

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCHES : D :
KOLKATA

BEFORE SHRI P.M.JAGTAP, AM & SHRI N.V. VASUDEVAN, JM

ITA No.1030/Kol/2016 Assessment Year:2011-12		
Brotex Sales Pvt. Ltd. 63, Radha Bazar Street, Kolkata-700001. Rep. by None PAN : AAECB 1921 E	Vs.	Commissioner of Income Tax, Kolkata-2, AayakarBhawan, P-7, Chowringhee Square, Kolkata – 700 069. Rep. by None
ITA No.1031/Kol/2016 Assessment Year:2011-12		
Dhanlabh Tradelinks Pvt.Ltd. 63, Radha Bazar Street, Kolkata-700001. Rep. by None PAN : AADCD 5263 C	Vs.	Commissioner of Income Tax, Kolkata-2, AayakarBhawan, P-7, Chowringhee Square, Kolkata – 700 069. Rep. by None
ITA No.1088/Kol/2016 Assessment Year:2009-10		
M/s. Olympus Suppliers Pvt.Ltd. 15/B, Clive Row, Kolkata-700001. Rep. by Shri Subash Agarwal, Advocate PAN : AABCO 0624 Q	Vs.	Pr.Commissioner of Income Tax, Kolkata-2, AayakarBhawan, P-7, Chowringhee Square, Kolkata – 700 069. Rep. by None
ITA No.1090/Kol/2016 Assessment Year:2009-10		
Gangotri Financial Advisory Pvt.Ltd. C/o Advocate Amit Agarwal, 50D, Muktaram Babu Street, Kolkata-700007. Rep. by None PAN : AADCG 3052 G	Vs.	Commissioner of Income Tax, Kolkata-1, Kolkata AayakarBhawan, P-7, Chowringhee Square, Kolkata – 700 069. Rep. by None

(Appellants)

(Respondents)

Date of Hearing	:	02.08.2016
Date of Pronouncement	:	05.08.2016.

ORDER

Per Bench

Through these appeals, different assessees assail the correctness of separate orders passed by the Commissioners of Income-tax (CIT) u/s 263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the captioned assessment years. Since all these appeals are based on largely similar facts and common grounds of appeal, we are proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Before taking up the disposal of the instant appeals on merits, we consider it expedient to record that when the appeal vide ITA No.1090/Kol/2016 in the case of Gangotri Financial Advisory Pvt. Ltd was called up for hearing, neither there was any adjournment application nor any body put in appearance at all. None appeared on behalf of the department. When the appeals vide ITA Nos.1030/Kol/2016 and 1031/Kol/2016 in the case of Brotex Sales Pvt. Ltd and Dhanlabh Tradelinks Pvt. Ltd respectively were called for hearing, we find that notices were served and acknowledgement copies are on record but neither there was any adjournment application nor any body put in appearance at all. None appeared on behalf of the department. In the case of M/s. Olympus Suppliers Pvt. Ltd vide ITA No.1088/Kol/2016 Shri Subash Agarwal, Advocate represented on behalf of the assessee but none appeared on behalf of the department. In this appeal there is a delay of 19 days in filing the appeal by the assessee. The impugned order of the CIT u/s 263 of the Act was passed on 23.03.2015 (wrongly referred as 29.03.2015 in the proceedings before the Hon'ble Calcutta High Court). The same was not served on the assessee. The assessee challenged the order of the CIT dated 23.03.2015 u/s 263 of the Act before the Hon'ble Calcutta High Court in WP No.3116(W) of 2016. The Hon'ble High Court by its order dated 20.04.2016 observed that it shall be treated that the date of receipt of the order u/s 263 of the Act was only 29.02.2016 and on that basis the assessee was given liberty to pursue the remedies against the order dated 23.03.2015. The present appeal by the assessee has been filed on 19.05.2016. The appeal against the order u/s 263

of the Act are to be filed within 60 days from the date of receipt of the order dt. 28.04.2016. The same was however filed only on 19.05.2016 resulting in a delay of 19 days. The delay has been explained in an application for condonation of delay. It has been stated therein that the Hon'ble High Court's order was communicated to the assessee only on 06.05.2016 and the relevant papers were handed over to the advocate on 10.05.2016. The appeal was prepared by the advocate on 17.05.2016 and thereafter filed on 18.05.2016 before the Tribunal. After considering the reasons explained in the petition for condonation of delay we are satisfied that the delay in filing this appeal was due to a reasonable and sufficient cause and the appeal is accordingly condoned.

3. We also find that the issues raised in these appeals are squarely covered against the assessee by several orders passed by this bench including *Subhlakshmi Vanijya Pvt. Ltd. vs. CIT (infra)*. Under these circumstances, we are taking up these appeals for disposal on merits *ex parte qua* the assessee.

4. Briefly stated the facts of all the cases in this batch are similar inasmuch as returns were filed by such companies with meagre income; intimations were issued u/s 143(1); thereafter notices u/s 148 were issued either at the instance of such companies divulging a paltry escapement of income or otherwise ; assessment orders were passed u/s 143(3) read with section 147 after making nominal additions and the AOs, during the course of such assessment proceedings, made some formal enquiries about shares issued by such companies at huge premium by issuing notices u/s 133(6) to some of the shareholders and getting satisfied without any further investigation. The jurisdictional CITs have passed orders u/s 263 in all such cases, which have been assailed before the Tribunal.

5. We have perused the relevant material on record. It is relevant to mention that we have disposed of more than 500 cases involving same issue through certain orders with the main order having been passed in a group of cases led by *Subhlakshmi Vanijya Pvt.*

Ltd. vs. CIT (ITA No.1104/Kol/2014) dated 30.7.2015 for the A.Y. 2009-10.

6. We find as has also been admitted by the Id. DR that facts and circumstances of the cases under consideration are *mutatis mutandis* similar to those decided earlier. In our aforesaid order in *Subhlakshmi Vanijya Pvt. Ltd., vs. CIT* (ITA No. 1104/Kol/2014 A.Y. 2009-10), we have drawn the following conclusions: -

A. Contention of the assessee that since the AO of the assessee-company was not empowered to examine or make any addition on account of receipt of share capital with or without premium before amendment to section 68 by the Finance Act, 2012 w.e.f. A.Y. 2013-14 and hence the CIT by means of impugned order u/s 263 could not have directed the AO to do so, is unsustainable.

B. Failure of the AO to give a logical conclusion to the enquiry conducted by him gives power to the CIT to revise such assessment order, by holding that :-

i) the enquiry conducted by the AO in such cases can't be construed as a proper enquiry;

ii) CIT u/s 263 can set aside the assessment order and direct the AO to conduct a thorough enquiry, notwithstanding the jurisdiction of the AO in making enquiries on the issues or matters as he considers fit in terms of section 142(1) and 143(2) of the Act, which is relevant only up to the completion of assessment ;

iii) Inadequate inquiry conducted by the AO in the given circumstances is as good as no enquiry and as such, the CIT was empowered to revise the assessment order ;

iv) The order of the CIT is not based on irrelevant considerations and further in the present circumstances, he was not obliged to positively indicate the deficiencies in the assessment order on merits on the question of issue of share capital at a huge premium ; and

v) the AO in the given circumstances can't be said to have taken a possible view as the revision is sought to be done on the premise that the AO did not make enquiry thereby rendering the assessment order erroneous and prejudicial to the interest of the revenue on that score itself.

C. In the given facts and circumstances of all such cases, the notices u/s 263 were properly served through affixture or otherwise. Further the law does not require the service of notice u/s 263 strictly as per the terms of section 282 of the Act. The

only requirement enshrined in the provision is to give an opportunity of hearing to the assessee, which has been complied with in all such cases.

D. Limitation period for passing order is to be counted from the date of passing the order u/s 147 read with sec. 143(3) and not the date of Intimation issued u/s 143(1) of the Act, which is not an order for the purposes of section 263. In all the cases, the orders have been passed within the time limit.

E. The CIT having jurisdiction over the AO who passed order u/s 147 read with section 143(3), has the territorial jurisdiction to pass the order u/s 263 and not other CIT.

F. Addition in the hands of a company can be made u/s 68 in its first year of incorporation.

G. After amalgamation, no order can be passed u/s 263 in the name of the amalgamating company. But, where the intention of the assessee is to defraud the Revenue by either filing returns, after amalgamation, in the old name or otherwise, then the order passed in the old name is valid.

H. Order passed u/s 263 on a non-working day does not become invalid, when the proceedings involving the participation of the assessee were completed on an earlier working day.

I. Order u/s 263 cannot be declared as a nullity for the notice having not been signed by the CIT, when opportunity of hearing was otherwise given by the CIT.

J. Refusal by the Revenue to accept the written submissions of the assessee sent after the conclusion of hearing cannot render the order void *ab initio*. At any rate, it is an irregularity.

K. Search proceedings do not debar the CIT from revising order u/s passed u/s 147 of the Act.

7. It is noticed that all or some of the above conclusions are applicable to the appeals in this batch. In view of the foregoing discussion and following the view taken in *Subhlakshmi Vanijya Pvt. Ltd. (supra)*, we uphold all the impugned orders.

8. In the result, all the appeals are dismissed.

The order pronounced in the open court on 05.08.2016.

Sd/-
[P.M.Jagtap]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 05.08.2016.

RG.PS

Copy forwarded to:

- Appellant
- Respondent
- CIT
- CIT (A)
- DR, ITAT

AR, ITAT, Kolkata