital increased from Rs.1,00,000/- to Rs.21,00,00,000/- in the financial year (F.Y.) 2017-18. It was further observed that share capital has been received from 65 persons. One of the reasons, for selection of case under scrutiny, was introduction of large capital or share capital in the year of incorporation. Although, the assessment record, contains the names of all the 65 persons. However, the available details as per records are incomplete. The records reveals that the assessee has submitted only details like acknowledgement of Return of income for all the 65 persons for the assessment year (A.Y.) 2018-19 and Bank statements of the deposits only. Other than these two details, no other details to prove creditworthiness of the investors have been filed. That is, balance sheets of the shareholders were not filed. Considering such facts, notice u/s 263 of the Income-tax Act, 1961, was issued vide DIN & Document No. ITBA/REV/S/91/2022-23/1050176985(1) dated 27.02.2023 and duly served upon the assessee, which is reproduced by the ld.Pr.CIT in the revisionary order under section 263 of the Act, at page no.2 to 4 of the order. In response to the notice of the ld.Pr.CIT, the assessee submitted written submissions before the ld.Pr.CIT, which is reproduced by the ld.Pr.CIT, in para 3 (page no.5 to 16) of the revision order. Thereafter, the ld.Pr.CIT has issued another notice dated 20.01.2024, which is placed at page no.17 of the revision order under section 263 of the Act.

4. In response to the above notice, of the ld. PCIT, the assessee furnished copy of its earlier reply dated 11<sup>th</sup> March 2023. In its reply, the assessee submitted copy of income tax return of shareholders, bank statement, copy of ledger accounts, copy of balance sheet only for few shareholders. In support of



the amount of Rs.10,20,12,500/- (Share capital) received from 27 persons, the assessee has submitted that in some of the cases, balance sheet of the subscriber of shares, were also submitted at the time of assessment proceedings. Further, the assessee has submitted that it has fully justified the identity, genuineness and creditworthiness of the investors by way of submitting documentary evidences. The assessee has relied on various judicial pronouncements as mentioned in its reply dated 11.03.2023.

5. However, the Id.Pr.CIT rejected the contentions of the assessee and observed that many of such share subscribers have declared returned of income in the income bracket of Rs. 2.34 lacs to Rs. 5.00 lacs and claimed to have invested the amount 6 to 26 times higher to their income which proves that these subscribers are not persons having capacity of making investments irrespective of the chances of return on investments. It is not a secret that share investment in an un-listed company, does not give easy exit route and are normally illiquid for a considerable time with few/limited exit options. Further, looking to the income declared by the assessee- company, it can be stated that no reasonable return on such investment by way of dividend is visible in these cases. In such scenario, no prudent investor would like to stack such huge amount of money in shares of the assessee- company, where no return on investment, appeared forthcoming. It was also observed that the assessee had not furnished balance sheet of most of subscribers/lenders in order to gauge the credit-worthiness of such subscribers. The Id PCIT further notice that some of the bank accounts of investors contained cash deposits, which are immediately invested in the assessee- company. It was further seen that, in some case the bank statements of the investors have no any major transactions other than the transaction with the assessee- company. For example, in case of Rupal Chandrakantbhai Dadhaniya who has invested total Rs.42,00,000/-, in the shares and given Rs. 11,50,000/-, as loan to the assessee- company, having



capital of Rs.21,84,015/-, only as per the balance sheet, for the year ended as on 31.03.2018 of Rupal Chandrakantbhai Dadhaniya.

6. The Id PCIT observed that balance sheets of the shareholders were not filed. Further, in respect of cases where balance sheets were filed, it was observed by the Id. PCIT that huge unsecured loans were shown, as the source for share investment, in the assessee-company. From the Balance Sheets / Bank Statements, it appeared that most of these loans have been taken for the purpose of Share Capital Investment and unsecured loans. For example, in the case of Rupal Chandrakantbhai Dadhaniya, whereas her own capital is Rs.21,84,015/-, loan taken is about Rs.37.30 lacs from which Share Capital and Unsecured loan are provided. Similarly, in the case of Mittal Jayeshbhai Bavarva, it was seen that her own capital is Rs.16,61,816/-, whereas Rs.69.13 lacs is claimed to have been taken, as loan from which Rs.21 lacs invested in the Share Capital of the assessee -company. It was further noted by Id PCIT that Shri Dharmeshkumar Premjibhai, Kothiya has shown returned income of Rs.2,43,440/-, which also raises grave doubts on the creditworthiness of the person of investing Rs.21 lacs in share capital during the year under consideration. The Id PCIT stated that these are only few instances of such glaring discrepancies and manipulation of books. The above point to glaring and obvious mismatch/discrepancies between the source of income/funds and the capacity/creditworthiness for making investment in the Share Capital. These glaring discrepancies/mismatches should have raised the antenna of the assessing officer and he should have conducted necessary enquiries/verifications. However, the assessing officer accepted the share capital investment and loans without carrying out inquiry/verification that should have been done. The assessee was also required to furnish the explanation about nature & source as well as to prove the capacity of creditors to advance money. However, the assessee failed to furnish/prove the same. The Id. PCIT also invoked the provisions of explanation to section 263 of the Act



and stated that assessment order was passed without making enquiry or verification, which should have been done, therefore impugned order passed by the assessing officer, under section 143(3) r.w.s. 143(3A) and (3B), was set-aside by the Id. PCIT for fresh assessment and directed the assessing officer to pass a fresh assessment order after making necessary enquiries.

7. Aggrieved by the order of the Id.Pr.CIT, the assessee is in appeal before us.

8. The Id. Counsel for the assessee, Shri S.N. Soparkar,( Senior Advocate), argued that assessee has introduced fresh capital in the assessment year under consideration and the assessee has proved the identity, creditworthiness and genuineness of the transaction and the assessing officer has examined the same by issuing notices, two times, under section 142(1) of the Act, during the assessment proceedings, therefore, it is not a case of lack of enquiry. The shareholders who have invested the money in the company submitted their balance sheet, profit & loss account, bank statements. During the assessment proceedings, the assessing officer issued notice to the assessee, asking the assessee to submit documentary evidences to prove the identity, creditworthiness and genuineness of the investment in the assessee-company. The assessee has replied to the assessing officer along documentary evidences. The assessing officer has also issued further two notices under section 142(1) of the Act, which are placed at paper book (PB) page no.378-406 of the assessee's paper book. In response to these notices, the assessee submitted required details and documents. Therefore, the assessing officer has scrutinized the details, so submitted by the assessee, and did inquiry also, and thereafter passed the assessment order, therefore, such assessment order should not be stated to be erroneous and prejudicial to the interest of the Revenue.



9. On the other hand, the Id.DR for the Revenue submitted that the assessee's share capital was to the tune of Rs.1,00,000/- only and during the year, the assessee has received share capital and premium of Rs.21 crores from 65 shareholders. The Id.DR invited our attention to paper book (PB) Page No.133 and stated that the cash was deposited prior to the issue of cheque to the assessee-company. The Id.DR also invited attention towards PB Page No.164 and 165 and stated that the respective shareholders deposited the cash in bank account prior to the issue of cheque to the assessee-company. The Id.DR also invited our attention towards paper book Page No.182, page No. 213 and Page No.218 and explained that in the respective bank statement of the shareholders, the cash was deposited prior to the issue of cheques to the assessee-company, for allotment of share capital. Therefore, the Id.DR submitted that there were huge cash deposited in the bank accounts of the shareholders prior to the issue of cheques to the assessee- company, which is nothing but unaccounted money of the assessee- company, which was deposited by the assessee- company, in their bank accounts of these shareholders, as most of the shareholders do not have any transaction in their bank statement except to cash deposit and issue of cheques in favour of the assessee- company. The assessee has failed to prove source of such cash deposits. In this scenario, the assessee has failed to prove the first degree of evidences, that is "source". Since, in the assessee's case under consideration, the assessment year involved is the assessment year (AY) 2018-19 wherein, the assessee needs to explain the "source of source", which is second degree of evidences. The Id.DR also pointed out that some of the shareholders were not submitted their balance sheets before the assessing officer. In some of the cases, the shareholders took the loan and thereafter invested in the share capital of the assessee-company. The Id DR pointed out that with effect from 01.04.2013, there was amendment in section 68 of the Act, wherein the assessee needs to explain the "source of source". The assessing



officer has never asked the assessee to prove “source of source” therefore, it is a case of “no enquiry” on the part of the assessing officer, so far the **source of the source** is concerned.

10. In addition to this, the ld DR pointed out that 55 shareholders have not filed their balance sheets, neither before the assessing officer, nor before the ld. PCIT, therefore, without balance sheets, creditworthiness of shareholders cannot be examined. The non-submissions of the balance sheets by 55 shareholders, mean that the assessee-company has failed to prove the creditworthiness. Apart from this, in the bank statements of the shareholders, there is no other transaction except the cash deposited prior to the issue of cheque to the assessee-company. Therefore, it is a serious matter, where the assessee has failed to prove the **source of source also**. Therefore, the ld.DR pointed out that the assessee has not submitted documents and evidences to prove **source of the source**.

11. In rejoinder, the ld. Counsel for the assessee submitted that the shareholders income were adequate and 12 shareholders had filed balance sheets also. There is withdrawal of cash by the respective shareholders, in their bank statements, also. If there is no major bank transactions getting reflected in the bank statements of the shareholders, it is not a point to make addition in the hands of the assessee-company. The shareholders normally invest money out of the past savings and not from the current income. The ld. Counsel also submitted various judgements before the Bench, explaining the terminology of **source of the source**, which we have gone through.

12. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld PCIT and other materials brought on record.



We note that first proviso to section 68 of the Act, clearly provides that in respect of share capital, explanation offered by the assessee-company shall be deemed to be not satisfactory unless the shareholder offers explanation about the nature and source of such investment and the AO is satisfied about such explanation. First proviso to section 68 of the Act is reproduced as under:

*"Provided that where the assessee is a company (not being a company in which the public are substantially interest), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-*

*a) The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory"*

13. We note that in assessee's case, under consideration, balance sheets of 55 Shareholders were not available before the Ld. PCIT, which is needed to prove the source( first degree evidence to prove **source** only).In the assessee's case under consideration, the assessment year involved, is the assessment year 2018-19. Therefore, as per the proviso to section 68 of the Act, the assessee needs to explain the **source of the source**. However, the assessee has failed to prove the **source of the source**, as necessary documents and evidences were not filed by the assessee. As per ld DR balance-sheets of 55 shareholders are not available. The assessee has not submitted the entire documents and evidences to prove the first decree evidences, wherein only the source is to be proved. However, the second decree evidences, which is known, as source of the source, have never been submitted by the assessee before the Ld.PCIT. Therefore, considering the facts and circumstances, we are of the view that one more opportunity should be given to the assessee to plead his case before the ld. PCIT to prove the **source of the source**.



14. Therefore, considering the above facts, we are of the view, that this matter should be remitted back to the file of the Ld. PCIT with the direction to the assessee to submitted all details and documents to prove the source of the source. Some of the documents, that is, balance sheets of 55 shareholders, to prove the first decree of evidences are absent before the Ld. PCIT. We also find that the second decree evidences to prove the source of the source in respect of share capital have not been furnished by the assessee before the Ld. PCIT. Therefore, we are of the view that one more opportunity should be given to the assessee to furnish the required documents and evidences to prove the source of the source before the Ld. PCIT. We note that it is settled law that principles of natural justice and fair play require that the affected party is granted sufficient opportunity of being heard to contest his case. Therefore, without delving much deeper into the merits of the case, in the interest of justice, we restore the matter back to the file of Ld. PCIT for de novo adjudication and pass a speaking order after affording sufficient opportunity of being heard to the assessee, who in turn, is also directed to contest his stand forthwith. Therefore, we deem it fit and proper to set aside the order of the PCIT and remit the matter back to the file of the ld. PCIT to adjudicate the issue afresh on merits. For statistical purposes, the appeal of the assessee is treated as allowed.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order is pronounced in the open court on 02/06/2025**

**Sd/-**  
**(DINESH MOHAN SINHA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(DR.ARJUNLAL SAINI)**  
**ACCOUNTANT MEMBER**

राजकोट/Rajkot

दिनांक/ Date: 02/06/2025

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