

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 34/JP/2021
निर्धारण वर्ष/Assessment Year :2011-12

Majestic Stock Pvt Ltd 24, Santosh Sagar Colony, Brahmpuri, Jaipur	बनाम Vs.	Principal Commissioner of Income Tax, Jaipur-2
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAGCM3877J		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. S. L. Gupta (Adv.)
राजस्व की ओर से/ Revenue by : Sh. A. S. Nehra (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 05/10/2021
उद्घोषणा की तारीख/Date of Pronouncement: 22/10/2021

आदेश/ ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. PCIT-Jaipur-2 passed u/s 263 dated 31.03.2021 for A.Y 2011-12.

2. Briefly stated, the facts of the case are that the return of income for A.Y 2011-12 was filed by the assessee on 29.03.2012 declaring income at Rs. Nil. The matter was reopened by issuance of notice u/s 148 and assessment u/s 147 r.w.s 143(3) of the I.T. Act, 1961 was completed on 31.12.2018 by the DCIT, Circle-7, Jaipur and assessed income was determined at Rs. 18,47,250/-.

3. On perusal of the assessment records, the Id PCIT found that assessee company had received share application money from four entities amounting to Rs. 1,61,00,000/-. It was stated that as per copy of bank statement provided by the Maxius Ventures Pvt. Ltd, it seen that it has invested only Rs. 20,00,000/- instead of Rs. 45,00,000/- in the assessee company. Schedule-4 appended to the balance sheet of Maxius Ventures Pvt. Ltd shows decrease of investment from Rs. 5,31,29,000/- to 2,48,93,845/- and no details of share application money invested in the assessee company is available. Hence amount of share application money invested by the Maxius Ventures Pvt. Ltd. could not be verified and credit worthiness of the investment was also could not be verifiable. It was held by the Id PCIT that it is factually clear that the A.O. has not verified the issue of unexplained share application money while completing the assessment and it appears that the assessment order passed u/s 147 r.w. s. u/s 143(3) of the I.T. Act 1961 for A.Y. 2011-12 on 31.12.2018 is erroneous in so far as it is prejudicial to the interest of the Revenue and a show cause notice u/s 263 of the I.T. Act, 1961 was issued to the assessee to explain as to why the assessment order passed by the DCIT Circle-7, Jaipur on 31.12.2018 may not be revised u/s 263 and may not be treated as erroneous and prejudicial to the interest of the Revenue.

4. In response to the show-cause, the assessee filed its submissions. The submissions so filed were considered by the Id PCIT but not found acceptable and the assessment order was set aside to be made de novo after proper examination of genuineness of share capital and providing opportunity being heard to the assessee. Against the said findings, the assessee is in appeal before us.

5. During the course of hearing, the Id. AR raised various contentions against the order so passed by the Id. PCIT, Jaipur and relied upon the written submissions, the contents thereof read as under:

"1. The Id. PCIT passed order u/s 263 mentioning the basis that as per bank statement, investment in share by M/s Maxis Ventures Pvt. Ltd. (Formerly known Happy Collection Pvt Ltd) shown Rs. 20,00,000/- as against subscription of share of Rs. 45,00,000/- which is factually wrong and without verifying complete bank statement as submitted by us during course of assessment proceeding. In facts, the assessee submitted bank statement of Investor Company as well as own bank account. In bank statement, entries for investment of share application Rs. 45,00,000/- appearing as detail below:

26-08-2010	RTGS through Ch no. 561388	Rs. 20,00,000/-
09-09-2010	RTGS through Ch no. 561395	Rs. 25,00,000/-

The fact has been clearly explained by appellant company to Id PCIT vide letter dated 26-02-2021 that both entries of share application money invested are verifiable from complete bank statement of investor company with further provided transaction enquiry report from bank and also from bank statement of appellant company submitted during course of assessment proceeding. The only thing is that the Id PCIT considered only the part of bank statement of Maxis Venture Pvt. Ltd (Formerly known Happy Collection Pvt Ltd) and missed to see the next page having entry Rs 25,00,000/- dated 09-09-2010. As such complete Rs.45,00,000/- paid by investor are duly verified from both bank Statement of investor company and appellant company submitted during course of hearing and also from transaction report obtained from bank

submitted to Id PCIT for further clearance of any confusion in understanding of entries in bank statement.

2. Further Id PCIT again in misconception of facts mentioned in order that A.O. has not verified the genuineness of transaction, identity of investor, his credit worthiness and source of money. In fact genuineness and creditworthiness, identity and source has been verified from the following documents of investor submitted during course of assessment proceeding:

- (i) Copy of Bank statement appearing payment as mentioned in para 1 above
- (ii) Confirmation
- (iii) Copy of ITR
- (iv) Copy of balance sheet
- (v) Company Master data available at MCA website

The Id A.O also obtained same documents directly from investor company calling information u/s 133(6) and verified from books of accounts and document submitted by appellant company.

3. Further, the Id PCIT also create doubt on decrease in investment figure in balance sheet of Maxis Venture Pvt Ltd (Formerly known Happy Collection Pvt. Ltd) shows from Rs 5,31,29,000/- in 2009-10 to Rs 2,48,93,845/- in 2010-11, it is submitted that decrease in figure of investment in balance sheet of investor company is irrelevant to verify the transaction. The amount appearing in head Investment in the balance sheet is sum of total investment held as on date of balance sheet. In balance sheet showing a consolidated figure of all investment including investment to assessee company. The figure of investment in balance sheet as on 31-03-2011 is Rs 2,48,93,845/- against investment to

appellant company Rs 45,00,000/- is still much higher than the investment made to appellant company and question of genuineness cannot arise due to decrease in investment figure of investor company on basis of such comparison. The investment by investor in appellant co. has been verified by other document like confirmation, bank account etc. separately.

4. For revision of any order u/s 263 there must be two conditions namely that the order of assessment is erroneous and that the order is prejudicial to the interests of the Revenue which must be satisfied before the Commissioner may invoke his powers under Section 263 of the Act. In this case the fact is that all document to verify the transaction called by the A.O during assessment proceeding and also made further enquiry by calling information u/s 133(6) and verified from books of accounts and document submitted by appellant company. Hence revision is not permissible when inquiries on the issue have already been made by the AO before passing the order of assessment. The Id PCIT before conclusion that the order is erroneous, he must himself make an inquiries with available material/evidence with him. In support, we draw your attention decisions of various High Court as under:

a) In the case of CIT vs. Vikas Polymers [2012] 341 ITR 537 (Delhi)(HC), the Court held that if the AO has made inquiries and replied to by the assessee, then exercise of revisional powers are not warranted. Also, want of evidence cannot be a ground to disturb the findings of the AO or to state that the AO has shirked his responsibility. That the Commissioner should have provided reasons in support of revising the assessment order.

b) In the case of ITO vs. DG Housing Projects Ltd [2012] 343 ITR 329(Delhi)(HC), the Court held that in cases where inquiries have been

made by the AO, the CIT must himself make inquiries and come to the conclusion that the order is erroneous, that the order has to be on merits of the result of the inquiry, that the AO acts as an investigator and an adjudicator, that the CIT cannot direct the AO to see if the order is erroneous or reconsider the order, that nothing bars/prohibits the CIT from collecting and relying upon new/additional material/evidence to show and state that the order of then Assessing Officer is erroneous.

Looking to above facts, the Id PCIT did not provide adequate reasons in support of his revisional order. Your honour is therefore requested to kindly accept the appeal against order of revision u/s 263 which is against the fact and bad in law.”

6. In his submission, the Id. CIT/DR drawn our reference to the findings of the Id. PCIT, Jaipur which read as under:-

“6. I have considered the contentions of assessee. I find that the same are not tenable. I have gone through the assessment order and case records and submission filed by the assessee, in the facts and circumstances of the case. The contention of assessee are not tenable. The fact is that in case of Maxius Ventures Pvt. Ltd., investment of Rs. 20,00,000/- as per the bank statements whereas the share capital subscription of Rs.45,00,000/-. The assessee has contended that now his filing a bank statement and transaction inquiry from bank. However, the pertinent point is that at the time of assessment no such details were filed or brought on record. Absence of such details during assessment proceedings make it an erroneous order. From the above facts and circumstances of the case and having regard to the material available on record, the Assessing Officer failed to consider/apply his

mind to the information available on record with regard to the unexplained share application money received from M/s Volplast Pvt. Ltd. Further, AO has also not verified the genuineness of the transaction, regarding the identity of the investor, his creditworthiness, and genuineness of the transaction with reference to the source of money given to the assessee (availability of funds at that time). Thus, it is evident that the AO has not applied his mind to the issue in proper manner.

7. From the above facts and circumstances of the case and having regard to the material available on record, the Assessing Officer failed to consider/apply his mind to the information available on record with regard to the verification and examination of the unexplained share application money as shown in the Balance-sheet filed during the course of re-assessment proceedings. Thus, the order passed on 31.12.2018 is without making necessary verification cum examination of the genuineness of the unsecured loans of Rs.45,00,000/- shown in the balance-sheet and as such the assessment was made without application of mind on the given facts on record. This in turn has resulted in passing of an erroneous order by the Assessing Officer in the case due to non-application of mind to relevant material, an incorrect assumption of facts and an incorrect application of mind to law which is prejudicial to the interest of the Revenue.

8. Thus, I am of the considered opinion that the order passed U/s 143(3) on 29.03.2012 is erroneous and prejudicial to the interest of the Revenue and that action u/s 263 is justified in this case.

9. Accordingly, by virtue of powers conferred on the undersigned under the provisions of section 263 of the Income Tax Act 1961, I hold

that the order under Section 143 (3) of the IT Act dated 31.12.2018 for AY 2011-12 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of Revenue as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue of unexplained share application money. The order of the Assessing Officer is therefore liable to revision under the clause (a), (b) & (c) of Explanation (2) to section 263 of the Income Tax Act. Hence, the assessment order is set aside to be made de novo after proper examination of genuineness of share capital and providing opportunity of being heard to the assessee."

10. We have heard the rival contentions and perused the material available on record. Firstly, it is noted that the whole of the reassessment order passed u/s 147 r/w 143(3) has been set aside to be made de novo after proper examination of genuineness of share capital. To our understanding, the said finding of the Id PCIT will relate to the whole of the share capital amounting to Rs 1.61 Crores which has been raised by the assessee company during the year under consideration. However, if we look at the show-cause notice and the discussions in the body of the impugned order, the matter is restricted to share application money received from one of the entities, namely Maxius Ventures Ltd amounting to Rs 45 lacs. Therefore, we find that there is no basis for setting aside the whole of the reassessment order and if at all, the matter has to be set-aside, which we shall be discussing in the subsequent paragraphs, it is to be restricted to examining the matter relating to share application money received from Maxius Ventures Ltd amounting to Rs 45 lacs.

11. Having said that, it is not under dispute that the case of the assessee was reopened u/s 148 to examine the genuineness of share

application money received by the assessee from four entities including Maxius Ventures Ltd during the financial year relevant to impugned assessment year. During the course of reassessment proceedings, the Assessing officer examined the matter and called for information/explanation from the assessee including information sought directly u/s 133(6) of the Act. Basis such examination, he accepted the transactions relating to three entities including Maxius Ventures Ltd as genuine and in respect of the fourth entity, he held that the creditworthiness and genuineness of the transaction was not proved and addition towards unexplained share application money was made u/s 68 of the Act. Therefore, it is not a case that the matter relating to Maxius Ventures Ltd was not examined by the Assessing officer during the course of reassessment proceedings.

