

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon'ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 1156/Kol/2017

Assessment Year : 2012-13

M/s RBS Credit & Financial Development Pvt. Ltd. -vs- PCIT-3, Kolkata
[PAN: AABCR 3300 A]
(Appellant) (Respondent)

For the Appellant : Shri Ravi Tulsiyan, FCA

For the Respondent : Shri Md. Usman, CIT(DR)

Date of Hearing : 27.02.2018

Date of Pronouncement : 09.03.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the assessee arises out of the order of the Learned Principal Commissioner of Income Tax-3, Kolkata [in short the Id. CIT] in Memo no. Pr. CIT-3/Hqrs.-3/Kol/U/s263/Wd-8(3)/113/2016-17/16346-16349 dated 08.03.2016 passed u/s 263 of the Act against the order passed by the DCIT, Circle-8(2), Kolkata [in short the Id. AO] under section 143(3) of the Income Tax Act, 1961 [in short “the Act”] dated 31.03.2015 for the Assessment year 2012-13.

2. The only issue to be decided in this appeal is as to whether the Id CIT was justified in invoking revisionary jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a Non-Banking Finance Company (NBFC) engaged in investment of shares and other trading business. The return of income for the Asst Year 2012-13 was filed by the assessee company on 27.9.2012 declaring total income of Rs Nil. The assessment was completed u/s 143(3) of the Act on 31.3.2015 determining the total income of Rs 3,31,87,540/- after making addition of Rs 2,79,00,000/- on account of share application money by applying the provisions of section 68 of the Act and addition of Rs 91,65,000/- on account of deemed dividend u/s 2(22)(e) of the Act and further disallowance of Rs 78,45,083/- u/s 14A of the Act. Later the Id CIT assumed jurisdiction u/s 263 of the Act and issued show cause notice dated 9.2.2017 and supplementary show cause notice dated 28.2.2017, alleging that the assessment order passed in the assessee's case u/s 143(3) of the Act by the Id AO for the Asst Year was prima facie, erroneous and prejudicial to the interests of the revenue on the following grounds:-

a) That the assessee having issued 1457000 equity shares of Rs 10 each at a premium of Rs 15 per share and thereafter raising share capital of Rs 1,45,74,000/- and share premium of Rs 2,18,61,000/- cannot be considered as genuine since the assessee was not involved in any genuine business activity and source of fund for share application was doubtful. In view of the above, it was alleged that since the Id AO had failed to apply the provisions of section 68 of the Act and had passed the assessment order without making enquiries or verification and not in accordance with the decision of Hon'ble Jurisdictional High Court in the case of Rajmandir Estates Pvt Ltd vs PCIT reported in (2016) 70 taxmann.com 124 (Cal) , the assessment order so passed by the Id AO u/s 143(3) of the Act is prima facie erroneous and prejudicial to the interests of the revenue.

b) That the assessee having valued closing stock at Rs 1,15,07,191/- under the head 'changes in inventories of finished goods , WIP and stock in trade' in Schedule 13 of its profit and loss account for the relevant Asst Year whereas book value of closing stock was Rs 1,22,37,799/-, the same has resulted in notional loss of Rs 7,30,608/- (1,22,37,799 – 1,15,07,191) , as changes in inventories of shares & securities was debited to profit and loss account and the loss being contingent in nature, the same cannot be allowed to be set off against the taxable income and as per CBDT Instruction No. 3/2010 this notional loss should have been added back to the assessee's total income. In view of the above, the Id CIT alleged that since the Id AO had passed the assessment order u/s 143(3) of the Act without making enquiries or verification, the assessment order so passed by the Id AO u/s 143(3) of the Act is prima facie erroneous and prejudicial to the interests of the revenue.

4. In response to the show cause notices issued, the assessee filed written submissions explaining the details why the assessment order cannot be held to be erroneous and prejudicial to the interests of the revenue. However, the Id Pr CIT proceeded to pass the order u/s 263 of the Act on 8.3.2017 by observing that the impugned assessment order has not considered the provisions of section 68 of the Act and the decision of Hon'ble Jurisdictional High Court supra in relation to the issue of receipt of share application money and further observing that the Id AO had failed to make any enquiry in respect of issue of debiting the differential value of closing stock of shares in the profit and loss account of the assessee thereby making the impugned order erroneous and prejudicial to the interests of the revenue. Aggrieved, the assessee is in appeal before us on the following grounds:-

1. That, on the facts and in the circumstances of the case, the ld. Principal CIT erred in law in assuming jurisdiction u/s. 263 of the Act on mere possibilities and guess work in order to impose his own views on the A.O. on the same set of facts & evidences considered by the A.O., by holding that the order passed by the A.O. u/s. 143(3) of the Act on 31.03.2015 was prima facie erroneous and prejudicial to the interests of the revenue.

2. That, the Ld. Pr. CIT erred in assuming jurisdiction u/s.263 on his alleged assumption that the A.O. has not discussed in the assessment order the genuineness of issuance of 14,57,400 shares of face value of Rs.10/- (Rs.1,45,74,000) at a premium of Rs.15/- per share (Rs.2,18,61,000) when as per record vide Order Sheet entry dated 05.03.2016 the A.O. had in-depth enquired/verified the details of source of the entire share capital received from the group companies with supporting documents, leaving no scope in law to interfere with u/s.263 of the Act.

3. That, The Ld. Pr. CIT ought to have considered that addition of Rs.2.79 crores made u/s.68 in the impugned assessment order has rather caused prejudice to the assessee and not the revenue, inasmuch as the share application money of Rs.1,36,65,000/-, if at all, could have been subjected to sec.68, whereas the A.O. went ahead to add a sum of Rs.2.79 crores u/s.68 of the Act, which was in excess of share application money actually received by the assessee.

4. That, the Ld. Pr. CIT factually went wrong in assuming that the A.O. has not considered that the assessee was not involved in any genuine business activity, whereas the assessee being a NBFC has genuine & substantial business activities and as per P/L Account verified by the A.O., total receipts in the nature of dividend, profit on sale of investment & interest amounted to Rs.1,76,71,978/- and there was net profit of Rs.46,29,111/-.

5. That, the Ld. Pr. CIT erred in assuming that the A.O. failed to inquire into the creditworthiness of the shareholders in spite of the fact that all the share applicants being the assessee's group companies, the source of the assessee's share capital and share premium was from within the assessee-group and their balance sheets proved availability of sufficient funds to invest, which stood verified by the A.O. vide Order Sheet entry dated 05.03.2015 and hence cannot be doubted.

6. That, the Ld. Pr. CIT while admitting that the A.O. made certain enquiries in regard to receipt of share application money further erred in alleging that no enquiry was made by him to rule out the possibility of the transaction being

collusive and sham in spite of the fact that depositions u/s.131 (1) from the directors of the shareholder companies were recorded/considered at par with supporting authentic evidence, thus negating any avenues of not conducting any enquiry or conducting inadequate enquiries.

7. That, the Ld. Pr. CIT has wrongly alleged that the A.O. has not even examined the bank accounts of the share subscribers when as per record, bank statements of the share subscribers and the assessee reflecting debit and credit entries respectively had been verified by the A.O., who ultimately made addition of Rs.2.79 crores u/s. 68 of the Act on that account.

8. That, the Ld. Pr. CIT on misinterpretation has alleged that book value of closing stock was shown at Rs.1,22,37,191/-, whereas as per PIL Account the same was shown at Rs.1,15,07,191/- under the head 'Changes in Inventories of finished goods, WIP & stock-in-trade' and hence the notional loss of Rs. 7,30,608/- cannot be allowed to be set off without considering that the assessee has taken closing stock of share scrips at lower of cost price or net realizable value/market value in accordance with AS-2.

9. That, the Ld. Principal CIT grossly erred on facts and in law in invoking jurisdiction u/s. 263 of the Act and referring the case back to the A.O. for fresh examination of addition u/s. 68 of the Act.

10. That, the Ld. Pr. CIT wrongly invoked provisions of sec. 263 against the settled law that when the A.O. forms an opinion and frames assessment on the basis of his enquiry and verification of the documents requisitioned and available on record, even if inadequate, the same does not mean no enquiry at all, inasmuch as inadequate enquiry by itself does not give occasion to invoke provisions of sec. 263 merely because the Ld. Pr. CIT has different opinion in the matter.

11. That, the Ld. Pr. CIT without bringing on record any conclusive material/evidence to prove that the view taken by the A.O. was unsustainable in law has termed the assessment order erroneous and prejudicial to the interests of revenue when it is settled law that satisfaction of the A.O. who made enquiry should be the touchstone to base the validity of the assessment order and the CIT cannot substitute his subjective view in place of findings of the A.O.

12. That, further the assumption of jurisdiction u/s. 263 and passing consequential order by the Ld. Pr. CIT was bad in law inasmuch as it is a settled law that the phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with the expression 'erroneous' and merely that the A.O.

has not discussed the inquiry carried out and its outcome in the assessment order does not mean that the assessment order was erroneous.

13. That, even on merits of the case, the order passed by the Ld. Pr. CIT u/s. 263 is devoid of any merit and against the settled law inasmuch as all the required details/information/evidences required to be produced in establishing identity & creditworthiness of the shareholders (group companies) and genuineness of the transaction are already on record and explained before him and hence the conditions precedent to invoke sec.68 have not been satisfied in this case.

14. That, as the order of Ld. Pr. CIT on the above issues suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

15. That the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.

5. We have heard the rival submissions and perused the materials available on record including the paper book of the assessee comprising of pages 1 to 231. With regard to the issue of receipt of share application money, we find that during the relevant assessment year, the assessee had allotted 1457400 equity shares of face value of Rs 10 each at a premium of Rs 15 per share to 4 parties viz. Baba Basuki Distributors Pvt Ltd, Regards Fin-Cap Pvt Ltd , Kamayani Commotrade Pvt Ltd and Amber Vinimay Pvt Ltd and accordingly raised share capital of Rs 1,45,74,000/- and share premium of Rs 2,18,61,000/-. Out of the total allotment made, the assessee company had received share application money of Rs 1,36,65,000/- only during the relevant financial year from 3 parties viz Baba Basuki Distributors Pvt Ltd, Regards Fin-Cap Pvt Ltd and Kamayani Commotrade Pvt Ltd. Share application money from Amber Vinimay Pvt Ltd was received during the preceding assessment year. The details of amounts received during the year together with their respective sources as explained before the Id AO as well as before the Id CIT in section 263 proceedings are as under:-

Regard Fin-Cap Pvt Ltd – Rs 62,45,000/-

Kamayani Commotrade Pvt Ltd – Rs 24,20,000/-

Baba Basuki Distributors Pvt Ltd - Rs 50,00,000/-

----- Rs 136,65,000/-

Regard Fin-Cap Pvt Ltd – Rs 62,45,000/-

a) Refund of Loan from Crescent Technology Pvt Ltd – Rs 15,90,954/-

b) Sale of investments to Neelima Kansal Dhruv Kansal and DSE Financial Services Ltd – Rs 39,50,380/-

c) Dividend received from Simplex Infrastructures Ltd – Rs 2,11,000/-

d) Refund of margin money from BSE/NSE – Rs 1,96,942/-

Kamayani Commotrade Pvt Ltd – Rs 24,20,000/-

Refund of Share application money from Ambar Vinimay Pvt Ltd – Rs 64,20,000/-

Baba Basuki Distributors Pvt Ltd – Rs 50,00,000/-

Refund of Share application money from Startrade Vyapaar Ltd – Rs 50,00,000/-

5.1. The above receipts in the respective companies accounts are duly reflected in the bank statements of respective companies which are also enclosed in the paper book of the assessee. We are in agreement with the arguments of the Id AR that, in any case, the Id AO ought to have added only a sum of Rs 1,36,65,000/- u/s 68 of the Act being the amount of share application monies received during the relevant financial year and not Rs 2,79,00,000/- or any other figure. This argument was made by the Id AR without prejudice to the fact that the entire sources together with the source of source were duly explained by the assessee company during the course of assessment proceedings as well as before the revision proceedings u/s 263 of the Act. It was further pleaded that assessee being a NBFC had genuine and substantial business activities during the relevant assessment year of giving loans and earning interest

income therefrom, making investment in shares, including that of listed companies and earning dividend therefrom and profit on sale of investments. The details of income earned by the assessee company are as under:-

Interest income	3,16,490.00
Dividend received	1,21,74,923.63
Profit on sale of investments	51,80,564.77

5.2. From the balance sheet of the assessee enclosed in the paper book, we find that the assessee had made substantial investments in shares of listed and unlisted companies during the year under consideration. The total value of investments as at the beginning of the year were Rs 20,07,47,007.19, out of which investment of an amount of Rs 16,68,79,617/- was made in the shares of a listed company namely Simplex Infrastructure Ltd, which is stated to be one of the largest infrastructure companies in the country. It was stated that the assessee had made this investment in Simplex Infrastructure Ltd at the rate of Rs 2 per share although market value of such investments alone was Rs 101,68,61,236/-. The assessee explained before the lower authorities that because of huge investment made by it in Simplex Infrastructure Ltd, the share applicant companies had invested in the assessee company. These facts had been confirmed in the deposition of the directors of the share applicant companies in response to summons issued u/s 131 of the Act during the course of assessment proceedings itself. We also find that the book value of shares of the assessee company as on 31.3.2011 stood at Rs 24.90 per share , which justifies the allotment of shares at Rs 25 per share including premium of Rs 15 per share. This goes to prove the genuineness of the transactions beyond doubt. The identity of the share applicants have been proved beyond doubt by those share applicants being regularly assessed to income tax . Similarly the creditworthiness of the share applicants also were proved beyond doubt in the instant case in as much as even the source of source was proved

by the assessee. The entire details called for by the Id AO in notice u/s 133(6) of the Act were duly filed by the share applicants before the Id AO. The Id AO even sought to verify the veracity of their claims by issuing summons u/s 131 of the Act to all the share applicants in the assessment proceedings. All the directors of the share applicant companies appeared before the Id AO and deposed before him confirming the entire fact of transactions and investment made in the assessee company together with sources and purpose for such investment. The Id AR also argued that the entire share applicant companies are group companies and they are all disclosed promoter companies of Simplex Infrastructure Ltd, having common directors.

5.3. We also find from the order sheet copies enclosed in the paper book, that the Id AO had sought for specific queries regarding the raising of share capital in the course of assessment proceedings and the assessee had discharged its obligation by performing the following functions:-

- a) Details called for by the Id AO were submitted to him.
- b) Replies were directly filed by all the share applicants in response to notices issued u/s 133(6) of the Act by filing the ITR acknowledgements, audited financial statements, confirmation for having made investment in shares of assessee company at premium, source for such investments, bank statements proving the immediate source of credit, copy of share certificates containing distinctive numbers of shares, date of allotment etc.
- c) The directors of the share applicant companies also appeared in person and gave a statement in response to section 131 summons before the Id AO and confirmed the aforesaid transactions.
- d) Assessee had also filed a reply letter before the Id AO stating all these facts vide letter filed on 13.3.2015 enclosed in pages 32 & 33 of the paper book filed before us.

Hence from the aforesaid action of the assessee company and the response of the share applicant companies, it could be safely concluded that the three necessary ingredients for section 68 of the Act have been duly complied with by the assessee company and there is absolutely no case for making any addition u/s 68 of the Act in the assessment or warranting any fresh enquiry pursuant to revision proceedings u/s 263 of the Act. We are not inclined to accept the finding of the Id CIT in his section 263 order that no enquiries were made by the Id AO in the assessment proceedings regarding share capital and share application money. Infact we also had the benefit of assessment records which the Id DR was pleased to make available at the time of hearing before us. From the perusal of the said records, it was noticed that the aforesaid details as stated were very much available in the file.

5.4. We find that despite furnishing of all the evidences, the Id AO proceeded to add towards receipt of share capital by applying the provisions of section 68 of the Act to the extent of Rs 2.79 crores which was even higher than the amount of Rs 1.3665 crores received by the assessee during the year in the assessment completed u/s 143(3) of the Act. Hence it could be safely concluded that the addition made in the sum of Rs 2.79 crores towards share capital (added in excess by the Id AO) could only be treated as an act which is prejudicial to the interests of the assessee and not the revenue. Hence the condition precedent for invoking revisionary jurisdiction u/s 263 of the Act fails squarely on that count. In other words, even assuming the addition towards share capital is to be made u/s 68 of the Act, it could be made only to the extent of Rs 1.3665 crores being the amount received during the year, whereas the Id AO had added a sum of Rs 2.79 crores. Hence where is the prejudice caused to the revenue here? Moreover, since adequate enquiries were made by the Id AO in the course of assessment proceedings and relevant documents were duly filed by the assessee as stated supra, it could be safely concluded that the issue has been thoroughly examined

and enquired by the Id AO. Hence it cannot be stated as 'lack of enquiry' on the part of the Id AO.

5.5. We also find that the decision rendered by the Hon'ble Calcutta High Court in the case of Rajmandir Estates Pvt Ltd vs PCIT reported in 70 taxmann.com 124 (Cal) is not applicable to this case and is factually distinguishable. In the said case, it was held that the Id CIT is entitled to revise u/s 263 of the Act if the Id AO had not applied his mind to important aspects and had not taken his enquiry to its logical conclusion. However, as far as the present case of the assessee before us is concerned, it is well established as above and is also evident from perusal of the impugned assessment order that the Id AO had conducted enquiry into the taxability of share capital receipts u/s 68 of the Act from all possible purviews and has even added an amount more than the amount received by the assessee during the year and thereby causing prejudice only to the assessee and not to the revenue. Hence the reliance placed by the Id DR on the decision of Hon'ble Calcutta High Court supra does not advance the case of the revenue before us. In the instant case, the Id AO on thorough examination of the relevant records had come to a conclusion that the receipts towards share capital deserves to be added u/s 68 of the Act in the sum of Rs 2.79 crores in the year under appeal, thereby taking one of the view in the matter. At the cost of repetition, in any case, only a sum of Rs 1.3665 crores could be added u/s 68 of the Act towards share capital and share application money as that was the money received during the year under consideration, where as the Id AO had already added Rs 2.79 crores in the assessment, thereby causing prejudice only to the assessee and not to the revenue. We find lot of force in the arguments of the Id AR and on the following decisions relied upon by him :-

a) Hon'ble Supreme Court in the case of CIT vs Max India Ltd reported in 295 ITR 282 (SC).

- b) Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd vs CIT reported in 243 ITR 83 (SC).
- c) Hon'ble Calcutta High Court in the case of CIT vs J.L.Morrison (India) Ltd reported in 366 ITR 593 (Cal).
- d) Hon'ble Delhi High Court in the case of CIT vs Sunbeam Auto Ltd reported in 332 ITR 167 (Del).
- e) Hon'ble Bombay High Court in the case of CIT vs Gabriel India Ltd reported in 203 ITR 108 (Bom).
- f) Hon'ble Punjab & Haryana High Court in the case of Hari Iron Trading Co. vs CIT reported in 263 ITR 437 (P&H).
- g) Hon'ble Delhi High Court in the case of CIT vs Leisure Wear Exports Pvt Ltd reported in 341 ITR 166 (Del).

5.6. In view of the aforesaid findings and respectfully following the various judicial precedents relied upon hereinabove, we hold that the order passed by the Id AO by adding a sum of Rs 2.79 crores towards share capital cannot be termed as one which is prejudicial to the interests of the revenue warranting revisionary jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

6. With regard to the issue of alleged notional loss representing changes in inventories of shares and securities, the Id AR stated as under:-

The closing stock of the assessee on 31.3.2012 was shown in Note 13 of the Profit and Loss Account for the relevant financial year under the head 'changes in inventories of finished goods, WIP and stock in trade' at Rs 1,15,07,191/-. A tabular representation of the valuation of closing stock is reproduced below:-

Sl. No.	Name of the scrip	Quantity	Cost Price	Market Price	Stock Taken
01.	Siyaram Silk Ltd.	25473	3502374.07	6542740.05	3502374.07
02.	WPIL Ltd.	103834	7698232.50	22848671.70	7698232.50
03.	GMR Infrastructures Ltd.	5890	648770.84	182884.50	182884.50
04.	Nucleus Software Ltd.	2000	388422.15	123700	123700
		1,37,197	1,22,37,799.56	2,96,97,996.25	1,15,07,191.07

6.1. The assessee has taken closing stock of the aforementioned share scrips at lower of cost or net realizable value / market value in accordance with the Accounting Standard 2 (AS 2) issued by The Institute of Chartered Accountants of India (in short ICAI) and also notified by the CBDT. In the supplementary show cause notice dated 28.2.2017, the Id CIT, having observed that the assessee has valued its closing stock for the relevant Asst Year at lower of cost or net realizable value thus reflecting an amount of Rs 1,15,07,191/- in Note 13 of its Profit and Loss Account for the relevant financial year instead of Rs 1,22,37,799/-, alleged that the same represents Mark to Market (MTM) losses on account of revaluation of forex derivative and are notional in nature and cannot be deductible as business losses under the Act. In this regard, the Id CIT placed reliance on the CBDT's Instruction No. 3/2010 which relates to tax implications of forward foreign exchange contracts. Further in the order dated 8.3.2017 passed u/s 263 of the Act, the Id CIT discussed in detail what is 'mark to market loss' and held that 'since all such MTM losses on account of revaluation of forex derivative are only notional, they are not deductible as business losses under the Act. In this connection, the Id PCIT further relied on Instruction No. 17/2008 dated 26.11.2008 of CBDT relating to non-allowability of contingent and unascertained losses applicable for banks. In view of the above, the Id PCIT alleged that the Id AO had failed to make enquiries which are called for in the circumstances of the case thereby making the impugned assessment order passed by him erroneous and prejudicial to the interests of the revenue.

6.2. In this regard, the Id AR submitted that first of all that closing stock entirely consists of shares and no part of it was derivatives where the question of MTM loss would arise. As such, the assessee in accordance with AS 2 had rightly valued its closing stock of shares for the relevant Asst Year at lower of cost or net realizable value thus reflecting an amount of Rs 1,15,07,191/- in Note 13 of its Profit and Loss Account for the relevant financial year. He argued that AS-2 issued by ICAI had been notified by the Income Tax Department u/s 145(2) of the Act. We find that the assessee having reflected its closing stock in conformity with AS-2, the resultant differential figure of Rs 7,30,608/- (1,22,37,799 – 1,15,07,191) which was debited in the profit and loss account cannot be regarded as notional loss. If the assessee would have debited opening stock and credited closing stock in the profit and loss account instead of recognizing it in a separate schedule under Note 13 to Profit and Loss Account, the effect would have been the same since 'changes in inventories of shares & securities' is the differential figure between the opening stock and closing stock of shares. There was no error in the accounts or claim of loss which the Id AO could have disallowed. We find that the Id CIT wrongly presumed the claim of differential figure in the valuation of closing stock of shares as MTM loss arising on account of revaluation of forex derivatives. We find that the assessee had filed the details of closing stock of shares as tabulated above before the Id AO which is enclosed in page 231 of the paper book filed before us. The Id AO on examining the same rightly came to the conclusion that no disallowance / addition is warranted thereon. Accordingly there was no occasion for him to discuss about the same in the assessment order. Merely because there was no mention regarding this issue in the assessment order, it cannot be presumed that the Id AO had not made any enquiry in this regard in the assessment proceedings. We hold that the Id AO cannot be expected to discuss each and every item of his verification in the assessment order and he could be expected to address only those issues on which he is not in agreement with, in his assessment order. We hold that the Id AO had made adequate enquiries in this regard,

examined the same in the assessment proceeding and had taken the same to its logical conclusion. On the contrary, we only find that the Id CIT had wrongly presumed that the changes in the inventory of closing stock of shares as MTM loss arising on account of forex derivatives, which is absolutely baseless and factually incorrect. This proves the complete non-application of mind on the part of the Id CIT while invoking revisionary jurisdiction u/s 263 of the Act for this issue. We find lot of force in the arguments of the Id AR and on the following decisions relied upon by him :-

- a) Hon'ble Delhi High Court in the case of CIT vs Ashish Rajpal reported in 320 ITR 674 (Del)
- b) Hon'ble Delhi High Court in the case of CIT vs Sunbeam Auto Ltd reported in 332 ITR 167 (Del)
- c) Hon'ble Gujarat High Court in the case of CIT vs R.K.Construction Co. reported in 313 ITR 65 (Guj)
- d) Hon'ble Delhi High Court in the case of DIT vs Jyoti Foundation reported in 357 ITR 388 (Del)
- e) Hon'ble Delhi High Court in the case of ITO vs DG Housing Projects Ltd reported in 343 ITR 329 (Del)

6.3. In view of the aforesaid findings and respectfully following the various judicial precedents relied upon hereinabove, we hold that the order passed by the Id AO by allowing the changes in inventories of finished goods, WIP and stock in trade as deduction and the same cannot be treated as MTM loss or notional loss and hence cannot be termed as erroneous inasmuch as it is prejudicial to the interests of the revenue, warranting revisionary jurisdiction u/s 263 of the Act in the facts and circumstances of the case.

7. In view of the aforesaid findings with regard to both the issues of share capital and MTM losses, we hold that the revision order passed by the Id PCIT u/s 263 of the Act deserves to be quashed and is hereby quashed. Accordingly , the Grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 09.03.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 09.03.2018

SB, Sr. PS

Copy of the order forwarded to:

1. M/s RBS Credit & Financial Development Pvt. Ltd., 12/1B, Bellie Sengupta Sarani, Kolkata-700087.
2. PCIT-3, Kolkata.
3. C.I.T(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

