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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 21.10.2024+ **ITA 532/2024 & CM APPL. 61048/2024****SIPURA DEVELOPERS PVT LTD**

.....Appellant

Through: Mr C S Aggarwal, Sr Advocate with
Mr Ravi Pratap Mall, Mr Pushpa
Sharma and Mr Uma Shankar,
Advocates.

versus

PR. COMMISSIONER OF INCOME TAX 7

.....Respondent

Through: Mr Sunil Aggarwal, SSC, Mr
Shivansh B Panday, Mr Vipul
Acharya, JSCs and Mr Utkarsh
Tiwari, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (ORAL)**

1. The appellant (hereafter *the assessee*) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 27.09.2024 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the Tribunal*) in ITA No.2023/Del/2024.

2. The assessee had preferred the said appeal [ITA No.2023/Del/2024] under Section 253 of the Act assailing an order dated 28.03.2024 passed by



the Principal Commissioner of the Income Tax (hereafter *the PCIT*) under Section 263 of the Act in respect of the assessment year (AY) 2016-17. The learned Tribunal rejected the assessee's appeal.

3. The assessee has projected several substantial questions of law. However, the substantial question that arises is set out below:-

“Whether the Income Tax Appellate Tribunal is correct in law and on facts in upholding the order dated 28.03.2024 passed u/s 263 of the Act by completely ignoring the judgments of jurisdictional High Court of Delhi in the cases of CIT vs. Software Consultants reported in 341 ITR 240 and Ranbaxy Laboratories Ltd. vs. CIT reported in 336 ITR 136?”

4. The present appeal is heard on the said question.

5. The assessee had filed its returns for income for the AY 2016-17 on 11.10.2016 declaring a total income of ₹49,81,950/-. The said return was processed under Section 143(1) of the Act and in terms of the intimation dated 14.08.2017 sent under the said provision, an amount of ₹4,76,97,220/- was determined as refundable to the assessee.

6. The Assessing Officer (hereafter *the AO*) issued the notice dated 30.03.2021 under Section 148 of the Act seeking to reopen the assessment for the relevant assessment year – AY 2016-17. Thereafter, a copy of the reasons recorded for the reopening of the assessment was furnished to the assessee. The assessee was informed that the assessment was reopened on the basis of the information and its analysis received by the Department. The reasons as recorded and disclosed for reopening of the assessment are set out



below:-

“Basic Details of the case:

The assessee is a company which was incorporated on 15.01.2015 under the Company Act, 1956.

The directors of the assessee company are Ajay Kumar Agarwal and Harvinder Singh.

The assessee has filed the return of income for the year under consideration.

1. Details of Information received

Information was received through Insight Portal of Income Tax Department regarding High Value Transactions undertaken by the assessee. It was reported that in the DP account of assessee company maintained in Axis Bank, there was huge credit during the FY 2015-16 of Rs. 95,44,00,462/- . It was further observed that within one month of inception of account, assessee received 4,00,99,000 shares of Feldon Developers Pvt Ltd from third party 2,00,00,000/- shares from Information TV Private Limited, 2,00,99,000 shares from INX News Private Limited. High Value transaction with the above pattern gives prima facie belief of tax evasion in form purchase of shares.

1. Details of analysis of information received and material collected

The above information has been carefully examined and the same has also been verified from the ITR filed by the Assessee. As reported to the bank, assessee was engaged into activity of real estate developer, and such a huge share transaction is not commensurate with the income



profile of the assessee. Accordingly, it is prima facie apparent that amount of Rs. 95,44,00,462/- has escaped assessment.

1. Income Chargeable to tax escaping assessment

In this case, not more than four years have elapsed from the end of the assessment year under consideration and there had not been scrutiny assessment completed for the year under consideration, I have reason to believe that there is non-disclosure of true and complete facts on the part of the assessee and income chargeable to tax has escaped assessment. Since return of income has been filed for the assessment year under consideration i.e. AY 2016-17 and scrutiny assessment has taken place, clause (b) of Explanation 2 to Section 147 is applicable. Accordingly, in this case, the requirement to initiate proceedings u/s 147 is reason to believe as recorded above.

In view of the above stated facts, I am satisfied that at least an income exceeding Rs. 1 lakh chargeable to tax has escaped assessment for the AY 2014-15, within the meaning of section 147 of the Income Tax Act, 1961.

In this case, four years have not elapsed from the end of the assessment year under consideration, necessary sanction to issue notice u/s 148 of the Act is being obtained from the Addl. Commissioner of Income Tax, Range-22, New Delhi under the provisions of section 151(2) of the Income Tax Act, 1961 read with the Taxation and other laws (relaxation and amendment for certain provisions) Act, 2020.”



7. Thereafter, notices were issued to the assessee under Section 142(1) of the Act for assessing the assessee's income chargeable to tax.
8. The assessee filed its objections for initiation of the re-assessment proceedings and also challenged the jurisdiction of the AO, who had issued the said notices on various grounds. Apart from the above, the assessee also furnished its explanation for the source of the funds used for making the investment in the shares of Feldon Developers Private Limited (hereafter *FDPL*). The assessee had explained that it availed the loans and advances for a sum of ₹99,49,00,000/- from M/s Aspire Promoters Private Limited (hereafter *APPL*) and had purchased the shares of FDPL from the said funds.
9. The assessee's objections regarding the jurisdiction of the AO were disposed of by an order dated 28.01.2022. Thereafter, the AO proceeded to re-assess the assessee's income chargeable to tax for the relevant AY.
10. The AO issued the Show Cause Notice dated 27.03.2022 proposing to add the sum of ₹99,49,00,000/- received by the assessee from APPL. The assessee responded to the proposed addition and furnished its explanation along with the relevant documents.
11. The AO accepted the explanation regarding the receipt of loans and advances from the APPL and the investment made by the assessee in acquiring 4,00,99,000 (four crores and ninety-nine thousand) number of shares of FDPL from two entities (2,00,00,000 shares from Information TV Private Limited and 2,00,99,000 shares from INX News Private Limited). And, passed an order dated 30.03.2022 accepting the income as returned by



the assessee.

12. The relevant extract of the assessment order dated 30.03.2022 which clearly indicates that the AO was satisfied with the assessee's explanation to the proposed addition under Section 68 of the Act, is set out below:-

“3. Subsequently, in order to verify genuineness of transaction this unit has issued notice u/s 133(6) to the above parties for cross checking. However, no details/information received from the above three parties. Therefore, this office has issued notice u/s 142(1) of IT Act on 14/03/2022 requesting assessee to collect information as called vide notice U/s 133(6) from the above parties and upload the same immediately. Being aggrieved by the settlement of objection raised, the assessee company filed submission for the disposal of objection raised against the proceeding u/s 147 of the IT Act. This office vide letter dated 17/03/2022 again settled objection raised by the assessee. Subsequently, assessee company vide letter dated 16/03/2022 filed application for adjournment to submit the details. Accordingly, adjournment has been granted and requested the assessee to submit the details by 21/03/2022. The assessee company filed reply on 21/03/2022 and submitted details of share purchase from INX News Pvt. Ltd. and information TV Pvt. Ltd., and also submitted details of unsecured loan received of Rs. 99,49,00,000/- from M/s Aspire Promoters Pvt. Ltd. Further, assessee submitted notarized share purchase agreement made on E-stamp of Rs 100/- dated 03/02/2015 and copy of confirmation of M/s Aspire Promoters Pvt. Ltd., INX News Pvt. Ltd. and Information TV Pvt. Ltd. along with bank statements of respective parties reflecting the transactions. The assessee company did not submitted copy of return of income along with



financial statement of above three parties. Therefore, in absence of financial statements, the credit worthiness of M/s. Aspire Promoters Pvt. Ltd. could not be verified.

4. Accordingly, the Draft assessment order cum show cause notice dated 27/03/2022 has been issued and served upon the assessee through e-mail/ITBA for making addition of Rs. 99,49,00,000/- being unexplained cash credit U/s. 68 of the IT Act. In response to the same, the assessee has submitted reply on 28/03/2022 alongwith all required documents, which are verified and found in order.”

[emphasis added]

13. The learned PCIT was of the view that the said assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. Accordingly, the learned PCIT issued a notice dated 04.01.2024 under Section 263 of the Act. The assessee had received an amount of ₹45,50,00,000/- from a company named “Vatika Limited” on which tax deducted at source (TDS) amounting to ₹4,55,00,000/- had been deducted. The learned PCIT reasoned that the assessee would have received an income of ₹4,55,00,000/- (commensurate with TDS) as interest chargeable to tax. However, the assessee had declared income of only ₹50,00,000/- (incorrectly mentioned by the learned PCIT as ₹5,00,000/-) as profit earned from sale of investment, in its return.

14. The reasons as set out by the learned PCIT for proposing to proceed under Section 263 of the Act in the notice dated 04.01.2024 is set out below:

“3. ... It is noticed that the assessing officer did not raise any query related to this issue during the



course of proceedings nor has the assessee given any justification for claim of TDS without declaring the corresponding interest income from securities.

4. In light of the above facts, it appears to me that the assessment order passed by Assessing Officer is erroneous and is prejudicial to the interest of revenue.”

15. The assessee responded to the said notice and explained that it had invested a sum of ₹1,045.00 Crores in non-convertible debentures of Vatika Limited issued for ₹1,000.00 Crores (issue value). The said non-convertible debentures were redeemed by Vatika Limited on 31.03.2016 at a value of ₹1,045.50 Crores. The assessee claimed that it had earned an income from capital gain of ₹50,00,000/- which was duly disclosed in its returns. However, Vatika Limited had deducted TDS at the rate of 10% on the difference between the issue value and the value at which the said debentures were redeemed being ₹45.50 Crores (₹1,045.50 Crores less ₹1,000.00 Crores).

16. The learned PCIT also issued the notice dated 18.03.2024 alleging that the assessee had received a sum of ₹140,95,00,000/- from Vatika Limited and further paid a sum of ₹145,00,00,000/- to Antonious Developers Private Limited on the last date of the financial year i.e. 31.03.2016..

17. The assessee explained that its gains were limited to the difference between the value at which it had acquired the said debentures and the value at which the same were redeemed by Vatika Limited. Thus, no income had arisen in the hands of the assessee commensurate with the TDS deposited by Vatika Limited.



18. However, the PCIT did not accept the assessee's contention that there was no income chargeable to tax commensurate to TDS, which was the basis of issuance of the notice under Section 263 of the Act. Accordingly, the learned PCIT passed the order dated 28.03.2024 under Section 263 of the Act holding the assessment order passed by the AO as erroneous insofar as it is prejudicial to the interest of the Revenue. According to the learned PCIT, the AO should not have overlooked the said transaction. PCIT held that no enquiry was made by the AO in respect of the aforesaid transaction whereby the assessee had received a sum of ₹140,95,00,000/- from Vatika Limited and further paid a sum of ₹145,00,00,000/- to Antonious Developers Private Limited. And, the said amount was required to be added as an income under Section 68 of the Act. The learned PCIT directed the AO to frame an assessment making the aforesaid addition to the assessee's income for the relevant assessment year.

19. The assessee filed an appeal before the Tribunal which was dismissed by the impugned order.

20. It is apparent from the above that the learned PCIT had sought to make an addition under Section 68 of the Act on account of a transaction which was not the subject matter of the reasons recorded for reopening the assessee's assessment for the relevant assessment year (AY 2016-17).

21. In the aforesaid context, the assessee contends that if the AO could not make any addition in respect of the income that the AO had reasons to believe had escaped assessment; it would not have the jurisdiction to make any other addition to the assessed income in the reassessment proceedings.



22. There is no cavil that Section 147 of the Act, as was in force at the time of issuance of the notice dated 30.03.2021 issued under Section 148 of the Act, is applicable.

23. It is relevant to refer to Section 147 of the Act, as was in force prior to being substituted with effect from 01.04.2021 by virtue of the Finance Act, 2021. The main provision of Section 147 of the Act, as applicable at the material time, is set out below:

“147. *Income escaping assessment.* – If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):”

[Emphasis added]

24. It is apparent from the plain language of Section 147 of the Act, as applicable at the material time, that subject to the Assessing Officer having reasons to believe that the assessee's income had escaped assessment, he could assess or reassess such income *and also* any other income chargeable to tax, which has escaped assessment. Once the assessment was reopened on account of the AO having reasons to believe that the assessee's income had escaped assessment his power was not confined to assessing only such income in respect of which he had reason to believe had escaped assessment but also extended to assessing / reassessing other income which, during the course of proceedings, he finds had escaped assessment. If the AO finds that



the income which he had reason to believe had escaped assessment had not escaped assessment or such reasons could not fructify an assessment, the AO would have no jurisdiction to tax other income. The words “and also as” used in Section 147 of the Act, as applicable, clearly indicate that the assessment / reassessment of income other than income for which the AO had reasons to believe had escaped assessment could only be assessed / reassessed if the income which the AO had reasons to believe had escaped assessment. However, if during the course of the proceedings, the AO was satisfied that the income for which he had reasons to believe had escaped assessment had not escaped assessment, his jurisdiction to assess / reassess under Section 147 of the Act would stand concluded.

25. The Rajasthan High Court in ***Commissioner of Income Tax v. Shri Ram Singh:(2008) 306 ITR 343 (Raj)*** had interpreted the language used in Section 147 of the Act and held as under:

“27.....It is only when, in proceedings under section 147 the Assessing Officer, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had “reason to believe” to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147.

28.To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the Assessing Officer were to come to the conclusion, that any income chargeable to tax, which, according to his “reason to believe”, had escaped assessment for any assessment year, did not escape assessment, then, the mere fact that the Assessing Officer entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax which the Assessing Officer may find to have escaped assessment, and



which may come to his notice subsequently, in the course of proceedings under section 147.”

26. The Bombay High Court in *Commissioner of Income Tax v. Jet Airways (I) Limited:(2011) 331 ITR 236 (Bom)* had examined the import of Explanation 3 that was introduced to Section 147 of the Act. The said explanation clarified that the power of the AO was not confined to assessing or reassessing such income for which he had reasons to believe had escaped assessment but also to other income which, during the course of the proceedings, were found to be chargeable to tax. However, the Bombay High Court had held that introduction of Explanation 3 by virtue of Finance (No.2) Act of 2009 with retrospective effect from 1989 did not override or negate the condition as contained in the substantive provision of Section 147 of the Act. Thus, the income, other than the income which the AO had reasons to believe had escaped assessment, could be assessed only if the income which the AO had reasons to believe had escaped assessment was found to have escaped assessment. The relevant extract of the Bombay High Court’s decision is reproduced below:

“22. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment of reassessment on grounds other than those on the basis of which a notice was issued under section 148. Setting out the reasons, for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the Finance (No. 2) Act of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section



147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

[Emphasis added]

27. In *Ranbaxy Laboratories Ltd. v. Commissioner of Income Tax: 2011 SCC OnLine Del 2612* a Coordinate Bench of this Court concurred with the aforesaid view and held as under:

"18. We are in complete agreement with the reasoning of the Division Bench of the Bombay High Court in the case of CIT v. Jet Airways (I) Limited (2011) 331 ITR 236 (Bom). We may also note that the heading of section 147 is "income escaping assessment" and that of section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute the escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per Explanation 3 if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make



assessment of those items. However, the Legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under section 147 regarding assessment or reassessment of the escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items, viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under sections 80HH and 80-I as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under sections 80HH and 80-I and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-I which as per our discussion was not permissible. Had the Assessing Officer proceeded to make disallowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per Explanation 3 to reduce the claim of deduction under sections 80HH and 80-I as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in the affirmative in favour of the Revenue and the second part of the question against the Revenue.”

[Emphasis added]



28. The aforesaid decision was also subsequently followed by this Court in *Commissioner of Income Tax v. Software Consultants*, (2012) 341 ITR 240 and *Commissioner of Income Tax (Exemption) v. Monarch Educational Society*: 2016 SCC OnLine Del 6636. In *Commissioner of Income Tax (Exemption) v. Monarch Educational Society* (*supra*), this Court observed as under:

“8. The issue urged by the Revenue stands covered in favour of the assessee by the decision of this court in *Ranbaxy Laboratories Ltd. v. CIT* (2011) 336 ITR 136 (Delhi) which has been followed in *CIT v. Software Consultants* (2012) 341 ITR 240 (Delhi). In sum, if no addition is made on the basis of the reasons to believe recorded by the Assessing Officer for reopening the assessment under section 148 of the Act, resort cannot be had to Explanation 3 to section 147 of the Act to make an addition on any other issue not included in the reasons to believe for reopening the assessment. No substantial question of law arises. The appeal is dismissed.”

29. The issue involved in the present case is similar to the one involved in *Commissioner of Income Tax v. Software Consultants* (*supra*). In the said case, the assessee had not filed its return of income for the AY 1993-94. During the assessment proceedings relating to a subsequent assessment year (AY 1997-98), the AO noted that the Central Bureau of Investigation (CBI) had conducted a search in the premises of the assessee and had found Fixed Deposit Receipts (FDRs) of a value of ₹20,00,000/- in the possession of a Director of the assessee company. The said Director claimed that although the FDRs were in her name but the same belonged to the assessee company. This explanation was accepted by the Commissioner of Income Tax (Appeals) in an appeal filed by the said Director in her personal capacity.



30. The FDRs in question pertained to the AY 1993-94. In view of the said information, the AO issued a notice under Section 148 of the Act. In response to the said notice, the assessee filed its return declaring a loss of ₹1,02,756/-. During the proceedings initiated pursuant to the reassessment notice issued under Section 148 of the Act, the assessee established its capacity to invest ₹20,00,000/- and had also proved the source of the funds. The AO accepted the same and thus, made no addition in respect of the FDRs in question. During the course of the assessment proceedings, the AO also noticed that there was an increase of ₹47,00,000/- in the share application money reflected by the assessee company in its books of account. The share application money was received from several persons. The AO thus issued notice to one such person selected on a random basis. The said notice recorded his statement confirming the investment made in the assessee company.

31. Thus, the AO did not make any addition on account of the increase in the share application money during the relevant assessment year.

32. The Commissioner of Income Tax (CIT) was of the view that the AO ought to have made further enquiries in respect of the share application money. Accordingly, the CIT passed an order under Section 263 of the Act on the basis that the AO's order was erroneous and prejudicial to the interests of the Revenue.

33. This Court, following the earlier decision in ***Ranbaxy Laboratories Ltd. v. Commissioner of Income Tax*** (*supra*) found that CIT's order under Section 263 of the Act was unsustainable. This is primarily on the ground that since the assessee company's explanation for investment in FDRs of the



value of ₹20,00,000/- was accepted, no addition could have been made by the AO in respect of any other income. It will be apposite to refer to conclusion arrived at by the Court in the said case. The same is set out below:

“14. For exercise of power under section 263 of the Act, it is mandatory that the order passed by the Assessing Officer should be erroneous and prejudicial to the interests of the Revenue. In the present case, the Assessing Officer did not make any addition for the reasons recorded at the time of issue of notice under section 148 of the Act. This position is not disputed and disturbed by the Commissioner of Income-tax in his order under section 263 of the Act. Sequitur is that the Assessing Officer could not have made an addition on account of share application money in the assessment proceedings under section 147/148. Accordingly, the assessment order is not erroneous. Thus, the Commissioner of Income-tax could not have exercised jurisdiction under section 263 of the Act.”

34. In a recent decision in *ATS Infrastructure Limited v. Assistant Commissioner of Income Tax*: **Neutral Citation: 2024:DHC:5474-DB**, this Court took note of a number of decisions including in *Ranbaxy Laboratories Ltd. v. Commissioner of Income Tax* (*supra*) and reiterated the proposition that in the event no addition is made in respect of income which the AO had reason to believe had escaped assessment, no other income would be taxed as having escaped the assessment.

35. Clearly, if the AO could not have made an addition in the taxable income of the assessee for the relevant assessment year, on account of investment made in FDPL shares – which was the AO’s reason to believe that the assessee’s income had escaped assessment – no addition in respect of any other amount could be made to the assessed taxable income of the assessee in proceedings initiated pursuant to the notice dated 30.03.2021



issued under Section 148 of the Act. It follows that the AO's order dated 30.03.2022 could not be held to be erroneous insofar as it is prejudicial to the Revenue on account of not making any addition on account of income from interest on non-convertible debentures of Vatika Limited. Thus, in fact, the PCIT passed an order under Section 263 of the Act, which the AO could not have been passed in the reassessment proceedings.

36. Mr Aggarwal, the learned counsel appearing for the Revenue had submitted that the powers of the Commissioner under Section 263 of the Act are not abridged/restricted by any restriction/limitation in exercise of powers by the AO or on account of any action/inaction/wrong action on the part of the AO. He contends that in view of the above, it is not necessary to deal with the principal contention of the assessee that absent any addition of the income alleged to have escaped assessment in the reasons recorded by the AO, the AO did not have any jurisdiction to make any other addition under Section 147 of the Act.

37. The said contention is unmerited. The powers of the Commissioner under Section 263 of the Act are in the nature of a review and an order under Section 263 of the Act could be passed only if the learned PCIT found that (i) the order passed by the AO is erroneous; and (ii) that it is prejudicial to the interest of the Revenue. Once it is accepted that the AO could not have made any addition to the assessee's any other income if it was satisfied with the assessee's explanation regarding the transaction of purchase of shares of FDPL; it would follow that the learned PCIT could not fault the AO for not making any such addition.



38. Clearly, once the AO accepted the assessee's explanation regarding the investment made in the shares of FDPL and the amount borrowed from APPL for funding the said purchase, the AO could not proceed to make any addition on any other ground in the reassessment proceedings.

39. Thus, non-addition of any income on account of alleged income from interest commensurate with the TDS deposited by Valtika Limited, or making further enquiries would not confer the learned PCIT with the jurisdiction to pass an order under Section 263 of the Act.

40. The question as framed in paragraph no.3 above is thus, answered in favour of the assessee and against the Revenue.

41. Accordingly, the order dated 28.03.2024 passed by the learned PCIT and the impugned order passed by the learned Tribunal are set aside.

42. The appeal is allowed in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

OCTOBER 21, 2024

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Click here to check corrigendum, if any