IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH :"C" NEW DELHI]

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA. No. 2916/Del/2017
(Assessment Year:2010-11)

M/s. Kanha Capital Services Limited, C/o. Kapil Goel, Advocate, F–26/124, Sector : 7, Rohini, Delhi – 110 085. **PAN: AAACK2720J**	Vs.	Pr. CIT – 5, New Delhi.
(Appellant)		(Respondent)

Assessee by :	N o n e;
Departmentby:	Ms. Sunita Singh[CIT] – D.R.
Date of Hearing :	15/07/2021
Date of pronouncement :	12/10/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by the ld. Pr. Commissioner of Income Tax, Delhi–5, New Delhi, dated 23.03.2017, under Section 263 of the Income Tax Act, 1961 (the Act) for assessment year 2010-11. The assessee has raised several grounds of appeal challenging the assumption of jurisdiction under Section 263 of the Act.

2. Briefly stated the facts of the case is that assessee is a company, who filed the return of income on 5.09.2010 declaring 'NIL' income. It was not assessed u/s 143 (3) of the Act. Subsequently, the case of the assessee was re-opened under Section 147 of the Act. In the reasons recorded it was mentioned that there is an information from Directorate of Income Tax, Investigation, on 12.03.2013 where the assessee appears in the list of beneficiaries, who have taken accommodation entries from one Shri Surendra Kumar Jain through dummy companies. In the details of the beneficiaries, name of the middleman, date of the cheque, the company from

whom the accommodation entries are taken, name of the assessee, the bank from which accommodation entries routed through, cheque number, the amount of cheques and the name of the middlemanwas mentioned. According to the information assessee received two cheques on 10th March, 2010 from Axis Bank of Rs.10,00,000/- each through middleman 'Goyal Sahab' from M/s. Zenith Automotive Pvt. Ltd. and Shalini Holdings Ltd. The reasons were recorded on 9.04.2013. Therefore, Assessment order u/s 143(3) read with Section 147 assessment order was passed by the ld. Income Tax Officer, Ward 5(1), New Delhi, on 25th of August, 2014 passing a cryptic order and accepted the returned income.

3. On examination of the record, the ld. PCIT noted that there was detailed information available with the Assessing Officer about accommodation entries obtained by the assessee from M/s. Jain Brothers i.e. Mr. S.K. Jain, the name of the middleman is mentioned. The documents were also found where assessee is mentioned as a beneficiary and the name of the facilitator Mr. Goyal Sahab as mediator for arranging the accommodation entries was also found. The details of the cash trail was also shown from the documents from Mr. S. K. Jain and Mr. Virendra Kumar Jain. Despite all these information, the ld. Assessing Officer did not make any enquiry. He ignored the above facts and passed the assessment order in a cryptic manner without making any enquiries. Thus, the ld. CIT issued notice under Section 263 of the Act that why the order passed should not be held as erroneous and prejudicial to the interest of Revenue.

4. During the course of proceedings assessee submitted that the revision proceedings have been initiated for examining the same issue which has been already examined by the ld. Assessing Officer in re-assessment proceedings and, therefore, same may be quashed.

5. The ld. CIT rejected the contention of the assessee and held that the ld. Assessing Officer despite having the complete information with respect to the accommodation entry obtained by the assessee has accepted the returned income of the assessee without making any enquiry or verification which should have been made. He further held that the Assessing Officer was also aware about the flow of fund of the accommodation entry and also the name of the mediator. Therefore, he held that assessment order passed

by the ld. Assessing Officer under Section 147 read with Section 143(3) of the Act on 25th August, 2014 is erroneous and prejudicial to the interest of Revenue hence he set aside the issue and directed the Assessing Officer to examine the issue in the light of the seized papers. Against this order, the assessee is in appeal.

6. In this case on 16th February, 2021 and 14th July, 2021 despite notices, none appeared on behalf of the assessee. Therefore, the issue is decided on the merits of the case as per information available on record.

7. The ld. DR submitted that an identical issue has been decided by the co-ordinate bench in the case of Surya Financial Services Ltd. Vs. Pr. CIT in ITA. No. 2915/Del/2017 for assessment year 2010-11 dated 8.01.2018. He further submitted that the issue is squarely covered against the assessee by the decision of Hon'ble Supreme Court in the case of Deniel Merchants P. Ltd. Vs. ITO dated 29.11.2017 and PCIT Vs. Paramount Communications (P) Ltd. [2017 TIOL 253-SC-IT]. In view of this, it was submitted that the issue is squarely covered against the assessee.

8. We have carefully considered the orders of the lower authorities as well as the contention of the ld. DR. The first ground of appeal raised by the assessee is that the Assessing Officer should have initiated proceedings under Section 153C of the Act instead of Section 148 of the Act. Therefore, the assessment order, which is sought to be revised, is itself void ab initio. Therefore, the subsequent proceedings of revising that order are invalid. On careful consideration of the above argument, we find that on the search on Mr. S.K. Jain, no material pertaining to or belonging to this assessee was found. From the material an information was available that assessee is beneficiary of accommodation entries taken from Mr. S. K. Jain. We also found that all the material belonging to and pertaining to Mr. S. K. Jain was used as information in case of assessee. In view of this, according to us, the ld. Assessing Officer has correctly assumed jurisdiction under Section 148 of the Act. Therefore, ground No. 1 is dismissed.

9. The second ground relates to some infirmity in the reasons recorded. However, on perusal of the reasons recorded by the ld. Assessing Officer, we find that there is no infirmity in the reasons recorded by the ld. Assessing Officer. He has given the complete details including the name of the

middleman and mediator, who arranged these accommodation entries. Therefore, there is no infirmity in the reasons recorded, hence ground No. 2 of the appeal is dismissed.

10. Ground No. 3 is that the ld. Assessing Officer has not applied his mind and, therefore, 148 issued by the ld. Assessing Officer is invalid. We find that the ld. Assessing Officer has written detailed reasons after perusal of the return of income filed by the assessee. The reasons recorded, according to us, prima facie shows reason to believe with the Assessing Officer. Accordingly ground No. 3 is dismissed.

11. Ground No. 4 is regarding non-granting of opportunity and not considering the explanation furnished by the assessee. We find that the ld. CIT has granted more than 5 opportunities of hearing and considered the explanation of the assessee at page No. 20 of his order. Therefore, ground No. 4 is dismissed.

12. Ground Nos. 5–8 are challenging that it is not a case of no enquiry, but of inadvertent enquiry. Assessee has also challenged that he has not been granted an opportunity of cross examination of Mr. S. K. Jain. Assessee has also challenged that no independent personal satisfaction is recorded by the CIT. We find that the ld. CIT has himself verified the records and after verification of the records took out the relevant pages of the information. He further looked at the return of income filed by the assessee and perused the information supplied by the assessee during the course of assessment proceedings. Based on this the ld. CIT has passed the order under Section 263 of the Act. Even otherwise the documents are so glaring and clear-cut that the CIT (Appeals) after applying his mind and verifying return of income as well as the assessment records has come to the conclusion that no enquiry is made by the ld. Assessing Officer. In view of this, we dismiss ground Nos. 5–8 of the appeal.

13. Even otherwise the issue is squarely covered against the assessee on the facts and circumstances of the case by the two decisions of the Hon'ble Supreme Court, namely,Deniel Merchants P. Ltd. Vs. ITO (supra) and PCIT Vs. Paramount Communications (P) Ltd. (supra). Both these cases squarely cover the issue against the assessee. Even otherwise on earlier occasions the assessee has merely submitted the judicial precedents. However, no

evidence was produced to show that what kind of enquiry and information the Assessing Officer was supplied during the course of re-assessment proceedings. On identical facts and circumstances , Hon Supreme court in case of Daniel Merchants Pvt Ltd has dismissed the SLP against the order of the Hon. Calcutta Highcourt holding that :-

> "In all these cases, we find that the Commissioner of Income Tax had passed an order under Section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We see no reason to interfere with the order of the High Court. The Special Leave Petitions are dismissed."

14. Further honourable Calcutta High Court in Rajmandir estate private limited versus PCIT [2016] 386 ITR 162 (Cal) has also dealt with identical issue and upheld the action u/s 263 of the income tax act holding as Under:-

> "(21) After hearing the learned advocates, we are of the opinion that the following questions arise for consideration :
>
> (a) Whether in the light of the views expressed in the case of Lovely Exports (supra) and Steller Investment (supra), the order under section 263 directing further investigation is legal ?
>
> (b) Is the finding of the Commissioner of Income-tax that unac counted money was or could have been laundered as clean share capital by creating facade of paper work, routing the money through several bank accounts and getting it the seal of statutory approval by getting the case reopened under section 147 suo motu perverse ?
>
> (c) Whether the order passed by the Assessing Officer under section 143(3)/147 of the Income-tax Act is erroneous and also prejudicial to the interests of the Revenue ?
>
> (d) Whether the impugned judgment of the learned Tribunal is per verse ?
>
> (22) We shall consider the second question first.
>
> In a commentary on the Prevention of Money Laundering Act, 2002 by Dr. M. C. Mehanathan published by Lexis Nexis, 2014, the steps of money laundering are described as follows :
>
> "Steps of money-laundering

Although money-laundering often involves a complex series of transactions, it generally includes the following three basic steps :

1. Placement

It involves introduction of the proceeds of crime into the financial system. This is accomplished by breaking up large amounts of cash into smaller sums that are then deposited directly into a bank account, or by purchasing monetary instruments, transferring the

Page No : 0202

cash overseas for deposit in banking/financial institutions, use for purchase of high value things such as gold, precious stones, art works, etc. and reselling the same through cheques or bank transfers, etc.

2. Layering

This involves formation of complex layers of financial transactions which distance the illicit proceeds from their source and disguise the audit trail. In this process a series of conversions or transactions are involved for moving the funds to places such as offshore financial centres operating in a liberal regulatory regime. Often 'front' com panies are formed to accomplish this task. These companies obscure the real owners of the money through the bank secrecy laws and attorney-client privilege. The techniques used for the purpose are to lend the proceeds back to the owner as loans, gifts and, etc., under invoicing the items exported to the real owner or, etc. In some cases, the transfers may be disguised as payments for goods or services, thus giving them a legitimate appearance.

3. Integration

This involves investment in the legitimate economy so that the money gets the colour of legitimacy. This is achieved by techniques such as lending the money through 'front' companies, etc. The money may be invested in real estates, business and, etc.

The stages at which money-laundering could be easily detected are those where cash enters into the domestic financial system, either formally or informally, where it is sent abroad to be integrated into the financial systems of tax haven countries and where it is repatri ated in the form of transfers."

The role of the revenue authorities in tackling the menace of laun dering black money was commented by the learned author as follows :

"It has to be kept in view that India has a problem of black eco nomy, which is unaccounted and many a time the holders of black money also launder the black money in order to acquire legitimate assets. Legal or illegal income which evades tax and illegal income that comes within the exempted taxation slab constitute the unre ported Gross Domestic Product or black economy. Laundering the black money and laundering proceeds of crime are two different issues, although there is frequent overlap between the two. While laundering black money is to be handled through taxation laws or similar laws, the laundering of proceeds of crime is to be handled through special anti-money-laundering laws."

Page No : 0203

(23) The following pieces of evidence are noticeable :

(a) 39 corporate subscribers purchased 7,92,737 shares of Rs. 10 each at a

premium of Rs. 390 per share. In the process the assessee-company raised a paid up share capital of Rs. 79.27 lakhs with a premium of Rs. 31.7 crores.

(b) From the information made available by the assessee, it appears that 19 out of 39 applicants secured funds, for the purpose of contributing to the share capital of the assessee, on account of share application money. In other words, those 19 applicants collected funds on account of share application money in their respective companies and that money was con tributed to the share capital of the assessee. 15 out of the 39 applicants pro cured the requisite fund by selling shares. The rest of the applicants of shares, in the share capital of the assessee-company, did not disclose the nature of receipt at their end though the source of fund was identified. What has not been specified is, as to on what account was the money received.

(c) The forms of share application purporting to have been signed by the applicant companies have also been disclosed from which it appears that the date of allotment, number of allotment, number of shares allotted, share ledger folio, allotment register folio, application number, have all been kept blank. These particulars, Mr. Poddar, submitted should have been filled up by the assessee, but that has not been done.

(d) Another significant fact admitted by the assessee in reply to the notice to show cause under section 263 is that the "shares were offered to, and subscribed by the closely held companies owned by the promoters/ directors or their close relatives and friends".

(e) From the bank statements disclosed it appears that to have the cheques issued in favour of the assessee honoured, matching amounts were credited to the accounts of the subscribers shortly before the cheques issued in favour of the assessee were presented for collection.

(f) 19 applicants of shares within a period of less than six months had money contributed to their share capital which in their turn they con tributed to the share capital of the assessee. So that, the 19 companies which contributed to the share capital of the assessee in the name of assets were left merely with the share-scrips of the assessee. The other lot of 15 subscribers in substance had the share-scrips held by them substituted by the share-scrips of the assessee.

(g) Though, Mr. Poddar made extensive submissions scanning the order under section 263 in between the lines, he did not criticize the finding

of the Commissioner that "the Assessing Officer did not examine a single director of the assessee-company or of the subscribing company" which goes to show that correctness of this assertion is not in dispute.

(24) From the aforesaid evidence the following, prima facie, infer ences can safely be drawn :

(a) The promoter/directors of the assessee and their close relatives and friends had united with the common object of creating at least 20 (19+1) companies apparently having a large capital base, but, in fact these are mere paper

companies having no real worth. The transaction of sale and purchase of shares was nominal rather than real.

(b) The allegation, in response to the notice to show-cause under section 263 that "it bears importance to state here that the investor com panies of shares were interested to subscribe shares of the assessee com pany as, according to them, the assessee-company had prospect in future," is a plain lie.

(c) The blank share application forms, etc., tabulated above go to show that the alleged application for shares and the alleged allotment were not in the usual course of the business.

(d) In the light of the aforesaid pieces of evidence and the prima facie finding, we are emboldened to say that the three requirements : (A) identity of the shareholders ; (B) genuineness of the transaction and (C) the creditworthiness of the shareholders repeatedly impressed, by Mr. Poddar, upon us, have not been satisfied. Identity of the alleged share-holders is known but the transaction was not a genuine transaction. The transaction was nominal rather than real. The creditworthiness of the alleged share holders is also not established because they did not have any money of their own. Each one of them received from somebody and that somebody received from a third person. Therefore, prima facie, the share-holders are mere name lenders.

(25) For the reasons discussed in the preceding paragraph, we are satisfied that the judgment in the case of CIT v. Steller Investment (supra) has no manner of application to the facts and circumstances of this case. The question as to whether there has been a device adopted for money laundering also did not crop up for consideration in that case.

The Prevention of Money Laundering Act, 2002 was not also there on the statute at that point of time. Before the appeal in Steller Investment Ltd. was dismissed by the apex court, the question had cropped up in the case of CIT v. Sophia Finance Ltd. reported in [1994] 205 ITR 98 (Delhi) [FB] wherein a special bench held as follows (page 104) :

Page No : 0205

"As we read section 68 it appears that whenever a sum is found credited in the books of account of the assessee then, irrespective of the colour or the nature of the sum received which is sought to be given by the assessee, the Income-tax Officer has the jurisdiction to enquire from the assessee the nature and source of the said amount. When an explanation in regard thereto is given by the assessee, then it is for the Income-tax Officer to be satisfied whether the said expla nation is correct or not. It is in this regard that enquiries are usually made in order to find out as to whether, firstly, the persons from whom money is alleged to have been received actually existed or not. Secondly, depending upon the facts of each case, the Income-tax Officer may even be justified in trying to ascertain the source of the depositor, assuming he is identified, in order to determine whether that depositor is a mere name-lender or not. Be that as it may, it is clear that the Income-tax Officer has jurisdiction to make enquiries with regard to the nature and source of a sum credited in the books of account of an assessee and it would be immaterial as to whether the amount so credited is given the colour of a loan or a sum representing the sale proceeds or even receipt of share application money. The use of the words 'any sum found credited in the books' in section 68 indi cates that the said section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money."

In the case of Sumati Dayal v. CIT [1995] 214 ITR 801 (SC). Their Lordships held that a capital receipt can become taxable if the explanation offered by the assessee about the nature and source thereof is not satis factorily explained.

The judgment in the case of CIT v. Lovely Exports Pvt. Ltd. reported in [2008] 299 ITR 268 (Delhi) lends no assistance to the assessee because in that case the Division Bench reiterated that omission to make an enquiry, where such an exercise is provoked, shall render the order of the Assessing Officer both erroneous and prejudicial to the Revenue. The Division Bench went on to hold that the Revenue should not harass the assessee where "the preponderance of evidence indicates absence of culpability". In the present case there exists reasonable suspicion if not prima facie evidence of culpability.

(26) The learned Tribunal in the impugned judgment in paragraphs 3, 4 and 5 observed, inter alia, as follows :

Page No : 0206

"We have heard the rival submissions and perused the relevant material on record. It is relevant to mention that we have disposed of more than 500 cases involving same issue through certain orders with the main order having been passed in a group of cases led by Subh lakshmi Vanijya P. Ltd. v. CIT (I. T. A. No. 1104/Kol/2014), dated July 30, 2015— [2015] 43 ITR (Trib) 48 (Kol) for the assessment year 2009- 10. Both the sides have fairly admitted that facts and circumstances of the cases under consideration are mutatis mutandis similar to those decided earlier, except for certain issues which we will advert to a lit tle later. In our aforesaid order in Subhlakshmi Vanijya P. Ltd. v. CIT (I. T. A. No. 1104/Kol/2014), dated July 30, 2015 [2015] 43 ITR (Trib) 48 (Kol), we have drawn the following conclusions . . . :

It is noticed that all or some of the above conclusions are appli cable to the appeals in this batch."

The appellant has disclosed a copy of the judgment delivered by the learned Tribunal in Subhlakshmi Vanijya P. Ltd. v. CIT. The learned Tri bunal in paragraph 17.i opined as follows (page 87 of 43 ITR (Trib)) :

"All the cases under consideration have the same common feature of passing assessment orders in undue haste. When we consider the above factual matrix, there can be no escape from an axiomatic con clusion that in all these cases the enquiry conducted by the Assessing Officers is exceedingly inadequate and hence fall in the category of 'no enquiry' conducted by the Assessing Officer, what to talk of char actering it as an 'inadequate enquiry'. In our considered opinion, the highly inadequate enquiry conducted by the Assessing Officer result ing in drawing incorrect assumption of facts, makes the orders erro neous and prejudicial to the interests of the Revenue."

(27) In the case of Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC), the Tribunal had held as follows (page 327) :

"The Tribunal further held that if the orders for 1955-56 to 1959-60 were left out and the assessment order for 1960-61 was considered by itself, it could not be said that the assessment order was prejudicial to the interests of the Revenue. It was also observed that the factum of advance of initial capital, realization of amounts by sale of gold orna ments and the carrying on of the money-lending and speculative business had already been accepted and assessed in the previous years, that even in the year of assessment in question the Income-tax Officer had added Rs. 1,499 to the disclosed income from speculative business and Rs. 1,270

to the disclosed income from interest and made the assessment on a total income of Rs. 9,037 ; as such it could

Page No : 0207

not be said that the assessment was prejudicial to the interests of the Revenue and that at the most it could be said that the assessee could not have carried on any business at the addresses given by her but where an assessment has been made without territorial jurisdiction it could not be said to be prejudicial to the interests of the Revenue."

This court set aside the order of the learned Tribunal. In an appeal by the assessee before the apex court their Lordships upheld the order of this court holding, inter alia, as follows (page 328 of 88 ITR) :

"The learned advocate for the assessee contends that under section 33B the Commissioner had no jurisdiction to cancel the assessment made by the Income-tax Officer inasmuch as it cannot be said that where an assessee has been assessed to tax it was prejudicial to the interests of the Revenue on the ground that no assessment could have been made in respect of the income of which she made a volun tary return. This contention in our view is unwarranted by the language of section 33B. The words of the section enable the Com missioner to call for and examine the record of any proceeding under the Act and to pass such orders as he deems necessary as the cir cumstances of the case justify when he considers that the order passed was erroneous in so far as it is prejudicial to the interests of the Revenue. It is not, as submitted by the learned advocate, pre judicial to the interests of the Revenue only if it is found that the assessment for the year was disclosed on the basis that an income had been earned which is assessable. Even where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to assist someone else who would have been assessed to a larger amount, an assessment so made can certainly be erroneous and prejudicial to the interests of the Revenue. If so—and we think it is so—the Commissioner under sec tion 33B has ample jurisdiction to cancel the assessment and may ini tiate proceedings for assessment under the provisions of the Act against some other assessee who according to the Income-tax autho rities is liable for the income thereof."

The reasoning advanced by their Lordships in respect of an alleged revenue receipt is, according to us, equally applicable to an alleged capital receipt which, in fact, was received only in papers. The attempt of the assessee, it was apprehended in the case of Tara Devi (supra) was to assist someone else. An identical attempt is involved in this case. Who is the per son sought to be assisted by the assessee ? This question can only be answered after a thorough enquiry, directed by the Commissioner of

Page No : 0208

Income-tax, is held. The assessee is interested in stalling that investigation on the plea that the order of the Assessing Officer is neither erroneous nor prejudicial to the interests of the Revenue.

(28) We have indicated above the pieces of evidence which go to show that the Commissioner had reasons to entertain the belief that this was or could be a case of money laundering which went unnoticed because the Assessing Officer did not hold the requisite investigation except for calling for the records. The evidence which we have tabulated above and the prima facie inference drawn by us is deducible from the documents also submitted before the Assessing Officer. The fact that the Assessing Officer did not apply his mind to those pieces of evidence would be evident from the assessment order itself which reads as follows :

"During the financial year the assessee-company has issued 792737 No. of equity share with a face value of Rs. 10 along with a premium of Rs. 390.

Thereafter, notices under section 133(6) of the Income-tax Act, 1961 were also issued to verify the transactions of the assessee on test check basis. The case is discussed and heard. Issue relevant for deter mination of total income of the assessee is discussed as under :"

The issues relevant according to the Assessing Officer were a receipt of a sum of Rs. 61,000 on account of consultancy charges and the prelimi nary expenses written off amounting to a sum of Rs. 60,000. He, therefore, completed the assessment after making addition of a sum of Rs. 1,21,000. When it is an order erroneous in so far as the same is prejudicial to the interests of the Revenue was considered by this court in the case of CIT v. Maithan International [2015] 375 ITR 123 (Cal) to which one of us (Girish Chandra Gupta, J.) was a party wherein the following views were expressed (page 147) :

"It is not the law that the Assessing Officer occupying the position of an investigator and adjudicator can discharge his function by per functory or inadequate investigation. Such a course is bound to result in erroneous and prejudicial orders. Where the relevant enquiry was not undertaken, as in this case, the order is erroneous and prejudicial too and, therefore, revisable. Investigation should always be faithful and fruitful. Unless all fruitful areas of enquiry are pursued the enquiry cannot be said to have been faithfully conducted. In a dif ferent context the apex court observed 'contra veritatem lex nunquam aliquid permittit : implies a duty on the court to accept and accord its approval only to a report which is the result of faithful and fruitful investigation.'

(See Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) reported in [2010] 6 SCC 1 paragraph 200 at page 80)"

In the case of CIT v. N. R. Portfolio P. Ltd. [2014] 2 ITR-OL 68 (Delhi), the following views were expressed (page 86) :

"What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditwor thiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PANs or the fact that third persons or company had filed Income-tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genu ineness, creditworthiness, identity are deeper and obtrusive. Compa nies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and man age the said companies. It is the persons behind the company who take the decisions, control and manage them."

The persons behind the assessee-company and the persons behind the subscribing companies were not interrogated which was essential to unearth the truth. Reference may also be made to the judgment of this court in the case of CIT v. Active Traders Pvt. Ltd. (supra).

The question for consideration is whether in the presence of materials discussed above the Commissioner was justified in treating the assessment order erroneous and prejudicial to the interests of the Revenue. That ques tion in the facts and circumstances has to be answered in the affirmative.

(28) We find no substance in the submission that the order of the learned Tribunal is perverse, after examining all the submissions advanced by Mr. Poddar.

(29) Whether receipt of share capital was a taxable event prior to April 1, 2013 before introduction of clause (viib) to the sub-section (2) of section 56 of the Income-tax Act ; whether the concept of arm's length pricing in a domestic transaction before introduction of sections 92A and 92BA of the Income-tax Act was there at the relevant point of time are not questions which arise for determination in this case. The assessee with an authorised share capital of Rs. 1.36 crores raised nearly a sum of Rs. 32 crores on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees is an important pointer necessitating investigation. Money allegedly received on account of share application can be roped in under section 68 of the Income-tax Act if the

source of the receipt is not satisfactorily established by the assessee. Ref erence in this regard may be made to the judgment in the case of Sumati Dayal v. CIT (supra), wherein their Lordships held that any sum "found credited in the books of the assessee for any previous year, the same may be charged to Income-tax . . . ". We are unable to accept the submission that any further investigation is futile because the money was received on capital account. The Special Bench in the case of Sophia Finance Ltd. (supra) opined that "the use of the words "any sum found credited in the books" in section 68 indicates that the said section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money. Mere fact that the payment was received by cheque or that the applicants were companies, borne on the file of the Registrar of Companies were held to be neutral facts and did not prove that the transaction was genuine as was held in the case of CIT v. Nova Pro moters and Finlease (P.) Ltd. (supra). Similar views were expressed by this court in the case of CIT v. Precision Finance Pvt. Ltd. (supra). We need not decide in this case as to whether the proviso to section 68 of the Income- tax Act is retrospective in nature. To that extent the question is kept open. We may however point out that the Special Bench of Delhi High Court in the case of Sophia Finance Ltd. (supra) held that "the Income-tax Officer may even be justified in trying to ascertain the source of the depositor". Therefore, the submission that the source of source is not a relevant enquiry does not appear to be correct. We find no substance in the sub mission that the exercise of power under section 263 by the Commissioner was an act of reactivating stale issues. In the case of Gabriel India Ltd. (supra) the Commissioner of Income-tax was unable to point out any error in the explanation furnished by the assessee. Whereas in the present case we have tabulated the evidence which was before the Assessing Officer which should have provoked him to make further investigation. The Assessing Officer did not attach any importance to that aspect of the mat ter as discussed above by us. The judgment in the case of Leisure Wear Exports Ltd. (supra) relied upon by Mr. Poddar has no applicability because the evidence furnished by the assessee in this case does suggest a cover up. We also have held prima facie that neither the transaction appears to be genuine nor are the applicants of share are creditworthy.

The judgment in the case of Omar Salay Mohamed Sait (supra) cited by Mr. Poddar has no application for reasons already discussed. It is not true that the Commissioner in this case has merely on the basis of suspi cion held that this was or could be a case of money laundering. We as a

matter of fact have discussed this issue in great detail and need not reit erate the same. The order passed by the Commissioner is by no means an act of substituting

his own views to that of the Assessing Officer. It is true that the Assessing Officer had requisitioned the necessary details by his notice under section 142(1) but he thereafter did not apply his mind thereto. The judgment in the case of J. L. Morrison (India) Ltd. has no manner of application because in that case the question essentially was whether the receipt was of a capital or revenue nature. The facts and cir cumstances were not in dispute. Moreover, the view taken by the Assessing Officer was not shown nor was held by the court to be an erroneous view. Whereas in this case we have demonstrated in some detail as to why is the order of the Assessing Officer erroneous and prejudicial to the Revenue.

The judgment in the case of Malabar Industrial Co. Ltd. (supra) and Max India Ltd. do not apply to the facts of this case for reasons already discussed by us. From the judgment of the learned Tribunal in the case of Subholaxmi, placed before us in great detail by Mr. Poddar, we find that all important issues placed for consideration by no other than Mr. Poddar himself were duly considered by the learned Tribunal.

(30) For reasons already discussed we answer the issue No. (a) and (c) in the affirmative and the issue Nos. (b) and (d) in the negative. In the result the appeal fails and is dismissed. It is clarified that the views expressed herein are for the purpose of disposal of this appeal and shall not preclude the statutory authority from arriving at its own conclusion in accordance with law."

15. In view of this, we do not find any merit in the appeal of the assessee and hence same is dismissed. Accordingly, the action of the ld. CIT and the order passed consequently is upheld.

16. In the result the appeal filed by the assessee is dismissed.

Order pronounced in the open court on : 12/10/2021.

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 12/10/2021.

MEHTA

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1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR:ITAT

Date of dictation	12.10.2021
Date on which the typed draft is placed before the dictating member	12.10.2021
Date on which the typed draft is placed before the other member	12.10.2021
Date on which the approved draft comes to the Sr. PS/ PS	12.10.2021
Date on which the fair order is placed before the dictating member for pronouncement	12.10.2021
Date on which the fair order comes back to the Sr. PS/ PS	12.10.2021
Date on which the final order is uploaded on the website of ITAT	12.10.2021
date on which the file goes to the Bench Clerk	12.10.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	