

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 458/DEL/2021 [A.Y 2015-16)

**M/s Reinforce Recruiter Pvt Ltd
116A, 1st Floor, Somdutt Chamber-1
Bhikaji Cama Place, New Delhi**

**Vs. The Pr. C.I.T - 7
Delhi**

PAN: AAECR 5711 L

(Applicant)

(Respondent)

**Assessee By : Shri Ashwani Kumar, Adv
Department By : Ms. Rakhi Vimal CIT-DR**

**Date of Hearing : 07.09.2022
Date of Pronouncement : 09.09.2022**

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. PCIT - 7, Delhi dated 24.03.2021 framed u/s 263 of the Income-tax
Act, 1961 [hereinafter referred to as 'The Act'] pertaining to
Assessment Year 2009-10.

2. The sum and substance of the grievance of the assessee is that the Id. PCIT erred in law and on facts in assuming jurisdiction u/s 263 of the Act by holding that the assessment order dated 29.09.2017 framed u/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue.

3. The representatives of both the sides were heard at length, the case records carefully perused and with the assistance of the Id. Counsel, we have considered the relevant documentary evidences/ judicial decisions brought on record in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee filed its return of income on 28.09.2015 declaring loss of Rs. 1,00,912/-. Return was processed u/s 143(1) of the Act at NIL income on 17.10.2015 and thereafter, return was selected for limited scrutiny.

5. Statutory notices were issued and served upon the assessee. The reasons given for selection of the case for limited scrutiny is as under:

- i) Low income in comparison to very high investment;
- ii) Low income in comparison to high loans/ advances/investments in shares; and,

- iii) Large increase in investment in unlisted equities during the year.

6. Accordingly, a questionnaire was served upon the assessee asking it to furnish details of investment in unlisted equities and source of investment in these unlisted equities. The assessee was also asked to explain the reasons for low income in comparison to very high investments/loans/advances/investments in shares.

7. The assessee filed details sought by the Assessing Officer and after considering the submissions, assessment order was framed on total income of Rs. NIL by order dated 29.09.2017 framed u/s 143(3) of the Act.

8. Assuming jurisdiction cast upon him, by provisions of section 263 of the Act, the Id. PCIT issued show cause notice dated 14.11.2018 which is as under:

Office of the Principle Commissioner of Income Tax, Delhi-7

New Delhi, Room No. 394A, 3Rd Floor, C.R. Building

I.P. Estate, New Delhi-110002

F.NO. Pr.CIT-07/263/2018-19/205

Dated: 14.11.2018

To,

The Principal Officer,
M/s Reinforce Recruiter Pvt. Ltd.
1/7406, Shivaji Park, Shahdra, Delhi-110032.

Sir/Madam

Sub: Show cause notice u/s 263 for the A.Y. 2015-16 in the case of
M/s Reinforce Recruiter Pvt. Ltd. (PAN:AAECR5711L),

On examination of the assessment records in your case for the
said assessment year it reveals that the assessment order Passed
u/s 143(3) on 29.09.2017 by the ITO, Ward 21(2), New Delhi is
found to be erroneous in so far as it is prejudicial to the interest
of the revenue due to the following reason:

2. In this case assessment u/s 143(3) in this case was
completed on 29.09.2017 Return of income was e filed by assessee
company on 28.09.2015 declaring loss of Rs 1,00,912/-. The case
was selected for 'Limited Scrutiny' under CASS on the following
reason:-

- i) Low income in comparison to very high investment.
- ii) Low income in comparison to high loans/ advances/
investment in shares.

- iii) Large increase in investment in unlisted equities during the year.

3. *The case was completed under section 143(3) of the Act vide order dated at income of Rs. 1,00,912/- by making addition of Rs. 100912/- u/s 14A of the Income Tax Act, 1961.*

4. *During the year under consideration the assessee has invested in unlisted equities; hit by the provision of section 56(2)(viiia) of the Income Tax Act, 1961 that provides the taxation of a company not being a company in which public are substantially interested i.e. closely held company receiving shares of a company, not being a company in which public are substantially interested i.e. closely held company for NIL or inadequate consideration, on the basis of Fair Market Value of shares (FMV), in accordance with provisions of Rule 11UA of -Income Tax-Rules, 1962 as amended.*

5. As per the provision of section 56(2)(viiia) of the Income Tax Act, 1961 which read as under:-

(viiia) Where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons on or after the 1st day of June 2010⁸⁷ [but before the 1st day of April, 2017], any property being share of a company not being a company in which the public are substantially interested,-

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than aggregate fair market value of property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause(vicb) or clause (vid) or clause (vii) of *section 47*.

Explanation-For the purpose of this clause, " fair market value" of a property, being shares of company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause(vii);

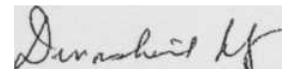
In other words, the value of shares received by the firm or a company for inadequate consideration or without consideration shall be chargeable to income tax under the head income from other sources.

6. Further it is noticed that neither the copy of balance sheet of the company in which investment was made by the assessee is available on record nor FMV of shares. Thus the issue has not been properly examined.

8. In view of the above, during the course of assessment proceedings A.O has not examined the issue of valuation of fair market value of shares as well as value of investment shown by the assessee.

9. Therefore, in view of the above report the order passed by the A.O on 29.09.2017 u/s 143(3) of the Act is erroneous in so far as it is prejudicial to the interest of the revenue. therefore, you are given an opportunity to show cause why an order u/s 263 JH may not be passed to set right the above omissions. In case you intend to furnish submission, then you are accorded an opportunity to submit the same, your case is fixed for hearing on 05.12.2018 at 04:45 PM in my Room no. 394A, 3rd floor, C.R. Building, I.P. Estate, New Delhi.

Please note that in case of failure to submit the above, the case will be decided on the basis of the facts and the evidences available on record and no further submission will be entertained.



(Devashish Roy Choudhury)
Pr. Commissioner of Income Tax,
Delhi-7, New Delhi

9. In the notice itself, the Id. PCIT has mentioned the reasons for limited scrutiny under CASS and, therefore, the Id. PCIT was well aware of the limitations of the Assessing Officer in assessing the income in the case of limited scrutiny.

10. The Id. PCIT was of the firm belief that during the course of assessment proceedings, issue of section 56(2)(viia) was neither enquired into nor examined for basis of determination of fair market value of shares.

11. After giving careful and thoughtful consideration to the observations of the PCIT, we fail to understand how the enquiry qua the provisions of section 56(2)(viia) of the Act would be necessary on the facts of the case in hand when the provisions of section 56(2)(viia) of the Act as it stood in F.Y. 2014-15 relevant to Assessment Year 2015-16 was for taxability as income from other sources in the hands of the company receiving the shares, whereas during the year under consideration, the assessee has invested in equity shares as mentioned by the Id. PCIT himself at Para 2 Page 2 of his order.

12. By no stretch of imagination it can be said that non enquiry u/s 56(2)(viiia) of the Act would make the assessment order dated 29.09.2017 erroneous and prejudicial to the interest of the Revenue keeping in mind that return was selected for limited scrutiny and the Assessing Officer has examined all the facts relating to the reasons for selection of the case for limited scrutiny.

13. Basis of the PCIT in assumption of jurisdiction u/s 263 of the Act itself is erroneous and bad in law and, therefore, the assessment order framed by the Assessing Officer cannot be faulted with.

14. Considering the facts of the case in totality, we set aside the order of the PCIT dated 24.03.2021 framed u/s 263 of the Act and restore that of the Assessing Officer dated 29.09.2017 framed u/s 143(3) of the Act.

15. Before parting, the ld. DR, in her written submissions, has referred to various judicial decisions which, after perusal, is found to be non-relevant on the facts of the case discussed hereinabove.

16. In the result, the appeal of the assessee in ITA No. 458/DEL/2021 is allowed.

The order is pronounced in the open court on 09.09.2022.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th September, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	