12. It is not even the case of the Id PCIT that the information/documentation were not called by the Assessing officer and the matter was not examined by the Assessing officer. The Id PCIT has referred to the bank statement and balance sheet of Maxius Ventures Ltd which is available on the assessment records and held that the Assessing officer has failed to apply his mind to information available on record. In other words, the Id PCIT is of the opinion that the information so available on record has not been properly examined/verified by the Assessing officer and thus, there is no proper application of mind by the Assessing officer. The basis of arriving at such a finding is that as per bank statement of Maxius Ventures, only transaction of Rs 20 lacs has been reflected as against share application of Rs 45 lacs and secondly, there is a decrease in overall quantum of investment as reflected in the balance sheet of Maxius Ventures. The Id AR has contested such findings of the Id PCIT and during the course of hearing, taken us

through the bank statement of Maxius Ventures and submitted that the Id PCIT has verified only one of the entries appearing in the bank statement amounting to Rs 20 Lacs on 26.08.2010 and has failed to notice that there is another entry of Rs 25 lacs on 9.09.2010. Further, the Id AR has submitted that total quantum of investment in the books of Maxius Ventures at the beginning of the year stood at Rs 5,31,29,000/- and at the end of the year, it has no doubt reduced to Rs 2,48,93,845/- but it continues to include the investment made in the assessee company amounting to Rs 45 lacs and more so, the fact of such investment amounting to Rs 45 lacs has been confirmed by Maxius ventures and also cross-verified by the AO calling for information u/s 133(6) from the said investor company. We agree with the contentions advanced by the Id AR that the share transactions totaling to Rs 45 lacs are duly reflected in the bank statement as well as in the balance sheet of the investor company and therefore, the same cannot form the basis for holding that the order passed by the Assessing officer was erroneous as he failed to consider such discrepancies.

13. Regarding identity and creditworthiness of the investor company and genuineness of the transaction, we find that where the Id PCIT has himself accepted the fact that the share application money atleast to the extent of Rs 20 lacs has been received through the banking channel from Maxius Ventures, the identity and nature of the transaction is very much accepted by him. Regarding creditworthiness, the assessee has submitted that during the course of reassessment proceedings, the assessee has submitted the copy of bank statement of the investor company which shows clearly the money standing to the credit of the investor company account from its share trading business and out of which, the investment has been made in the assessee's company.

Further, the assessee has submitted copy of balance sheet, income-tax return, company master data available on MCA website of the investor company which has details of its directors/shareholders and other relevant details as well as copy of confirmation from the investor company. Besides, the Assessing officer has also directly called for information from the investor company u/s 133(6) and has verified the same with the books of accounts of the assessee company. We therefore find that where the assessee has submitted all these documentation and the same has been duly examined by the Assessing officer by independently calling for the information and cross-verifying the same with the investor company and with the books of accounts of the assessee company, it cannot be held that the Assessing officer has failed to carry out proper verification of the transaction under consideration.

14. In light of the aforesaid discussions and in the entirety of facts and circumstances of the case, we are of the considered view that there is no legal and justifiable basis to interfere with the findings of the Assessing officer as the necessary enquiries and examination as reasonably expected have been carried out by the Assessing officer and he has taken a prudent, judicious and reasonable view after considering the entire material available on record and the order so passed u/s 143(3) r/w 147 cannot be held as erroneous in so far as prejudicial to the interest of Revenue. The impugned order passed by the Id PCIT u/s 263 is accordingly set aside and the order of the Assessing officer is sustained.

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

Order pronounced in the open Court on 22/10/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/10/2021

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Majestic Stock Pvt. Ltd., Brahmpuri
2. प्रत्यर्थी / The Respondent- Pr. CIT, Jaipur-2
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 34/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar