

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “C”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1518/M/2023
Assessment Year: 2014-15**

M/s. Citron Infraprojects Ltd., 97, 9 th Floor, Maker Tower F, Cuffe Parade, Mumbai-400 005 PAN: AADCC3735C	Vs.	Principle Commissioner Of Income Tax(Central)-4, Room No.663, 6 th Floor, Aaykar Bhavan, Maharishi Karve Road, Mumbai-400020
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Mr. K.C. Selvamani, CIT D.R.

Date of Hearing : 19 . 07 . 2023
Date of Pronouncement : 27 . 07 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The assessee by filing the present appeal, sought to set aside the impugned order dated 23.03.2023 passed by the Principal Commissioner of Income Tax (hereinafter referred to as PCIT] qua the assessment year 2014-15 on the grounds inter-alia that :-

“1. On the facts and in the circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax (Central)-4 erred in passing ex-parte order, not considering the submission filed by the appellant on 23.03.2023, thereby not following the principles of natural justice. The appellant, thus, prays that the said action of Hon'ble Principal CIT may kindly be quashed.

2. *Without prejudice to Ground No. 1, the Hon'ble Principal Commissioner of Income Tax (Central)-4 erred in holding that the assessment order passed by the learned A.O. u/s. 144 r.w.s. 153A of the Act dated 26.02.2021 is erroneous and prejudicial to the interest of the revenue. The appellant prays that the order of the Principal CIT u/s. 263 may kindly be quashed and the assessment order of the Ld. A.O dated 26.02.2021 may be restored.*

3. *Without prejudice to Ground No. 1, the Hon'ble Principal Commissioner of Income Tax (Central)-4 erred in law and on facts in directing the Ld. A.O. to make addition in the assessment order passed u/s. 153A r.w.s. 144 of the Act which is not based on any incriminating material found in the search.*

4. *Without prejudice to Ground No. 1, the Hon'ble Principal Commissioner of Income Tax (Central)-4 erred in revising the approval of the Ld. Addl. CIT, Central Range 6 obtained u/s. 153D of the - Income Tax Act, 1961. The appellant prays that the said action of Hon'ble Principal CIT may kindly be quashed.*

5. *Without prejudice to Ground No. 1, the Hon'ble Principal Commissioner of Income Tax (Central)-4 erred in holding that the Ld. A.O. has failed to examine the correctness of valuation of shares and setting aside the appellant's case back to the Ld. A.O. for making a fresh assessment of such issue. The appellant prays that the said action of Hon'ble Principal CIT may kindly be quashed.*

6. *The appellant craves leave add/withdraw or amend any ground of appeal at the time of hearing or before hearing.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : on the basis of search and seizure operation carried out at the premises of assessee “incriminating material” was seized on the basis of which notice under section 153A of the Income Tax Act, 1961 (for short ‘the Act’) was issued. During the course of assessment proceedings the assessee filed submissions in response to the notice issued under section 142(1) of the Act. Assessing Officer (AO) noticed that during the year under consideration the assessee company had issued 31,00,000 shares at premium of Rs.190/- per share (issue price Rs.200/-) to the different applicants detailed as under:

Sr. No.	Name & Address	Number of shares applied	Number of shares allotted	Face value received (Rs.)	Share Premium received (Rs.)	Total Payment received (Rs.)
1	Chirag Pittie	335000	335000	33,50,000/-	6,36,50,000/-	6,70,00,000/-
2	Shrivallabh Pittie Mercantile Ltd.	1382500	1382500	1,38,25,000/-	26,26,75,000/-	27,65,00,000/-
3	Shrivallabh Pittie Infraprojects Ltd.	1382500	1382500	1,38,25,000/-	26,26,75,000/-	27,65,00,000/-

3. The value of the share got determined by valuation report issued by M/s. Sanjay & Shah Company, Chartered Accountant at Rs.200/- per share.

4. However, the Ld. PCIT by invoking the revisionary jurisdiction issued a notice under section 263 of the Act by flagging the issue that the AO should have computed the fair market value of the assessee company as per NAV method provided in rule-11UA(2)(a) of the Income Tax Rules, 1962 (for short 'the Rules') and thereby invoked the provisions contained under section 56(2)(viib) of the Act and worked out the share value as per rule 11U at Rs.136/-.

5. The Ld. PCIT reported to have given the opportunity to the Assessee proposing to revise the assessment order but show cause notice was not complied. Another notice was again issued but the assessee failed to respond. Consequently the Ld. PCIT held the order passed under section 144 read with section 153A of the Act as erroneous in so far as being prejudicial to the interest of the Revenue and thereby set aside the same.

6. The assessee carried the matter before the Ld. PCIT by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. PCIT the assessee has come up before the Tribunal by way of filing present appeal.

7. Notice of the present appeal was issued to the assessee on the address given in form No.36 on 22.06.2023 but has not received back served/unserved and as such presumed to have been served upon the assessee. But the assessee has not preferred to prosecute the present appeal. So the Bench has decided to dispose of the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

8. We have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. The Ld. D.R. for the Revenue vehemently supported the order passed by the Ld. PCIT by contending that the present assessee is negligent one since beginning as he had neither appeared before the AO nor before the Ld. PCIT and as such the impugned order passed by the Ld. PCIT should be confirmed.

8. Bare perusal of the impugned order passed by the Ld. PCIT shows that the first notice under section 263 of the Act was reportedly issued to the assessee on 06.02.2023 and second notice was reportedly issued on 24.02.2023 but the assessee reported to

have not been appeared and the Ld. PCIT has proceeded to pass the impugned order.

9. From the facts and circumstances of the case, we are of the opinion that the impugned order has been passed in haste without bringing on record if alleged notices issued to the assessee were ever served upon. It is also a fact on record that assessment order in this case is also passed at the back of the assessee. In these circumstances we do not find any reason to keep the appeal pending because ultimately order needs to be passed on merits by procuring the presence of the assessee by way of dasti summons by providing adequate opportunity of being heard. In these circumstances, we hereby set aside the impugned order passed by the Ld. PCIT and remit the case back to Ld. PCIT to decide afresh after procuring assessee's presence and by providing opportunity of being heard.

10. Resultantly the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.07.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 27.07.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.