

आयकर अपीलीय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M .Jagtap, Vice-President (KZ) and Shri A. T. Varkey, JM]

I.T.A. No. 194/Kol/2021
Assessment Year: 2016-17

Lovely International Pvt. Ltd. (PAN: AAACL 5322 K)	Vs.	ACIT, Circle-8(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	12.08.2021
Date of Pronouncement	19.08.2021
For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Shri Dinesh Aibor Jayal Sawkuie, CIT

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal filed by the Assessee company against the order of Ld. PCIT, Kolkata-1, Kolkata dated 25.05.2021 passed u/s 263 of Income Tax Act, 1961 (*hereinafter referred to as the Act*) for Assessment year 2016-17.

2. At the outset, the Ld. A.R. of the assessee Shri S. M. Surana assailed the action of Ld. PCIT to have usurped the revisional jurisdiction u/s 263 of the Act without satisfying the condition precedent as stipulated u/s 263 of the Act i.e. without validly holding that the AO's action in respect of receipt of share capital by the assessee is erroneous as well as prejudicial to the revenue. According to Ld. AR., the Ld. PCIT has accepted in para 5 of his impugned order that the AO has enquired from the assessee company the details of share and share premium quoted. And that the same was raised from the directors of the assessee company and their wives. The Ld. PCIT has also taken note that the share premium of Rs. 200 per share face value of Rs. 10 was in accordance to law [i.e. Rule 11UA(2)(c) of the Income Tax Rules, 1962 (*hereinafter referred to as the Rules*) read with Section 56(2)(viib) of the Act] and that in this regard the assessee company had produced before the AO the copy

of board resolution passed for issuance & allotment of shares. The only fault pointed out by the Ld. PCIT for interdicting the order of the AO was by alleging that *source* of investment of share capital was not enquired into by issuance of notice u/s 133(6) of the Act. According to Ld. A.R., the AO had specifically asked for the '*source of source*' and the same has been answered by the assessee by showing that the source of source was from sale of blue-chip scrips in the recognized stock exchange and by selling immovable property (*refer Page 55 of PB*). So therefore in the light of the aforesaid facts according to Ld. A.R. it is clear that Ld. PCIT misdirected himself by assuming wrong facts to hold that the AO has not enquired the *source of source* and therefore erred in interfering by passing the impugned order setting aside the assessment passed by the AO dated 20.12.2018 for *de novo* assessment and to enquire into the *source of source* of share capital and share premium to the extent of Rs. 1,08,15,000/-. Per contra, the Ld. CITDR supporting the decision of Ld. PCIT does not want us to interfere.

3. Brief facts of the case are that the assessee company filed the return of income showing total income of Nil. The AO noted that the return was selected for scrutiny through CASS inter-alia on the issue of infusing of share capital on premium to the tune of Rs. 1,08,15,000/-. The AO had issued notice u/s 142(1) dated 28.08.2018 and asked for the details on the issue of shares and share premium as item no. 6 and 7 which reads as under:

1. *Please furnish name, address, PAN details of the Directors.*
 2.
 3. *Furnish all bank details in the name of the company and directors.*
 4.
 5.
 6. *Furnish details of changes in shares/reconciliation of shares during the year.*
 7. *Furnish details of shares premiums with name, PA, address etc.*
 8.
 9.
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10.

11.

12. *Furnish details of other expenses:*

4. Pursuant to the aforesaid 142(1) notice (supra) the assessee replied by giving following details in respect of share capital & premium :

2. Please furnish all bank details in the name of the company and directors:

As regards your honours query regarding the details of bank accounts of the assessee company, in this regard we would like to inform your honour that the details of bank accounts are as follows:

Sl.No.	Name of Bank & Address	Nature of A/c	IFSC Code	Account No.	Balance as per books (Rs.)	Balance as per bank statement (Rs.)	BRS, if any
1.	HDFC Bank Chowringhee	Current Account	HDFC0001219	69303300000078	Rs.9,944/-	Rs.9,944/-	-

	Road Branch, Kolkata						
2.	South Indian Bank Brabourne Road Branch, Kolkata	Current Account	SIBL0000262	2620730000002773	Rs.1,36,361/-	Rs.1,36,361/-	-
3.	State Bank Bikaner & Jaipur N.S.Road Branch, Kolkata	Current Account	SBBJ0010004	61307520155	Rs.13,754/-	Rs.13,754/-	-
Total as on 31.03.16 in Balance Sheet (Note 2.12)					Rs.1,60,059/-	Rs.1,60,059/-	

With regard to the details of bank accounts of directors, we would like to inform that the same will be provided if so required by your honour.

3. Furnish details of changes in shares / reconciliation of shares during the year.:

As regards your honours query regarding the details of changes in share/reconciliation of share during the year, in this regard we would like to inform your honour that the assessee company had issued 51,500 shares during the period of Rs.10/- (FV) at a premium of Rs.200/- per share. The details of changes in shares/ reconciliation of shares are as follows:

Particulars	PAN and Address	No. of shares	Amount (Rs.)
Opening balance		16,55,800	Rs.1,65,58,000/-
Add: Issued during the year			
Shri. Kishan Gopal Biyani	AEGPB9491Q 58D,Block-D, New Alipoe Kol-53	31,800	Rs.3,18,000/-
Shri. Samir Biyani	ADHPB5871E 58D,Block-D, New Alipoe Kol-53	2,600	Rs.26,000/-
Smt. Lila Devi Biyani	ADAPB9652L 58D,Block-D, New Alipoe Kol-53	3,050	Rs.30,500/-
Smt. Varsha Biyani	AGGPB3892H 58D,Block-D, New Alipoe Kol-53	14,050	Rs.1,40,500/-
Closing balance		17,07,300	Rs.1,70,73,000/-

4. Furnish details of share premiums with name, PA. address, etc:

As regards your honours query regarding the details of share premiums with name, PAN & Address, in this regard we would like to state that as earlier informed the assessee company had issued 51,500 shares during the year at a premium of Rs.200/- per share resulting in increase of share premium balance by Rs.1,03,00,000/-.

The details of shareholders contributing to the increase of share premium during the year are as follows:

Sl. No.	Name	Address	PAN	No. of shares	Share Premium
1.	Shri Gopal Kishan Biyani	58D,Block-D, New Alipore Kol-53	AEGPB9491Q	31,800	Rs.63,60,000/-
2.	Shri Samir Biyani	58D,Block-D, New Alipore Kol-53	ADHPB5871E	2,600	Rs.5,20,000/-
3.	Smt. Lila Devi Biyani	58D,Block-D, New Alipore Kol-53	ADAPB9652L	3,050	Rs.6,10,000/-
4.	Smt. Varsha Biyani	58D,Block-D, New Alipore Kol-53	AGGPB3892H	14,050	Rs.28,10,000/-
Total				51,500	Rs.1,03,00,000/-

5. It was brought to the notice of the AO that during the year 51,500 shares were issued (refer balance sheet page 30 to 54 of PB). And that the shares were issued to the directors and their relatives out of which 31,900 shares were issued to the director of the assessee company Shri Kishan Gopal Biyani (page 55 of PB) who already held 3,68,950 shares; and 2600 shares were issued to Mr. Samir Biyani who already held 1,17,850 shares in the assessee company (refer 30 to 55 of PB). It was also brought to the notice of the AO that apart from 3050 shares were allotted to Mrs. Lila Devi Biyani (wife of Shri Kishan Gopal Biyani); and 14050 shares were allotted to Smt. Varsha Biyani (wife of Shri Samir Biyani) (refer 49 to 50 of PB). In order to substantiate the identity, creditworthiness and genuineness of the transaction, the assessee had filed PAN of all the share holders their respective ROI, copy of bank statement, computation of income, balance sheet etc. and that the share subscription along with share premium were paid by account payee cheques. The source of share subscribers for subscription was given at page 55 of PB which is reproduced as under:

LOVELY INTERNATIONAL PVT LTD
DETAILS OF SHARE APPLICATION ALONG WITH SOURCE OF FUNDS FOR THE A Y 2016-17

S No	Name	No of Shares	CAPITAL RAISED			RECEIVED		SOURCE OF FUND OF PURCHASER		
			Capital	Premium	Net Amount	Date	Amount	Date	Amount	Nature
1	Kishan Gopal Biyani	25000	250000	5000000	5250000.00	24.07.15	5250000.00	24.07.15	5260062.69	Sale of Quoted Equity Shares on NSE Platform
		6900	69000	1380000	1449000.00	13.10.15	1450000.00	13.10.15	1465430.03	Thru Eastern Financiers Ltd
2	Samir Biyani	2600	26000	520000	546000.00	24.07.15	550000.00	24.07.15	553142.90	Sale of Quoted Equity Shares on NSE Platform Thru Eastern Financiers
3	Lila Devi Biyani	3000	30000	600000	630000.00	24.12.15	600000.00	23.12.15	600000.00	Sale of Shaes of M/s Lovely Floriculture Pvt Ltd Recd From Mukesh Kumar Somani
						21.01.16	30000.00	21.01.16	50000.00	Recd from her Partnership Firm M/s Lovely's
4	Varsha Biyani	14000	140000	2800000	2940000.00	30.12.15	2900000.00	29.12.15	2900000.00	Against Sales of Immovable Property
						21.01.16	40000.00			From Bank Balance
		51500	515000	10300000	10815000.00					

6. From a perusal of the aforesaid *source of source* it can be seen that Mr. Kishan Gopal Biyani has received money from the sale of quoted equity shares on NSE (contract notes and balance sheet filed). Likewise Shri Samir Biyani has received funds from sale of quoted equity shares on NSE platform. Likewise Lila Devi Biyani received Rs. 50,000/- from the partnership firm M/s Lovely and Rs. 6,00,000/- from sale of shares of M/s Lovely Floriculture Pvt. Ltd. received from Shri Mukesh Kumar Somani. And Varsha Biyani received Rs. 29 lakhs against the sale of her immovable property. In order to substantiate the 'source of source' the assessee had filed contract note of M/s Eastern Financiers Ltd. through which the directors and his wife had sold the scrips of Bluechip company in the National Stock Exchange (NSE) which is seen placed from [69-102, 114-115, 130-131 and 144-149 of PB]. All the shareholders had filed their copy of income tax return acknowledgment which is seen placed at [page 56, 107,118,134-135 of PB]. Their respective computation of income can be seen placed at [page 60-61,110, 139-140 of PB]. Their respective bank statement of shareholders are seen placed at page 57-59, 108-109, 119-120, 130 of PB and the evidence of allotment of share can be seen from page 103 to 106, 116-117, 132-133 and 150-152 of PB. A perusal of the copy of bank statement of the assessee company placed at page 152 to 159 reveals that all the share subscription has come through banking channel. So when these facts were furnished before the AO pursuant to his notice u/s 142(1) and queries, the assessee

has brought to the notice of the AO evidence to show identity, creditworthiness and genuineness of the share subscribers & transaction. Moreover, it was brought to our notice that the AO had accepted the loans taken from the very same parties (shareholders) (refer page 50 of PB) which was not questioned by Ld. PCIT in his SCN. In order to show creditworthiness of the share subscribers, it had also been brought to the notice of AO the following facts which is evident from the PB which is that assessee had filed their [share subscribers] respective copy of acknowledgment of filing of return, copy of bank statement, computation of income., and balance sheet. From a perusal of the aforesaid documents of Shri Kishan Gopal Biyani it is revealed that he has a capital of Rs. 1.60 crores, share holding in blue chip companies, immovable property, income over Rs. 91 lakhs, and that the immediate source of the money of share subscription was from the sale of shares in NSE exchange which was duly submitted along with the contract note in respect of sale of shares and deposits of the same in the bank account. Similarly for Shri Samir Biyani copy of acknowledgement of filing of return, copy of bank statement, computation of income balance sheet reveals capital over 1.60 crores, shareholding in blue chip companies, immoveable properties, income over Rs. 20 lakhs and the immediate source being sale of shares of blue-chip companies in NSE which is evidenced by contract notes for sale of shares and receipt were deposited into bank accounts. In respect of Smt. Lila Devi Biyani evidences filed viz copy of acknowledgement of filing of return, copy of bank statement, computation of income balance sheet, reveals shareholding in blue chip companies, and immoveable properties, and profit and loss account reveals that she had shown income over Rs. 12 lakhs and the immediate source was from proceeds of sale of shares evidenced by contract notes and receipt were deposited in the bank accounts. Similarly, for Smt. Varshai Biyani filed copy of acknowledgement of filing of return, copy of bank statement, computation of income, balance sheet, shareholding in blue-chip companies, immoveable properties, and statement of profit and loss account reveals income over Rs. 6.5 lakhs and the immediate source was from sale of immovable property and receipt were deposited into bank accounts. In the aforesaid facts, the AO did not draw any adverse inference against the nature and source of the share

subscription which was allotted to the directors and their wives as noted (supra). This action of the AO has been interdicted by the Ld. PCIT by exercising his revisional jurisdiction u/s 263 of the Act. In his show cause notice the Ld. PCIT has pointed out two issues (a) that AO has not verified the source of money invested by the subscribers of shares and the capacity of such subscribers during the course of assessment proceedings (b) that the AO has passed the assessment order on 20.12.2018 at an assessed loss of Rs. 13,62,09,730/- without making any addition on this issue. Pursuant to the show cause notice of the Ld. PCIT the assessee replied. The reply of the assessee has been reproduced by the Ld. PCIT from page 2 to 4 of impugned order. Thereafter the Ld. PCIT has held as under:

*“5. I have considered the facts of the case and gone through submission of the assessee and details available on record. On perusal of assessment record and assessment order, it is observed that the AO vide notice u/s 142(1) of the I T Act, 1961 dated 28.08.2018 had enquired from the assessee company the details of changes in shares during the year and details of shares premium with name, address etc. The assessee company vide his submissions dated 13/11/2018, furnished the said details. The assessee company had allotted 51,500 equity share of face value of Rs. 10 each at a premium of Rs. 200/- per share during the year under consideration by private placement to the Directors and their wives. Then the AO vide notice u/s 142(1) dated 01/12/2018 asked the assessee to furnish the computation of fair market value of the shares for the purpose of allotment to various allottees and copy of the Board Resolution. The assessee company vide submission dated 20/12/2018 furnished the certificate obtained from a Chartered Accountant regarding the computation of fair market value of the shares for the purpose of allotment to various allottees and a perusal of the same reveals that the fair market value of unquoted equity shares of the assessee company has been computed as Rs. 209.00 under Rule 11UA(2)(c) of the I T Rules, 1962 read with Section 56(2)(viib) of the Act, 1961. The assessee company has produced copy of the Board Resolution passed in this regard. **However the AO failed to conduct enquiries u/s 133(6) of the I. T. Act regarding sources of investment of such huge share capital of the Directors and their wives.** Thereby the order passed by the AO in the instant case was erroneous and prejudicial to the interest of the revenue.[Emphasis given by us]”*

7. Aggrieved by the aforesaid action of Ld. PCIT the assessee is before us.

8. We have heard both the parties and perused the records. We note that the Ld. PCIT issued show cause notice proposing to invoke revisional jurisdiction u/s 263 on two issues. However we note that after hearing the assessee and reproducing its reply, the Ld. PCIT has found AO's order to be erroneous as well as prejudicial only one issue i.e. *“AO failed to conduct enquiries u/s 133(6) of the Act regarding source of investment of such huge share capital of directors and their wives.”* This fault

according to Ld. PCIT makes the order of the AO erroneous as well as prejudicial to the interest of the revenue which he was pleased to set aside for fresh assessment as per his directions given at Para 12 of his impugned order. i.e. to enquire into the source of share capital of Rs. 1,08,15,000/-.

9. Before we advert to the facts and law involved in this lis before us, let us revise the law governing the legal issue before us. The assessee has challenged in the first place, the very usurpation of jurisdiction by Id. Principal CIT to invoke his revisional powers enjoyed u/s 263 of the Act. Therefore, first we have to see whether the requisite jurisdiction necessary to assume revisional jurisdiction is existing in this case before the Pr. CIT rightfully exercises his revisional power. For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him;[*because AO has to discharge dual role of an investigator as well as that of an adjudicator*]then in aforesaid any event the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries* (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction

with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **“unless the view taken by the Assessing Officer is unsustainable in law”**.

10. We find from the discussion at para 5 (supra) of this order and the finding of Ld PCIT given below para 5 corroborates that the AO in fact had issued notice u/s 142(1) and called for all the details of the share subscribers/share premium and pursuant to the notice of AO, the assessee had filed all the documents to substantiate the identity, creditworthiness and genuineness of the share subscription. The source of source of the share subscription was also brought to the notice of the AO as discussed (supra) and we note that the assessee company is a private limited company and it is closely held and has raised share subscription from its own directors and their wives who are all income tax assessee's and all the money has come through banking channel and their creditworthiness has also been proved by the documents produced and discussed supra. Therefore the Ld. PCIT erred in finding that the source of share subscribers has not been properly enquired by the AO. Therefore, since the condition precedent for invoking the revisional jurisdiction has not been satisfied the Ld. PCIT lacks of jurisdiction to interfere in the assessment order passed by the AO dated 20.12.2018 and therefore we are inclined to quash the same.

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

Order is pronounced in the open court on 19th August, 2021
Sd/-
(P. M. Jagtap)
Vice-President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 19.08.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Lovely International Pvt. Ltd., 24, Anju chamber, 3rd Floor, 38, Park Street, Kolkata-700016.
2. Respondent – ACIT, Circle-8(1), Kolkata
3. The PCIT- 1, Kolkata
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
