IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH, NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER AND MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 5239/DEL/2019 (A.Y. 2014-15)

M/s. Sunray Cotspin (P) Ltd. Plot No.660, Udyog Vihar, Phase-V, Gurgaon, Haryana-122 002	Vs.	Pr. CIT Gurgaon.
PAN No: AAPCS 2728 D		
[Appellant]		[Respondent]

Date of Hearing : 20.02.2020
Date of Pronouncement : 21.02.2020

Assessee by : Shri Gautam Jain, C.A

Revenue by : Shri H. K. Chaudhary, CIT-DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal the assessee has challenged the assumption of jurisdiction u/s 263 of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] by the PCIT, Gurgaon for A.Y. 2014-15.

2. The representatives of both the sides were heard at length. The case records carefully perused and with the assistance of the ld. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

3. Facts on record show that the assessment was framed u/s 143(3) of the Act vide order dated 18.08.2016. Assuming powers conferred upon him by provisions of section 263 of the Act, the PCIT served a notice which reads as under:

GOVERNMENT OF INDIA

MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,

OFFICE OF THE PR. COMMISSIONER OF INCOME TAX,

HSIIDC BUILDING, VANIJYA NIKUNJ, UDYOG VIHAR, PHASE-V, GURGAON

F No. PCIT/GGN/TECH/263/78/2018-19/5391 Dated 29.11.2018

To,

The Principal Officer,

M/s. Sunray Cotspin Pvt. Ltd.,

Plot No.116, Udyog Vihar, Phase-IV,

Sir/ Madam

Subject: Notice u/s 263 in case of M/s. Sunray Cotspin Pvt. Ltd. (PAN-AAPCS 2728 D) for A.Y. 2014-15 – Reg -

The assessment in this case was completed u/s 147/143(3) of the I.T. Act vide order dated 18.08.2016 by the then Assessing Officer declaring a returned income of Rs.12,350/-

2. The assessment records of the above noted assesse for the A.Y. 2014-15 were examined. On examination of the assessment records, following discrepancies are noticed. On the basis of discrepancies, it is observed that the assessment framed by the AO u/s 143(3) is erroneous and pre-judicial to the interest of revenue due to following reasons:

3. *During the year under consideration, company had issued 1833300/- shares @ Rs.30/- to various individual against the face value of Rs.10/- and has received share premium of Rs.3,66,66,000/-.*

On perusal of assessment record it is noticed that no details w.r.t. the calucation of FMV as determined in accordance with the rule 11U and 11UA of the I.T. Act 1961 or otherwise, have been verified by the AO and the above mentioned entities/persons have paid huge share premium of Rs.3,66,66,000/- which is not duly substantiated by their return of Income for the period under consideration. The AO has failed to examine/ verify with documents, the creditworthiness of M/s. Sunray Cotspin Pvt. Ltd. and no desired explanation about the nature and source of this share application money & share premium has been examined which is necessary for making assessment.

4. Hence, on perusal of assessment record, it was found that requisite inquiries were not conducted regarding the issue as to what prompted the subscribers to the shares to pay such substantial premium on shares of a little known company having no significant business activities. It is also observed that the assessment order has been passed without application of mind. A proper inquiry has also not been conducted regarding the identity and creditworthiness of the shareholders. It is observed that the order has been passed mechanically which turns the assessment erroneous and cause prejudice to the interest of service.

5. You are, therefore, provided an opportunity to show cause as to why assessment order passed by Income Tax Officer, Ward-4(3), dated 18.08.2016 for the A.Y. 2014-15 in your case, should not be revised u/s 263 of the IT Act. You are therefore requested to attend my office on 10.12.2018 at 10.30 AM either in person or through representative duly authorized in writing on your behalf or produce or cause to be produced at the said time, any documents or any other evidence on which you rely in your support.

In case of no reply no attendance as per above, it shall be assumed that you do not wish to say anything in the matter and matter would be decided on merit, as per material available on record without any further notice intimation to you.

(Krinwant Sahay)
Pr. Commissioner of Income Tax
Gurugram"

4. Second notice was again served vide notice dated 17.01.2019. In response to the said notice, the assessee filed a detailed reply, which is placed at pages 182 to 233 of the paper book.

5. The ld. PCIT was not convinced with the detailed submissions made by the assessee and set aside the assessment order by observing as under:

> "In view of the above facts and circumstances of the case, I am of the confirmed view that the A C), by not pursued the inquiries to their logical end has made the order erroneous and prejudicial to the interest of revenue. Hence the same deserves to be revised u/s 263 of I.T. Act, 1961. Therefore, the said order passed by the Assessing Officer is set aside on this particular issue only. The assessing officer is directed to pass fresh assessment order after making thorough and detailed inquiries-on this particular issue only. The assessing officer should pass a speaking order after providing adequate opportunity to the assessee."

6. Before us, the ld. counsel for the assessee pointed out that the PCIT has grossly erred in not understanding the facts in its true perspective. It is the say of the ld. counsel for the assessee that during the F.Y. 2012-13, relevant to Assessment Year 2013-14, share

application money was Rs. 5,46,80,000/- and share capital was Rs. 1 lakh and there was negative reserve and surplus of Rs. 1,06,177/- and effective increase in the share capital of Rs. 3,19,000/- and not the amount taken by the ld. PCIT.

7. The ld. counsel for the assessee further stated that the assessee has fully discharged the initial onus cast upon it by filing documentary evidences, which have been considered by the Assessing Officer before framing assessment order u/s 143(3) of the Act.

8. The ld. DR strongly supported the findings of the PCIT. It is the say of the ld. DR that the Assessing Officer has not made any enquiry and has accepted the documents/submissions furnished by the assessee during the course of assessment proceedings at face value. The ld. DR stated that because of inadequate enquiry, the order is not only erroneous but also prejudicial to the interest of the revenue.

9. To understand the facts, let us consider the balance sheet, which is as under:

BALANCE SHEET

As at 31st March, 2014

(All Amounts in Rs., Unless otherwise satated)

	Note	As at 31st March, 2014	As at 31st March, 2013
EQUITY & LIABILITIES			
Shareholder's Funds			
Share Capital	**3**	1,84,33,000	100000
Reserve & Surplus	**4**	3,66,50,408	-106177
Share Application Money		0	54680000
Non Current Liabilities			
Long Term Borrowings	**5**	14900000	0
Current Liabilities			
Short term borrowings	**6**	49574006	100000
Trade payables	**7**	7892019	8682
Short term provisions	**8**	21600	0
TOTAL		127471033	54782505
ASSETS			
Non-current assets			
Fixed Assets			
Capital Work-in-progress		54258043	54060040
Deffered Tax Assets	**9**	1160	2318
Non current Assets	**10**	161600	0
Current assets			
Inventories	**11**	1691395	0
Trade receivable	**12**	71006423	0
Cash & bank balances	**13**	288845	720147
Short term loans & advances	**14**	53770	0
Other current assets	**15**	9797	0
TOTAL		**127471033**	**54782505**
Summary of significant accounting policies	**2**		

The accompanying notes are an integral parts of these financial statements

As per our report of even date
For Bhudladia & Company
Chartered Accountants
Firm Regn. No. 002511N

CA RAMESH KUMAR
Partner
Membership No.503354
Place : Sirsa
Date: 3rd September 2014

For and on behalf of Board of Directos

Pankaj Sharda
Director

Mahesh Sharda
Director

10. It can be seen from the above that the share application money of Rs. 5,46,80,000/- was taken in Assessment Year 2013-14 and not in the year under consideration. Reserve and surplus account is as under:

NOTE
To the financial statements for the year ended 31st March, 2014 (Contd.)

(All Amounts in Rs., Unless otherwise stated)

4) RESERVES AND SURPLUS

	As at 31st March, 2012	**Additions**	**Deductions**	**As at 31st March, 2013**	**Additions**	**Deductions**	**As at 31st March, 2014**
Capital Reserve	0	0	0	0	0	0	0
Capital Redemption Reserve	0	0	0	0	0	0	0
Securities Premium Account	0	0	0	0	36666000	0	36666000
Other Reserve							
Capital Subsidy	0	0	0	0	0	0	0
Investment Allowance Reserve	0	0	0	0	0	0	0
General Reserve	0	0	0	0	0	0	0
Surplus in Stmnt of profit & loss	-78734	-27443	0	-106177	90585	0	-15592
Total	**-78734**	**-27443**	**0**	**-106177**	**36756585**	**0**	**36650408**

11. It is pertinent to see the notice u/s 142(1) of the Act issued by the Assessing Officer which is as under:

NOTICE UNDER SECTION 142(1) OF THE INCOME TAX ACT, 1961 – M/S SUNDRY COTSPIN PRIVATE LIMITED - PAN: AAPCS2728D – 2014 - 15

Income Tax Officer, Ward-4(3), Gurgaon <gurgaon.ito4.3@incometax.gov.in>
Thu, Jun 2, 2016 at 11:56 AM

To: dpsirsa@gmail.com

NOTICE UNDER SECTION 142(1) OF THE INCOME TAX ACT, 1961

PAN : AAPCS 2728 D

Office of the
Income Tax Officer, Ward-4(3),
6th Floor, HSIDC Building Vinijya Nikunj,
Udyog Vihar-V, Gurgaon.

Dated: 01/06/2016

To,

M/S SUNRAY COTSPIN PRIVATE LIMITED,
POLT NO 116,
UDYOG VIHAR, PHASE IV,
GURGAON - 122002

Sir,

In connection with the assessment for the assessment year 2014-15

You are hereby required to:

(a)* Prepare a true and correct return of your income in respect of which you are assessable under the Income tax Act, 1961 The return should be in the appropriate form as prescribed in rule 12 of the Income tax Rules, 1962. It should be duly verified and signed in accordance with the provisions of section 140 of the said Act and delivered at my Office on or before at ___

(b) **Produce or cause to be produced before me at my office at Gurgaon on 08-06-2016 at 11.00 AM, the accounts and/or documents specified below.

(c)***Furnish in writing and verified in the prescribed manner, the information called for on the points and/or matters specified therein before me at my office at Gurgaon on 08-06-2016 at 11.00AM, specified overleaf or below*.

Yours faithfully,

(P. B. Verma)
Income Tax Officer, Ward-4(3), Gurgaon
(Assessing Officer)

4. Copy of Audit Report with annexure.
5. Details of Share premium
6. Give the details of Bank A/c maintained by you & your family members with all Bank statements.
7. Computation of income.

12. It would not be out of place to make it clear that the return was selected under scrutiny through CASS and the main reason was to examine the share premium. Being a limited scrutiny case, we fail to persuade ourselves to believe that the Assessing Officer did not make any enquiry on the issue on the basis of which return was selected for scrutiny assessment. It is a settled proposition of law that in a return selected for limited scrutiny, the Assessing Officer cannot go beyond the issue and from the notice u/s 142(1) of the Act exhibited elsewhere, it can be seen that the Assessing Officer made specific query in relation to details of share premium.

13. The assessee had furnished complete details in respect of share application money received and the same is placed at pages 34 to 36 of the paper book which read as under:

SUNRAY COTSPIN PRIVATE LIMITED
DETAIL OF SHARE APPLICATION MONEY RECEIVED

AJAY GOYAL

DATE	AMOUNT	
06.08.2011	1200000	
10.08.2011	700000	
14.11.2011	640000	
16.11.2011	5000	
08.12.2011	65000	**2610000**

GIRDHARI LAL MODI

DATE	AMOUNT	
25.08.2011	700000	
Less: Refund 06.01.2014	-1000	699000

NARAYANI DEVI GOYAL

DATE	AMOUNT	
04.08.2011	1300000	
10.08.2011	700000	
23.08.2011	800000	
24. 09.2011	1000000	
27.12.2013	1000	**3801000**

PHULA DEVI MODI

DATE	AMOUNT	
24.09.2011	1000000	
10.12.2011	500000	**1500000**

RAMESH MODI

DATE	AMOUNT	
.08.2011	3200000	
24.09.2011	600000	
10.12.2011	204000	
27.12.2013	46000	**4050000**

SANJAY GOYAL

DATE	AMOUNT	
04.08.2011	1455000	
10.08.2011	700000	
23.08.2011	175000	
16.09.2011	250000	
08.12.2011	793000	**3373000**

Less : Refund on 01.12.2012		**-3373000**
01.10.2013	874000	
27.12.2013	104000	**978000**

SAT NARAIN GOYAL

DATE	**AMOUNT**	
04.08.2011	2500000	
06.08.2011	1270000	
10.08.2011	700000	
23.08.2011	800000	
24.09.2011	1000000	
01.10.2013	1616000	
27.12.2013	1000	**7887000**

SEEMA GOYAL

DATE	**AMOUNT**	
06.08.2011	755000	
10.08.2011	700000	
23.08.2011	175000	
16.09.2011	250000	
08.12.2011	793000	
01.12.2012	3373000	
	6046000	
Less : Refund 06.01.204	1000	6045000

VIKAS MODI

DATE	**AMOUNT**	
10.08.2011	2500000	
Less: Refund 06.01.2014	1000	2499000

LALIT MOHAN SHARDA

DATE	**AMOUNT**	
08.08.2011	2780000	
10.08.2011	220000	
26.08.2011	348000	
09.12.2011	327000	
30.12.2013	480000	**4155000**

KRISHNA DEVI SHARDA

DATE	AMOUNT	
08.08.2011	2780000	
10.08.2011	220000	
26.08.2011	348000	
09.12.2011	327000	
30.12.2013	480000	**4155000**

MAHESH SHARDA

DATE	AMOUNT	
Opening Balance	**110000**	
09.08.2011	2780000	
11.08.2011	220000	
27.08.2011	348000	
10.12.2011	327000	
19.07.2012	100000	
30.12.2013	270000	**4155000**

PRIYANKA SHARDA

DATE	AMOUNT	
09.08.2011	2780000	
10.08.2011	220000	
27.08.2011	348000	
09.12.2011	327000	
30.12.2013	480000	**4155000**

ANUJ SHARDA

DATE	AMOUNT	
08.08.2011	2780000	
10.08.2011	220000	
26.08.2011	348000	
09.12.2011	327000	
30.12.2013	480000	**4155000**

PANKAJ KUMAR SHARDA

DATE	AMOUNT	
08.08.2011	2780000	
11.08.2011	220000	
.08.2011	348000	
09.12.2011	327000	
16.12.2013	320000	
0.12.2013	160000	**4155000**

SHWETA GOYAL

DATE	AMOUNT	
06.08.2011	1085000	
10.08.2011	700000	
14.11.2011	640000	
08.12.2011	65000	
	2490000	
Less: Refund on 01.10.2013	2490000	**0**
		54999000

14. A bare perusal of the aforementioned detail shows that out of total sum of Rs. 5,49,99,000/-, only Rs. 53 lakhs has been accounted for during the year under consideration. The share application money has been received from very same persons from whom share application and share premium amount has been received in earlier years. No adverse inference has been drawn in earlier years in respect of money received from the very same persons. During the year also, in the course of assessment proceedings, the assessee has furnished copy of bank statements in respect of all allottees alongwith their tax returns details.

15. We also find that during the course of scrutiny assessment proceedings, the assessee has furnished a certificate from the CA justifying the valuation of shares and the certificate is placed at pages 168 to 170 of the paper book. This clearly shows that the Assessing Officer has examined the share premium received during the year

which is supported by the fact that the return was selected for scrutiny assessment only for this limited purpose.

16. The following observations of the PCIT appear to be misplaced:

> "I have considered the various case laws quoted by the ld. counsel for the assessee. It is found that the contents/facts of the case laws are not exactly related to the instant case. Perusal of the assessment records mows that the A.O has not made any independent inquiries regarding the confirmations. No notices u/s 133(6) were sent to the shareholders. On perusal of records, it is found that the AO has not verified any of the returns of the subscribers from the concerned assessing officer of the person to whom shares have been assessed. Analysis of this statement does not throw any light whatsoever on the source of the funds of the subscriber companies. The A.O. should have called for the bank statement duly signed by concerned authority 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/individuals were available at the given address, whether they had the financial capability to invest such substantial amounts and whether they were genuine corporate entities."

17. As mentioned elsewhere, since the case was for a limited scrutiny in respect of share premium received during the year, it cannot be examined in piecemeal manner but has to be examined in respect of share capital as a whole and since reason for selection for scrutiny confined to share premium received during the year and did not extend to the share capital, therefore, the assumption that creditworthiness of subscribers has to be examined vis a vis share premium received is misconceived/misplaced. In our understanding of the law, share premium during the year ought to be confined to examination of application of section 56(2)(vii)(b) of the Act and have nothing to do with the application of section 68 of the Act. Moreover, u/s 68 of the Act, the opening balances cannot be added.

18. In our understanding of the facts, there was a specific query from the Assessing Officer to which a specific reply alongwith supporting documents were submitted by the assessee during the course of scrutiny assessment proceedings itself.

19. Considering these facts in totality, it can be safely concluded that the Assessing Officer did raise queries which were complied by the assessee. It is a settled position of law that powers u/s 263 of the Act

can be exercised by the Commissioner on satisfaction of twin conditions, i.e., the assessment order should be erroneous and prejudicial to the interest of the Revenue. By 'erroneous' is meant contrary to law. Thus, this power cannot be exercised unless the Commissioner is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Thus, where there are two possible views and the Assessing Officer has taken one of the possible views, no action to exercise powers of revision can arise, nor can revisional power be exercised for directing a fuller enquiry to find out if the view taken is erroneous. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire in case of inadequate inquiry. Our view is fortified by the decision of Hon'ble High Court of Bombay in the case of CIT vs. Nirav Modi, [2016] 71 Taxmann.com 272 (Bombay)".

20. The Hon’ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. 203 ITR 108 has held that:

> *“ the decision of the ITO cannot be held to be erroneous simply because in his order he did not made an elaborate discussion in this regard…….”.*

21. The Hon'ble Gujarat High Court in the case of Micro Inks Ltd. 85 Taxmann.com 310 has held that:

> *"If the Assessing Officer has adopted a view which is a plausible one, the view would not be open to revision by the Commissioner."*

22. Considering the facts of the case in the light of judicial decisions discussed hereinabove and on perusal of the facts, we have no hesitation in holding that the assessment framed u/s 143(3) of the Act was after detailed enquiries and verification and merely because the assessment order is silent, the same cannot be considered as erroneous and prejudicial to the interest of the revenue, as held by the Hon'ble High Court of Bombay in the case of Gabriel India Ltd [supra].

23. In the instant case, the Assessing Officer, after considering the various submissions made by the assessee, has taken a possible view. Therefore, merely because the PCIT does not agree with the opinion of the Assessing Officer, he cannot invoke the provisions of section 263 of the Act to substitute his own opinion. It has been further held in several decisions that when the Assessing Officer has made enquiry to his satisfaction and it is not a case of no enquiry and the PCIT wants

that the case should have been investigated/probed in a particular manner, he cannot assume jurisdiction u/s 263 of the Act.

24. In view of the above discussion, we set aside the order of the PCIT and restore that of the Assessing Officer dated 18.08.2016 framed u/s 143(3) of the Act.

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

The order is pronounced in the open court on 21.02.2020.

Sd/-	**Sd/-**
[SUCHITRA KAMBLE]	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 21st February, 2020

VL/

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	20.02.2020
Date on which the typed draft is placed before the dictating Member	21.02.2020
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	