

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI  
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
&  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.2980/Mum/2015  
(Assessment Year: 2010-11)**

KSM Securities & Finance Private Limited 2 <sup>nd</sup> Floor, National Insurance Building, 204, D.N.Road Fort, Mumbai-400 001	Vs.	CIT-1 3 <sup>rd</sup> Floor, Room No.387 Aaykar Bhawan M.K.Road Mumbai-400 020
<b>PAN/GIR No.AAACK4080F</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri K.Gopal & Ms. Neha Paranjape, AR's
Revenue by	Shri T.Kipgen, CIT-DR
<b>Date of Hearing</b>	<b>06/01/2020</b>
<b>Date of Pronouncement</b>	<b>04/03/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax-1, Mumbai, dated 25/03/2015 u/s 263 of the I.T.Act, 1961 for Assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:-

1) *The learned Commissioner of Income Tax erred in initiating proceedings under section 263 of the Income Tax Act, 1961, Your appellants therefore submit that the initiation of proceedings under section 263 of the Income Tax Act, 1961 is illegal and bad in law and order of the learned Commissioner of Income Tax be quashed or set aside.*

2) *The learned Commissioner of Income Tax erred in setting aside the assessment made by the assessing officer under section 143(3) of*

*the Income Tax Act 1961 and directing the assessing officer to make a fresh assessment. Your appellants submit that setting aside of assessment is illegal and bad in law.*

3) *The learned Commissioner of Income Tax erred in holding that premium received on issue of shares is not explained and therefore chargeable to tax under section 68 of the Income Tax Act, 1961. Your appellant submits that the premium received on issue of shares was fully explained to the assessing officer during the course of assessment proceedings and therefore the directions given by the leaned Commissioner of Income-tax to reframe the assessment be quashed or set aside.*

4) *The learned Commissioner of Income Tax erred in directing the assessing officer to reframe the assessment order after considering the stock-in-trade for calculating disallowance under section 14A of the Income Tax Act, 1961, Your appellant submit that the assessing officer has applied his mind while calculating the disallowance under section 14A of the Income Tax Act, 1961 and has calculated the same while passing assessment order under section 143(3) of the Income Tax Act, 1961. Your appellant submit that the direction given by the learned Commissioner of Income Tax is void and bad in law and ought to be quashed or set aside.*

5) *Your appellant further reserves the right to add, amend or alter the aforesaid grounds of appeal as they may think fit by themselves or by their representatives.*

3. The brief facts of the case are that the assessee is engaged in the business of financing, investments, consultancy and share related activities, filed its return of income for AY 2010-11 on 12/10/2010, declaring total income of Rs.15,77,305/-. The assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 06/03/2013, determining the total income at Rs.29,80,924/- by making additions towards disallowances u/s 14A of the I.T.Act,1961. Subsequently, the Ld.CIT-1, Mumbai, issued show cause notice u/s 263 of the I.T.Act, 1961 and called upon the assessee to explain as to why, the assessment order passed by the Ld. AO, dated 06/03/2013 shall not be revised for the issues stated in his show cause notice. In the show cause notice, the Ld.CIT has questioned issue of shares at premium, in light of provisions of section 68 of the

I.T.Act, 1961 and also, disallowances of expenditure u/s 14A of the I.T.Act, 1961 and opined that the assessment order passed by the Ld. AO is erroneous, insofar as it is prejudicial to the interest of the revenue. In response to show cause notice, the assessee submitted that it has furnished necessary evidences in order to prove identity, genuineness of transactions and creditworthiness of the parties, in respect of share capital and share premium and also, furnished necessary details with regard to disallowances of expenditure incurred in relation to exempt income. The Ld. AO after satisfied with explanation furnished by the assessee, has accepted the claim of share capital issued with premium, however made additions towards disallowances u/s 14A of the Act of Rs.2,49,457/- by applying the provisions of Rule 8D of I.T.Rules, 1962. Therefore, the assessment order passed by the Ld. AO cannot be considered as erroneous, insofar as it is prejudicial to the interest of the revenue. The Ld.CIT after considering relevant submissions of the assessee and also taken note of provision of section 68 of the Act, opined that the assessment order passed by the Ld. AO is erroneous insofar as, it is prejudicial to the interest of the revenue, in respect of share premium collected on issue of shares and issue of disallowances of expenditure u/s 14A of the Act, on the ground that although, the Ld. AO has examined both the issues ,but failed to appreciate the facts to relevant provision of the Act, even though the assessee has issued shares at huge premium, which is not supported by necessary evidences. Further, although the Ld. AO has determined disallowances u/s 4A r.w.Rule 8D, but excluded shares held as stock in trade for the purpose of determination of disallowances, even though shares held as stock in trade needs to be considered for the purpose of computation of average value of investments.

Therefore, he opined that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue and accordingly, set aside the assessment order passed by the Ld. AO with a direction to reframe the assessment afresh taking into account, the observation made in his order.

4. The Ld. AR for the assessee submitted that the Ld.CIT has erred in invoking jurisdiction u/s 263 of the I.T.Act, 1961 to revise the assessment order passed by the Ld. AO, even though the assessment order is neither erroneous, nor prejudicial to the interest of the revenue, insofar as, the issues questioned by the Ld.CIT in his show cause notice. The Ld. AR, further submitted that the Ld.AO has examined issue of share premium collected for issue of shares and furnished necessary evidences to prove that a share capital has been raised from family members of promoters of the company and all subscribers to share capital have sufficient source of income to explain the amount of investments in assessee company. The assessee has also explained shares issued at premium. The Ld. AO after being satisfied with explanation furnished by the assessee has accepted the claim. The Ld. AR, further submitted that insofar as, disallowances of expenditure u/s 14A of the Act, the Ld. AO has applied the provisions of Rule 8D of I.T.Rules, 1962 and determined total disallowances of Rs.10,23,618/- and after reducing suo-moto disallowances made by the assessee has made further addition of Rs.2,42,457/-. Therefore, the Ld.CIT was incorrect in assuming that the Ld. AO has not verified the issue in right perspective of the law. In this regard, he relied upon various judicial precedents, including the decision of Hon'ble Bombay High court, in the case of CIT vs Neerav Modi (2016) 241 taxmann 245.

5. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT submitted that the assessment order passed by the Ld. AO is erroneous, insofar as it is prejudicial to the interest of the revenue, because the Ld. AO has not verified the issue of shares issued at premium and also, disallowances of expenditure u/s 14A of the Act. Therefore, the Ld.CIT was correct in assuming jurisdiction u/s 263 of the I.T.Act, 1961.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below, along with case laws cited by both the parties. The provisions of section 263 provides an inherent power to the commissioner of income tax to revise the assessment order, if he is satisfied that the assessment order passed by the Ld. AO is erroneous, insofar as, it is prejudicial to the interest of the revenue. In order to invoke jurisdiction u/s 263, the Id.CIT should satisfy himself that the Ld. AO has passed erroneous order, which caused prejudice to the interest of the revenue. Unless, the Ld. CIT satisfied twin condition provided u/s 263, he cannot assume jurisdiction to revise the assessment order. In this legal background, if you examine facts of present case, one needs to understand, whether the assessment order passed by the Ld. AO is erroneous, insofar as it is prejudicial to the interest of the revenue. The Ld.CIT has questioned two issues in his show cause notice. According to the CIT, the Ld. AO has not examined the issue of share premium collected on issue of shares in light of provisions of section 68. He has also questioned the issue of disallowances u/s 14A of the Act, in light of exclusion of shares held as stock in trade for the purpose of determination of average value of investments.

Insofar as, issue of shares at premium, there is no doubt, the Ld. AO has called for necessary details by issuing a specific notice u/s 142(1), for which the assessee has filed a detailed reply, vide its letter date 29/10/2012, which is part of paper book at page No.19, where it has furnished complete details, including issue of share at premium. The assessee has also filed necessary details with regard to expenses incurred in relation to exempt income and also claimed that it has made suo-moto disallowances of Rs.7,81,161/-. The Ld. AO has determined disallowances u/s 14A by invoking Rule 8D and made further additions, over and above disallowances made by the assessee. These are undisputed facts. The Id.CIT, although accepted fact that the Ld. AO has examined the issue of shares at premium, but questioned premium collected on issue of shares, in light of provisions of section 68 of the Act, 1961.

7. Having heard both the sides, we find that once necessary ingredients provided u/s 68 i.e identify, genuineness of transactions and creditworthiness of the parties are proved, then the share premium collected on issue of shares cannot be questioned, because the proviso inserted to section 68 of the I.T.Act, 1961 was effective from AY 2013-14 and which is not applicable for the year under consideration as held by the Hon'ble Bombay High Court, in the case of CIT vs Green Infra Ltd. [2017] 392 ITR 7. Insofar as, disallowances of u/s 14A of the Act, the main allegation of the Ld.CIT is that although, the Ld. AO has computed disallowances by invoking Rule 8D, but has excluded shares held as stock in trade contrary to provision of section 14A r.w.Rule 8D of I.T.Rules, 1962. We find that the law as was there at the prevailing time, when the assessment was completed by the Ld. AO was supported by certain

judicial precedents, as per which share hold as stock in trade was not necessarily to be included for the purpose of determination of average value of investments. The Ld. AO on the basis of law prevailing at that time has considered the issue and determined disallowances applying the prescribed procedure provided u/s 14A r.w.Rule 8D of I.T.Rules, 1962. Therefore, we are of the considered view that the Id.CIT was erred in, coming to the conclusion that the Ld. AO has not examined the issue, in light of provisions of the Act. Further, when a issue has been considered by Ld. AO and has taken one of the possible views, then the Ld.CIT cannot assume jurisdiction to revise assessment order, on the ground that the enquiries conducted by the Id. AO is inadequate. This legal principle is supported by the decision of Hon'ble Bombay High court, in the case of CIT vs Neerav Modi (supra), where it was held that where the Ld. AO after making proper and detailed enquiries took a view that amount received towards gift received from his relative as a gift transactions, impugned revisional order passed by the commissioner directing the Ld. AO to enquiry into capacity of donors and to decide about genuineness of the gift was not sustainable. This legal principle is further supported by the decision of Hon'ble Supreme Court, in the case of CIT vs Max India Ltd.(2007) 295 ITR 282, where it was held that where, two views inherently possible and when, one view had to be taken into account by considering position of law, as it stood on day, when the commissioner passed order in purportedly exercises of his power u/s 263 of the Act, then view taken by the Ld. AO cannot be called erroneous and the Ld.CIT is incorrect in assuming jurisdiction u/s 263 of the I.T.Act, 1961.

8. In this case, on perusal of facts available record, we find that the assessee has furnished necessary details with regard to share premium collected from family members and the Id. AO after being satisfied with explanation furnished by the assessee has accepted the claim. Similarly, the Ld. AO has thoroughly examined the claim of expenditure incurred u/s 14A of the Act and made further disallowances by invoking Rule 8D of I.T.Rules, 1962. Therefore, we are of the considered view that the Ld.CIT was incorrect in assuming jurisdiction to revise the assessment order u/s 263 of the I.T.Act, 1961 on both issues. Hence, we are inclined to set aside the order passed by the Id.CIT u/s 263 of the I.T.Act, 1961 and restored the assessment order passed by the Ld. AO u/s 143(3) of the I.T.Act, 1961.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 04/03/2020

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai