IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (B), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A.T. Varkey, Judicial Member]

I.T.A. No. 1356/Kol/2013
Assessment Year: 2009-10

M/s. Twine Steel Pvt. Ltd.....Appellant
9/12, Lal Bazar Street, Mercantile Building,
3rd Floor, Block-B, Room No. 10,
Kolkata – 700 001.
[PAN: AACCT 8721 E]

CIT, Kolkata - III, Kolkata.....Respondent
CIT-III, Aayakar Bhawan, 5th Floor,
P-7, Chowringhee Square,
Kolkata – 700 069.

Appearances by:
Shri Rajesh Duggar, AR appearing on behalf of the Assessee.
Shri Radhey Shyam, CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : July 08, 2019
Date of pronouncing the order : August 09, 2019

ORDER

Per P.M. Jagtap, Vice President (KZ)

This appeal filed by the assessee is directed against the order of Ld. CIT - III, Kolkata dated 11.03.2013 passed u/s 263 of the Income Tax Act, 1961.

2. The assessee in the present case is a company which is engaged in the business of providing services. The return of income for the year under consideration was filed by it on 27.09.2009 declaring a total income of Rs. 296/-. Thereafter, a letter dated 11.10.2010 was filed by the assessee along with copy of audited accounts pointing out that there was an inadvertent mistake in not taking into account the service charges of Rs. 52,730/- received in cash while preparing the final accounts and seeking rectification of the said mistake by the AO. The Assessing Officer however did not make any rectification as

sought by the assessee u/s 154 observing that the mistake pointed out by the assessee was not apparent from records. According to the AO, the non consideration of service charges of Rs. 52,730/- by the assessee had resulted in escapement of income to that extent from the assessment from the assessment and accordingly a notice u/s 148 was issued by him on 22.11.2010 after recoding the reasons. In reply, a letter dated 29.11.2010 was filed by the assessee stating therein that the return originally filed on 27.09.2009 be treated as the return filed in compliance of notice u/s 148. Thereafter, assessment was completed by the AO u/s 143(3)/147 of the Act vide an order dated 30.12.2010 determining the total income of the assessee at Rs. 55,426/- after making addition on account of income from service charges amounting to Rs. 52,730/- and disallowance of preliminary expenses amounting to Rs. 2400/-.

3. The records of the assessment made by the AO u/s 143(3)/147 came to be examined by the concerned Ld. CIT and on such examination, he found that proper enquiry was not made by the AO in respect of the share capital of Rs. 12.42 lacs raised by the assessee during the year under consideration with a premium of Rs. 4.97 crores in order to ascertain the identity and creditworthiness of the concerned shareholders as well as the genuineness of the relevant transactions. He accordingly issued a notice u/s 263 requiring the assessee to show cause as to why the assessment made by the AO u/s 143(3)/147 should not be set aside u/s 263 by treating the same as erroneous as well as prejudicial to the interest of the revenue. In reply, it was submitted by the assessee that the AO had conducted proper enquiry regarding the identity and creditworthiness of the

shareholders and after having satisfied himself with the documentary evidence filed in this regard in the form of confirmation letters along with PAN, copies of bank statement and balance sheets of the shareholder companies, the share capital and share premium amount received by the assessee company during the year under consideration was accepted by him. This explanation offered by the assessee was not found acceptable by the Ld. CIT and setting aside the order of the AO on this issue, he directed him to make the assessment afresh as per the specific directions given by him for the following reasons given in the impugned order:

> *"I have considered the matter. The notices u/s 133(6) have been sent on a test Check basis. Further, on perusal of the replies, it is seen that the bank statements of the subscribing companies is for a very limited period and not for the whole year. Analysis of this statement does not throw any light whatsoever on the source of the funds of the subscriber companies. The AO should have collected for the bonk statement of the full financial year for proper analysis & verification. Further, the replies were just placed on record and no independent inquiries were carried out regarding the fact whether the subscribing companies were available of the given address, whether they had the financial capability to invest such substantial amounts and whether they were genuine corporate entities. The A.O. did not examine a single Director of the assessee company or of the subscribing companies. Further, the A.O. also did not cross verify the Income Tax acknowledgement, balance sheet etc. from the A.Os of the subscribing companies.*
>
> *In recent years, it has become a common practice to introduce unaccounted money by way of shore capital in dummy companies. The present assessee company is part of the large number of such cases in Kolkata as well as other parts of the country. The share capital is introduced by rotating the money to dummy companies which have been created solely for this purpose. The Directors of such companies are more often than not low paid employees such as peons, darbans, drivers or other persons of humble means. The modus operandi for introduction of unaccounted money as share capital is that unaccounted cash is deposited in the bank accounts of different persons/companies. After this, the money is transferred by way of cheques to other companies and this is*

done 3 to 4 times using different companies and thus rotating the money into 3 to 4 layers. After 3 to 4 layers, the money reaches its intended destination and this company is then sold off to the group or person who will ultimately use the money. He in turn, returns the amount of share capital and premium in cash to the person from whom the company is purchased. Thus, when share capital is introduced of huge premium in new formed companies with no business, it should raise the suspicion of the A.O. In fact, such high premium is not commanded even by blue chip quoted companies. Under these circumstances, the A.O. is duty bound to carry out through & detailed inquiries and go beyond the layers created by the so called "entry operators" so that it may be established that the share capital is bogus. This has not been done in the present case and the AO had just taken on record the confirmations, bonk statements etc. of some of the subscriber companies and passed the assessment order.

It also needs to be pointed out that this assessee's case is not an isolated example. There are hundreds of such cases in this charge and other charges where the modus operandi is identical. Once the money has been related through 3 to 4 companies, return of income is filed showing very nominal income. Subsequent to this, letter is written to the A.O. that inadvertently the assessee company has left out some minor item of income or claimed some deduction wrongly and the AO is requested to issue notice u/s 148. Thereafter, in the proceedings u/s 148, inquiries are carried out in a routine and superficial matter. Confirmations & other documents regarding the share capital are filed which are placed on record. Thereafter, order u/s 147/143(3) is passed adding back the amount offered by the assessee supposedly left out by mistake. It is needless to say that no independent inquiries are carried out regarding the share capital. The company is then passed on to the final purchaser after charging a percentage of the capital in the company. This modus operandi has been confirmed in many search operations carried out by the investigation wing on entry operators & others over the past few years.

Thus it is seen that unaccounted money is laundered as clean share capital by creating a facade of paper work, routing the money through several bank accounts and getting it the seal of statutory approval by getting the case reopened u/s 147 suo moto. The Apex Court in the case of Sumati Dayal vs CIT (214 ITR 801) held that the true nature of a transaction has to be ascertained in the light of surrounding circumstances. Thus, it is now well settled that tax authorities are entitled to look into surrounding circumstances to find out the reality of a transaction by applying the test of human probability. Reference in this

context is invited to the Apex Court decision in the case of CIT vs Durga Prasad More (82 ITR 540). In this context, I would also like to draw attention to the jurisdictional High Court's decision in the case of CIT vs Precision Finance Pvt. Ltd. (208 ITR 465). In that case, the Hon'ble Judges observed that-

It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. In our view, on the facts of this case, the Tribunal did not take into account all these ingredients which have to be satisfied by the assessee. Mere furnishing of the particulars is not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established consequently the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, accordingly, it is to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. In that view of the matter, the question before us is answered in the negative and in favour of the revenue.

Attention is also invited to the Delhi High Court decision in the case of CIT vs Nova Promoters & Finlease Pvt. Ltd. (342 ITR 0169) where it was observed that the fact that the share application money had come through cheques and the fact that the share applicants were registered with the Registrar of Companies were neutral facts and did not have much evidentiary value.

I have considered the facts and the decisions of the superior Courts cited above. I am of the opinion that the AO by not pursuing the inquiries to their logical end has made the order erroneous and prejudicial to the interest of revenue. The order is, therefore, set aside and the AO is directed to carry out through and detailed enquiries in the case. He should carry out inquiries about the various layers through which the share capital has been rotated. The AO is also directed to summon the present & past directors of the assessee company and the subscriber companies and examine them. The AO should also examine as to when this company was sold. At that point of time the fictitious assets such as shares in other

companies or loans given to other companies is converted back into cash by credit in the assessee company's bank account. The source of this money also needs to be examined. Further, information should be sent to the AO's of the subscriber companies and to the other companies through which the capital has been rotated regarding the findings of the AO. Subsequent to the inquiries & verification of all relevant aspects of the case, the AO, should pass a speaking order after providing adequate opportunity to the assessee. "

Aggrieved by the order of the Ld. CIT passed u/s 263, the assessee has preferred this appeal before the Tribunal.

4. At the time of hearing before the Tribunal, the learned counsel for the assessee raised an additional ground challenging the validity of the impugned order passed by the Ld. CIT u/s 263 on the basis that the original order passed by the AO u/s 143(3)/147 being invalid, the consequential order passed by the Ld. CIT u/s 263 is liable to be cancelled being bad in law. In support of the assessee's case on this issue raised in the additional ground, the learned counsel for the assessee relied on the order of the coordinate bench of this Tribunal dated 05.04.2017 passed in the case of M/s. Classic Flour & Food Processing (P) Ltd. vs CIT, Kolkata – 4 (ITA No. 764 to 766/Kol/2014) wherein a similar issue raised by the assessee by way of additional ground was entertained by the Tribunal by observing that the law is well settled that the validity of the preliminary proceedings for want of proper jurisdiction can be challenged even in the appellate proceedings arising out of collateral proceedings. The Tribunal in the said case found that initiation of reassessment proceedings was not valid as the mandatory requirement of section 147 had not been satisfied. Consequently it was held by the Tribunal that the

reassessment order passed by the AO as well as the consequential order passed u/s 263 was liable to be quashed being invalid. Keeping in view the decision of the coordinate bench of this Tribunal in the case of M/s. Classic Flour & Food Processing (P) Ltd. (supra), the additional ground raised by the assessee is admitted by us and the issue raised therein is being decided on merit after hearing the argument of both the sides.

5. The learned counsel for the assessee submitted that there was no tangible material that had come to the possession of the AO to form a belief about the escapement of income of the assessee from assessment and in the absence of such material, the reopening of assessment itself was bad in law. He invited our attention to the reasons recorded by the AO as furnished at page no 5 of the Paper Book and submitted that the service charges of Rs. 52,730/- could or could not have been the income of the assessee. He contended that even though rectification was sought by the assessee by letter dated 11.10.2010, the assessee never surrendered any income on account of service charges as his additional income. He contended that there was thus no reason for the AO to entertain a belief about the escapement of income of the assessee and reopening of the assessment was bad in law. He contended that the AO never asked the details of service charges of Rs. 52,730/- stated to be received by the assessee and even the Ld. CIT accepted this position vide his impugned order passed u/s 263 while holding the assessment order passed by the AO u/s 143(3)/147 to be erroneous. He contended that the assessment made by the AO u/s 143(3)/147 thus was bad in law and the consequential order passed by the Ld. CIT u/s 263 revising the said assessment is

liable to be quashed being invalid as held by the coordinate bench of this Tribunal in the case of M/s. Classic Flour & Food Processing (P) Ltd. (supra).

6. The learned DR, on the other hand, submitted that the self confession made by the assessee vide letter dated 11.10.2010 submitted to the AO pointing out that the service charges of Rs. 52,730/- received in cash were not taken into account while computing the total income was sufficient to establish the escapement of income and the reopening of assessment by the AO on the basis of the said letter constituting tangible material coming to his possession was valid in the eyes of law. He invited our attention to the reasons recorded by the AO and contended that the reasons recorded by the AO clearly displayed how the belief about the escapement of assessee's income was entertained by the AO on the basis of assessee's own letter establishing escapement. He contended that the reopening of assessment as well as the assessment completed by the AO u/s 143(3)/147 thus was in accordance with law. He also contended that the learned counsel for the assessee has not raised any arguments, other than the arguments raised challenging the validity of assessment made by the AO u/s 143(3)/147 to challenge the impugned order passed by the Ld. CIT u/s 263. He contended that similar order passed u/s 263 involving identical circumstances setting aside the order passed by the AO for lack of enquiry on the issue of increase of share capital including premium has been upheld by the Hon'ble Calcutta High Court in the case of Rajmandir Estates Pvt. Ltd. (386 ITR 162) and even the SLP filed by the assessee in the said case has already been dismissed by the Hon'ble Supreme Court.

7. In the rejoinder, the learned counsel for the assessee submitted that the facts involved in the present case are different from the case of Rajmandir Estates Pvt. Ltd. (supra) decided by the Hon'ble Calcutta High Court and the reliance of the learned DR on the said decision of the jurisdictional High Court is clearly misplaced.

8. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the impugned order passed by the Ld. CIT u/s 263 is mainly assailed by the learned counsel for the assessee on the basis of issue raised in the additional ground challenging the validity of the assessment made by the AO u/s 143(3)/147 which is revised by the Ld. CIT vide his impugned order passed u/s 263. The main thrust of the arguments of the learned counsel for the assessee is that the reopening of assessment as made by the AO after recording the reasons itself was bad in law and the consequential order passed by the AO u/s 143(3)/147 was invalid. The learned DR, on the other hand, has supported the revenue's case by relying on the reasons recorded by the AO which according to him are sufficient to show that there was escapement of income of the assessee from assessment and the reopening of assessment was in accordance with law. In order to appreciate the contentions raised by the learned representatives of both the sides and to decide this preliminary issue challenging the validity of reopening, it would be pertinent to refer to the reasons recorded by the AO for reopening of assessment which are as under:

> *"The assessee filed its return of income for the assessment year 2009-10 on 27.09.2009 declaring a total income of Rs. 296/-. Letter submitted on*

11.10.2010 along with copy of audited accounts filed along with the said submission showed that the assessee had claimed that it had earned on income of Rs. 52,730/- in cash as service charges which was not taken into account while computing the total income of the assessee. In the same submission the assessee has implied that such income should be accounted for by rectifying the mistake u/s 154. However since the said mistake is not apparent from records and in the absence of any corroborative evidence to back such a claim, the implication of the assessee regarding rectifying such mistake u/s 154 cannot be considered. Instead on the strength of assessee's own submission and in the absence of any claim if such income was notified by other expenses in the course of business it is apparent that income has escaped assessment.
Therefore, in view of the above, I have reason to believe that income of Rs. 52,730/- received in cash as service charges by the assessee has escaped assessment within the meaning of section 147 of the IT Act, 1961.

Proceedings u/s 147 are hereby initiated for reasons recorded above."

9. A perusal of the reasons recorded by the AO clearly shows that a letter dated 11.10.2010 was submitted by the assessee along with copy of audited accounts pointing out that the service charges of Rs. 52,730/- received in cash during the year under consideration were not taken into account while computing its total income. The assessee also sought that such income should be accounted for by the AO by way of rectification u/s 154. Although the request of the assessee for rectification u/s 154 was not accepted by the ASSESSING OFFICER as the mistake pointed out was not apparent from records, we are of the view that the self declaration made by the assessee vide letter dated 11.10.2010 regarding non-consideration of the service charges of Rs. 52,730/- received in cash while computing the total income as declared in the return of income filed originally was sufficient to establish that there was escapement of income of the assessee to that extent. As rightly contended by the learned DR, the letter dated

11.10.2010 submitted by the AO on 11.10.2010 was a tangible material that had come to the possession of the AO and since the same was sufficient to form a belief about the escapement of income of the assessee from assessment on account of undisclosed service charges of Rs. 52,730/- the reopening of assessment by the AO was in accordance with law.

10. As regards the contention raised by the learned counsel for the assessee that non-consideration of service charges as stated in the letter by the assessee could or could not have been the income of the assessee we find that the same is devoid of any merit as there is nothing brought on record to support and substantiate the same. On the other hand, the contents of the said letter as summarised by the AO in the reasons recorded and remained uncontroverted by the learned counsel for the assessee, in our opinion, we are sufficient to establish the escapement of income of the assessee from the assessment and there was a valid reason for the AO to reopen the assessment to bring to tax the said escaped income. The refusal by the AO to rectify the mistake as pointed out by the assessee in the said letter also does not support the case of the assessee as the same was done by the AO by giving a valid reason that the mistake pointed out by the assessee not being apparent from record was beyond the scope of rectification u/s 154.

11. As regards the contention of the learned counsel for the assessee that even the Ld. CIT vide his impugned order passed u/s 263 has held the order of the AO passed u/s 143(3)/147 as erroneous, we find that the error allegedly pointed out by the Ld. CIT

in the order passed by the AO u/s 143(3)/147 is entirely on a different issue relating to the share capital and share premium received by the assessee during the year under consideration and there is nothing in the said order to show that the order of the AO was erroneous on the issue on which it was reopened relating to undisclosed service charges. We, therefore, find no merit in the case of the assessee that the reopening of assessment itself being bad in law, the assessment made by the AO u/s 143(3)/147 as well as the consequential order passed by the Ld. CIT u/s 263 are invalid. Additional ground raised by the assessee thus is dismissed.

12. In the grounds originally raised in this appeal, the assessee has challenged the impugned order passed by the Ld. CIT u/s 263 on various counts. At the time of hearing before us, the learned counsel for the assessee however has not raised any contention in support of the said ground raised by the assessee. As rightly submitted by the learned DR, a similar order passed by the Ld. CIT u/s 263 in the case of Rajmandir Estates Pvt. Ltd. (supra) involving identical facts and circumstances was upheld by the Hon'ble Calcutta High Court. He has also filed a copy of judgement passed by the Hon'ble jurisdictional High Court in the said case, the head note of which is reproduced hereunder:

> *"Section 68, read with section 263 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment year 2009-10 - During relevant year, assessee-company had increased its share capital by issuing 7.93 lakh shares of Rs.10 each at a premium of Rs.390 - Assessee originally filed a return showing a gross total income of Rs.24,658 however, thereafter wrote to Assessing Officer that due to inadvertence it had not disclosed receipt of a sum of Rs.61,000 on account of consultancy fees - Assessing Officer completed assessment without holding requisite investigation except for calling for records - Commissioner passed order*

under section 263 and opined that this was or could be a case of money laundering which went undetected due to lack of requisite enquiry into increase of share capital including premium received by assessee and non-application of mind - He thus held that assessment order passed under section 143(3)/147 was erroneous and prejudicial to interest of revenue and therefore, set aside same and issued directions for a thorough enquiry - Whether where assessee with an authorised share capital of Rs.1.36 crores raised nearly a sum of Rs.32 crores on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees was an important pointer necessitating investigation - Held, yes -Whether however, Assessing Officer did not hold requisite investigation except for calling for records, he also did not interrogate persons behind assessee company and persons behind subscribing companies which was essential to unearth truth - Held, yes - Whether thus Commissioner was justified in treating assessment order erroneous and prejudicial to interest of revenue - Held, yes [Paras 23, 24 28 & 29] [In favour of revenue]"

13. Although the learned counsel for the assessee has submitted that the decision of Hon'ble Calcutta High Court in the case of Rajmandir Estates Pvt. Ltd. (supra) relied upon by the learned DR in support of the revenue's case is distinguishable on fact, he has not been able to point out any material distinction in the facts involved in the present case vis-a-vis the facts involved in the case of Rajmandir Estates Pvt. Ltd. (supra). As submitted by the learned DR, the SLP filed by the assessee in the case of Rajmandir Estates Pvt. Ltd. has already been dismissed by the Hon'ble Supreme Court. In the facts of the present case are considered in the light of the decision in the case of Rajmandir Estates Pvt. Ltd. (supra), we find that there is no infirmity in the impugned order passed by the Ld. CIT u/s 263 and upholding the same, we dismiss this appeal of the assessee.

14. In the result, the appeal of the assessee is dismissed.

Order Pronounced in the Open Court on 9th August, 2019.

Sd/-	Sd/-
(A.T. Varkey)	(P.M. Jagtap)
JUDICIAL MEMBER	VICE PRESIDENT

Dated: 09/08/2019
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Twine Steel Pvt. Ltd., 9/12, Lal Bazaar Street, Mercantile Building, 3rd Floor, Block-B, Room No. 10, Kolkata – 700 001.
2. CIT, Kolkata – III, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata