

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2491/Del/2017
(Assessment Year: 2012-13)

M/s. Globus Projects Private Ltd, Unit No. 5D, 5 th Floor, Assets Aria Signature Offices, JW Marriott Hotel, Asset Area-4, Delhi Aerocity Hospitality District, New Delhi PAN:AACCG5308E	Vs.	DCIT, Central Circle-1, Faridabad
(Appellant)		(Respondent)

ITA No. 2484/Del/2017
(Assessment Year: 2012-13)

Bestech Hospitalities Pvt. Ltd, Unit No. 5D, 5 th Floor, Assets Aria Signature Offices, JW Marriott Hotel, Asset Area-4, Delhi Aerocity Hospitality District, New Delhi PAN:AACCG5308E	Vs.	DCIT, Central Circle-1, Faridabad
(Appellant)		(Respondent)

ITA No. 2485/Del/2017
(Assessment Year: 2012-13)

Bestech India Pvt. Ltd, Unit No. 5D, 5 th Floor, Assets Aria Signature Offices, JW Marriott Hotel, Asset Area-4, Delhi Aerocity Hospitality District, New Delhi PAN:AACCG5308E	Vs.	DCIT, Central Circle-1, Faridabad
(Appellant)		(Respondent)

Assessee by :	Shri Raj Kumar Gupta, CA Shri Sunit Goel, CA
Revenue by:	Smt Aparna Karan, CIT DR
Date of Hearing	22/11/2017
Date of pronouncement	30/11/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. All these three appeals have been filed by three different assessees against the order of Id CIT (Central), Gurgaon u/s 263 of the Act holding that the order of the Id Assessing Officer

passed u/s 153A of the Income Tax Act are erroneous and prejudicial to the interest of revenue. The parties before us agreed that facts and circumstances of all these three appeals which pertained to “Bestech Group” are similar and their arguments are also similar. With the consent of the parties and as suggested by them ITA No. 2491/Del/2017 for AY 2012-13 was taken up as the lead matter and decision taken therein is applied to the facts of other appeals in ITA No. 2484/Del/2017 and 2485/Del/2017 for Assessment Year 2012-13.

2. Now, therefore, we take up the ITA No. 2491/Del/2017 in case of Globus Projects Pvt. Ltd.
3. The assessee has raised the following grounds of appeal in ITA No. 2491/Del/2017 for Assessment Year 2012-13:

“(A) That on the facts & circumstances of the case and the statement of Mr. Sanjay Singhal, CMD of M/s Bhushan Power and Steel Ltd. the learned CIT u/s 263 erred in:

- i) Holding that the A.O. has failed to thoroughly examine/ investigate the identity/ genuineness/ creditworthiness/ of the parties from whom the alleged share application money/ share capital have been received Inspite of the A.O. conducting detailed enquiries and servicing notices on all shareholders, companies u/s 131 and 133(6) of the Income Tax Act & due compliances by them including recording of Directors statement on oath.*
- ii) Holding that the capital contributed by M/s KDK Food Grains Pvt. Ltd., M/s Leisure Buildcon Pvt Ltd. and M/s Manomay Foods & Beverages Pvt. Ltd. in the Assessee Company was not genuine as it was out of funds advanced by the M/s Bhushan Power and Steel Ltd to them.*
- iii) Holding that the Assessment order passed u/s 153A(l)(b) by the Assessing officer is the efore erroneous & Prejudicial to the Interest of the revenue.*
- iv) Holding that the Assessment Order u/s 153A(l)(b) dated 13.06.2014 passed by the Assessing Officer is therefore set aside to be made de novo.”*

4. The brief facts of the case is that assessee is a company engaged in the business of real estate developments. On 04.07.2012 search u/s 132 of the Act was carried out at residential and office premises of Bestech Group of Companies. Survey u/s 133A was also carried out at the business premises of the company. This company was also part of that group. Therefore, in terms of provisions of section 153A read with section 153C of the Act notice was issued on 29.11.2013. The assessee furnished return of income on 10.12.2013 declaring income of Rs. 4167120/-. After the discussion assessment u/s 153A(1)(b)of the Act was passed on 13.06.2014 by the Deputy Commissioner of Income Tax, Central Circle-1, Faridabad.
5. Subsequently, on 08.11.2016 the Pr. Commissioner of Income Tax (Central), Gurgaon issued show cause notice u/s 263 of the Act for the impugned assessment order as under:-

*“The Principal Officer,
M/s Globus Project Pvt. Ltd.,
SCO-169-170, Ground Floor
Sector 8-C, Madya Marg,
Chandigarh*

Subject:- Show cause notice u/s 263 of the Act, 1961 in the case of M/s. Goobus Projects Pvt. Ltd. Assessment Year 2012-13-reg]

1. The search and seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 04.07.2012. Notice u/s 153A(l)(a) of the Act was issued on 29.11.2013 which was duly served upon the assessee. The assessee in response to the above notice filed his return of income on 10.10.2013 declaring returned income of Rs. 41,67,120/- and assessment u/s 153A(l)(b) of the i.T. Act was made vide order dated 13.06.2014 and income of the assessee was accepted at Rs. 41,67,120/-.

2. On perusal of the balance-sheet and record of the assessee for year under ;essment, it was observed that assessee company have received share application money/share capital to the extent of Rs, 7,38,00,000/- from the three companies named as under:-

- i. M/s Leisure Buildcon Pvt. Ltd., C-17, Guru Nanakpura, Opp. Scope Tower, Laxmi Nagar New Delhi (Rs. 2,31,00,000/-)*
- ii. M/s KDK Food Grains Pvt. Ltd., Shop No. 17, Plot No. 13E, Gali No. 20, Guru Nanak Complex, Madhu Vihar, Delhi - 110092. (Rs, 3,36,00,000/-)*
- (iii) M/s Manomay Food & Bev. Pvt. Ltd., Shop No. 17, Plot No. 13E, Gali No. 20, Guru Complex, Madhu Vihar, Delhi -110092 (Rs. 1,71,00,000/-)*

During the course of assessment proceedings assessee was required to give the source of the share capital the company, please also furnish detail of any changes in the share capital of the compare, the year . In response to the assessee has submitted its reply vide letter dated 12.03.2014 the assessee company has allotted 2,46,000 fresh shares. To prove the identity, genuineness of the transactions and creditworthiness of each of the above said share holders, following documents are enclosed herewith for verification and record.

- a) Share application form*
- b) Board resolution for investment in the assessee company in case the share holder is a company.*
- d) Copy of extract of hoard meeting of the. assessee company in which allotment of shares has been made.*
- d) Copy of allotment letter.*
- e) Copy of confirmation of accounts.*

- f) Bank statement reflecting the said payment of shares and its sources of funds.
 g) Copy of income tax return acknowledgement
 h) Copy of balance sheet showing the investment in the Assessee company.

3. The DDIT(Inv.)-I, Faridabad vide his report dated 17.04.2015 reported as under:-

"A survey operation u/s 133A was carried out in the case of M/s Bhushan Power and Steel Ltd. (BPSL) on 27.12.2012 and issue of advances made to M/s KDK Food Grains Pvt Ltd., M/s Leizure Buitdcon Pvt Ltd., M/s Manomay Foods & Beverages Pvt Ltd. M/s SPB Propcon Pvt Lid. M/s Strap Creation Pvt Ltd., M/s Syns Construction Pvt Ltd. was confronted to Sh. Sanjay Singhal, CMD of BPSL. Sh. Sanjay Singhal could not give any specific detail and was also not able to establish the genuineness of existence of above mentioned companies The amounts given to the above companies are outstanding in the books as advances. The details of advances given are as under:-

S.No.	Name & address of the Company	FY.	Amount given as capital advances
1	M/s KDK Food Grains Pvt Ltd., F-20/B, 2 nd floor, Gali No. 29, Gurudwara Rd., Madhy Vihar, New Delhi	2011-12	12,50,00,000/-
2	M/s leisure Buildcon Pvt. Ltd., 27 Kilokari Village Opposite, Thaper Business Center., New Delhi	2011-12	12,50,00,000/-
3	M/s Maonmay food & Bev. Pvt Ltd., F-2Q/B, 2 nd floor, Gali No. 29, Gurudwara Rd., Madhy Vihar, New Delhi	2011-12	9,00,00,000/-
4	M/s SPB Propcon Pvt Ltd., 27 Kilokari Village Opposite, Thaper Business Center, New Delhi	2011-12	13,00,00,000/-
5	M/s Strap Creation Pvt Ltd., 106 Dua Business Center, Main Vikas Marg, Shakarpur, Delhi	2011-12	10,00,00,000/-
6	M/s Syns Construction Pvt Ltd., A-69, Laxmi Nagar, Delhi		11,00,00,000/-

Sh. Sanjay Singhal stated that Rs. 68 crores were given to the above companies by BPSL as advances.

In this case also, BPSL has made payments to paper companies namely M/s KDK Food Grains Pvt Ltd., M/s Leizirc Bulldcon Pvt. Ltd., M/s Manomay Food' : / Beverages Pvt Ltd., M/s SPB Propcon Pvt Ltd., M/s Strap Creation Pvt. Ltd., M/s

Syns Construction Pvt. Ltd. for siphoning off funds in the grab of making bogus purchase or for buying capital goods. From the analysis of ITR and ROC data of the above mentioned companies, it is found that these companies are not doing any meaningful business activities and are existing only on papers. Summons were issued to the companies and their directors on 02.09.2014.

No.	Name of the company to which summons issued	Name of the Directors to which summons issued	Remarks
1	M/s KDK Food Grains Pvt Ltd.	Sh. Ajay Kumar, E-635/B, Pratap Vihar, Ghaziabad Sh. Mahindra Saxena, E-648, Sec-10, Pratap vihar, Vijay Nagar, Ghaziabad	No compliance made till date
2	M/s Leizure Buildcon Pvt Ltd.	Sh. Surabh Jain and Sh. Ramji, 27 KHokari Village, Sunlight colony. New Delhi	No compliance made till date
3	M/s Manomay Foods & Beverages Pvt Ltd.	Sh. Ajay kumar, E-635/B, Pratap Bihar, Ghaziabad Sh. Mahindra Saxena, E-648, Sector-to,	No compliance made till date
4	M/s SPB Propcon Pvt. Ltd.	Sh. Surabh join and Sh. Ramji, 27 Kitokari Village, Sunlight colony, New Delhi	No compliance made till date
5	M/s Strap Creation Pvt Ltd	Sh Jai Narayan, 106 Dua Business Center, Main Vikas Marg, Shakarpur, Delhi Sh. Anil*Kumar, A-62, Laxmi Nagar, Delhi	No compliance made till date
6	M/s Syns Construction Pvt Ltd.	Sh. Mahesh Prasad, Sh. Sudhir Sharma and Nitin Yadav, A-69, Laxmi Nagar, New Delhi, Sh. Santosh Kumar, G-29, Laxmi Nagar, New Delhi	No compliance made till date

Till date not a single director or anybody on the behalf of the company has appeared.

During the survey on BPSL on 27.12.2012 Sh Sanjay Singhal, CMD BPSL was asked about the purpose of making such huge advances. He could not give any explanation and admitted for disallowance of interest on these advances given. Thus, assesses himself admitted that no goods have been purchased from the above entities and amounts are still outstanding in the name these paper entities in the books of accounts of BPSL

From the above discussion on modus operandi and financial credentials of above entities to which payments were made, it is concluded that payments were made to these entities for siphoning off funds from BPSL Payments made by BPSL to the above mentioned paper entities have finally been introduced in the entities of Bestech Group in form of bogus share capital/premium. Thus, prima facie from the discussed modus operandi, it appears that cash paid by Bestech group for taking bogus share

capital/ premium accommodation entries through paper entries has been given equal amount of BPSL group. However, issue may be investigated further before finalizing the assessment proceedings.

4. *it is seen that during the assessment proceedings, the issue of creditworthiness and genuineness of the transactions of the investor companies from whom the assessee company has received share capital has not been thoroughly examined/ investigated which is also evident from the report dated 17.04.2015 of DDIT(Inv.)-I, Faridabad. Merely filing confirmations/PAN Nos. etc. does not prove the genuineness & creditworthiness of the investors.*

5. *The order of the Assessing Officer in therefore erroneous & prejudicial to the interests of revenue.*

6. In view of the aforesaid facts, you are hereby given a opportunity to show cause why Asstt. Order dated 30.05.2014 be not revised.

7. You may appeal personally or through authorised representative on 25.11.2016

6. The assessee submitted its replies dated an undated letter, 27.01.2017 and 17.02.2017, which are all placed at, page NO. 146 to 157 of the paper book which are as under:-

a. Undated letter (Page 146 to 154 of the paper book)

*“The Honourable Commissioner of Income Tax - Central,
Gurgaon. Haryana.*

Respected Sir,

*Re:- Reply to Show Cause Notice u/s 263 of Income Tax Act
1961 M/s Globus Project Private Limited. Assessment Year
2012-13*

The above referred assessee is in receipt of show cause notice u/s 263 of Income Tax Act, 1961 for the above-mentioned assessment year. In this regard we respectfully submit as under:

Statement of Facts

- 1. The Assessee is Private Limited Company engaged in the business of Construction and development of Residential and Commercial Complexes.*
- 2. A search and seizure operation under section 132 of the Act was carried out on Bestech Group of cases on 4th July, 2012, wherein some papers relating to assessee company were also seized.*
- 3. During the year under assessment the assessee company has received share application money/share capital from the following companies :*

<i>S. No.</i>	<i>Name of Shareholder</i>	<i>Amount Received</i>
<i>1</i>	<i>KDK Food Grains Pvt. Ltd.</i>	<i>3,36,00,000</i>
<i>2</i>	<i>Leisure Buildcon Pvt. Ltd.</i>	<i>2,31,00,000</i>
<i>3.</i>	<i>Manomay Food & Beverages Pvt. Ltd.</i>	<i>1,71,00,000</i>

4. *The assessee company has duly discharged onus cast on it as per Section 68 of the Income Tax Act, to prove identity of shareholders, creditworthiness of the shareholders and genuineness of transactions by filing requisite proofs / documents to the Assessing Officer vide its letter dated 04.04.2014 wherein it has filed the following documents:*
- *Share Application Form*
 - *Board Resolution of Investor Company authorizing board to make investment in assessee company*
 - *Copy of extract of board meeting of the assessee company in which allotment of shares has been made.*
 - *Copy of Allotment Letter*
 - *Confirmation from Investor Company*
 - *Bank Statement of Investor Company reflecting payment of said share application/ share capital and their sources of funds*
 - *Copy of Income Tax Return of Investor Company*
 - *Copy of Balance Sheet of Investor Company reflecting the investment made by it in assessee company.*
5. *The Assessing Officer has also independently verified the Identity, Creditworthiness of share applicants and genuineness of transactions by independently calling the directors of all the companies by issuing summons u/s 131 and / or simultaneously calling information by issuing notice U/s 133(6) of Income Tax Act at the given address of share applicant companies.*
6. *Alter thorough verification and investigation, the Assessing officer was fully satisfied about the genuineness of the above credits in the books of accounts of the assessee company. Therefore, she did not made any addition u/s 68 of the Act while framing assessment order.*

Submission

Provisions of Section 263 of the Act

Sir, Section 263 of the Income Tax Act states - “ (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, Including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a)

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;

(c)

Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

- (a) *the order is passed without making inquiries or verification which should have been made;*
- (b) *the order is passed allowing any relief without inquiring into the claim;*
- (c) *the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- (d) *the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

On a bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments.

- *In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. It is pertinent to note that „Records“ includes all records relating to any proceeding under this Act available at the time of examination by Learned Commissioner.*
- *The second feature would come when he will judge an order passed by an Assessing Officer based on record available at the time of examination, f Learned Commissioner formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue, he would issue a show cause notice pointing out the reasons for the formation of his belief that action u/s 263 is required on a particular order of the Assessing Officer.*
- *After hearing the assessee and conducting such inquiry as he may deem fit Ld Commissioner will pass the order.*

Broad Principles established by Various Judicial Pronouncement to Judge the Action of CIT taken u/s 263

The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263 as follows:

- (i) *The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.*
- (ii) *Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous then the section will be attracted.*
- (iii) *An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.*
- (iv) *if the order is passed without application of mind, such order will fall under the category of erroneous order.*
- (v) *Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.*

- (vi) *If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power U/s 263 is not permitted to substitute his estimate of income in place of the income estimated by the AO.*
- (vii) *The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not feel satisfied with the conclusion.*
- (viii) *The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.*
- (ix) *if the AO- has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee. the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.*

Independent Verification by Assessing Officer during Assessment Proceedings

Sir in the present case, assessee company has received share application money/ share applicants tabled above. During the assessment proceedings itself:-

- Necessary documents in support of said share application money/ share capital were fed by the assessee company before the learned assessing officer in order discharge onus cast on it as per Section 68 of the Income Tax Act, to prove identity of shareholders, creditworthiness of the shareholders and genuineness of transaction.*
- Assessing office has independently made inquiries and verification of the documents submitted by the assessee. She called requisite information all of these share holders u/s 133(6) of the Act. The notices u/s 133(6) were served and complied by all the share applicant companies who have filed all the documents which were called for in the notice. The assessee company has :: Drained copy of submission made by these companies in response to notice u/s ' 33(6) during assessment proceedings. The copy of the same is being submitted herewith for your kind perusal and records.*
- The Learned Assessing Officer has also called upon the directors of these share applicant companies by issuing summons U/s 131 of the Act. All such summons were duly served and complied by share applicant companies. The director of all the share holder companies have deposed and have filed all such documents which were called for or could be filed in support of said share application money besides appearing in person and answering all the questions raised during the course of recording of statement on oath U/s 131 by the learned Assessing Officer to her satisfaction. The director of all the share applicant companies left the office of the learned assessing officer, only, after giving answers to all the questions raised and after providing all the documents asked for, during the course of recording of statement and no further question/ requisition of*

document was asked / sought by the learned assessing officer from the directors. The assessee applied for and obtained copy of statements recorded and documents filed by the directors of these companies u/s 131 of the Act during assessment proceedings. The copy of the same is being submitted herewith for your honor's kind perusal and records.

From the above facts, it is evident that the assessing officer had made adequate / requisite inquiries / verification to satisfy herself about genuineness of transactions and framed assessment order, only, after being fully satisfied and after taking the approval from her range head. Therefore, order passed by assessing officer cannot be deemed to be erroneous as per Explanation 2 to Section 263 of the Act. Thus, the case of the assessee may not be covered under the provisions of Section 263 of the Act.

Statement recorded u/s 131 and submission received u/s 133(6) forming part of „Records“

Sir, all the above Replies filed by shareholder companies u/s 133(6) of the Act and Statements of directors of shareholder companies recorded on oath in response to notice u/s 131 of the Act, are forming part of „Records“ as defined in explanation 1(b) of Section 263 of the Act. These records may have skipped your examination / may have not been made available to your goodself while judging the assessment order of the Assessing Officer and framing an opinion that identity, creditworthiness of share applicants and genuineness of transactions has not been thoroughly examined / investigated during assessment proceedings whereas assessing officer has framed the assessment order after making adequate inquiries and verification. Thus, the case of the assessee may not be covered under the provisions of Section 263 of the Act.

Order Passed by Learned Assessing officer cannot be termed as Erroneous:-

Sir based on the provisions of section 263 of the Act and broad principles established by various judicial pronouncements, the order passed by the Assessing Officer should be treated as erroneous for the following reasons:

- The Learned AO has made sufficient enquiries during the course of assessment proceedings on the relevant issues by making independent verification of the identity, creditworthiness of shareholders and genuineness of transactions. Further, the assessee has given detailed explanation by a letter in writing and Assessing Officer accepted the share capital on being satisfied with the nature of the assessee and her own independent verification. Thus, the decision of the AO cannot be held to be erroneous although she does not make an elaborate discussion in that regard in the order.*
- While making the assessment, the AO examines the accounts, makes enquiries, applies her mind to the facts and circumstances of the case and determine the income.*
- The Assessing Officer exercises quasi-judicial power vested in her and if she exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous.*

Thus, present case does not fulfill the basic condition of assessment order being erroneous for initiating proceedings u/s 263 of the Act.

It is therefore prayed that show cause notice issued u/s 263 of the Act may please be dropped.

Without prejudice to above submission, we further submit that on merits also, no disallowance u/s 68 of the Act is warranted in the case of the assessee company on the

following grounds:

1. *That as mentioned in Para 3 of show cause notice, Mr. Sanjay Singhal, CMD of BPSL has accepted the fact that BPSL has given the amounts mentioned in the notice to Share Applicants Companies and these are still outstanding in the books as advance. He confirmed these payments to share applicant companies and never admitted that these payments are not genuine.*

The Show Cause Notice also states that he admitted for disallowance of interest on these advances given. It is worth mentioning here that he never admitted to the disallowance of the whole advances but agreed to disallowance of interest attributable to these advances only.

Thus, in his statement, Mr. Sanjay Singhal, CMD of BPSL has never admitted that advances paid to share applicant companies are bogus. Rather, he confirmed the payment of advance to share holder companies, out of which share capital has been paid to the assessee company during the year under consideration. In other words, he has rather confirmed the sources of funds out of which share capital has been paid to assessee company. Thus, no addition u/s 68 of the Act may be made in the case of the assessee company.

2. *That the allegation that these share applicant companies does not have any meaningful business and exist only on papers are just presumptions and there is no basis to allege so. It is evident from the assessment records that the addresses of all the investor companies were genuine where all the summons/ notices/ correspondences have been served/ delivered and complied adequately.*

None of the correspondence mailed by the leaned assessing officer returned back undelivered. All the investor companies were existent and were available on the given addresses. All these share applicant companies are in regular business has sufficient means to invest in the shares of assessee company and same a also been explained and proved by them by submitting the requisite documents and recording of statement on oath in person of one of their respective director before the learned assessing officer. Moreover, Sir, when all share applicant companies are existent and has admitted the investment with assessee company, the addition at all could be made in the hands of the applicant companies and not the assesses company.

3. *That a search and seizure operation was conducted on the residential and business premises of Bestech Group in July 2012. During search operation, lot of documents and papers were seized which were duly analyzed by Investigation /mg and assessing officer. But none of the paper suggest that share capital received by the assessing company was bogus.*
4. *That section 68 of the Act cast a burden on the assessee to prove the identity, creditworthiness of the investors and genuineness of the transactions. Assessee company has proved the identity, creditworthiness of the investors and genuineness of the transactions beyond doubt by providing following documents of all the investor companies besides personal presence of their respective directors:*

Identity	Genuineness	Creditworthiness
----------	-------------	------------------

Certificate of Incorporation of Share Applicant	Copy Share Application Form	PAN of Share Applicant
Address of the Share Applicant	Confirmation of Applicant	Acknowledgement of IT Return for AY 2011- 12
PAN of Share Applicant	Mode of Payment i.e. through Crossed Account Payee Cheque	Copy of Bank Statement of Applicant
Copy of Acknowledgement of IT Return for AY 11-12	Copy of Board Resolution passed by Share Applicant for investment in assessee company	Confirmation of Applicant which also specify the sources of investment
Copy of Bank Statement of Applicant 5	Allotment Letter and Delivery of Shares	Balance Sheet of Share Applicant Company

Sir, it is pertinent to mention here that once a l the share applicant companies has confirmed the fact of giving the share capital / share application money, whatever addition which the learned AO may think fit, should have been made only in the hands of share applicant companies and not the receiver of the money (assessee company) as per the principles laid down by Hon'ble Supreme Court in the case of CIT vs. LOVELY EXPORTS PVT.LTD {(2008) 216 CTR 195) wherein it was held that - "If the share application money is received by the assessee company even from alleged bogus shareholders, whose names are given to AO, then the Department is free to proceed to re-open their individual assessments in accordance with law. But it cannot be regarded as undisclosed income of the assessee company".

Hon'ble Delhi High Court in CIT VS. STELLER INVESTMENTS LT 1991) 192 ITR 287) that "Even if it be assumed that the subscribers to the increased share capital were not genuine, under no circumstances, can the amount of such capital be regarded as undis closed income of the assessee company if certain shareholders were bogus and money was provided by some other persons, reopening of assessment of such persons would be sensible".

Hon'ble High court of Delhi has held in CIT VS. DOLPHIN CANPACK ITD (2006) 283 ITR 190{(2000) 283 ITR 190} that "Tribunal, while observing that complete details i mg confirmations details of bank account, PAN of subscribers to the shares ..ere furnished by the assessee and payments were made by cheques, was jstified in deleting addition under section 68.

The Hon'ble High Court of Rajasthan in the case of ARAVALI TRADING CO. VS. INCOME TAX OFFICER {(2008) 8 DTR 199) held "Once the existence of the creditors is proved and such persons own the credits which are found in the books of the assessee, the assessee"s onus stands discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him either in terms of sec.68 or on general principal".

The judgement of the Delhi High Court in the case of CIT vs Oasis Hospitalities (P) Ltd. (333/119), wherein it is held that where the assessee had filed copy of PAN, acknowledgement of filing ITRs of the companies, there bank account statements for the relevant period but had not produced the Directors of the Co., the addition made by the AO could not be sustained as the primary onus had been discharged by the assessee.

Similarly in the case of CIT vs Sofia Finance Ltd (205 ITR 98) (Del) (FB), it has been held that if the shareholders are identified and it is established that they have invested money for the purchase of shares then the amount received by the assessee Co. would be regarded as a capital receipt and no additions can be made u/s 68 of the Act.

Similar view has been expressed in various other judgments of Hon'ble courts, few of them is cited hereunder:

*CIT v.s Steller Investment Ltd (251 ITR 263) (SC)
Achal Investment Ltd vs CIT (268 ITR 211) (Del)
DCIT.vs Esteem Towers (P) Ltd. (99 TTJ 472) (Del)
CIT vs Dolphin Canpack Ltd (204 CTR 50) (Del)
CIT vs Giocom Impex (P) Ltd. (205 CTR 571) (Del)
CIT vs Gangaur Investment Ltd. (335 ITR 359) (Del)
CIT vs Dwarkadhish Investment (P)Ltd. (330 ITR 298)(Del)
CIT vs Gangeshwari Metal Pvt. Ltd. (2013) 361 ITR 10 (Del)
CIT vs Expo Global India Ltd. (2014) 361 ITR 147 (Del)*

Sir, as regards the credit worthiness, it is submitted that appellant has submitted the confirmation, bank account, Balance Sheet and income tax return of the applicant companies before the learned assessing officer. The appellant was not required to prove the source of the source as has been held by the Supreme Court in the case of CIT vs Daulat Ram Rawat Mull (87 ITR 349)(SC).

Hon'ble High Court of Delhi in the case of CIT vs Value Capital Services Ltd. (307 ITR 334) have held that the additional burden lay on the revenue to show that even if the applicant does not have means to make the investment in shares, the investment has emanated from the coffers of the assessee. In case, this additional burden is not discharged, the investment cannot be treated as undisclosed income of the assessee.

To Sum up, Sir, on this issue the law is very clear that once, assessee prima facie discharges its obligation by furnishing of requisite documents coupled with t. \a i.ev.co of parties, thereafter the onus shifts to the Department and the assessing officer is duty bound to investigate the same and addition, if any, could be made in the hands of applicant companies.

In the present case, the assessee company has duly discharged onus cast on it to prove identity of shareholders, creditworthiness of the -shareholder and genuineness of transaction by providing requisite proofs / documents as detailed above in the submission. The Learned Assessing officer has also independently verified the Identity, Creditworthiness of share applicant and genuineness of transactions by independently calling the directors of the companies u/s 131 and/or calling information U/s 133(6) of Income Tax Act. Thus, no addition u/s 68 of the act is warranted in the hands of the assessee company. In case the learned assessing officer was not at all satisfied about the transaction, appropriate action may have been taken against the share applicant as per the provisions of Income Tax Act.

5. *That, it is submitted that confession by some person in some other case (although in our case no such confession has been made by BPSL), could not lead to the conclusion that assessee Company has indeed received the accommodation entry.*

In this regard, your honor's attention is hereby drawn to the case of Addl. CIT vs. Hanuman Agarwal (151 ITR 150), in which, Hon'ble High Court of Patna

has stated that - “ The so-called confession by the creditor is not in relation to the amount in question but it seems clear that the so-called confession was made by me creditor in a third party”'s case. If the confirmatory letter was issued by the creditor subsequent to the so-called confession, it was much more incumbent upon the Department to summon the creditor in order to verify the statements made in the confirmatory letter. This was never done.”

Thus on the basis of fact and circumstances and various judicial pronouncements and merits of the case, it is hereby prayed that the proceedings initiated u/s 263 of the Act may please be dropped in the interest of justice and oblige.”

b. Letter dated 27/1/2017 (Page nO 155 to 156 of the paper book)

“27th January 2017

*The Honourable Commissioner of Income Tax - Central,
Gurgaon, Haryana.*

Respected Sir,

Re:- Reply to Show Cause Notice u/s 263 of Income Tax Act. 1961 M/s. Globus Projects Private Limited. Assessment Year 2012-13

In continuance of our earlier submission and without prejudice to the fact that the order passed by the learned assessing officer is not erroneous for invoking provisions of section 263 of the act, we respectfully submit that as mentioned in Para 3 of show cause notice, Mr. Sanjay Singhal, CMD of BPSL has accepted the fact that BPSL has given the amounts mentioned in the notice to Share Applicants Companies and these are still outstanding in the books as advance. In other words, he accepted and confirmed the fact that payments made by BPSL to share applicant companies (the companies who has paid share application money to assessee company) are genuine. It is also evident from the fact that all these advances have been duly repaid back by these share applicant companies to BPSL in subsequent period. The confirmation of account from Bhusan Power & Steels Ltd. reflecting such repayment is submitted herewith for your kind verification and records.

It is worth mentioning here that Mr. Singhal never admitted to the disallowance of the whole advances but agreed to disallowance of interest claimed by BPSL which is attributable to these advances. He rather confirmed that advance has been paid by BPSL to share holder companies. After repayment, his statement got further substantiated that all these advances, were genuine business advances.

It is further submitted that Manomay Foods & Beverages Pvt. Ltd. which has paid share application to assessee company out of fund received from BSPL has also repaid back advances received by it. The confirmation of the same is awaited and will be submitted to your goodself in next date of hearing.

In the present case, the assessee company, has duly discharged onus cast on it to prove identity of shareholders, creditworthiness of the shareholder and genuineness of transaction by providing requisite proofs / documents. The Learned Assessing officer has also independently verified the Identity, Creditworthiness of share applicant and genuineness of transactions by independently calling the directors of the companies u/s

131 and/or calling information U/s 133(6) of Income Tax Act. Further, the sources of funds out of which share capital has been paid to assessee company has also been confirmed by Mr. Singhal, CMD of BPSL. Thus, no addition u/s 68 of the Act may be made in the case of the assessee company. In case the your goodself is still not at all satisfied about the transaction, appropriate action may have been taken against the share applicant as per the provisions of Income Tax Act as laid down by various judicial pronouncements.

Thus, on the basis of fact and circumstances and various judicial pronouncements and merits of the case, it is hereby prayed that the proceedings initiated u/s 263 of the Act may please be dropped in the interest of justice and oblige.”

c. Letter dated 17/2/2017 (page no 157 of the paper book)

“17th February 2017

*The Honourable Commissioner of Income Tax - Central,
Gurgaon, Haryana.*

Respected Sir,

Re:- Reply to Show Cause Notice u/s 263 of Income Tax Act, 1961 M/s. Globus Projects Private Limited. Assessment Year 2012 13

In continuance of our earlier submission and without prejudice to the fact that the order passed by the learned assessing officer is not erroneous for invoking provisions of section 263 of the act, we respectfully submit that all the advances received by share applicant companies (the companies who has paid share application money to assessee company) have been duly repaid back to Bhusan Power & Steel Ltd. in subsequent period. All the confirmations of account from Bhusan Power & Steels Ltd. reflecting such repayment have already been submitted to your goodself with our submission dated 27.01.2017. Confirmation of account from Bhusan Power & Steel Ltd. reflecting such repayment from Manomay Foods & Beverages Pvt. Ltd. is submitted herewith for your kind verification and records.

Thus, Sir, In the present case, the assessee company has duly discharged onus cast on it to prove identity of shareholders, creditworthiness of the shareholder and genuineness of transaction by providing requisite proofs / documents. The Learned Assessing officer has also independently verified the Identity, Creditworthiness of share applicant and genuineness of transactions by independently calling the directors of the companies u/s 131 and/or calling information U/s 133(6) of Income Tax Act. Further, the sources of funds out of which share capital has been paid to assessee company has also been confirmed by Mr. Singhal, CMD of BPSL in his statement before Investigation Wing. Moreover, all the share applicant companies have repaid back the advances to BPSL in subsequent period. Thus, no addition u/s 68 of the Act may be made in the case of the assessee company.

In case the your goodself is still not satisfied about the genuineness of transaction, appropriate action may have been taken against the share applicant as per the provisions of Income Tax Act as laid down by various judicial pronouncements.

Thus, on the basis of fact and circumstances and various judicial pronouncements and merits of the case, it is hereby prayed that the proceedings initiated u/s 263 of the Act may please be dropped in the interest of justice and oblige.”

7. Consequently, vide order dated 17.02.2017 the Id CIT passed order u/s 263 holding that order passed by the Id Assessing Officer is erroneous and prejudicial to the interest of the revenue. The main reasons of the order of the Id CIT were as under:-

“1.A perusal of the facts shows that the assessment order in the case of M/s Globus Projects Private Limited u/s 153A(l)(b) of the IT.Act, 1961 for A.Y. 2012-13, was passed by Dy. Commissioner of Income Tax, Central Circle-I, Faridabad on 13.06.2014.

2. (a) *The assessee received the following amounts of share application money/ share capital:*

Sr. No.	Name of the company from whom share application money/ share	Address	Amount
1	M/s KDK Food Grains Pvt. Ltd.	Shop No 17, Plot No 13E, Gali No. 20, Guru Nanak Complex, MadhuVihar,	3,36,00,000/-
2	M/s Leisure Buildcon Pvt. Ltd.	C-17, Guru Nanak Pura, Opp. Scope Tower, Laxmi Nagar, Delhi	2,31,00,000/-
3	M/s Maonmay food & Bev. Pvt. Ltd.	Shop No. 17, Plot No 13E, Gali No. 20, Guru Nanak Complex, MadhuVihar,	1,71,00,000/-

- (b) *The assessing officer accepted the aforesaid statement of financial affairs in his assessment order.*
 (c) *However, subsequently the DDIT(Inv.)-I, Faridabad vide his report dated 17 04.2015 reported as under:-*

“A survey operation u/s 133A was carried out in the case of M/s Bhushan Power and Steel Ltd. (BPSL) on 27.12.2012 and issue of advances made to M/s KDK Food Grains Pvt. Ltd., M/s Leisure Buildcon Pvt. Ltd., M/s Manomay Foods & Beverages Pvt. Ltd. M/s SPB Propcon Pvt. Ltd. M/s Strap Creation Pvt. Ltd., M/s Syns Construction Pvt. Ltd. was confronted to Sh. Sanjay Singhal, CMD of BPSL. Sh. Sanjay Singhal could not give any specific detail and was also not able to establish the genuineness of existence of above mentioned companies. The amounts given to the above companies are outstanding in the books as advances. The details of advances given are as under:-

S.No.	Name & address of the Company	F.Y.	Amount given as capital advances
1	M/s KDK Food Grains Pvt. Ltd., F-20/B, 2 nd floor, Gali No. 29, Gurudwara Rd., MadhyVihar, New Delhi	2011-12	12,50,00,000/-

2	<i>M/s Leisure Buildcon Pvt. Ltd., 27 Kilokari Village Opposite, Thaper Business Center, New Delhi</i>	2011-12	12,50,00,000/-
3	<i>M/s Maonmay food & Bev. Pvt. Ltd., F-20/B, 2nd floor, Gali No. 29, Gurudwara Rd., MadhyVihar, New Delhi</i>	2011 - 12	9,00,00,000/-
4	<i>M/s SPB Propcon Pvt Ltd., 27 Kilokari Village Opposite, Thaper Business Center, New Delhi</i>	2011-12	13,00,00,000/-
5	<i>M/s Strap Creation Pvt Ltd., 106 Dua Business Center, Main Vikas Marg, Shakarpur, Delhi</i>	2011-12	10,00,00,000/-
6	<i>M/s Syns Construction Pvt Ltd., A-69, Laxmi Nagar, Delhi</i>		11,00,00,000/-

Sh. Sanjay Singhal stated that Rs. 68 crores were given to the above companies by BPSL as advances.

In this case also, BPSL has made payments to jgaper companies namely M/s KDK Food Grains Pvt. Ltd, M/s LeisureBuildcon Pvt. Fid/, M/s Manomay Foods & Beverages Pvt. Ltd M/s SPB Propcon Pvt. Ltd., M/s Strap Creation Pvt. Ltd., M/s Syns Construction Pvt. Ltd. for siphoning off funds in the grab of making bogus purchases or for buying capital goods. From the analysis of ITR and ROC dat of the above mentioned companies, it is found that these companies are not doing any meaningful business activities and are existing only on papers Summons were issued to the companies and their directors on 02.09.2014.

S. No.	Name of the company to which summons issued	Name of the Directors to which summons issued	Remarks
1	<i>M/s KDK Food Grains Pvt Ltd.</i>	<i>Sh. Ajay Kumar, E-635/B, PratapVihar, Ghaziabad Sh. Mahindra Saxena, E-648, Sec-10, Pratapvihar, Vijay Nagar, Ghaziabad</i>	<i>No compliance made till date</i>
2	<i>M/s Leisure Buildcon Pvt Ltd.</i>	<i>Sh. Surabh Jain and Sh. Ramji, 27 Kilokari Village, Sunlight colony, New Delhi</i>	<i>No compliance made till date</i>
3	<i>M/s Manomay Foods & Beverages Pvt. Ltd.</i>	<i>Sh. Ajay kumar, E-635/B, Pratap Bihar, Ghaziabad Sh. Mahindra Saxena, E-648, Sector- 10, PratapVihar, Vijay Nagar, Ghaziabad</i>	<i>No compliance made till date</i>
4	<i>M/s SPB Propcon Pvt Ltd.</i>	<i>Sh. Surabh Jain and Sh. Ramji, 27 Kilokari Village, Sunlight colony, New Delhi</i>	<i>No compliance made till date</i>
5	<i>M/s Strap Creation Pvt Ltd.</i>	<i>Sh. Jai Narayan, 106 Dua Business Center, Main Vikas Marg, Shakarpur, Delhi, Sh. Anil Kumar, A- 62, Laxmi Nagar, Delhi</i>	<i>No compliance made till date</i>

6	M/s Syns Construction Pvt. Ltd.	Sh. Mahesh Prasad, Sh. Sudhir Sharma and Nitin Yadav, A-69, Laxmi Nagar, New Delhi, Sh. Santosh Kumar, G-29, Laxmi Nagar New Delhi	No compliance made till date
---	---------------------------------	--	------------------------------

Till date not a single director or anybody on the behalf of the company has appeared.

During the survey on BPSL on 27.12.2012, Sh. Sanjay Singhal, C.MD BPSL was asked about the purpose of making such huge advances. He could not give any explanation and admitted for disallowance of interest on these advances given. Thus, assessee himself admitted that no goods have been purchased from the above entities and amounts are still outstanding in the name these paper entities in the books of accounts of BPSL.

From the above discussion on modus operandi and financial credentials of above entities to which payments were made, it is concluded that payments were made to these entities for siphoning offunds from BPSL Payments made by BPSL to the above mentioned paper entities have finally been introduced in the entities of Besiech Group in form of bogus share capital/premium. Thus, prima facie from the discussed modus operandi, it appears that cash paid by Beslech group for taking bogus share capital/premium accommodation entries through paper entries has been given equal amount to BPSL group. However issue may be investigated further before finalizing the assessment proceedings. ”

3. *A show cause notice was issued vide this office letter dated 08.11.2016 giving an opportunity to show cause why assessment order dated 13.06.2014 be not revised. The same is reproduced as under:*

(i) *On perusal of the balance-sheet and record of the assessee for year under assessment, it was observed that assessee company have received share application money/share capital to the extent of Rs. 7,38,00,000/- from the three companies named as under:-*

(a) *M/s Leisure Buildcon Pvt. Ltd., C-17, Guru Nanakpura, Opp. Scope Tower, Laxmi Nagar, New Delhi (Rs. 2,31,00,000/-)*

b) *M/s KDK Food Grains Pvt. Ltd., Shop No. 17, Plot No. 13E, Gali No. 20, Guru Nanak Complex, MadhuVihar, Delhi - 110092. (Rs. 3,36,00,000/-)*

c) *M/s Manomay Food & Bev. Pvt. Ltd., Shop No. 17, Plot No. 13E, Gali No. 20, Guru Nanak Complex, MadhuVihar, Delhi - 110092 (Rs. 1,71,00,000/-)*

(ii) *During the course of assessment proceedings assessee was required to give the I source of the share capital of the company, please also furnish detail of any changes in / the share capital of the company the year . In response to the assessee has submitted its / reply vide letter dated 12.03.2014 the assessee company has allotted 2,46,000 fresh ' shares. To prove the identity, genuineness of the transactions and creditworthiness of*

each of the above said shareholders, following documents are enclosed herewith for verification and record.

- a) *Share application form*
 - b) *Board resolution for investment in the assessee company in case the share holder is a company.*
 - c) *Copy of extract of board meeting of the assessee company in which allotment of shares has been made.*
 - d) *Copy of allotment letter.*
 - e) *Copy of confirmation of accounts.*
 - f) *Bank statement reflecting the said payment of shares and its sources of funds.*
 - g) *Copy of income tax return acknowledgement.*
 - h) *Copy of balance sheet showing the investment in the Assessee company.*
- (iii) *The DDIT(Inv.)-I, Faridabad vide his report dated 17.04.2015 reported as under:-*

“A survey operation u/s 133A was carried out in the case of M/s Bhushan Power and Steel Ltd, (BPSL) on 27.12.2012 and issue of advances made to M/s KDK Food Grains Pvt. Ltd., M/s LeizureBuildcon Pvt. Ltd., M/s Manomay Foods & Beverages Pvt. Ltd. M/s SPB Propcon Pvt. Ltd M/s Strap Creation Pvt. Ltd., M/s Syns Construction Pvt. Ltd. was confronted to Sh. Sanjay Singhal, CMD of BPSL. Sh. Sanjay Singhal could not give any specific detail and was also not able to establish the genuineness of existence of above mentioned companies. The amounts given to the above companies are outstanding in the books as advances. The details of advances given are as und r:

S.No.	Name & address of the Company	F.Y.	Amount given as capital advances
1	M/s KDK Food Grains Pvt. Ltd., F-20/B, 2 nd floor, Gali No. 29, Gurudwara Rd., MadhyVihar, New	2011-12	12,50,00,000/-
2	M/s Leisure Buildcon Pvt. Ltd., 27 Kilokari Village Opposite, Thaper Business Center, New Delhi	2011-12	12,50,00,000/-
3	M/s Maonmay food & Bev. Pvt. Ltd., F-20/B, 2 nd floor, Gali No. 29, Gurudwara Rd., MadhyVihar, New	2011-12	9,00,00,000/-
4	M/s SPB Propcon Pvt Ltd., 27 Kilokari Village Opposite, Thaper	2011-12	13,00,00,000/-
5	M/s Strap Creation Pvt Ltd., 106 Dua Business Center, Main Vikas Marg,	2011-12	10,00,00,000/-
6	M/s Syns Construction Pvt Ltd., A-69, Laxmi Nagar, Delhi		11,00,00,000/-

Sh. Sanjay Singhal stated that Rs. 68 crores were given to the above companies by BPSL as advances.

In this case also, BPSL has made payments to paper companies namely M/s KDK Food Grains Pvt. Ltd., M/s Leizure Buildcon Pvt. Ltd., M/s Manomay Foods & Beverages Pvt. Ltd., M/s SPB Propcon Pvt. Ltd., M/s Strap Creation Pvt. Ltd., M/s Syns Construction Pvt. Ltd. for siphoning off funds in the grab of making bogus purchases or for buying capital goods. From the analysis of ITR and ROC data of the above mentioned companies, it is found that these companies are not doing any meaningful business activities and are existing only on papers. Summons were issued to the companies and their directors on 02.09.2014.

<i>S. No</i>	<i>Name of the company to which summons issued</i>	<i>Name of the Directors to which summons issued</i>	<i>Remarks</i>
1	M/s KDK Food Grains Pvt. Ltd.	Sh. Ajay Kumar, E-635/B, PratapVihar, Ghaziabad Sh. Mahindra Saxena E- 648, Sec-10, Pratapvihar, Vijay Nagar, Ghaziabad	No compliance made till date
2	M/s. Leizure Buildcon Pvt Ltd.	Sh. Surabh jain and Sh. Ramji, 27 Kilokari Village, Sunlight colony, New Delhi	No compliance made till date
3	M/s Manomay Foods & Beverages Pvt. Ltd.	Sh. Ajay kumar, E-635/B, Pratap Bihar, Ghaziabad Sh. Mahindra Saxena, E-648, Sector-10, PratapVihar, Vijay Nagar, Ghaziabad	No compliance made till date
4	M/s SPB Propcon Pvt Ltd.	Sh. Surabh Jain and Sh. Ramji, 27 Kilokari Village, Sunlight colony, New Delhi	No compliance made till date
5	M/s Strap Cr ation Pvt. Ltd.	Sh. Jai Narayan, 106 Dua Business Center, Main Vikas Marg, Shakarpur, Delhi, Sh. Anil Kumar, A-62, Laxmi Nagar, Delhi	No compliance made till date
6	M/s Syns Construction Pvt. Ltd.	Sh. Mahesh Prasad, Sh. Sudhir Sharma and Nitin Yadav, A-69, Laxmi Nagar, New Delhi, Sh. Santosh Kumar, G-29, Laxmi Nagar, New Delhi	No compliance made till date

Till date not a single director or anybody on the behalf of the company has appeared.

During the survey on BPSL on 27.12.2012, Sh. Sanjay Singhal, CMD BPSL was asked about the purpose of making such huge advances. He could not give any explanation and admitted for disallowance of interest on these advances given. Thus, assessee himself admitted that no goods have been purchased from the above entities and amounts are still outstanding in the name these paper entities in the books of accounts of BPSL.

From the above discussion on modus operandi and financial credentials of above entities to which payments were made, it is concluded that payments were made to these entities for siphoning off unds from BPSL. Payments made by BPSL to

the above mentioned paper entities have finally been introduced in the entities of Bestech Group in form of bogus share capital/premium. Thus, prima facie from the discussed modus operandi, it appears that cash paid by Bestech group for taking bogus share capital/premium accommodation entries through paper entries has been given equal amount to BPSL group. However issue may be investigated further before finalizing the assessment proceedings. ”

(iv) . It is seen that during the assessment proceedings, the issue of creditworthiness and genuineness of the transactions of the investor companies from whom the assessee company has received share capital has not been thoroughly examined/ investigated which is also evident from the report dated 17.04.2015 of DDIT(Inv.)-I, Faridabad. Merely filing confirmations/PAN Nos. etc. does not prove the genuineness & creditworthiness of the investors.

(v) . The order of the Assessing Officer in therefore erroneous & prejudicial to the interests of revenue.

4. Opportunities were given to the assessee from time to time. The assessee’s main arguments have been that:

(a) The assessee had discharged his onus by producing all evidences.

(b) Sh. Sanjay Singhal CMD of BPSL never admitted to the disallowance of the whole advances but agreed to disallowance of interest claimed by BPSL which is attributable to these advances.

(c) Advances by the share applicant companies who had received advances from BSPL have been repaid to BSPL.

5. The facts of the case have been considered:

(a) The facts in respect of share application money/share capital are as under:

<i>Sr. No.</i>	<i>Name of the company from whom share application money/share capital received</i>	<i>Address</i>	<i>Amount</i>	<i>Amount given as capital advances by Bhushan Power and Steel Limited</i>
<i>1</i>	<i>M/s KDK Food Grains Pvt. Ltd.</i>	<i>Shop No. 17, Plot No 13E, Gali No. 20, Guru Nanak Complex, MadhuVihar, Delhi</i>	<i>3,36,00,000/-</i>	<i>12,50,00,000/-</i>
<i>2</i>	<i>M/s Leisure Buildcon Pvt. Ltd.</i>	<i>C-17, Guru Nanak Pura, Opp. Scope Tower, Laxmi Nagar, Delhi</i>	<i>2,31,00,000/-</i>	<i>12,50,00,000/-</i>
<i>3</i>	<i>M/s Maonmay food & Bev. Pvt. Ltd.</i>	<i>Shop No. 17, Plot No 13E, Gali No. 20, Guru Nanak Complex, MadhuVihar, Delhi</i>	<i>1,71,00,000/-</i>	<i>9,00,00,000/-</i>

(b) No evidence as to the nature of capital advances/capital goods purchased/genuineness of the same have been produced/proved.

(c) Sh. Sanjay Singhal admitted to the disallowance of interest on the aforesaid alleged advances.

(d) The repayment of advances by the share applicant companies who had received advances from BSPL to BSPL only confirms the allegations about non genuineness.

(e) The nodus operandi and financial credentials of above entities to which payments were made, it is concluded that payments were made to these entities for siphoning off funds from BPSL. Payments made by BPSL to the above mentioned

paper entities have finally been introduced in the entities of Bestech Group in form of bogus share capital/premium. Thus, prima facie from the discussed modus operandi, it is clear that cash paid by Bestech group for taking bogus share capital/premium accommodation entries through paper entries has been given equal amount to BPSL group.

(f). The A.O has failed to thoroughly examine/ investigate the identity/genuineness/ creditworthiness of the parties from whom the alleged share application money/share capital have been received.

6. The assessment order passed u/s 153A(1)(b)dated 13.06.2014 passed by the Assessing Officer is therefore erroneous & prejudicial to the interests of revenue.

7. The assessment order passed u/s 153A(1)(b) dated 13.06.2014 passed by the Assessing Officer is therefore set-aside to be made denovo.

8. „Ordered accordingly as above.”

8. The Id AR submitted before us as under:-

“Order u/s.263 unwarranted

- *Sec. 263 has been invoked for revising the asstt. order u/s. 153A dt. 13.06.14.*
- *The reason being, CIT was of the opinion that the A.O. failed to thoroughly examine/investigate the identity/genuineness/creditworthiness of the following three parties from whom share capital has been received*
 - *M/s KDK Food Grains (P) Ltd. Rs.3,36,00,000/-*
 - *M/s Leisure Buildcon (P) Ltd. Rs.2,31,00,000/-*
 - *M/s Maonmay Food & Bev. (P) Ltd. Rs. 1,7100.000/-*

The invocation of sec 263 is unsustainable for various mutually exclusive reasons

One

- *During ass t., the A.O. deeply examined the receipt of share capital from above three companies*
- *The A O. called for the all relevant information from assessee, from parties u/s.133 (6) and also recorded statement of directors of all the 03 companies u/s. 131.*
- *The exercise undertaken by the A.O. at asstt. stage is evident from following evidences which was furnished by the assessee as well as by the parties u/s. 133 (6) as well as statement recorded u/s. 131.*

KDK Food Grains (P) Ltd. Rs.3,36,00,000/-

- *Query reg. share holdings vide para-22 of questionnaire dt.05.02.14 (3) Notice u/s.133 (6) dt.25.05.14 to KDK (8)*
- *Reply to A.O. by assessee vide para-4 (giving details of documents furnished by the assessee to A.O.) (15)*
- *Details of all shares allotted (21)*
- *Board resolution dt.30.03.12 for allotment of shares (22)*
- *Resolution by KDK to purchase the shares (68)*
- *Bank statement of KDK (69-71)*
- *ITR ack. of KDK of A. Y. 12-13 (72)*

- Audited financial statement of KDK of A.Y. 12-13 showing the investment (79,75)
- Confirmation from KDK (83)
- Notice u/s. 131 to Sh. Mahendra Saxena, Director of KDK (84)
- Copy of statement of director of KDK (86-89) (specially ans. to Q. Nos.5, 9, 10, 11, 13 & 14)

M/s Maonmay Food & Bev. (P) Ltd. Rs. 1,71,00,000/-

- Query reg. share holdings vide para-22 of questionnaire dt.05.02.14 (3)
- Notice u/s. 133 (6) dt.25.05.14 to Maonmay (9)
- Reply to A.O. by assessee vide para-4 (giving details of documents furnished by the assessee to A.O.) (15)
- Details of all shares allotted (21)
- Board resolution dt.30.03.12 for allotment of shares (22)
- Reply by Maonmay of notice u/s. 133 (6) (giving details of documents furnished to A.O.) (23)
- Letter dt.30.03.12 by assessee to Maonmay for allotment of shares (24)
- Application form by Maonmay applying for shares (25)
- Resolution by Maonmay to purchase the shares (26)
- Bank statement of Maonmay (27-28)
- ITR ack. of Maonmay of A. Y 12-13 (29)
- Audited financial statement of Maonmay of A.Y.12-13 showing the investment (36, 32)
- Confirmation from Maonmay (40)
- Notice u/s. 131 to Sh. Mahendra Saxena, Director of Maonmay (84)
- Copy of statement of director of Maonmay (86-89) (specially ans. to Q. Nos.5, 9, 10, 11, 13 & 14)

M/s Leisure Buildcon (P) Ltd. Rs.2,31,00,000/-

- Query reg. share holdings vide para-22 of questionnaire dt.05.02.14 (3)
 - Notice u/s. 133 (6) dt.25.05.14 to Leisure (backofPg.9)
 - Reply to A.O. by assessee vide para-4 (giving details of documents furnished by the assessee to A.O.) (15)
 - Details of all shares allotted (21)
 - Board resolution dt.30.03.12 for allotment of shares (22)
 - Bank statement of Leisure (42-43)
 - ITR ack. of Leisure of A. Y. 12-13 (64)
 - Audited financial statement of Leisure of A.Y.12-13 showing the investment (53, 49)
 - Confirmation from Leisure (63)
 - Notice u/s. 131 to Sh. Saurav Jain, Director of Leisure (85)
 - Copy of statement of director of Leisure (120-123) (specially ans. to Q. Nos.4, 6, 7, 9, 10, 11, 14)
- All the above documents confirms the transactions.
- Information furnished u/s. 133 (6) further confirms the transactions.
- Statement of directors of all the 03 companies reconfirm these transactions.

- *The A.O. after verifying the documents/statement could not point out even a single discrepancy, hence accepted the receipt.*
- *Thus, in this case, the A.O. carried out all the maximum possible inquiries/investigations for receipt of the share capital and noting more could had been done.*
- *Sec.263 (1), expln. 2,clause (a) provides for an order to be erroneous and prejudicial to the interest of revenue when the order has been passed without making inquiries or verification which should have been made, however in this case, all maximum possible inquiries and verification has been carried out.*
- *It is neither a case of lack of inquiry and even not a case of inadequate inquiry.*
- *It is interesting to note that in the impugned order u/s.263, the CIT did not mention the information collected by the A.O., investigation done u/s. 133 (6) and also the fact of statement being recorded, although this complete material and information was with him.*
- *CIT, ignoring these important aspects / inquiries / investigation / statements by A.O., simplicitor gave a finding that the A.O did not carry out thorough investigation, however without even specifying as to what further inquiries/investigations ought to had been done by the A.O.*
- *It is also not a case where the A.O. assumed any incorrect fact or applied incorrect law.*
- *It is a case where the A.O. applied his mind fully and examined the said*
- *Sec.263 cannot be invoked for making the inquiries in a manner as thought of by the CIT, although, interestingly, the CIT silent as to what further queries/investigation ought to had been done by the A.O.*
- *Thus, there existed no circumstances which may permit for invoking provisions of sec.263 of the Act.*
- *Further, there is no material on record to show that cash has been given against receipt of share capital, hence this finding of CIT is without any material and basis
(Authorities laying down this legal proposition have been given separately)*
- *Further, in case the asstt. order dt. 13.06.14 is silent on this issue, that does not mean that this issue was not raised or was not examine by the A.O. since, it is not necessary for the A.O. to discuss each and every aspects of examination in the asstt. order.
(Authorities laying down this legal proposition have been given separately)*
- *Further, source of the source is not the responsibility of the assessee. However in this case even the source of source also stands explained. The assessee received share capital from above 3 companies. These 3 companies received the corresponding amount from Bhushan. Thus even the source of source stands explained and confirmed.
(Authorities laying down this legal proposition have been given separately)
(Synopsis for authorities given separately)*

Two

The report of DDIT dt.17.04.15 is subsequent to asstt. order dt.13.06.14 therefore it was not available to the A.O. at the time of asstt., hence could not had been considered

- *The only reason and the basis of invoking sec.263 is the report of DDIT dt. 17.04.15 in the case of another assessee namely Bhushan Power & Steel Ltd. (Bhushan) (CIT Pg.1-4)*

- *The asstt. order u/s. 153A stood completed on 13.06.14*
- *The report of DDIT was not in existence on the date of completion of asstt. on 13.06.14*
- *Under these facts it cannot be said that the A.O. failed to take into consideration the DDIT report dated 17.04.2015 and contents thereof.*
- *Hence section 263 cannot be invoked on the basis of material/ DDIT report which was not in existence at the time of completion of original asstt.*

Three

- *Even otherwise, there is nothing adverse in DDIT report dt.17.04.15 so as to invoke sec.263, rather the said report supports the case of assessee*
- *The DDIT report dt.17.04.15 in the case of Bhushan (3rd party) is abstracted in asstt. order (CIT Pg.1-4)*
- *As per conclusion of DDIT report, Bhushan made payments to these 3 companies (and other companies also) which are paper entities, and these companies, introduced the said amount as bogus share capital (CIT - Top Para Pg.4)*
- *However these observation/finding are otaly incorrect as per the facts mentioned in the report on the basis of which facts, the conclusion has been derived in the DDIT report, which stands clear from following as mentioned in DDIT report itself*
- *Sh. Sanjay Singhal, Director of Bhushan stated in his statement that the said amount was given by Bhushan to these companies (CIT Pg.2)*
- *DDIT stated that Bhushan gave the money to these companies for making bogus purchases, (CIT Pg.2)*
- *However this allegation of DDIT is wrong. The director of Bhushan in his statement clearly stated that no goods have been purchased from these comp, against these amt given, factually also no goods have been purchased and ultimately these ompanies have refunded the amount to Bhushan (CIT Pg.3)*
- *Director of Bhushan did not admit the allegation of deptt., he is simply stated for disallowan e of interest on amounts which have been used for giving to these companies (CIT Pg.3)*
- *Thus, the factual contents of the report, clearly proves that Bhushan gave the amount to these companies and these companies, in turn, purchased the share of the assessee*
- *The amount given by Bhushan to these companies was finally refunded by these companies to Bhushan (OTPg.7)*

Thus there is nothing adverse in the DDIT report also, even on merits

Four

- *CIT, did not himself carry out any inquiries or verification to substantiate*
- *No discrepancy was found either by the A.O. or by the CIT in any of the documents/information*
- *The CIT, did not carry out any inquiries/verification himself*
- *The report of DDIT, the only adverse document with CIT, clearly mentioned all the facts which clearly proved the source as well as the source of the source*
- *Hence, in the absence of any further material/information/inquiry/verification by the CIT himself, there was no occasion for invoking sec.263 (Authorities laying down this legal proposition have been given separately)*

Five

- *The directions for framing the asstt. denovo is illegal*
- *The show cause notice was issued for verification of receipt of share capital from 3 parties.*
- *However, the CIT set aside the whole asstt. for framing as denovo i.e. to examine the complete asstt. afresh.*
- *In proceedings u/s.263, the jurisdiction/direction can not exceed beyond the issued raised in show cause notice/issues raised during proceedings u/s.263.*
- *Hence the directions of denovo asstt. are beyond jurisdiction. AUTHORITIES*
- *CIT VS. CONTIMETERS ELECTRICALS (P) LTD. (2009) 22 DTR (DEL.) 158*
- *Revision on issue not mentioned in show cause notice is not permissible.*
- *PR. CIT V. KRISHAK BHARATI COOPE. LTD. 395 ITR 572 (Del.)*
- *Revision scope of provisions natural justice order covering issues not mentioned in show cause notice not permissible.*

Six

- *The findings in sec.263 order are self contradictory*
- *The CIT, has given a finding that it is a case of bogus share capital wherein cash has been paid against receipt of share capital (CIT Pg.8, Para - e)*
- *Thus the directions of the CIT to re-examine the issue by A.O., in substance cannot be independently examined and adjudicated with independent view by the A.O. in view of clear otherwise findings of the CIT as given in Para - e.*
- *Under the facts, when the CIT set aside the matter for re-examination, he should not give the findings as given in Para - e, which needs to be expunged, in case the order u/s.263 is not quashed.*
- *Seven The order under approval of addl. CIT is not to be taken as passed by assessing officer hence cannot be revised*
- *The Asstt. orders have been framed after approval from Addl. CIT U/s 153D.*
- *Thus, the issue stands examined by AO and thereafter re - examined by Addl. CIT.*
- *Sec. 263(1) provides that CIT can invoke Sec 263 for an order passed by assessing officer.*
- *The word „assessing officer“ has been defined in Sec. 2(1 A). He is the person who is vested with the powers of that of an Assessing officer who frames assessment order.*
- *Thus, orders passed by Assessing officer within the meaning of Sec. 2(7A) can be subject to Sec. 263.*
- *Thus, only the findings of the assessing officer who framed the assessment can be subjected to Sec. 263.*
- *In a case, where order is finalized after approval of Addl. CIT, the findings in such order are deemed to be that of Addl. CIT which have been brought into black & white by the below ranking officer who is the assessing officer.*
- *In other words, in substance, the findings in Asstt. order are not of assessing officer but of Addl. CIT who is not the assessing officer.*
- *In that case, such findings are not open for disturbance u/s 263.*

AUTHORITY

*CIT VS. SMT. A YA/f POORNA MM A CHANDRASHEKHAR 204
BRIJ BHUSHAN AGGARWAL (2005) 2 SOT 811 (AGRA)*

Held that Asstt, order passed by the ITO after consultation with and under supervision of Jt, CIT & on appreciation of evidence furnished by the assessee, though may be cryptic one, but could not be said to be erroneous and prejudicial to the interest of revenue.”

9. The Id Departmental Representative vehemently submitted that in the present case on 17.04.2015 the report of the DDI was received which was after survey carried out in case of Bhushan Power and Steel Ltd on 27.12.2012. It was further submitted that in the report it was stated that these are the paper companies. At the time of examination of the records by the Id CIT this information was available and therefore, the Id CIT(A) has stated that there is no proper enquiry made by the Id AO. She further referred to the page No. 69 of the paper book which is bank statement of KDK Foodgrains Pvt. Ltd with Axis Bank wherein, it is apparent that money paid to the assessee were earlier credited in the bank account of that company from Bhushan Power and Steel Ltd. She therefore submitted that it is clear cut case of „no enquiry“ made by the Id AO. She further relied on the following decisions of various courts as under:-

- a. *Malabar Industrial Co. ltd Vs. CIT Supreme Court (109 Taxman 66*
- b. *Rajmandir Estates (P) Ltd Vs. PCIT Kolkata High Court 70 Taxmann.com, 124*
- c. *Rankandir Estates (P) Ltd Vs. PCIT, Supreme Court 2017 77 Taxmann.com 285*
- d. *South India Steel Rolling Mills Vs. CIT 224 ITR 654*

10. The Id Authorised Representative in rejoinder submitted that report of the DDI was not before the Id Assessing Officer at the time of passing order, therefore, it cannot be said that the Id Assessing Officer has failed to consider the same and therefore, the order passed by him is erroneous. It was further stated that the page NO. 69 referred to by the Id DR is the bank statement which itself demonstrates that funds have been received by the depositor from Bhushan Steel Ltd therefore, even in the case of the shareholder, assessee has proved the source of source of the funds deposited. He therefore, submitted that the order passed by the Id Assessing Officer is neither erroneous nor prejudicial to the interest of revenue. With respect to the several decisions relied upon by the Id DR, he submitted that these are not applicable to the facts of the case as in the present case the complete enquiry has been made by the Id Assessing Officer, even the enquiry was also carried out with the Directors of those subscribing companies.

11. We have carefully considered the rival contentions and also perused the orders of the Id Assessing Officer as well as the order passed by the Id CIT u/s 263 of the Act. This section provides that the Commissioner has to be satisfied of twin conditions namely before revising the order:

- a. That the order of the AO sought to be revised is erroneous, and
 - b. That it is prejudicial to the interest of the revenue
12. Therefore, the above order of the Id Assessing Officer is required to be tested whether it is erroneous and prejudicial to the interest of the revenue in the above facts of the case. In the present case, the Id Assessing Officer passed order u/s 153A read with section 153C on 29.11.2016 but prior to passing the above order, the Id Assessing Officer issued letter dated 05.02.2014 to the assessee wherein, he asked the list of share holders stating their name, address, PAN along with the details of their shareholdings. The assessee submitted the above details vide letter dated 09.12.2013 and 30.05.2014 where, requisite details were submitted. Assessee submitted that it has issued 246000 shares during the year and submitted the shareholder wise details along with confirmation of the share holders coupled with their share application form, bank statement, income tax return copies and annual accounts of the subscribing companies. It further submitted board resolution for investment in the company, copy of the allotment letter, copy of confirmation etc. The assessee further requested that AO may also verify the facts of the above said transaction independently. The Id Assessing Officer thereafter, issued notice u/s 133(6) of the Act to those companies vide letter dated 27.05.2014 to which the shareholders replied on 12.06.2014 submitting their requisite details as called for. Such shareholders confirmed the fact of application of share, amount of share application money, their assessment particulars and also the copy of the balance sheet where these investments are reflected. They also submitted the copies of their bank statements from which the payment for share application was made. Consequent to that the Id Assessing Officer issued summons to the Directors of those companies u/s 131 of the Act and their statements were recorded. In specific reference to the question raised to the Director of the depositor companies, they confirmed the fact of making investment in the assessee company and also explained the nature of the business of the investor companies as well as source of the funds of making investments. He specifically submitted that source of the investment in the assessee company is receipt of inter-corporate deposit by the shareholder companies from M/s. Bhushan Steel and Power Ltd. He further explained how the premium has been decided. He further stated that as the assessee is carrying on the development of a project of residential complex, IT park at Punjab therefore, such investment are made. He further stated that investments are made on long term basis in the company. With respect to the report of the inspector that these companies were not available at the addresses given, he stated that the address visited by the inspector is incorrect and therefore, at the given address these

companies could not be found. He further narrated once again the correct address of these companies. He further submitted the bank statement of these companies to show the amount deposited with the assessee company. Further statement of Mr. Saurabh Jain who is also the director of these companies was recorded on 29.05.2014 who also confirmed the above transactions. Before the Id CIT the assessee thus submitted that complete enquiry with respect to the three companies have been made by the Id Assessing Officer. The Id CIT has stated that no evidence to the nature of the capital advances or capital goods have been produced. The assessee has submitted that these are the share capital money received by the assessee adequately before the Id Assessing Officer. Therefore, there cannot be any question of the receipt of capital advances or capital goods purchases. The Id CIT also stated that Mr. Sanjay Singhal who is the director of Bhushan Steel has admitted to disallowance of interest on inter corporate deposits to the share holder companies who invested in the assessee company. In the present case the disallowance of interest in the hands of Bhusan steel does not make the order of the Id Assessing Officer erroneous but in fact shows that assessee has proved even the source of the source of the money deposited in the assessee company. Further, the Id CIT has alleged that transaction of the repayment of the loans by the share holder companies to Bhushan Steel Pvt. Ltd shows about the in genuineness of the whole transaction. With respect to repayment of the loan taken by the share holders of the company does not make any impact on the creditworthiness of the depositors as well as the genuineness of the transaction. The Id CIT therefore, has stated that the Id Assessing Officer has failed to thoroughly examine/ investigate the identity/ genuineness/ creditworthiness of the parties from whom the alleged share application money has been received. In the present case in the assessment proceedings the Id Assessing Officer has made whatever enquiries were possible. The order of the Id CIT also did not suggest that what are the enquiries further required to be made by the Id Assessing Officer. It also does not show that how the enquiry made by the Id Assessing Officer are inadequate. According to us the Commissioner has set aside the assessment to the Assessing Officer to be made de novo. According to us the Commissioner had no jurisdiction to set aside the order of the assessment merely to conduct another purposeless and fruitless enquiry to reach the same result which was arrived earlier. If any further fresh enquiry is held it will be an empty formality as by going through the motion of making a further enquiry and reaching the same conclusion, no useful purpose would be achieved. Though, it is not expected of the Commissioner to record his final conclusion in his order but he must at least indicate as to how the order of the Id AO is

erroneous and prejudicial to the interest of revenue. Same is missing in the impugned order. It is also an established fact that every mistake or error committed by the AO cannot be subject to revision, but it is only when such type of mistake makes the order „prejudicial“, then only the CIT can assume the power of the revision. Further, the power of revisions is not meant to exercise for the purpose of directing the officer to hold another investigation when the order of the officer was not found to be erroneous. In the present case the Id CIT has failed to show that what is the „thorough investigation/ examination“ required to be made by the AO in the present circumstances when all the possible enquiries have been taken by the Id AO. The Id CIT has also not shown that the order of the Id AO is contrary to the provisions of the Act or any judicial precedent. In the present case the Id AO even examined the source of the credit of share capital of the share holders. The shareholder r companies were issued enquiry letters u/s 133(6) of the Act as well as summons were issued to their directors u/s 131 and they were examined. The version of the shareholder was also not proved to be wrong by the Id CIT. Therefore, neither the Id CIT could show that it is matter of “inadequate enquiry” or “un-sustainability” of the order. In view of this we are not inclined to sustain the order of the Id CIT passed u/s 263 of the Act.

13. The Id Authorised Representative has argued before us that based on the survey carried on by Income Tax Department on 27.12.2012 on Bhushan Power and Steel Ltd for which the report was available dated 17.04.2015, but the order of the Id Assessing Officer was passed on 13.06.2014, therefore, non consideration of the same cannot make the order erroneous. We do not agree with the contention of the Id AR because according to explanation 1(b) of Section 263 the „records“ include all records pertaining to the proceedings available at the time of examination by Id CIT. In the present case, when the records were examine by Id CIT such survey report was available on the record and hence, no fault can be found with the order of the Id CIT on this count.
14. The Id DR has vehemently stated that the order passed by the Id Assessing Officer does not discuss all these enquiries made by him or has not made any observation in the assessment order. It was further stated that the order of the Id Assessing Officer is „brief and cryptic“. We are of the opinion that “brief and cryptic” nature of the order does not make it erroneous and prejudicial to the interest of revenue. The revenue could not controvert that all these enquiries made by the Id Assessing Officer were either „not made“ or merely an „eyewash“.
15. The Id Departmental Representative has vehemently relied on the decision of the Hon'ble Calcutta High Court in case of Rajmandir Estates Pvt. Ltd Vs. CIT 70 Taxman.com 124

against which the Hon'ble Supreme Court has also dismissed the special leave petition vide 77 Taxmann.com 285. In that particular case the order u/s 263 was passed by the Id CIT was sustained for the reason that out of 39 share applicants 15 procured the funds by selling their own shares and the rest of the applicants did not disclose the nature of receipt at their end though the source of fund was identified. It was not known in that case as on what account the money was received. In the present case it has been established by the share holders that money has been received from M/s. Bhushan Steel and Power ltd as inter corporate deposits. This fact has been confirmed by the director of the investor company as well as the director of Bhushan Steel, and further supported by the bank statements. It is also established that these inter corporate deposits have been repaid. Further in case of Rajmandir Estate the form of share application money were found blank, however, in the present case it has not been stated that any such other incriminating documents is relied upon by the Id CIT. in the present case no relationship was also established as stated in para No. 23(d) of that decision. Further, as stated in para No. 23(g) of that decision, that the AO did not examine a single director of the assessee company or of the subscribing company, but in the present case directors of the subscribing company were examined and they confirmed the facts. Further, the amount of investment in share by those companies looking to the project of the company was also not found to be a plain lie. There is no allegation in the present case of money laundering also. In that case on the facts, it was held to be a case of „inadequate enquiry“ as the Id Assessing Officer did not hold requisite investigation except for calling for the records. In the present case, the Id Assessing Officer has made the due enquiry by examining the directors of the subscribing companies. Therefore, in the present case the Id Assessing Officer also examined the persons behind the company who take the decisions, controlled and managed them. On such examination also the fact of confirmation of investment was reiterated. Therefore, in view of the above distinguishing facts, the reliance by the Id DR on the decision of the Hon'ble Calcutta High Court does not help the case of Revenue.

16. In view of the above facts and circumstances and for the reasons given herein above we quash the order of the Id CIT passed u/s 263 of the Act on 17.02.2017.
17. For the similar reasons we also quash the order passed by the Id CIT(Central), Gurgaon in case of Bestech Hospitalities Pvt. Ltd u/s 263 of the Act dated 16.03.2017 challenged by the assessee in ITA No. 2484/Del/2017.

18. For the similar reasons we also quash the order passed by the ld CIT(Central), Gurgaon in case of Bestech India. Ltd u/s 263 of the Act dated 16.03.2017 challenged by the assessee in ITA No. 2485/Del/2017.

19. In the result all the three appeals filed by the assesses are allowed.

Order pronounced in the open court on 30/11/2017.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:30/11/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

TAXPUNDIT.ORG