

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

I.T.A. No.2433/M/2015
(Assessment Year: **2011-2012**)

Instant Holdings Ltd., (Successor to M/s. Idea Tracom (P) Ltd), 213, Bezzola Complex, 'B' wing, 71 – Sion Trombay road, Chembur, Mumbai – 400 071.	बनाम/ Vs.	Pr. Commissioner of Income Tax-6, Mumbai.
स्थायी लेखा सं./PAN : AACFN0055A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Vijay Mehta
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Sambit Mishra, DR

सुनवाई की तारीख /Date of Hearing : 07.10.2015
घोषणा की तारीख /Date of Pronouncement : 07.12.2015

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 28.4.2015 is against the revision order of the CIT-6, Mumbai dated 17.3.2015 for the AY 2011-12.

2. In this appeal, though the assessee raised three grounds in toto, the legal ground that emanates from the appeal relates to the validity of the order of Principal CIT (hereinafter referred as CIT) in assuming the jurisdiction u/s 263 of the Act on various reasons. Briefly stated relevant facts in this regard are that the assessee-company (Idea Tracom P Ltd) was formed on 22.5.2010 by Shri Kheman Yadav and Shri Yash Agarwal. The ownership of this company was transferred from the above said persons to M/s. RPG Cellular Investment & Holdings Pvt Ltd (RPG Cellular) and M/s. South Asia Electricity Holdings Ltd (South Asia). On 11.8.2010, the RPG Cellular and South Asia transferred their shares to M/s. Universal Industrial Funds Ltd (Universal). Thus, the said assessee-company has become the 100% subsidiary of the 'Universal'. The assessee purchased 1,67,350 shares of KEC International Ltd

(in short KEC); 30,96,800 shares of Zensar Technologies Ltd (Zensar); 6,30,500 shares of Spencer & Co. Ltd and 24,75,000 preference shares of South Asia from the said Universal. In order to finance the said acquisition of shares from the Universal, assessee issued Optional Fully Convertible Debentures (OFCDs) @ Rs. 100/- each to Instant Holdings Ltd (Instant Holdings) with the premium of Rs. 90/- on each share having face value of Rs. 10/-. These debentures were converted into the shares with the premium of Rs. 90/-. Thus, the Instant Holdings has become a successor company to the originally formed company named M/s. Idea Tracom (P) Co Ltd. This conversion of shares into OFCDs has happened in 2010. The rate at which the assessee-company acquired the shares of KEC International Ltd; Zensar Technologies Ltd and Spencer & Co. Ltd is lesser than the market value the Universal. The following is the details of the above referred acquisition of shares by the assessee (Idea Tracom) from the Universal:-

S.No	Name of the Script	Rate/ shares purchased	Market value (Rs.)
1	KEC International	469.09	508.76
2	Zensar Technologies	55.17	172.89
3	Spencer & Co	72.00	74.98
4	South Asia	100	100.00

3. Thus, the shares / preferential shares were purchased by assessee-company from the Universal, for consideration of Rs. 54,20,93,678/- against the market value of Rs. 91,53,34,248/-. Thus, the assessee acquired the above shares with the price less by Rs. 37.32 Crs (rounded of).

4. In the assessment order dated 22.3.2014, the AO issued various notices u/s 142 of the Act and the questionnaires / letters. Finally, he computed the assessed income at Rs. 11,37,53,720/- against the returned loss of Rs. 66,284/-. In the regular assessment, in connection with the said OFCDs converted into shares, AO determined the market value per share at Rs. 69/- against which, Rs. 90/- per share was the premium involved. Accordingly, AO considered the premium difference of Rs. 21/- per share (ie Rs. 90 – Rs. 69) as excess premium charged by the assessee from Instant Holdings and the same is treated as "income from other sources" u/s

56(1) of the Act. Accordingly, AO made addition of Rs. 11,38,20,000/- in the assessment.

5. Subsequently, the Principal CIT initiated the proceedings u/s 263 of the Act and questioned the above manner of making assessment and issued show cause notice stating that the shares worth Rs. 91.53 Crs were purchased for merely a sum of Rs. 54.20 Crs. He also questioned the manner of arriving at the difference in share premium of Rs. 21/- per share while making addition of Rs. 11,38,20,000/-. In the order made u/s 263 of the Act, the Principal CIT discussed the above facts and also the manner in which AO concluded the assessment and did not agree with the said assessment order of the AO. CIT came to the different conclusion. In his order, the Principal CIT concluded that the AO did not undertake the meaningful inquiries and therefore, the assessment order is treated as erroneous in so far as the same is prejudicial to the interest of the Revenue. CIT considered various submissions made by the assessee and summarized the same as under:

"10.1. It was submitted that revision proceedings are not legally tenable on account of the fact that:

- (i) An appeal on this issue has been filed before the CIT (A) which is pending for disposal.*
- (ii) There was detailed inquiry carried on by the AO before passing the assessment order and therefore it cannot be inferred that there was non-application of mind or enquiries.*
- (iii) It was also argued that no fresh enquiries in the guise of revision can be carried out by the Department u/s 263 of the Act.*
- (iv) Likewise, it was submitted that no revision was possible merely on the surmises and conjunctures. The assessee particularly objected to the observation that the difference between market value of shares transferred (Rs. 91.53 Crs) and sale consideration (Rs. 54.20 Crs) must have been received outside the books of accounts from the transferee company.*
- (v) It was also argued that neither there was any error in the assessment order nor any prejudice has been caused to the Revenue.*
- (vi) The AO has taken one view which was possible and therefore, revision proceedings are outside the pale of section 263 as interpreted by various judicial pronouncement.*
- (vii) It was vehemently argued that when the assessment order has been passed after considered al the facts and information, the same cannot be revised u/s 263 of the Act on the ground that CIT has different opinion the issues involved."*

6. Eventually, the CIT set aside the order of the AO as per the discussion given in para 13 of the Revision Order. Relevant lines from the said Revision Order are extracted as under:

"13.....I, therefore, set aside the assessment order passed on 18.3.2013 and direct the AO to pass an assessment order afresh (de novo) after verifying the facts carefully in accordance with settled position of law. The AO should give reasonable opportunity of hearing to the assessee before passing the fresh assessment order. The Assessing Officer is required to examine the facts and the applicable law on facts discussed above at the time of fresh assessment without being prejudiced by the fact that assessment order has been set aside u/s 263 after taking into account submissions of the assessee."

7. Aggrieved with the above decision of the CIT, assessee filed the present appeal before the Tribunal questioning the assumption of jurisdiction u/s 263 of the Act.

Arguments of Assessee's Counsel:

8. Before us, Ld counsel for the assessee made various submissions and argued vehemently for cancelling of the revision order of the Pri CIT as invalid and unsustainable in law. At the outset, Sri Vijay Mehtha, AR for the assessee brought our attention to the revisions order and mentioned that the CIT made various unsustainable and routine allegations against the AO and his order. Lack of proper verification to the issue of 'investment in purchase of shares' of Zensar, KEC, Spencer & Co Ltd from UNIVERSAL, illogical conclusions on excess premium on OFCDs from INSTANT, form vs substance etc. The summary of the arguments on the said allegations is discussed as follows.

9. **On the issue of Proper Verification:** AO made regular assessment after making addition of Rs 11.34 cr on account of excess premium collected from INSTANT relating to OECDs. During the regular assessment proceedings, AO issued notices u/s 142 (1) of the Act (dt 20/5/2013 and 9/1/2014), issued questionnaires, each one contains large no questions called for various details, explanations, annexures, written notes on various issue. The enquiries by the AO include of both general and specific issues. Bringing our attention to the various documents ie assessee relies vide letters dated 16/1/14, 29/1/14, 17/2/14 etc and mentioned that the AO verified all the issues/matters raised by the CIT. In this regard, assessee relied on documents placed in the APB from pages 1 to 42.

10. Further, Ld Counsel for the assessee relies on specific question raised in the questionnaires to demonstrate that the AO is aware of all the aspects of the issues

raised by the CIT. ie (i) improper enquiries and illogical conclusions of the AO (ii) questioned the addition of Rs 11.34 cr u/s 56(1) of the Act on account of excess premium collected from INSTANT and failed to make addition on account of investment in shares purchased from UNIVERSAL (iii) form vs substance. CIT also alleged on the hurriedly done transfer of shares of the assessee/ownership, investment in purchase of share without having own funds, purchase of said shares for lower consideration than the prevailing market rate. He proceeded to specify the relevant questions specific to the twin issues of investment in shares and the sources of funds and the relevant questions and the annexures are as under:

Notice under sub-section [1] of section 142 of the Income Tax Act, 1961, dated 20.5.2013.

8. *List of Associate / Sister / related concerns with PAN no. / Assessing Officer and addresses.*

12. (i) *in case of receipt of any share capital, please furnish the name, address, PAN, copy of accounts of the investor.*

15. *Details of investments along with the nature of return thereof and also state / explain the sources of funds for such investments along with cash flow statement. In respect of investments made in instruments capable of giving return exempt from taxation, please explain as to why the disallowance u/s 14A r.w.r 8D should not be made.*

31. *Furnish the name, Address, PAN and assessment details fo the persons who are beneficial owners of equity shares of the company holdig not less than 10% of the voting power at any time of the previous year. Please also furnish the ledger account of such persons in the books of the assessee company.*

Notice under sub-section [1] of section 142 of the Income Tax Act, 1961, dated 9.1.2014.

10. *Furnish party wise details of investments made with copy of share certificates issued in respect of quoted and unquoted shares in the following format:-*

11. *Whether these shares are held in physical form or Demat Form? If they are held in Demat form provide your Demat A/c details. If they are held in physical form furnish their Distinctive Numbers.*

The following are the details / information furnished by the assessee on matters questioned / raised in notice u/s 142(1) of the Act.

Dt:16.1.2014

8. *For the details of related party relationship please refer to balance sheet and the profit and loss account – Schedule 7 forming part of the Accounts. The PAN address and Assessing Officer details are enclosed at Annexure 6.*

12. *The details of receipt equity share capital is enclosed at **Annexure 9.***

15. The details of investments purchased during the captioned AYs alongwith sources of funds for the said purchase is enclosed at **Annexure 12**. For the cash flow statement, please refer Annual Report enclosed.

31. Please refer Schedule-7 (Notes forming part of the Accounts) to the Balance Sheet enclosed for details of holding companies. Also, enclosed at Annexure 15 is the copy of annual return of ITPL filed under Companies Act, 1956 showing list of transfer made from incorporation till 21.9.2011 being AGM date.

50.....The certified true copy of the resolution passed in the meeting of the Board of Directors of ITPL is enclosed at Annexure 17.

51. The bank statement of ITPL showing receipt of amount for allotment of debentures is enclosed at Annexure 18. Also, the bank statement of instant Holdings Limited showing payment of amount for allotment of debentures is enclosed at Annexure 19.

53. The return of allotment of shares to instant Holdings Limited pursuant to section 75(1) of the Companies Act, 1956 filed with the Registrar of companies in Form 2 is enclosed herewith at Annexure 20.

54. The party wise details of investments made during the captioned AYs is enclosed at Annexure 21.

55. The Demat statement of holdings for 31st March, 2011 is enclosed at Annexure 22."

11. Relevant annexures are scanned and are made part of this order as under:-

Annexure-12

Name of Company	No. of shares	Face Value per share	Cost (Rs.)	Nature of return	Source of funds
Equity shares					
Quoted					
KEC International Ltd	8 36 750	2	7 83 35 073	Dividend	Issue of Zero percent fully Convertible Debentures and issue of share capital
Zensar Technologies Ltd	30 96 800	10	17 08 62 605	Dividend	Issue of Zero percent fully Convertible Debentures and issue of share capital
Unquoted					
Spencer & Co Ltd	6 30 500	10	4 63 98 000	Dividend	Issue of Zero percent fully Convertible Debentures and issue of share capital
9% Non-Cumulative Redeemable Preference Shares					
South Asia Electricity Holdings Ltd (Pref Shares)	24 75 000	100	24 75 00 000	Dividend	Issue of Zero percent Convertible Debentures and issue of share capital
Total			54 20 93 678		

11.1. The above annexure shows the purchase value of the shares of KEC / Zensar / Spensar. Rs. 54,20,93,678/- is the gross consideration payable by the assessee to the Universal.

Details of Investments made during the financial year 2010-11

ANNEXURE 2

Name of Company	No. of shares	Face Value per share	Premium (Rs.)	Total amount paid (Rs.)	Physical / Demat
Equity shares					
Quoted					
KEC International Ltd	8 36 750	2	-	7 83 35 073	Demat
Zensar Technologies Ltd	30 96 800	10	-	17 08 62 605	Demat
Unquoted					
Spencer & Co Ltd	6 30 500	10	-	4 53 96 000	Demat
9% Non-Cumulative Redeemable Preference Shares					
South Asia Electricity Holdings Ltd (Pref Shares)	24 75 000	100	-	24 75 00 000	Physical
Total				64 20 93 678	

11.2. The facts relating to the market value of each of the scrip were also submitted. The FMV of Rs. 508.78 per share of KEC International is evident from the Page 34 of the assessee's paper book.

http://www.bseindia.com/markets/equity/EQR/reports/StockPriceHistory.aspx?exp=...

Pre-open Session Home > Market > Equity > Historical Data > ... Download All Record

Spectra Pre Open Stock Price

Live Reports Search KEC Ltd

End-of-Day-Reports Period:

Periodic Updates Daily From: 03/09/2010 To: 03/09/2010

Market Information Monthly From: MM YYYY

Historical Data Yearly From: YYYY

Stock Prices

NSE Gross Deliverables Ask by Goods

Investor Categorywise Turnover Company: (RQ)NIRBHSTGNASHIB532714

Day-Wise Trading High/Low Period: 03-Sep-2010 to 03-Sep-2010

Bulk Deals / Block Deals

Margin Trading

Date	Open	High	Low	Close	VWP	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Del. Qty to Traded Qty	* Spread	
											H-L	C-O
03/09	460.00	540.00	465.10	524.10	508.78	114,832	2,739	58,472,486	41,532	35.75	74.00	98.00

* Spread
H-L : High-Low
C-O : Close-Open

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11.3. Similarly, Rs. 172.89 pp per share is the FMV of Zensar as seen from page 35 of the assessee's paper book.

http://www.bseindia.com/markets/equity/EQReports/StockPriceHistor.aspx?scg=

Download All Record

Home > Markets > Equity > Historical Data > ...

Stock Prices

Search Zensar Tech

Period:

Daily From: 03/09/2010 To: 03/09/2010

Monthly From: [MM] [YYYY]

Yearly From: [YYYY]

Company: ZENSAR TECHNOLOGIES LTD, 594997

Period: 03-Sep-2010 to 03-Sep-2010

Date	Open	High	Low	Close	WAP	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Del. Qty to Traded Qty	All Prices in ₹		
											* Spread	H-L	C-O
03/09/10	170.55	175.20	167.00	172.89	172.89	22,045	528	38,18,844	6,300	27.86	8.20	1.61	

* Spread
H-L : High-Low
C-O : Close-Open

One optimized for RES & above, resolution 1024 X 768 & above. | Display | Settings

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12. **Thus,** analysing each of the afore said question and answer and the statements / Annexures, Ld Counsel made out that the AO probed into the aspects of each of the related concerned, facts relating to the multiple share transfers by the assessee company repeated over the short span of time, facts relating to the purchase of shares by the assessee without adequate funds from UNIVERSAL for consideration lower than the market price, raising of the funds through the OFCDs route from the INSTANT and clearing of the liabilities of the assessee involving the Universal etc.

13. **On the issue of prejudicial to the interest of revenue:** Referring the revenue loss related allegation of the CIT, Ld Counsel submitted that the assessee purchased shares of Zensar, KEC and Spencer & Co Ltd from UNIVERSAL for sum of Rs 54.21 cr when the market rate of these shares is above Rs 91.53 Cr. On this issue, Ld AR labored on the AO efforts of the AO in conducting proper verification. In this regard, he brought our attention to the contents of the page 17 of the APB – Annexures 12 and submitted it provides for the exhaustive details on the purchase

cost of the shares of three companies amounting to only Rs 54.21 cr against the higher market value. Further, he submitted that the AO is privy to their higher market values as he called for relevant details and assessee furnished the relevant documents. Relevant copies of these documents are placed in the APB and pages 33 to 40 of the Paper book are extremely relevant. On finding that the assessee is benefitted out of the said share purchase transactions and therefore, no loss of revenue as CIT alleges, AO opined and considered making addition of Rs 11.34 cr under the head 'income from other sources' u/s 56(1) of the Act. The said addition is made on account of excess premium collected from INSTANT in preference to the issue of share purchase consideration involving UNIVERSAL. On issue of formation of opinion on the low share purchase consideration paid by assessee, Ld Counsel submitted that the AO called for the specific details on the market values of the said three scrips. In this regard, he brought our attention to page no 34 of the APB and read out the details FMV of Rs 508.76 of the share price of **KEC** International Ltd. Similarly referring to page 35 of the APB, Ld Counsel submitted that the FMV of the share of **Zensar** Tech. Ltd is Rs 172.89pp. Pages 36 to 40 throw adequate light on the FMV/NAV of the share of Spencer and Co Ltd. Thus, the AO is privy to the details of FMV of all three shares purchased and the same is higher than the purchase price paid to Universal. The same is interpreted by Ld counsel before us by stating that the assessee is beneficiary in all these transactions involving M/s Universal and therefore, the assessee's substantial gain is obvious and irrefutable. It is not correct to allege that there is any loss to the revenue out of these transactions and therefore, the assessment order of the AO is prejudicial to the interest of revenue.

14. On the allegation of lack of **Application of mind of the AO:** Further, based on the extent of information gathered by the AO in the assessment which is evident from the questionnaires and replies, which formed part of the PB, Ld counsel also made out that it is not proper to allege that the AO has not verified the said issue of purchase of the shares for lessor consideration and applied his mind to this or any other related issues pointed out by the Principle CIT.

15. **Form vs Substance:** on this issue, the case of the assessee is that the same is no ground for assumption of jurisdiction by the CIT u/s 263 of the Act. In this

regard, Ld Counsel submitted that the CIT can assume jurisdiction validly only if there is erroneous assumption of fact or law, failure of the AO in application of mind to an issue and not formed any opinion in the matter etc. As per Ld Counsel, CIT is incorrect in issuing notice on the ground of 'illogical conclusion' or no proper verification etc. So long as (i) the conclusion are taken and (ii) verification is done by the AO on an issue, on the ground of illogicality is no sustainable ground for assumption of jurisdiction validly. Referring the expressions ie 'illogical conclusions' used in the revision order of the CIT, Mr Mehta interpreted the same by stating that the CIT admits to the fact of drawing conclusions on the issue by the AO.

16. **Nexus of the both the issues:** Further, referring to the addition of Rs 11.34 cr made by the AO in the regular assessment on the ground of excess premium collected from INSTANT in the context of raising OFCDs converted subsequently into shares at the price tag of Rs 10 plus 90/-, Ld counsel submitted this issue relates to the 'source of funds' for paying to UNIVERSAL towards purchase of the shares of three companies. It is anybody guess that the AO could not have made addition on account of 'excess premium' without going into the nitty-gritty of the transactions of share purchases as the premium is the source of funds to meet the cost of share purchase transactions. Since the issues are connected and details are called for as evident from the file, it is certainly reasonable to infer that AO verified and examined both the issues. The aforementioned variety of questions and answers between the assessee and the AO supports the same.

Arguments of the Ld CIT – DR for Revenue

17. On the other hand Ld CIT DR for the revenue relied heavily on the order the Pri CIT and argued that the order of the AO is erroneous and prejudicial to the interest of the revenue. In this regard, Ld DR brought our attention to the allegation of the Principle CIT that the AO has not drawn 'meaningful conclusions' (para 9) and in fact taken "illogical" conclusions on the issue of premium issue, Ld DR supported the revision order. He submitted that the Assessee raised funds by way of OFCDs of Rs 100/- each and the 'Instant' subscribed for the said debentures and paid the consideration of Rs 54.20 cr to the assessee. Subsequently, assessee converted the OFCDs in to shares by fixing the premium of Rs 90/- for each share

with par value of Rs 10/-. The case of the AO is that the premium is inflated and he fixed the intrinsic value of each share is only Rs 69/-. Ld DR questions why any prudent persons sells his shares for lower consideration. Therefore, he questions the decision of the AO who invoked the provisions of section 56(1) of the Act (para 4.7 of the AO) for addition of Rs 11.34 cr as discussed above. The difference amount of Rs 21/- per each share is considered as 'income from other sources' and certainly not as 'share application money' (para 4.8 of the AO). **But**, for the Principle CIT, it is wrong way of making assessment drawing '**illogical conclusion**'. Principle CIT is of the view that instead of making addition on account of 'premium' issue, AO should have made addition on account of lower purchase consideration paid by the assessee to 'Universal'. Earlier, assessee invested in preferential shares/shares of 'Zensar, KEC and Spencer' from Universal on credit basis. Otherwise, it is an undisputed fact that the assessee paid consideration of Rs 54.20 cr against the market value of Rs 91.53 cr (rounded off). Though it is unspecified, it is probably the case of the Revisionary Officer that the difference amount of Rs 91.53 cr – Rs 54.20cr should have been the addition made by the AO in the assessment. But the moot point for examination by us relates to if the AO is unaware of this issue at the time of regular assessment proceedings? Having done the scrutiny of facts relating to both (i) excess premium issue and (ii) investment in shares with lower price tag, AO concluded to invoke the provisions of section 56 of the Act. Principle CIT terms this conclusion as illogical one the result of improper verification.

18. Principle CIT also alleges that it is a case of '**colourble device**'. For this, CIT analysed the frequent transfer of the shares/ownership of the assessee-company, investment in shares at the rate lower than the market price, assessee does not have own funds to buy from UNIVERSAL, raising of the OFCDs @ RS 100/- each from INSTANT, the conversion of the Debentures into shares with Rs 90 /- as premium, the manner in which the assessee becomes the 100% subsidiary of the Instant and subsequently becomes the successor to the assessee company --- and describes whole of the above constitutes a case of colorable device for the RPG Brothers to acquire the control of the company. CIT has not made out as to how all

the above transfers/investments constitutes the 'prejudicial to the interest' of the assessee.

19. Another allegation against the AO relates to '**form vs substance**'. This allegation revolves around the facts relating to the transactions of purchase of the shares of Zensar, KEC and Spencer for the price lower than the market rates. CIT ignored the relevant fact that the assessee actually gained financially in the process and there is no loss of revenue in this case and it is the UNIVERSAL who lost in the process as he is the seller of the shares. Where is the revenue loss in the case of the assessee for validly invoking the provisions of section 263 of the Act?. For invoking the said provisions in the assessee's case, it is the settled legal proposition that the Principle CIT needs to demonstrate the meeting the twin conditions of (i) erroneous nature of the AO's order and (ii) the loss of revenue.

20. Thus, the CIT attached the order of the AO from various angles as discussed above (i) improper enquiries and illogical conclusions of the AO (ii) questioned the addition of Rs 11.34 cr u/s 56(1) of the Act on account of excess premium collected from INSTANT and failed to make addition on account of investment in shares purchased from UNIVERSAL (iii) form vs substance.

DECISION OF THE TRIBUNAL

21. We heard both the parties and perused the orders of the revenue, documents filed before us in the form of the Paper Book and the case laws. The said documents mainly refer to the facts on the questionnaires and the replies thereto relating to various issues i.e. the investment details of the assessee and all the related concerns, fair market value of the shares of Zensar, Spencer and KEC and the Share purchase particulars by the assessee from UNIVERSAL, relevant correspondence pertaining to the OFCDs subscribed by the INSTANT etc.

22. Further, we find the CIT raised various issues alleging the AO's failure to conduct verification, AO's illogical conclusions on the 'excess premium' received from INSTANT leading to the addition of Rs 11.34 cr instead of making addition on account of share purchase transactions from UNIVERSAL. Other miscellaneous issue raised by the CIT refers to form vs substance, frequent transfer of shares of the

company transferring the ownership of the assessee, purchase of the shares without having own funds from Universal etc. However, we find that the Pri CIT failed to demonstrate if any, of these decisions are prejudicial to the interest of revenue in the case of this assessee.

23. On assimilating all the relevant facts relating to the issues, we find that allegations of the CIT are not supported by any evidences. We find the shares of the assessee are transferred hurriedly and however, there is no violation of any provisions of any statute. We find there is no ground for allegation of colourable device when there is no tax loss in the case of the assessee. Therefore, we shall take up the legal issue relating to the validity of the jurisdiction of the CIT u/s 263 of the Act in the subsequent paragraphs of the order. Subsequently, other allegations of the CIT are also dealt with.

I. Scope of the provisions of section 263 of the Act

24. We have examined the scope of the provisions of section 263 of the Act and the settled legal propositions pro-founded by the Hon'ble Apex Court as well as other courts on the subject ie jurisdiction of the Pri. CIT u/s 263 of the Act are as follows. Accordingly, for the revenue, an incorrect assumption of fact, incorrect assumption of law, failure of the AO to or routinely to conduct investigation in to an issue and when such assumptions or failures led to 'the interest of revenue', are the approved grounds for the CIT to assume the jurisdiction u/s 263 of the Act. Limiting the aspects of 'incorrect assumption of law', which is the issue in the instant case, as well as 'prejudicial to the interest of revenue', the view of the supreme court and the High court of Bombay in the cases of Malabar Industrial Co Ltd (243 ITR83) and Gabriel India Ltd (203 ITR108)(Bom) respectively are relevant. It is a settled matter that the judicial discipline demands that the Income tax Authorities are bound to give effect to the judicial interpretation of the Honble High courts on the subject concerned. It is binding on the IT Authorities when such interpretations are affirmed by the Apex court. In the back ground of the same, an 'incorrect assumption of the law' constitutes an acceptable ground for the CIT to assume jurisdiction. Further, when the AO adopts **one of the courses permissible in law** and it has resulted in the loss of revenue; or where **two views are possible** and the ITO has taken one

view with which the Commissioner does not agree, **it cannot be treated as and erroneous order prejudicial to the interests of the revenue**, unless the view taken by the ITO is **unsustainable** in law.

25. Further, on the issue of application of the mind of the AO, in the case of **Gabriel India Ltd (supra)**, the Jurisdiction High Court has also held that where the AO has made enquiries with regard to nature of the claim as evidenced by the detailed explanations furnished by the assessee in the assessment proceedings, the **order of the AO cannot be called to be erroneous** and prejudicial to the interest of revenue. Recording the loss of revenue by the CIT is the requirement of the revisionary order of the CIT. Such loss of revenue should be obviously assessee-specific ie with reference to the assessee in question and not with reference to the other party of the transaction or third party. Regarding application of mind of the AO, it is a decided issue that the assessment proceedings must reflect that there are enquiries undertaken by the AO. It is not the requirement that the order must speak on such enquiries.

II. Decision on the Allegations of the Principal CIT:

26. **AO's failure to conduct verification and enquiry:** On verification of the notices and u/s 142, the questionnaires and replied thereto, we find that the AO probed into the aspects of each of the related concerned, facts relating to the multiple share transfers by the assessee company repeated over the short span of time, facts relating to the purchase of shares by the assessee with no adequate funds from Universal for consideration lower than the market price, raising of the funds through the OFCDs route from the INSTANT and clearing of the liabilities to the Universal etc. We also examined and the following annexures reflect the fact of verification of the details relating to the Share purchase transactions from the UNIVERSAL for the lower price. Page 17 and 34 onwards proves the point.

a. **In general:** Further, based on the questionnaires and the replies thereof we find AO examined all the core issues raised by the CIT in the revision order and formed opinion. The scope of the jurisdiction of the CIT u/s 263 is now settled legally. When the AO formed an opinion on an issue (ie amount of premium on the

OFCO), the CIT cannot sit on the judgment seat as the review officer u/s the provision of section 263 of the Act. Judgmental law does not permit the same.

b. Formation of an opinion on the issue of lower consideration in purchase of the shares from UNIVERSAL:

27. On the specific issue of purchase of price of the shares of Zensar, KEC and Spencer and Co Ltd: We heard both the parties and perused the assessment order of the AO, the revision order of the Pri CIT and the paper books filed before us/AO. The paper books contains the copies of the questionnaires, replies to the said questionnaires along with the Annexures etc. Relevant facts relating to series of transfer of shares ie transfer of ownership of the company were examined and find there is no violation of any law in such transfers. Further, we also find the assessee purchased the shares from the said Zensar, KEC, Spencer and Co Ltd and the transactions are considered by the AO genuine. Fact of verification of the share purchase transaction is very much on records. We find the AO is aware of and informed of the facts relating to the purchase price of the said shares, being lessor than that of the FMV. Considering the facts narrated by the Sri Mehta, we find that the AO conducted necessary enquiries in to various aspects of the said purchase transactions and opined to make addition on account of 'excess premium' only and invoked the provisions of section 56 of the Act and not on account of the said share purchase transactions involving Zensar, KEC, Spencer and Co Ltd. Therefore, we find no error in the order of the AO, whether of legal or factual nature on that account.

c. AO's illogical conclusions vs revisionary powers:

On these allegations of the CIT we find that so long as (i) the conclusion are taken and (ii) verification is done by the AO on an issue, on the ground of "illogicality" is no sustainable ground for assumption of jurisdiction validly. Referring the expressions ie 'illogical conclusions' used in the revision order of the CIT, Mr Mehta interpreted the same by stating that the CIT admits to the fact of drawing conclusions on the issue by the AO. We found point in the said argument of the Ld Counsel.

d. **Allegation of Loss of Revenue in the light of the expressions – “prejudicial to the interest of revenue”**: Similarly, various reservations the CIT mentioned in his order includes the investments are made at a price lower than their FMV at the relevant point of time and it is to his advantage. Actually, it is a case of revenue gain to the assessee and loss to the sellor company. Those companies should have been ideally revised by the relevant CIT. Ld DR is unable to justify the failure of the revenue in invoking the provisions of section 263 in the case of “Universal”. We are certain of the fact that, as vehemently argued by Ld AR for the assessee, we agree with the argument that there is no loss of revenue. It is likely that AO has not made addition on this account in the regular assessment In that case where is loss of revenue in these transactions.? after examining the document filed by the assessee and after due application of his mind. Therefore, considering the documents and questionnaire issued by the AO on this specific issue, the allegation of the CIT that the AO failed to apply his mind is unsustainable.

28. Order is silent on the quantification of fact of loss of revenue. No indication what so ever on the fact of loss of taxes. On doubts and surmises, CIT is not empowered to assume jurisdiction u/s 263 of the Act. On facts, it is a case of purchase of shares from Universal for a price advantages to the assessee. In that case how these transactions of purchase cannot be termed as ‘prejudicial to the interest of revenue’. Therefore, it is a case of ‘hit and run’ and without having any substance in the allegation of the CIT. Revision authority made various allegations and failed to quantify the revenue loss. Therefore, in our opinion, **it is not the case of ‘prejudicial to the interest of revenue’** and hence, it is a case of invalid assumption of jurisdiction u/s 263 by the CIT. Accordingly, the legal ground raised by the assessee is allowed.

29. Considering our decision on the legal ground, which is decided in favour of the assessee, the adjudication of the other grounds becomes an academic exercise. Therefore, rest of the grounds raised by the assessee are dismissed as academic.

30. In the result the appeal of the assessee is **partly allowed**.

Order pronounced in the open court on 07th December, 2015.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 07/12/2015
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**