

## Sec. 263 revision was valid if AO passed reassessment order without making proper inquiry: HC

**Summary – The High Court of Calcutta in a recent case of Success Tours & Travels (P.) Ltd., (the Assessee) held that where reassessment was made for purpose unconnected with issue of share capital/premium but issue of share capital at premium had also been examined by Assessing Officer in reassessment proceeding, revisional proceeding initiated by Commissioner alleging lack of proper enquiries as to issue of share capital/ premium in course of reassessment proceedings was valid**

**Mere fact that assessment year in question is year of commencement of business of assessee cannot insulate it from an inquiry directed towards steps contemplated under section 68**

**Service by post, which had been returned with endorsement "addressee not found", followed by an attempt at personal service and subsequent affixture would constitute substantial compliance of provisions of section 282**

### Facts

- The assessee-company had issued 2,36,000 shares having face value of Rs.10 each at a premium of Rs.240 and 10,000 shares at Rs.10 each to different body corporates. The assessee filed its return and total income of the assessee was shown to be *nil*. However, it had not disclosed receipt of a sum of Rs.32,500 on account of consultancy fees.
- The Assessing Officer issued notice under section 148 taking into account the said sum of Rs.32,500 as the sum which had escaped assessment and finally, assessment was completed by adding back Rs.32,500 with the total income of the assessee.
- Thereafter, the Commissioner passed order under section 263 opining that requisite enquiry were not conducted regarding issue of share capital including premium received by assessee-company. 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.
- On appeal, the Tribunal, upheld order of the Commissioner passed under section 263.
- On appeal to the High Court, the assessee contended that the Commissioner ought to have confined his decision, while exercising power under section 263, only to the issue on which reassessment was made under section 147/143(3).

### Held

- The authorities relied upon by assessee are *CIT v. Alagendran Finance Ltd.* [\[2007\] 293 ITR 1/162 Taxman 465 \(SC\)](#) and *Ranbaxy Laboratories Ltd. v. CIT* [\[2011\] 336 ITR 136/200 Taxman 242/12 taxmann.com 74 \(Delhi\)](#). In the latter case, the Assessing Officer had issued notice under section 148 on the ground that certain items from the assessee's accounts had escaped assessment. The Assessing Officer was satisfied with assessee's explanation over these heads and no disallowance

was made by the Assessing Officer in respect of these items. In the reassessment proceeding, however, the Assessing Officer found certain other deductions to have had been wrongly claimed and reduced the claim of deduction. This was found to be impermissible by the Delhi High Court. It was held that an Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings were initiated but he was not justified to undertake such exercise when the reasons for initiation of the proceeding did not survive.

- In the case of *Alagendran Finance Ltd. (supra)*, the revisional power of the Commissioner was in issue before the Supreme Court, but it was in relation to the question of limitation. In that case also, reassessment was made under certain specific heads. The Commissioner thereafter exercised his revisional jurisdiction in relation to part of the assessment order involving certain other items not involved in the reassessment proceeding. These items did not form the basis of reassessment proceeding. The jurisdiction of the Commissioner to invoke his revisional power was questioned on the ground of limitation, as provided for in sub-section (2) of section 263. In the factual context of that case, the Commissioner's power to exercise his revisional jurisdiction could be retained if the date of reassessment was treated to be the starting point for computing the period of limitation. But such revisional power became incapable of being exercised because of limitation provisions if the date of initial assessment under section 143(3) was taken to be the starting point. The Supreme Court's opinion in that case was that if revisional power was sought to be exercised in relation to items which did not form the basis of reassessment proceeding, then the Commissioner's jurisdiction could not be exercised because of the limitation provision contained in section 263(2).
- It is apparent from the reassessment order that the issue of share capital at premium was examined by the Assessing Officer in the reassessment proceeding. There is specific reference to that aspect of the appellant's account in that order passed on 9-4-2010. The said order also records that detail with respect to increase of share capital submitted by the assessee was examined through issue of notice under section 133(6). Though the question of issue of share capital was not a factor which prompted the proceeding for reassessment the triggering factor, being consultancy fees which had escaped assessment, was accepted by the Assessing Officer for undertaking the exercise of reassessment. Thus, it was permissible for the reassessing authority to widen the scope of reassessment. The judgment of the Delhi High Court in the case of *Ranbaxy Laboratories Ltd. (supra)* does not aid the appellant in its endeavour to invalidate the revisional proceeding. The principles enunciated in the case of *Alagendran Finance Ltd. (supra)* also cannot rescue the appellant, as infusion of share capital formed part of the reassessment procedure. The revisional proceeding was thus commenced within the limitation period prescribed under section 263(2). The Tribunal has rightly held in the order impugned that limitation period for passing the order is to be counted from the date of passing the order under section 147 read with section 143(3) and not the date of intimation issued under section 143(1).