

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.:- 574/Del/2018  
Assessment Year: 2014-15

M/s. Vidya Prakashan Mandir Pvt. Ltd. G.F-8, Narain Manzil, Plot No. 23, Barakhamba Road, New Delhi-110 001	Vs.	Pr.CIT, Delhi-9 PAN AAACV3208L
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Shri Ashwani Kumar, CA
Department by :	Smt. Deepali Chandra, CIT(DR)
Date of Hearing	16/04/2018
Date of pronouncement	19/06/2018

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the assessee against impugned order dated 12.1.2018, passed by Ld. Pr. Commissioner of Income Tax, Delhi -9 under section 263 for the assessment year 2014-15. In the grounds of appeal assessee has raised following grounds:-

*"1. That the order dated 12-01-2018 passed u/s 263 of the Income-tax Act, 1961 passed by the Ld. Pr Commissioner of Income-Tax, Delhi -9, New Delhi is against law and facts on the file in as much as he was not justified to set aside the order dated*

*31-12-2016 passed u/s 143(3) of the Income-tax Act, 1961 for the AY 2014-15 by the Assistant Commissioner of Income-Tax, Circle -25 (2), New Delhi on the ground that the same is allegedly erroneous and prejudicial to the interests of the Revenue in as much as the twin conditions as laid out in Section 263 of the Income-tax Act, 1961 were not fulfilled.*

*2. That the order dated 12-01-2018 passed u/s 263 of the Income-tax Act, 1961 passed by the Ld Pr Commissioner of Income-Tax, Delhi -9, New Delhi is against law and facts on the file in as much as he was not justified to set aside the order dated 31-12-2016 passed u/s 143(3) of the Income-tax Act, 1961 for the AY 2014-15 by the Assistant Commissioner of Income-Tax, Circle -25 (2), New Delhi and direct the Assessing Officer to :-*

*(a) inquire into the issue of receipt of Rs. 7.80 crores on share premium/share capital from M/s Prosperity Mercantile Pvt Ltd and also receipt of Rs. 1 crore from M/s Prosperity Mercantile Pvt Ltd on behalf of Sh 8asant Kr Jain, a shareholder / Director in the Appellant Company on the ground that M/s Prosperity Mercantile Pvt Ltd is allegedly an entry/provider/shell/paper company which had been acquired by the Appellant Company for the purpose of allegedly routing its own unaccounted money.*

*(b) inquire into the issue of NIL WIP found in the final accounts of the Appellant Company. ”*

2. The facts in brief *qua* the issue arising in the impugned proceedings u/s 263 are that, Assessee Company is engaged in the business of printing and publishing of books. It had filed its return of income on 29.9.2014, declaring an income of Rs. 2,15,13,283/-. The

said return was selected for scrutiny and accordingly notice u/s 143(2) was issued on 31.8.2015. During the course of assessment proceedings the AO noted that assessee has claimed long term capital gain as exempt u/s 10 (38) on sale of following shares:-

- i) Unno Industries Ltd.;
- ii) Pinnacle Ventrade Private Limited; and
- iii) Lambodar Nimit Private Limited.

AO further noted that during search proceedings conducted by Kolkata Investigation Wing, certain statements of persons were recorded from where it was gathered that the share price movement of these companies and sale/purchase are not genuine and transaction of the purchase and sale of shares of the aforesaid companies were in the nature of accommodation entry and circular entry to claim bogus long term capital gain. After incorporating the relevant statements in his order and detailed discussion, he held that amount of Rs. 2,36,00,699/- debited by the assessee out of sale of bogus shares is to be taxed as unexplained cash credit and accordingly, addition of this amount was made to the income of the assessee and assessment was completed at an income of Rs. 4,54,46,162/- after making certain other minor disallowances on account of employee contribution of ESI of Rs. 75,498/- and disallowance u/s 40A(3) of Rs. 2,56,682/-.

3. Later on Ld. Pr. CIT in his revisionary proceedings u/s 263 had called for the assessment records and on perusal of the same observed that the AO while framing the assessment u/s 143(3) had failed to verify the following issues :-

- “1. *To enquire about the fresh share capital amounting Rs. 2.75 Cr. and fresh share premium amounting Rs. 5.05 Cr. ~received by you from M/ s Prosperity Mercantiles (P) Ltd, 9/12, Lal Bazar Street, 3rd Floor, Block C, Kolkata, a Kolkata based company. This becomes important when the AO has made a huge addition on account of bogus LTCG on the basis of information received from Investigation Wing, Kolkata.*
2. *The opening and closing stock of raw material and W.I.P. has been shown as Nil which required further enquiries.*
3. *Against the sale of Rs. 58 Crores, the purchase amount is Rs. 37.80 crores. Considering the nature of trade, the purchase amount seems on a higher side, so it also required further enquiries /verification.”*

4. Accordingly a show cause notice was issued u/s 263(1) on 23.8.2017. In response to which assessee filed its detailed objection / reply stating that the AO during the course of the assessment proceedings had duly enquired about the issue of share capital/share premium received during the year from M/s. Prosperity Mercantile (P) Ltd. and assessee was asked to justify the genuineness and creditworthiness alongwith the documentary evidence of source of amounts received in the bank account of M/s. Prosperity Mercantile

Ltd. Based on such documents and after he was duly satisfied, he accepted the share capital which were received during the year. Apart from that, various legal submission were also made challenging the revisionary proceedings exercised u/s 263. To prove the genuineness and creditworthiness of the share capital/premium received, the assessee had filed a) confirmation of the company; b) bank statement of M/s. Prosperity Mercantile (P) Ltd.; c) computation of income and acknowledgement of filing income-tax return of the said party; and d) copy of audited balance sheet wherein this amount was shown as investment. Thus, it was submitted that when assessee has discharged its primary onus as laid down in section 68 with regard to establishing the genuineness of the transaction and creditworthiness of the party, then without any other adverse material, addition could not have been made u/s 68. The AO was duly satisfied with the said evidence and now to take a contrary view is beyond the purview of section 263. Lastly, it was also submitted that there is no specific / concrete evidence that M/s. Prosperity Mercantile (P) Ltd. had given any kind of accommodation entries to the assessee. On other point also as raised in the show cause notice the details submissions were made.

5. Ld. Pr. CIT dropped the third point as raised in the show cause notice. However in so far as the fresh share capital receipt during the

year receipt of Rs. 2.75 crores and share premium of Rs. 5.05 crores was, Ld. PCIT has given very exhaustive reasons in the impugned order. He had also taken note of show cause notice issued by the AO with regard to share subscribed by M/s. Prosperity Mercantile (P) Ltd. and share premium received on such shares, however he observed that AO did not took it logical conclusion and it appears AO has inadvertently ignored this issue while passing the assessment order without adding the share capital / share premium while framing the assessment. After taking note of assessee's legal objection with regard to the wrong assumption of revisionary jurisdiction u/s 263, rejected assessee's contention on the ground that after the insertion of *Explanation 2* in section 263 w.e.f 1<sup>st</sup> June 2015, if the AO has not made proper inquiry or verification then said assessment order is deemed to be erroneous in so far as it is prejudicial to the interest of the revenue. The relevant observation of the Ld. PCIT with regard to the nature of inquiry conducted by the AO during the course of the assessment proceedings and assessee's response as dealt in para 10 is reproduced hereunder :-

*“10. Though, the assessee vide its reply dated 23.12.2016 replied that, the details of pay from M/s. Prosperity Mercantile Private Limited alongwith bank statement, balance sheet and ITR are enclosed to justify the source of payment, which can be verified from the bank statement and creditworthiness of the company can be verified from the balance sheet enclosed. Here it is relevant to*

*mention that the AO was not satisfied with the financial of the Co. and the sources of M/s. Prosperity Mercantile Private Limited. In this context he has asked the assessee to submit the documentary evidence for the sources of amount received in the bank account of M/s. Prosperity Mercantile Private Limited to verify the creditworthiness of M/s. Prosperity Mercantile Private Limited. However, the assessee in its reply dated. 23.12.2016 did not submit the requisite details as asked by the AO. In the bank statement, the payment to the assessee company' is visible but it is seen that the equivalent amount have been received by M/s. Prosperity Mercantile Private Limited on the same day or one day before through transfers or through cheque payments. The details in r/o source of these credits in the bank statement of M/s. Prosperity Mercantile Private Limited have not been furnished by the assessee. However, it is apparent that the AO has passed the assessment order on 31.12.2016 and did not make any addition on the issue of share capital/ share premium u/s 68 of the IT Act. This issue has not been discussed in the order sheet or in the assessment order at all. Further, the AO called the Director of the assessee company u/s.131 to appear on 26.12.2016. However, there is no record of his appearance on 26.12.2016.”*

6. On the aforesaid reasoning he held that AO has failed to carry out necessary inquiry and verification despite the fact that no proper details as were required by AO was furnished by the assessee. Thereafter he wrote a note on how accommodation entry provider company operates and further noted various facts of M/s. Prosperity Mercantile Private Limited which can be summarised as under :-

- M/s. Prosperity Mercantile Private Limited was formed in Kolkata in November, 2010 and in short span of four months share capital/share premium raised by this company was to the tune of Rs. 29.50 crores.
- This company was probably sold to the assessee company and two other persons who were appointed as Directors in this company.
- This company was showing a nominal income and in the fixed asset side it had one car and one computer software.
- Bank account reveals that in most of the occasions there were matching credits/debit entries and their initial Directors were also directors in several companies in Kolkata and other places who were either employees of the beneficiary who were not men of great worth.
- No major business operations have been carried out.

Thus, all these indicators required the AO to further inquire from investigation wing or through the AO of M/s. Prosperity Mercantile Private Limited.

7. Ld. PCIT then wrote letter to the investigation wing Meerut and also Investigation Wing Kolkata to inquire in the case of M/s. Prosperity Mercantile Pvt. Ltd. and also in the case of the assessee. In



response to such letters, reports were received by him which has been taken note in para 15.1 of the impugned order. The sum and substance of the said report was that, *firstly*, on inquiry this company was not found existing at the given address; *secondly*, this company has seven shareholders and some of the shareholders were not found existing in the given addresses; *thirdly*, 4 of the shareholders were found in the data base of shell/bogus company maintained by Investigation Wing Kolkata; and *lastly*, noted that the share holder companies were managed by the entry operators. With regard to the Investigation report in relation to M/s. Prosperity Mercantile Pvt. Ltd., Ld. CIT has noted down the various facts dealt by him from pages 16 to 19 :-

- i. During the inquiry proceedings the assessee did not co-operate with the authorities on various pretexts. The summons were also issued to Sh. Naveen Kr. Jain who appears to be Director in the assessee company as well as in M/s. Prosperity Mercantile Pvt. Ltd.*
- ii. M/s. Prosperity Mercantile Pvt. Ltd. was incorporated in Kolkata on 25.11.2010, the Directors of this company were Sh. N. C Barik and Sh. Balai Das and these two persons were also Directors in more than 250 companies. Then Sh. BK Sultania was appointed as Director who remained as Director till March, 2014. Sh. Sultania was also Director in 72 other companies. Similarly Sh. AK Sultania was also Director in M/s. Prosperity Mercantile Pvt. Ltd. apart from being Director in 49 other companies.*

- iii. *In the very first year (F. Y. 2010-11) in a short span of four months, M/s. Prosperity Mercantile Pvt. Ltd. raised share capital of Rs. 30.39 lakhs and also received share premium of Rs. 29.10 crores which indicates that approx. share premium of Rs. 989 was received on one share which is simply astronomical for a company which had no background and having Directors who were also Directors in hundreds of other companies. This company had no fixed assets worth mentioning.*
- iv. *Thereafter Sh. Naveen Kr. Jain and Sh. Pankaj Kr. Jain became Directors in M/s. Prosperity Mercantile Pvt. Ltd. on 09.11.2011. These two persons are Meerut based and probably connected with the assessee company in some manner. Sh. Naveen Kr. Jain was also Director in M/s. Vidya Prakashan Mandir Pvt. Ltd. Thereafter bank account of M/s. Prosperity Mercantile Pvt. Ltd. was opened in Meerut on 15.11.2011. All these facts indicate that in all likelihood M/s. Prosperity Mercantile Pvt. Ltd. was acquired (taken over) by the assessee company after paying some commission. M/s. Prosperity Mercantile Pvt. Ltd. did not show any worthwhile income since its inception. The bank account of M/s. Prosperity Mercantile Pvt. Ltd. runs into more than 60 pages, however, no corresponding turnover / receipts are shown in the return of income of M/s. Prosperity Mercantile Pvt. Ltd.*
- v. *The signing power for issuing cheques in M/s. Prosperity Mercantile Pvt. Ltd. is given only to Sh. Naveen Kumar Jain and Sh. Pankaj Kr. Jain.*
- vi. *In normal course, if there is a real company having 30 crores assets/ investments then it is highly unlikely that two ordinary persons who are based at Meerut would practically acquire such company without paying any corresponding sum.*

*Thus in all likelihood M/s. Prosperity Mercantile Pvt. Ltd. is an entry operator/shell/ paper company which had been acquired by the assessee company for routing its own unaccounted money into its books of account.*

- vii. *The assessee company has received Rs. 7.80 crores approx. as share capital/ share premium from M/s. Prosperity Mercantile Pvt. Ltd. in A. Y. 2014-15. M/s. Prosperity Mercantile Pvt. Ltd. also paid Rs. 1 crore to the assessee company on behalf of Sh. Basant Kr. Jain a Director/ shareholder of the assessee company. Thus, in all total amount of Rs. 8.80 crores was received by the assessee company from M/s. Prosperity Mercantile Pvt. Ltd. in the period relevant for A. Y. 2014-15.*
- viii. *In the Return of income for A.Y. 2011-12 to 2013-14 share - holding of M/s. Prosperity Mercantile Pvt. Ltd. was left blank.*
- ix. *In A. Y. 2014-15 in the Return of income of M/s. Prosperity Mercantile Pvt. Ltd. seven shareholders are shown which are as under:*

- 1) *M/s. Ashok Investors Trust Ltd.*
- 2) *M/s. Best Way Hire Purchase Pvt. Ltd.*
- 3) *M/s. Counter Stone Business Pvt. Ltd.*
- 4) *M/s. Ayudhya Wincom Pvt. Ltd.*
- 5) *M/s. Lifelong Ventures Pvt. Ltd.*
- 6) *M/s. Limbo Engineering Pvt. Ltd.*
- 7) *M/s. Orchid Infra Builders Pvt. Ltd.*

*For the assessee company as well as for these seven shareholders same PAN No. DDDPD6061 D is used which on account of inquiry was found to be as bogus PAN, till A. Y. 2016-17 same shareholders and same PAN is shown in the Return of income of M/s. Prosperity Mercantile Pvt. Ltd.*

- x. *The assessee company has many group companies some of which are mentioned below:*
- 1) *M/s. Astonis Marketing Pvt. Ltd.*
  - 2) *M/s. Mukul Metrology Pvt. Ltd.*
  - 3) *M/s. Vidya Knowledge Education Foundation*
  - 4) *M/s. BDS Construction Pvt. Ltd.*
  - 5) *M/s. SS Infra Ventures Pvt. Ltd.*
  - 6) *M/s. SBM Business Pvt. Ltd.*
  - 7) *M/s. Shubham Rolling Mills Pvt. Ltd.*
  - 8) *M/s. Classic Infra Projects Pvt. Ltd.*
  - 9) *M/s. Vishwanath Paper and Boards Pvt. Ltd.*
- xi. *There are some more companies which have bank transactions with M/s. Prosperity Mercantile Pvt. Ltd., these companies might also to be connected with assessee company.*
- 1) *M/s. Discreto Real Estate Pvt. Ltd.*
  - 2) *M/s. Impact Realcom Pvt. Ltd.*
  - 3) *M/s: Kamal Consultants Pvt. Ltd.*
  - 4) *M/s. Facinate Marketing Pvt. Ltd.*
  - 5) *M/s. Vidya Bal Mandali Pvt. Ltd.*
  - 6) *M/s. BSCP Builders Pvt. Ltd.*
- xii. *As per the depreciation chart of M/s. Prosperity Mercantile Pvt. Ltd. in the fixed assets side they own one car and computer software worth Rs. 4500/-. Further if we look at the balance sheet then on the liability side out of the total fund of Rs. 29.58 crores, Rs. 29.44 crores is shown as reserve and surplus (share capital + share premium);*
- xiii. *Information in the case of M/s. Prosperity Mercantile Pvt. Ltd. was passed to the Pr.CIT -1, Aaykar Bhawan, Kolkata vide our letter dated 24.10.2017 and then the same information was passed to*

*the Pr.CIT-2, Aaykar Bhawan, Kolkata vide our letter dated 13.11.2017 for taking appropriate action at their end.*

*In response to our letters, Add1.CIT, Range -5, Kolkata vide his letter dated 27.12.2017 informed that the assessment proceedings in respect of M/s. Prosperity Mercantile Pvt. Ltd. for A.Y. 2011-12 have been re-opened and the re-assessment proceedings are in progress.*

- xiv. On 24.10.2017, summons u/s. 131 were issued to Sh. Pankaj Kr. Jain and Sh. Naveen Kr. Jain, the Directors of M/s. Prosperity Mercantile Pvt. Ltd. for their personal appearance on 31.10.2017, however none of these Directors appeared. Thereafter summons to Sh. Naveen Kr. Jain, Sh. Sanjay Kr. Jain and Sh. Pankaj Kumar Jain all Directors of M/s. Prosperity Mercantile Pvt. Ltd. were again issued on 04.12.2017 and they were- requested to appear personally on 08.12.2017. For this purpose our Inspector was deputed to serve the summons personally at Meerut. In response an adjournment application was received from Sh. Pankaj Kr Jain vide his letter dated 07.11.2017. A letter was also received from Sh. Sanjay Kr. Jain. in his letter he stated that he had already resigned from M/s. Prosperity Mercantile Pvt. Ltd. so he has no concern with the said company. An undated letter was also received from Sh. Pankaj Kr. Jain, in which he stated that he is not been able to go out of Meerut so it is not possible for him to appear before the undersigned. However, he confirmed that he is a Director in M/s. Prosperity Mercantile Pvt. Ltd. and M/s. Prosperity Mercantile Pvt. Ltd. had purchased 27,45,000 equity shares of M/s. Vidya Prakashan Mandir Pvt. Ltd. and paid Rs. 28.40 per share through cheque.*

xv. *Thereafter summons were again issued to Sh. Naveen Kr. Jain and Sh. Pankaj Kr. Jain on 18.12.2017 and they were requested to appear on any working day between 19<sup>th</sup> to 22<sup>nd</sup> December, 2017 during office hours. However none of them attended. Sh. Pankaj Jain vide undated letter responded that summon reached to him on 22.12.2017 only so it was not possible for him to appear on the same date. A similar undated letter was also received from Sh. Naveen Kr. Jain with the same submissions.*

*From these proceedings it is clear that three reasonable opportunities were provided to the Directors of M/s. Prosperity Mercantile Pvt. Ltd. for their personal appearance in the case of M/s. Vidya Prakashan Mandir Pvt. Ltd. However, from the turn of events it is obvious that none of the Directors attended the proceedings.*

xvi *Thereafter on 19.12.2017 a letter was issued to the Director/ Principal Officer of the assessee company (M/s. Vidya Prakashan Mandir Pvt. Ltd.) and they were requested to produce the Directors of M/s. Prosperity Mercantile Pvt. Ltd. on any working day between 26<sup>th</sup> to 29<sup>th</sup> December, 2017. However, no response was received to this letter.”*

8. Thus, Ld. PCIT concluded that M/s. Prosperity Mercantile Pvt. Ltd. is an entry provider/shell company which had been acquired by the assessee company for the purpose of routing its own unaccounted money in the garb of share capital/share premium. Accordingly, he directed the AO to make further inquiries or verification in this regard which he should have done initially and consequently, set aside the assessment order on the issue of receipt of Rs. 7.80 crores on share

premium/share capital received from M/s. Prosperity Mercantile Pvt. Ltd. and also receipt of Rs. 1 crore from same company on behalf of Shri Basant Kumar Jain shareholder/ Director of the assessee company. He also directed the AO to inquire the issue of 'NIL' WIP found in the final accounts of the assessee company.

9. Before us Ld. Counsel for the assessee, Shri Ashwani Kumar pointed out that during the course of the original assessment proceedings the genuineness of the transaction of receiving of share capital and share premium and the creditworthiness of M/s. Prosperity Mercantile Pvt. Ltd. was inquired into by the AO and in response the assessee had submitted the entire details like confirmation of account, bank statement, income tax returns, audited balance sheet and other documents. Once all these documents were there and AO has duly applied his mind, then it cannot be said that no inquiry has been done by the AO and in so far as assessee is concerned primary requirement of discharging the onus u/s 68 stood satisfied. He drew our attention to the balance sheet of M/s. Prosperity Mercantile Pvt. Ltd. and pointed out that this company as on 31<sup>st</sup> March, 2013 had reserve and surplus of Rs. 29.44 crores from where it had made investment in shares of various companies including that of assessee company at Rs. 21.96 crores which was duly reflected in the balance sheet. This investment in shares also

included the investment made on subscribing the share capital of the assessee company. The shares were duly allotted by the assessee to M/s. Prosperity Mercantile Pvt. Ltd. Once this company had a huge reserve and surplus of more than 29.44 crore out of which it has subscribed to the share capital and share premium of 7.80 crores in the assessee company then creditworthiness stands proved. The genuineness of the transaction is also proved by the fact that these transactions have been made through banking channels and he drew our attention to the bank statement and submitted that the amount has been received on various dates out of huge credit balance available in the said bank account. (The copy of the bank statement is appearing from pages 53 to 59 of the paper book). Not only that, he submitted that in the case of M/s. Prosperity Mercantile Pvt. Ltd. assessment orders u/s 143(3) has been completed for the assessment year 2014-15 vide order dated 7.12.2016 and for the assessment year 2015-16 vide order dated 20.12.2017 after scrutiny. Copy of the said assessments has been placed in the supplementary paper book from pages 94 to 104 before us. Thus, he submitted that once a detailed scrutiny assessment u/s 143(3) has been made with regard to each and every item of the balance sheet and not only that investment in shares have also been examined and thereby disallowance u/s 14A were made in the case of the said company, then it cannot be held that either the genuineness or creditworthiness of the transaction can



be doubted. He further pointed out that the entire investigation reports relating to M/s. Prosperity Mercantile Pvt. Ltd. can be a case for carrying out inquiry and investigation into the source of funds available with the said company in the earlier assessment years because this company had huge reserve and surplus much prior to 31<sup>st</sup> March, 2013 and the amount has been invested in the subscription of the shares of the assessee company much after i.e., in the financial year 2013-14. As far assessee is concerned, no adverse inference can be drawn because neither there is any material nor there is any iota of evidence that assessee has routed any kind of its unaccounted money for getting the share capital or share premium and it is also not the case that any cash was deposited in the bank account of the said company which has been routed through this company. Thus, on these facts neither the assessment order can be set aside nor any adverse inference can be drawn for making any addition u/s 263.

10. On the other hand, Ld. CIT (DR) strongly relied upon the order of the Ld. PCIT and pointed out that specific enquiries has been conducted by Ld. PCIT and reports have been sought which points that how M/s. Prosperity Mercantile Pvt. Ltd. was a shell company and the shareholders of the said company were found to be either bogus or involved in providing accommodation entry. Once a shell/

bogus company has subscribed to share capital and paid huge share premium and then it is definitely a good ground for carrying out necessary inquiry and investigation for scrutinising the genuineness of the transaction. Further detailed written submissions have been filed with regard to the power of revision u/s 263 and also the effect of insertion of *Explanation 2* and also purpose of insertion of *Explanation 2* inserted w.e.f. 1<sup>st</sup> June, 2015. Referring to her written submissions, she pointed out that under the given facts, AO has failed to carry out proper inquiry and verification as was required by the AO and if such an inquiry has not been done or taken to a logical conclusion, then Ld. Pr.CIT is justified in cancelling such assessment u/s 263. In support, catenas of judicial decisions have been relied upon.

11. We have heard the rival submissions, perused the relevant finding given in the impugned orders as well as the material referred to before us at the time of hearing. The main issue involved is with regard to credit of share capital account amounting to Rs. 2.75 crores and share premium amounting to Rs. 5.05 crores from a Kolkata based company, M/s. Prosperity Mercantile Private Limited. During the course of the assessment proceedings, though AO has asked to prove the genuineness of the transaction of receiving of share capital and share premium from M/s. Prosperity Mercantile Pvt. Ltd. and also creditworthiness of the said company, but as noted by the Ld. PCIT

certain requisite details as asked by the AO were not filed. From the perusal of the reply filed by the assessee during the course of assessment proceedings, we find that assessee had filed confirmation of the party, details of payment alongwith bank statement, audited balance sheets of the subscribing company, sale purchase agreement and Income Tax Returns of the said company. All the other details as required by the AO which has not been furnished have not been specified in the impugned order. Ld. PCIT wanted that AO should have inquired into the source of the credit in the bank account of M/s. Prosperity Mercantile Private Limited and since it has not been furnished before the AO, therefore he should have not accepted the amount of share capital / share premium and instead should have made addition as unexplained credit u/s 68. During the course of the revisionary proceedings u/s 263, the Ld. PCIT has conducted enquiry through investigation wing in the case of subscriber company, M/s. Prosperity Mercantile Pvt. Ltd., based on which he has recorded certain facts as was made available in the said report which has been discussed in the earlier part of the order. From these records, he has inferred that M/s. Prosperity Mercantile Private Limited was a shell company formed to provide accommodation entry as certain share holding companies and the persons who were operating them were reported by the Investigation Kolkata Wing as mere entry provider. The entire adverse finding in report has been with regard to M/s.

Prosperity Mercantile Private Limited; and since, assessee company has received 7.80 crores approx as share capital / share premium from the said company, he has formed an opinion that the said amount must not only be non-genuine but also in the nature of accommodation entry. One very important fact as noted by the Ld. PCIT is that, already reassessment proceedings in the case of M/s. Prosperity Mercantile Private Limited has been reopened for the assessment year 2011-12 which is still in progress as huge funds have been generated in that year. However, in the entire report received by him or in the impugned order, there is no reference of any inquiry or statement by any person or any evidence whereby it has been found that the assessee company has given any kind of unaccounted money to any of the share holding company of M/s. Prosperity Mercantile Private Company; or to any entry operator who has facilitated such kind of accommodation entry of unaccounted money; or money has been received by the assessee through circuitous manner routing through various bank accounts. In para 17.1, he has merely drawn a presumption that, it appears that amount is credited in some bank account and then after routing it through bank accounts the same is transferred to M/s. Prosperity Mercantile Private Limited and from this bank account entry is provided to the assessee company. However neither any link of any such bank account has been given by him nor has any such information has been received by him.

12. Even if it is reckoned for argument sake that AO has failed to carry out proper inquiry or verification about the source of funds with the subscribing company, but that would only satisfy one limb of assumption of jurisdiction u/s 263, that is, the assessment order passed by the assessing officer is erroneous, but second limb which is equally important to be established while exercising revisionary proceedings is that, such an order should also be prejudicial to the interest of the revenue, which needs to be established by the CIT/PCIT. In other words in the context of the present case, it has to be seen whether the company in whose name credit is standing in the books of the assessee, has offered any explanation about the nature and source of such sum so credited. From the entire reading of the impugned order passed u/s 263 it appears that M/s. Prosperity Mercantile Private Limited was having share holder companies who were in the either in the list of bogus shell companies or these companies may have been operated by some entry providers. The entire premise of the Ld. PCIT is that source of the credit has not been examined by the AO. Thus, in this case the key element which needs to be examined whether the source and creditworthiness of the subscribing company stands satisfied or not. In this case one glaring fact which emerges from the record is that, M/s. Prosperity Mercantile Private Limited, much prior to 31<sup>st</sup> March, 2013 had huge reserves and surplus of Rs. 29,44,32,831/- and such reserves and surplus was

by way of share capital and premium amount received by it way back in the A.Y. 2011-12. As on 31<sup>st</sup> March, 2014, the same amount of Rs. 29.44 crores continued to be in the reserve and surplus; and from this fund, investment in shares have been made in various companies for Rs. 21.16 crores as on 31<sup>st</sup> March, 2014. In the balance sheet of M/s. Prosperity Mercantile Pvt. Ltd., as on 31<sup>st</sup> March, 2014 , details investment in the shares in various companies also reflect investment in Vidya Prakashan Mandir P. Ltd. i.e., assessee of Rs. 8,79,58,000/-. The shares subscribed had already allotted to this company. Apart from that, we also find that scrutiny assessment u/s 143(3) has been passed in the case of M/s. Prosperity Mercantile Pvt. Ltd. for the assessment year 2014-15, vide order dated 17.12.2015, wherein books of account and entries in the balance sheet has been examined. This inter-alia means that the investment in shares as well as the funds available in the balance sheet stands accepted. If this company had huge unaccounted or unexplained fund in the form of reserves and surplus in the earlier years which may have been scrupulously generated through unaccounted money of other companies or persons, then it requires investigation and inquiry in the case of that company, because any action or adverse inference on the source of its funds should be drawn in the case of that company. As long as the funds available with the said company stands accepted in the scrutiny proceedings by the department which has not been disturbed and

from the said funds shares of the assessee company has been purchased and investment has been made, then source for subscribing share/ share premium stands proved. As far as assessee is concerned it cannot be held that any kind of unaccounted money has come into the bank account of the assessee, as it has not been found that assessee's unaccounted money has been routed through circuitous manner. As noted by Ld. PCIT already action for reopening the assessment in the case of M/s. Prosperity Mercantile Pvt. Ltd. for the assessment year 2011-12 has been initiated when huge amount by way of share premium and share capital has been received by it. If the said company by whatever manner has received the fund 3 years back which stands accepted by the department in scrutiny proceedings year after year in its case and from the same fund has investment has been made in the assessment company in this year, then source ostensibly stands proved. In case something adverse is found in the reassessment proceedings of M/s. Prosperity Mercantile Pvt. Ltd. that assessee has routed some kind of unaccounted money for this purpose, then department is free to take action under the provisions of the Act and in accordance with law. But, until the source of funds with M/s. Prosperity Mercantile Pvt. Ltd. and investment made in the shares of assessee company stands accepted by the department and that too in scrutiny proceedings u/s 143(3) for the same assessment year which till date is final, then it cannot be held

that nature and source of the credit from the subscribing company is not proved. Here the subscribing company has given its confirmation, bank statement, its return of income and balance sheet to show the availability of funds and investment made to prove the source of credit. There is no iota of evidence or any link till date that assessee has routed its unaccounted money through some scrupulous manner and after such rotation of money from various bank account through M/s. Prosperity Mercantile Pvt. Ltd., it has received share capital / share premium in this year. Simply because there is an adverse inquiry report in the case of M/s. Prosperity Mercantile Pvt. Ltd. that it is some kind of shell company managed by some entry providers through their companies, that by itself will not implicate assessee, unless the assessee is found to have taken some kind of accommodation entry from this company. Till such adverse material is found from or inquiry, we do not find any reason to hold that such a share capital premium received by the assessee company is to be treated as bogus. As observed earlier, if something adverse is found qua the assessee in the proceedings in the case of M/s. Prosperity Mercantile Pvt. Ltd., then department is free to rope in assessee under the provisions of Act. But as of now, it cannot be held that assessment order accepting the share capital/ share premium is prejudicial to the interest of revenue. Accordingly, we hold that no addition u/s 68 could be warranted in the case of the assessee in facts and circumstances of



the case. Thus, the impugned order u/s 263 setting aside the assessment order is cancelled on this issue.

13. In so far as the second point raised by the Ld. PCIT on the issue of WIP being nil, nowhere the Ld. PCIT has discussed why the order of the AO is erroneous in so far as it is prejudicial to the interest of revenue. In fact there is no adverse finding or comment by him as why the WIP as shown by the assessee at nil is not correct or requires further inquiry or verification. To set-aside the assessment on this issue he has to demonstrate that order of the AO is erroneous or prejudicial. Thus, we do not find any reason for setting aside this matter to the AO and accordingly, on this issue also the order of the Ld. PCIT is cancelled.

14. In the result appeal of the assessee is treated as allowed.

**Order pronounced in the Open Court on 19<sup>th</sup> June, 2018.**

**sd/-**

**sd/-**

**(B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 19/06/2018

***Veena***

Copy forwarded to

1. Applicant
2. Respondent
3. CIT

4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi