

IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

BEFORE: SHRI. N.K.SAINI, VP & SHRI , R.L. NEGI, JM

ITA NO. 1464/Chd/2018

Assessment Year : 2014-15

M/s Venkatesh Technokraft Pvt. Ltd. C/o Sh. Tejmohan Singh, Advocate # 527, Sector 10-D, Chandigarh		The ITO, W-1(5), Ludhiana, Punjab
PAN NO: AABCV9215G		
Appellant		Respondent

Assessee by : Shri Tejmohan Singh, Advocate

Revenue by : Shri Sandip Dahiya, CIT

Date of Hearing : 10/02/2021

Date of Pronouncement : 19/04/2021

Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 27/09/2018 of Ld. Pr.
CIT-1, Ludhiana.

2. Following grounds have been raised in this appeal:

1. That the Ld. Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 27.12.2016 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his competence.

2. That the Ld. Commissioner of Income Tax has erred in failing to consider the various replies and submissions placed on record in proceedings before him which is arbitrary and unjustified.

3. That the assessment order having been passed by the Assessing Officer after due application of mind and taking into consideration the various replies, material on record and books of account, the action resorted to by the Commissioner of Income Tax is unwarranted and uncalled for.

4. That the order of Commissioner of Income Tax is erroneous, arbitrary, opposed to the facts of the case and is unsustainable in law.

From the aforesaid grounds it is gathered that only grievance of the assessee relates to the jurisdiction of the Ld. Pr. CIT assumed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee filed its return of income on 04/09/2014 declaring an income of Rs. 19,52,040/- which was processed under section 143(1) of the Act, later on the case was selected for scrutiny. The A.O. assessed the income which was returned by the assessee by observing in para 2 & 3 of the assessment order dt. 27/12/2016 as under:

2. In response to said notices Sh.Ravinder Singh Khera, Chartered Accountant, Authorised representative of the assessee, attended the assessment proceedings from time to time with whom the case was discussed. During the course of assessment proceedings, audit report along with trading Account/ Profit & Loss account, Balance Sheet etc was filed. The information requisitioned as per questionnaire was furnished, placed on record and examined. Books of account were produced. The assessee derives income from Business of wholesale trading of cutting tools.

3. The details filed were duly examined and the case was discussed with the authorized representative of the assessee. After examination, the case is assessed at returned income Rs. 19, 52,040/-.

4. The Ld. Pr. CIT thereafter exercised his revisionary power under section 263 of the Act and observed that proper and sufficient enquiries had not been made by the A.O. which rendered the assessment order erroneous in so far as it is prejudicial to the interest of the Revenue. Ld. Pr. CIT observed as under:

" Share issued at Premium by the assessee:

A perusal of assessment record of the year under consideration reveals that the assessee had issued shares at premium to the shareholders as detailed below:-

Name of Shareholders	Shares	Face Value of Shares (Rs.)	Share Premium (Rs.)	Total Value (Rs.)
Daisy Suppliers (P) Ltd.	40,000	4,00,000/-	6,00,000/-	10,00,000/-
Zinnia Sales (P) Ltd.	40,000	4,00,000/-	6,00,000/-	10,00,000/-
Sunflame Distributors (P)	20,000	2,00,000/-	3,00,000/-	5,00,000/-

Ltd.				
Pansy Dealer (P) Ltd.	40,000	4,00,000/-	6,00,000/-	10,00,000/-
Virat Commosale (P) Ltd.	20,000	2,00,000/-	3,00,000/-	5,00,000/-
Nilay Distributors (P) Ltd.	40,000	4,00,000/-	6,00,000/-	10,00,000/-
Total	2,00,000	20,00,000/-	30,00,000/-	50,00,000/-

Assessee has submitted only part information/documents to the AO, who accepted the same as per assessment order dated 27.12.2016. A perusal of assessment records shows that the assessee could not produce the complete information as required by the AO and also could not produce the directors of the investor companies. So the genuineness of the transactions was not established. The AO did not carry out proper investigation/enquiries regarding receipt of these share premium with respect to identity, creditworthiness and genuineness of transaction of share premium receipt.”

4.1 Ld. Pr. CIT asked the assessee to show cause as to why the aforesaid assessment order dt. 27/12/2016 passed under section 143(3) of the Act for the A.Y. 2014-15 should not be revised / modified/enhanced or set aside with a direction to make the assessment denovo.

4.2 In response, the assessee submitted as under:

That during assessment proceedings, the A.O. had required the assessee to justify the issue of shares at a premium under rule 11UA of the IT Rules, 1962. The assessee had submitted details of turnover, assessable income, tax paid from A.Y.s 2011-12 to 2015-16, and the investor companies being impressed and satisfied by the company's performance and safe investment of their funds had purchased shares of the assessee company at a premium of Rs. 15/- per share. The assessee had accumulated reserves and surpluses of Rs. 142.84 lacs against paid up capital of Rs. 103.12 lacs, thus apparently there was accumulated profit of Rs.15/- per share against paid up capital of Rs.10/- per share. Requirements of Rule 11UA were fully complied with which can be verified from the company's audited balance sheets which were filed during assessment proceedings. The AO had accepted the Fair Market Value of Rs.25/- per share of face value of Rs. 10/- each as per Rule 11UA of the IT Rules.

That all documents required by the A.O. were filed during assessment proceedings. Copies of written submissions filed during assessment proceedings were enclosed. That the documents filed before the A.O, included documents filed by the investment companies also to each of whom the A.O. had specifically issued registered letters u/s 133(6) of the I T Act, 1961. As regards non-production of directors of the investor companies, the AO had required the assessee to do so only vide letter dated 08/12/2016, received by the assessee on 10/12/2016 for producing the directors on 14/12/2016, which was not possible due to the short notice. Reply had been submitted that since these companies are based in Calcutta, 1000 kms away from Ludhiana, because of financial difficulties

faced due to demonetization, the assessee is unable to produce the directors, however that the A.O. may issue commission as per the provisions of the Income Tax Act, 1961.

As regards proper investigation regarding receipt of share premium with respect of identity, creditworthiness and genuineness, that the A.O. had thoroughly investigated this issue, letter u/s 133(6) were issued to the investing companies, and had collected information, confirmations, explanations and documentary evidences which were filed before the AO. Thus it cannot be said that no proper enquiries were made by the A.O.

Further that during assessment proceedings, the assessee had produce complete books of accounts, original vouchers and other records before the A.O.

It was also submitted that when the AO takes one of the two views permissible in law, and the CIT does not agree with such view, it cannot be treated as erroneous and prejudicial to the interest of revenue. That the assessment order has to be both erroneous and prejudicial to the interest of revenue, for recourse u/s 263(1).

4.3 Ld. Pr. CIT observed that the A.O. asked the assessee to produce the Directors of the investor companies. The Assessee reiterated the submissions which were made earlier and also furnished the documentary evidences regarding source of source of the deposits in banks of the investing companies from where funds were transferred to the assessee's bank account through banking channels only. It was stated that the same were also produced before the A.O. It was further stated that since all the investing company and their respective Directors were based in Calcutta therefore the commission may be issued in accordance with the provisions of law to procure whatever further information is required.

4.4 The Ld. Pr. CIT after considering the submissions of the assessee observed that the assessee during the course of assessment proceedings furnished the computation of the issue of share at a premium under Rule 11UA of the Income Tax Rules, 1962 and furnished the details of turnover, assessable income, tax paid from A.Y. 2011-12 to 2015-16 and also furnished the confirmation signed by the investing companies. The Ld. Pr. CIT also pointed out that all the so called investors have PAN, copies of bank accounts alongwith balance sheets were

also filed. The Pr. CIT admitted that the funds were transferred through RTGS from respective bank accounts. However these investing companies were not produced before the A.O. even though specifically called upon, by stating that it was not possible to do so due to short notice as they were from Kolkata.

4.5 It was stated before the Ld. CIT(A) that the investor companies being impressed and satisfied by the company's performance and safe investment of their funds, had purchased shares of the assessee company at a premium of Rs. 15/- per share. The Ld. Counsel for the Assessee furnished the documents received by the assessee, in response to the notices issued under section 133(6) of the Act to six companies.

In those replies, it was stated that their Directors came into contact with Shri Lokesh Kumar, Director of the assessee company somewhere in the beginning of financial year 2013-14 and Mr. Lokesh Kumar expressed his willingness to sell equity shares of the assessee company, since he was in need of long term funds, after such discussion, exchange of financial documents / data and after negotiation of the rate of the shares, the deal was finalized.

4.6 However, the Ld. Pr. CIT was of the view that the A.O. merely obtained the confirmation from the assessee and accepted the same without conducting enquiry into the identity of the investor or genuineness of the transaction. The Ld. Pr. CIT observed that the companies did not respond to the letters of the A.O. but the assessee furnished details which were called from those investing companies which could not be said to be the independent verification. He also observed that existence of the four companies vis M/s Zinnia Sales(P) Ltd., M/s Daisy Suppliers(P) Ltd., M/s Pansy Dealers(P) Ltd. and M/s Nilay Distributors (P) Ltd. could not be established as none of those were found at the addresses given by the assessee, therefore the contention of the assessee that the service of letter / summons was a proof that the investor company existed at given address was far from reality. Therefore the existence of the investor companies

was not proved. Ld. Pr. CIT also pointed out that those companies had common set of Authorized Signatory / Directors who had signed the balance sheet and some had the same address of Kolkata.

4.7 Ld. Pr. CIT also discussed the observations made in the assessment order of M/s Gobinda Technologies Private Ltd. PAN AAOCS0684D wherein it was observed that the identity of the six investor companies had been proved only on paper. Ld. Pr. CIT was of the view that the A.O. failed to make proper and sufficient enquiry and none of the ingredient required to be looked into vis identity, credit worthiness and genuineness of the transaction had been examined by the A.O. only a superficial look at the documents submitted by the assessee had been made and contention of the assessee had been accepted without any in-depth examination. Such lapse had rendered the assessment order erroneous in so far as it was prejudicial to the interest of the Revenue. He also observed that not only no disallowance / addition had been made by the A.O. and that the issue had not been properly examined and inquired into, therefore, detailed and deep inquiries were required to be made on this issue before accepting the claim of the assessee.

4.8 Ld. Pr. CIT observed that the assessment record revealed that requisite enquiry were not conducted regarding the issue as to what prompted the subscribers to the shares to pay premium on shares of a little known company having no or insignificant business activities. Therefore the assessment order was passed without application of mind, no proper enquiry was conducted regarding the identity and creditworthiness of the subscribers and no proper enquiry had been made regarding the genuineness of the transactions. The reference was made to the following case laws :

- Judgment of High Court of Calcutta in GA No. 509 of 2016 with ITAT No. 113 of 2016 in Rajmandir Estates P Ltd. Vs. PCIT Kolkata –III, Kolkata order dt. 13/05/2016
- Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC)

- CIT Vs. Active Traders Pvt. Ltd.
- CIT vs. Nova Promoters and Finlease (P) Ltd.
- CIT Vs. Precision Finance Pvt. Ltd.
- SLP (C) No.s 23976/2017 in Deniel Merchants Pvt. Ltd. & Anr. Vs. ITO & Anr
- Jai Commercial Co. Ltd. Vs. Joint CIT(2000) 66 TTJ (Del-Trib) 731
- Express Newspapers (P) Ltd. Vs. CIT (2002) 255 ITR 137 (Mad)
- Desai Brothers Ltd. Vs. Dy. CIT (1998) 66 ITD 203 (Pune-Trib)
- Gee Vee Enterprises Vs. Addl. CIT & Ors. (1975) 99 ITR 375 (Del)
- CIT Vs. Pushpa Devi (1987) 164 ITR 639 (Pat)
- Lajja Wati Singhal, Smt. Vs CIT (1997) 226 ITR 527(All)
- P.K. Fabrics Vs. Asstt. CIT(1998) 67 ITD 326 (Asr-Trib)
- V. Narayanan Vs. Dy. CIT (2004) 88 ITD 43 (Chennai Trib)
- Ambika Agro Suppliers Vs. ITO(2005) 95 ITD 326(Pune Trib)

4.9 Ld. CIT(A) held that the A.O. completed the assessment without making proper enquiry and that not only the A.O. had not made proper enquiry and had not verified the correctness and genuineness of the assessee's explanation but he had also made the assessment order without proper application of mind and without properly appreciating the facts. Therefore the order made without application of mind was erroneous and prejudicial to the interest of the Revenue. The reliance was placed on the following case laws:

- Thermal Systems (Hyd)(P) Ltd. Asstt. CIT (2006) 11 (1) ITCL 245 (Del-HC); (2009) 312 ITR 187 (Hyd-Trib)
- Pravin Navin Investments & Trading Co. (P) Ltd. Asstt. CIT (2009) 27(II) ITCL 498 (Mum-Trib); (2009) 29 SOT 284 (Mum-Trib.)
- Board of Control for Cricket in India Vs. Director of Income Tax (Exemption), (2006) 278 ITR(AT) 83 (Mum-Trib); (2005) 96 ITD 263 (Mum-Trib);

The Ld. Pr. CIT, accordingly set aside the assessment order passed by the A.O. and directed him. to make fresh assessment denovo after properly

examining the fact of the case and relevant legal provision and conducting proper enquiry after affording the opportunity of being heard to the assessee.

5. Now the assessee is in appeal.

6. Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the A.O. made the proper enquiries and raised the specific queries relating to the share premium and the assessee replied the same, a reference was made to page no. 1 & 2 of the assessee's compilation which is the copy of the reply dt. 08/11/2016, in response to the notice dt. 18/10/2016 issued by the A.O.

6.1 It was further submitted that the Ld. Pr. CIT in para 2 of the impugned order although mentioned that proper and sufficient enquiry had not been made which lapses bears to have rendered the assessment order erroneous in so far as prejudicial to the interest of the Revenue, but he has not mentioned that no enquiry was made by the .O. So, it was not a case of lack of enquiry, therefore, the Ld. Pr CIT was not justified in exercising his powers under section 263 of the Act.

6.2 It was stated that the Ld. Pr. CIT at page no. 2 of the impugned order referred that the assessee could not produce the Director of Investor Companies, on that ground also the addition could not have been made. It was submitted that the A.O. required the assessee to justify the issuance of share at a premium of Rs. 15 per shares. The said premium was worked out on the basis of valuation of the shares (copy of which is placed at page nos. 476 & 477 of the assessee's paper book). It was accordingly submitted that the A.O. on verifying the valuation report of the shares accepted the Fair Market Value at Rs. 25 per share having face value of Rs. 10 each.

6.3 Ld. Counsel for the assessee referred to para no. 5.1 of the impugned order and submitted that vide letter dt. 19/12/2016, all the documents which

were asked by the A.O. to be produced, were furnished by the assessee. As regards to the non production of the Directors, it was stated that the assessee requested the A.O. to summon the Directors, reference was made to page no. 498 and 499 of the assessee's paper book.

6.4 It was stated that all the investing companies furnished their replies to the A.O., reference was made to page no. 283 to 370 which are the copies of the confirmatory letters received from the investing companies along with supporting documents. It was accordingly submitted that the assessee furnished all the details before the A.O. who examined the same and accepted after proper verification, therefore the Ld. Pr. CIT was not justified in holding that the assessment order passed by the A.O. was erroneous or prejudicial to the interest of the Revenue.

6.5 It was contended that an identical issue has been decided by the ITAT Chandigarh Bench "B" Chandigarh in the case of M/s Technico Metals Pvt. Ltd. Vs. DCIT in ITA No. 1348/Chd/2017 for the A.Y. 2012-13 vide order dt. 15/02/2019 wherein one of the companies which made the investment in the assessee company was involved and the issue was decided in favour of the assessee, a reference was also made to page no. 57 to 78 of the assessee's paper book which is the copy of the said decision. It was stated that the Ld. Pr. CIT, only on the basis of suspicion, was not justified to direct the A.O. for making further enquiries. It was further submitted that the facts of the cases relied by the Ld. Pr. CIT were different from the facts of the assessee's case.

6.6 Ld. Counsel for the Assessee submitted that if at all the Ld. Pr. CIT was not satisfied from the enquiry made by the A.O. he could have made the enquiry himself but this exercise had not been done by him, therefore, the impugned order passed by the Ld. Pr. CIT may be quashed. Reliance was placed on the following case laws:

- * Director of Income Tax Vs. Jyoti Foundation [2013] 357 ITR 388 (Delhi)
- * M/s Colors Textiles Limited Vs. ITO in ITA No. 1514/Chd/2017 for the A.Y. 2013-14 dt. 05/12/2018
- * Sh. Abhimanyu Gupta Vs. The Pr. CIT in ITA No. 771/Chd/2017 for the A.Y. 2012-13 dt. 09/04/2018
- * M/s Worldwide Immigration Consultancy Pvt. Ltd. Vs. Pr. CIT-I in ITA No. 772/Chd/2017 for the A.Y. 2012-13 dt. 13/11/2019.

6.7 It was reiterated that the A.O. asked the assessee to furnish the information relating to investor companies which were furnished vide letter dt. 14/12/2016 copy of which is placed at page no. 188 to 196 of the assessee's paper book, therefore it was not a case of lack of enquiry and only on the suspicion, the assessment order framed by the A.O. after the proper enquiry and application of mind, cannot be set aside, the reliance was placed on the following case laws:

- CIT Vs. Sunbeam Auto Ltd. [2011] 332 ITR 167 (Delhi)
- Director of Income Tax Vs. Jyoti Foundation [2013] 357 ITR 388 (Delhi)
- Malabar Industrial Co. Ltd. Vs. CIT [2000] 243 ITR 83 (SC)

Reliance was also placed on the decision dt. 17/08/2009 of the Hon'ble Jurisdictional High Court in ITA No. 445 of 2008 in the case of CIT Vs. M/s Unique Autofelts (P) Ltd, copy of which is placed at page no. 1 to 6 of the assessee's paper book. It was accordingly submitted that the Ld. Pr. CIT was not justified in invoking the provisions of section 263 of the Act and directing the A.O. to make assessment denovo after properly examining the facts which the A.O. had already verified/examined while framing the assessment under section 143(3) of the Act, therefore the impugned order may be set aside.

7. In his rival submissions the Ld. CIT DR strongly supported the impugned order passed by the Ld. Pr. CIT and further submitted that the A.O. had not made the proper enquiry before framing the assessment, therefore the assessment order passed by the A.O. was erroneous. It was further submitted

that all the companies who made the investment in assessee company were dubious company and were only paper company which fact has not been enquired by the A.O. therefore the Ld. Pr. CIT rightly directed the A.O. to make proper enquiry and to frame assessment denovo. The reliance was placed on the following case laws:

- Rajmandir Estates Private Ltd. Vs. Principal Commissioner of Income Tax [2016] 386 ITR 162(Cal).
- Sumati Dayal Vs. CIT (1995) 214 ITR 801(SC)
- CIT Vs. Active Traders Pvt. Ltd.
- Deniel Merchants P Ltd & Anr Vs. ITO & Anr in SLP(C) No.s 23976/2017
- Jai Commercial Co. Ltd. Vs. Joint CIT(2000) 66 TTJ (Del-Trib) 731
- Express Newspapers (P) Ltd. Vs. CIT (2002) 255 ITR 137(Mad),
- Desai Brothers Ltd. Vs. Dy CIT(1998) 66 ITD 203(Pune-Trib)
- Gee Vee Enterprises Vs. Addl. CIT & Ors. (1975) 99 ITR 375(Del)
- CIT Vs. Pushpa Devi (1987) 164 ITR 639
- Lajja Wati Singhal, Smt. Vs CIT (1997) 226 ITR 527(All)
- P.K. Fabrics Vs. Asstt. CIT(1998) 67 ITD 326(Asr-Trib)
- V. Narayanan Vs. Dy. CIT(2004) 88 ITD 43 (Chennai-Trib)
- Ambika Agro Suppliers Vs. ITO(2005) 95 ITD 326 (Pune –Trib)

8. We have considered the submissions of both the parties and perused the material available on the record. In the present case the A.O. framed the assessment under section 143(3) of the Act vide order dt, 27/12/2016. Before completing the assessment, the A.O. issued the notice under section 142(1) alongwith Questionnaire to the assessee on 03/06/2016. In response to the said notice the assessee furnished reply. Thereafter again the A.O. issued notice dt. 18/10/2016 in response to which the assessee submitted as under:

Respected Madam,

Kindly refer to the notice as mentioned above.

During the assessment proceedings pending before your kind Honor your good self has directed the assessee to file certain information and documents for AY 20: 2015.

In this connection, the assessee most respectfully submits here with following information and documents for your kind perusal and records:-

1. As per para 1, detail of addition to share application money, share capital and share premium is attached here with for your kind perusal and records.
2. As per para 2, copy of ITRs, Computation of Income, Bank Statements and Confirmations of Sh. Lokesh Kumar, Smt. Madhu Aul and Lokesh Kumar HUF is enclosed here with for your kind reference and records. A copy of Share Application Money Form, confirmation certificate from depositor company, copy of resolution for share application to the assessee company, bank statement, copy of PAN card along with a copy of Memorandum and Articles of Association is attached here with for your reference and records in case of following persons:-

- a) Pansy Dealer P. Ltd.
- b) Daisy Suppliers P. Ltd.
- c) Zinnia Sales P. Ltd.
- d) Sunflame Distributors P. Ltd.
- e) Nilay Distributors P. Ltd.
- f) Virat Commosale P. Ltd.

3. The documents as mentioned in para 2 above very clearly prove the identity/credit worthiness and genuineness of the transaction by the depositors.

The assessee hopes your good self will find the above information and documents in order.

4. The information as per para 4 is enclosed here with for your ready reference and records and the premium on the shares has been charged based on the past financial performance of the company as per audited balance sheets and is received as per proviso of section 56(2)(viib) of Income Tax Act, 1961.

5. As per para 5, a copy of bank statement is attached here with for your kind reference and records.

6. As per para 6, the information as called for by your good self has already been filed in annexure 2 as a part of tax audit report which was filed in 1st written submission as per point 1 of the questionnaire dated 03.06.2016 for the year under consideration.

7. As per para 7, a copy of return of allotment filed with ROC is enclosed here with for your reference and records.

Complete books of accounts along with vouchers for purchase/sale of goods, vouchers for direct expenses, VAT returns, vouchers for expenses debited to profit & loss account and TDS returns are produced here with for your kind perusal.

The assessee hopes your good self will find the above information and documents in order. It is therefore requested that the assessment in the case may kindly be completed and oblige.

8.1 After considering the submissions of the assessee and the material on record the A.O. framed the assessment under section 143(3) of the Act on the returned income i.e; Rs. 19,52,040/-. However the Ld. Pr. CIT exercised his revisionary power under section 263 of the Act and considered the assessment order passed by the A.O. as erroneous and prejudicial to the interest of the Revenue for the reasons that proper and sufficient enquiry had not been made by the A.O. and that the Directors of the investor companies were not produced, so the genuineness of the transaction was not established.

8.2 Ld. Pr. CIT also observed that only a superficial look at the documents submitted by the assessee had been made and contention of the assessee had been accepted by the A.O. without any indepth examination and such lapse had rendered the assessment order erroneous in so far as it was prejudicial to the interest of the Revenue. The reliance was placed mainly on the judgment of the Hon'ble Kolkata High Court in the case Rajmandir Estates Pvt. Ltd. Vs. PCIT in ITA No. 173 of 2016 order dt. 13/05/2016 along with other case laws mentioned at page no. 11 to 14 of the impugned order.

8.3 Now we have to consider as to whether the A.O. had made the proper enquiry or not and that the view taken by the A.O. was a possible view in accordance with law or not.

8.4 The power of the Ld. Pr. CIT under section 263 of the Act and the condition to invoke the same may be summarized as under:

- (i) "The Pr. CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interests of the Revenue. Both the conditions must be fulfilled.
- (ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the A.O. and it is only when an order is erroneous, the section will be attracted.
- (iii) An incorrect assumption of facts or an incorrect application of law will suffice for the requirement of the order being erroneous.

- (iv) if the order is passed without application of mind, such order will fall under the category of erroneous order.
- (v) Every loss of revenue cannot be treated as prejudicial to the interest of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view-with which the Pr. CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under the law.
- (vi) If while making the assessment, the A.O. examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income, the Pr. CIT, while exercising his power under s. 263, is not permitted to substitute his estimate of income in place of the income estimated by the A.O.
- (vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrives at a conclusion, such conclusion cannot be termed to be erroneous simply because the Pr. CIT does not feel satisfied with the said conclusion.
- (vii) The Pr. CIT, before exercising his jurisdiction under s. 263, must have material on record to arrive at a satisfaction.
- (ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allowed the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard."

8.5 In the present case the A.O. during the course of original assessment proceedings, issued the questionnaire to the assessee and in response thereto the assessee furnished the reply dt. 08/11/2016 & 14/12/2016 copy of which along with supporting documents are placed at page no. 1 to 274 of the assessee's compilation. In the said replies the assessee furnished the details of the share application money received during the year alongwith confirmation certificate from depositor company, copies of the resolution for share application money to the assessee company, bank statement, copy of PAN Card and Memorandum & Article of Association of the investor companies, details of the share issued at premium, copy of bank statement of the assessee company maintained with Bank of Baroda, copy of the return of allotment of shares filed with ROC in Form No. PAS-3, copy of the Audited Report alongwith audited balance sheet, P&L Account and Bank Statement etc of the investor

companies. The A.O. issued the notice under section 133(6) of the Act to the investor companies, copies of which are placed at page nos. 275 to 280 of the assessee's compilation. In response to those letters, the investor companies furnished the confirmatory letters to the A.O. alongwith documents relating to the Financial Statements filed with the Registrar of the Companies, copies of the said documents are placed at page no. 281 to 370 of the assessee's compilation. The Assessee also furnished the detailed calculation sheet of Fair Market Value of unquoted equity shares, copies of which is placed at page nos. 476 & 477 of the assessee's compilation.

The A.O. after making the proper examination of those documents accepted the valuation of shares issued by the Assessee at premium of Rs. 15/-per share. Accordingly, the Fair Market Value of unquoted equity shares under Rule 11UA of the Income Tax Rules was accepted at Rs. 25/- per share. The Ld. Pr. CIT although held that the assessment was completed without making proper enquiry however the valuation of the share furnished to the A.O. by the assessee has not been doubted. On the basis of aforesaid discussion, it can be said that the A.O. not only asked the relevant documents from the assessee but also considered those documents furnished by the assessee while framing the assessment under section 143(3) of the Act. In the present case, the allegation of the Ld. Pr. CIT is that the A.O. had not made proper enquiry, however it is not the case of the Ld. Pr. CIT that there was a lack of enquiry.

8.6 On a similar issue the Hon'ble Delhi High Court in the case of CIT Vs. Sunbeam Auto Ltd. [2011] 332 ITR 167 (supra) held as under:

“ (i) that the Assessing Officer allowed the claim on being satisfied with the explanation of the assessee. Such decision of the Assessing Officer could not be held to be erroneous simply because in his order he did not make an elaborate discussion in that regard. The Assessing Officer had called for explanation on the very item from the assessee and the assessee had furnished its explanation. This fact was conceded by the Commissioner himself in his order. This showed that the Assessing Officer had undertaken the exercise of examining as to whether the expenditure incurred by the assessee in the replacement of dies and tools was to

be treated as revenue expenditure or not. Therefore, it could not be said that it was a case of lack of inquiry. The accounting practice followed for a number of years had the approval of the income-tax authorities. Even for future assessment years, the very same accounting practice was accepted.”

8.7 In the present case also the A.O. had called the explanation from the assessee on the issue relating to the share premium and the assessee had furnished its explanation which was examined by the A.O. The assessee also furnished the valuation report of the share premium and thereafter the A.O. framed the assessment under section 143(3) of the Act, so it was not a case of lack of enquiry.

8.8 Similarly the Hon'ble Delhi High Court in the case of DIT Vs. Jyoti Foundation [2013] 357 ITR 388 (supra) held as under:

“ that inquiries were certainly conducted by the Assessing Officer. It was not a case of no inquiry. The order under section 263 itself recorded that the Director felt that the inquiries were not sufficient and further inquiries or details should have been called for. The inquiry should have been conducted by the Director himself to record the finding that the assessment order was erroneous. He should not have set aside the order and directed the Assessing Officer to conduct the inquiry.”

8.9 In the present case also the A.O. made the enquiries, so it was not a case of no enquiry and if the Ld. Pr. CIT was not satisfied from the enquiry made by the AO he should have conducted the enquiry himself to record the findings that the assessment order was erroneous he should not have setaside the order passed by the AO and directing him to conduct the enquiry.

8.10 On a similar issue the Hon'ble Jurisdictional High Court in the case of CIT Vs. M/s Unique Autofelts (P) Ltd. (supra) held as under:

“5. From the finding of the Tribunal, it is clear that the assessee had given proper explanation by filing the necessary confirmations. In view of such a finding, the Tribunal rightly held that power under Section 263 of the Act could be exercised where view taken by an Assessing Officer was erroneous. While exercising such power, the Commissioner was bound to take into account all relevant facts. If order invoking the said power proceeds on an erroneous assumption, the same could be set aside by the Tribunal. Finding of the Tribunal is not shown to be perverse. No substantial question of law arises.”

8.11 One similar issue has also been decided by the ITAT Bench "B" Chandigarh in ITA No. 1348/Chd/2017 for the A.Y. 2012-13 in the case of M/s Technico Metals Pvt. Ltd. Vs. DCIT wherein vide order dt. 15/02/2019 relevant findings have been given as under:

"8. We have considered the above submissions of Ld. Representatives of the parties. It is noticed from the record that the assessee company to prove the identity and creditworthiness of the investor companies and genuineness of the transactions has furnished the following documents in relation to the investor company.

(A) M/s Lawa Marketing (P) Ltd.

a) Copy of Application Form for Equity Shares

b) Copy of Statement of Bank Account of Transactions effected on 20.03.2012

c) Copy of Permanent Accounts-lumber

d) Copy of Income-Tax Return Acknowledgement of A.Y. 2011-12

e) Copy of Blank Share Transfer Form

g) Copy of Certificate of Incorporation

f) Copy of Memorandum and Articles of Association

g) Copy of Letter (along with Enclosed copies) to the Deputy Director of Income-Tax, DDIT(Inv.), Unit-(I), Kolkata; wherein Information was furnished U/s 131 of the Income-Tax Act, 1961 in the case of M/s Technico Metals (P.) Ltd. for A Y 2012-13:

(i) Copy of Form of Application for Equity Shares

(ii) Copy of Bank Statement of Yes Bank from 01.03.2012 to 31.03.2012 evidencing the Fact that M/s Lawa Marketing (P.) Ltd. had paid a Share Application Money of Rs. 25,00,000/- through RTGS dated 20.03.2012. The same was sourced out of Sale of Shares for Rs.32,00,000/- to M/s Ability Dealmark (P.) Ltd. on 20.03.2012.

(iii) Copy of Income-Tax Return Acknowledgement of A.Y. 2012-13

(iii) Copy of Directors Report, Auditor's report and Balance Sheet of M/s Lawa Marketing (P) Ltd. as at 31.03.2012 along with a Schedule of details of investments.

h) Copy of confirmation

g) Copy of Share Certificate

(B) M/s Pansy Dealer (P) Ltd.

a) Copy of Summons Issued to M/s Pansy Dealer Pvt. Ltd. u/s 131 of the Income-Tax Act, 1961 by the Deputy Director of Income-Tax (Investigation), Unit 1(1), Kolkata

b) Copy of Application Forms for Equity Shares

c) Copy of Income-Tax Return Acknowledgement of A. Y. 2011-12

d) Copy of Letter (along with Enclosed copies) to the Deputy Director of Income-Tax, DDIT(Inv.). Unit-(I)l. Kolkata; wherein Information was furnished U/s 131 of the Income-Tax Act. 1961 in the case of M/s Technico Metals (P.) Ltd. for A.Y. 2012-13:

- (i) Copy of Form of Application for Equity Shares
- (ii) Copy of Bank Statement of Indusind Bank from 19.03.2012 to 31.03.2012 evidencing the fact that M/s Pansy Dealer (P.) Ltd. had paid a Share Application Money of Rs. 25,00,000/- through RTGS dated 21.03.2012.
- (iii) Copy of Income-Tax Return Acknowledgement of A.Y. 2012-13
- (iii) Copy of Director's Report, Auditor's Report and Balance Sheet of M/s Pansy Dealer (P.) Ltd. as at 31.03.2012 along with a Schedule of Details of Investments.
- e) Copy of Confirmation
- f) Copy of Extract of Minutes of Board Meeting of M/s Pansy Dealer (P.) Ltd.
- g) Copy of Share Certificate

9. A perusal of the above reveals that the assessee had furnished the relevant documents to prove the identity, creditworthiness of the investors as well as genuineness of the transactions. However, the Assessing officer harped the assessee to produce the directors of the investor company before him, in reply, to which the assessee submitted as under:-

"In spite of the best efforts made by the assessee company, none of the subscriber is agreed to be personally present before Your Honor, since, all these are staying in Kolkata or other places which are far from Ludhiana. The assessee company has already submitted confirmations giving their full addresses. Your Honor is requested to kindly summon these parties by using Your good office. The assessee company is ready to make payment of diet money for the same".

10. The Ld. counsel in this respect has also relied on the decision of the Hon'ble Rajasthan High Court in the case of 'CIT Vs. Jalan Hard Coke Ltd.,' [2018]

95 taxmann.com 330 (Rajasthan), wherein, in somewhat identical facts, the assessee expressed its inability to produce the share applicants, the Hon'ble High Court held that additions were not warranted observing that the company cannot assess for the income tax to find out the persons who has applied as shareholder. The said decision of the Hon'ble Rajasthan High Court has been affirmed by the Hon'ble Supreme Court by way of dismissal of SLP filed against the said order reported in 'CIT Vs. Jalan Hard Coke Ltd.,' [2018] 95 taxmann.com 331 (SC). The Ld. counsel has also brought our attention to para 6.1 of the decision of Hon'ble Rajasthan High Court in the case of "CIT Vs. Jalan Hard Coke Ltd." wherein, the Hon'ble High Court considering the entire decision of the Hon'ble High Court in the case of 'CIT Vs. ARL Infratech Ltd.,' [2017] 88 taxman.com 469 has approved the observation of the Tribunal that the alleged report of the inspector of the Department who has stated to have visited at the given address of the share applicant was never put or confronted to the assessee and, hence, the reliance cannot be placed on the said report.

11. In this case, the share application money along with premium was received through banking channel. The details of the bank account of the investor have been duly supplied. Even the source of funds of the Investor is also explained. The income tax returns of the investor are also furnished. The investor companies have been duly registered under the Indian Companies Act and there is no evidence on file that their registration has been cancelled or that the

investor companies have been declared as non-existent or shell companies. In response to summons issued by the DDIT (Inv), Kolkata, investor companies duly filed all the details and duly confirmed that they had invested in the shares of the assessee company. The only reason for which the aforesaid investment has been disbelieved by the Assessing officer is on the ground that the Inspector of the Income tax at Kolkata had reported that the aforesaid companies could not be traced out at the given address. However, we find from the record that the assessee company has furnished the bank details of the investor companies. The address on the existence of the said companies could have been verified from the account opening forms etc. It is in the common knowledge that the accounts are opened in the bank through introducers who approve that the account holder is known to him / her and is genuine. Enquiries could have been made from the said introducers also. Apart from that, the companies have been duly registered at the given address and duly audited by the auditors. The assessee had also produced on the file the report of the auditors in the case of both the investor companies who have audited the accounts of the aforesaid firms. If there was any doubt about the existence of such companies, the concerned auditors, CA of the respective companies could have been enquired / investigated. It has been explained that the M/s Lawa Marketing (P.) Ltd. had paid share application money of Rs. 25 lacs through RTGS and the same was sourced out of the sale of shares for Rs. 32 lacs to M/s Ability Dealmark (P.) Ltd.). Similarly, the source of funds in the case of M/s Pansy Dealer (P.) Ltd. has been explained that the same were sourced by sale of shares of M/s Malcom Marketing Pvt. Ltd. There is voluminous record placed on the file such as share application forms, share certificates, bank accounts statements, confirmation from the investors, certificate of incorporation of the said companies, directors report, auditors report and balance sheets etc. So far as the question as to why the said investment company would investigate the assessee company, that in our view, is the internal / market decision of the said investor company and that cannot be a basis for holding that the said investor is bogus. So far as the observation that the investor companies were running into losses, the Ld. Counsel for the assessee in this respect has demonstrated from the balance sheet, that as on the date of investment, the said companies were having huge surpluses, which were sufficient to make the aforesaid investment. Under the circumstances, the sole report of the Inspector that he could not trace the companies, which has been submitted in the back of the assessee without any opportunity to the assessee to confront the same, is not sufficient to hold that the aforesaid transactions were bogus. Moreover, there is no evidence on the file that the amounts invested by the aforesaid companies was the own money of the assessee.

12. In view of this, we do not find any justification on the part of the lower authorities in making the impugned additions. The same are accordingly set aside/deleted.

8.12 In the aforesaid case, some of the investor companies were the same which were involved in the present case and the share premium was Rs. 390/-per share in the said case while in the present case the share premium was only of Rs. 15/- per share which was based on the valuation report. So by respectfully

following the aforesaid referred to order of the ITAT and the ratio laid down by the various Hon'ble High Courts in the aforesaid referred to judgments, we are of the view that the Ld. Pr. CIT was not justified in considering the assessment order passed by the AO as erroneous and prejudicial to the interest of the Revenue, particularly when the AO after making the proper enquiry and considering the various documents furnished by the assessee, had taken a possible view. Therefore, the Ld. Pr. CIT was not justified in considering the assessment order passed by the AO as erroneous on this basis that the assessee could not produce the Directors, as has been held in the aforesaid referred to case of M/s Technico Metals Pvt. Ltd. Vs. DCIT.

8.13 On a similar issue, the Hon'ble Supreme Court in the landmark judgment reported in the case of Malabar Industries Vs. CIT(supra) has held as under:

“ A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner *suomotu* under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase “prejudicial to the interests of the Revenue” is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase “prejudicial to the interests of the Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order

prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

8.14 In the present case, as we have already pointed out that the AO asked the assessee to furnish the relevant details relating to the shares issued at premium to various companies and the assessee furnished all the relevant documents which were examined by the AO who had taken a possible view, therefore as per the ratio laid down by the Hon'ble Apex Court in the aforesaid referred to case, even if the Ld. Pr. CIT did not agree with the view taken by the A.O, the said assessment order passed by the A.O., cannot be treated as an erroneous order and prejudicial to the interest of the Revenue.

8.15 In the present case the Ld. CIT DR heavily relied on the judgments of the Hon'ble Kolkata High Court in the case of Rajmandir Estates Private Ltd. Vs. Principal Commissioner of Income Tax [2016] 386 ITR 162(Cal) wherein the Promoter / Director of the said assessee and their close relatives and Friends had united with the main objective of creating company apparently having the large capital basis but infact those were mere paper company having no real worth and that the share were offered which were subscribed by closely held companies owned by the Promoter / Director or their close relatives and Friends. But in the present case, the facts are different as the investor companies were not related or owned by the Director of the assessee company and the shares were allotted at a premium of Rs. 15/- per share, valuation of which was worked out on the basis of detailed calculation sheet, copy of which is placed at page no. 47 of the assesses compilation.

9. As regards to the allegation that the assessee could not produce Director of the Investor companies, it is noticed that the assessee furnished confirmatory letters received from the Investing companies alongwith copies of the Balance Sheets, copies of Ledger Accounts of the broker etc and requested to the Ld. Pr.

CIT to issue commission as per provisions of Section 131(1)(d) of the Act, since all the Directors of Investing Companies were permanently based in Kolkata which was nearly 1700 Km away from Ludhiana and therefore the assessee requested to AO to issue the commission. However the AO after appreciating the complete documentary evidences placed on record and applying his mind to the facts of the case, accepted the evidences filed by the assessee and had taken a possible view. The aforesaid facts are clear from the letter dt. 08/11/2017 written by the assessee to the Ld. Pr. CIT copy of which is placed at page no. 498 & 499 of the assessee's compilation.

9.1 We, therefore, by considering the totality of the facts as discussed hereinabove are of the view that the Ld. Pr. CIT was not justified in exercising his powers under section 263 of the Act and considering the assessment order dt. 27/12/2016 passed by the AO as erroneous and prejudicial to the interest of the Revenue, the same is quashed and the assessment order passed by the AO dt. 27/12/2016 is restored.

10. In the result, appeal of the assessee is allowed.

(Order pronounced in the open Court on 19/04/2021)

Sd/-

□□.□□. □□□□
(R.L. NEGI)
□□\$□□ □□&□/ Judicial Member

Sd/-

□□.□□ .□□□□,
(N.K. SAINI)
□□□ □! / VICE
PRESIDENT

AG

Date: 19/04/2021

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. □□
6. □ Guard File

DR, ITAT, CHANDIGARH