आयकर अपीलीय अधीकरण, न्यायपीठ –"B" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA
[Before Hon'ble Shri A. T. Varkey, JM & Shri Manish Borad, AM]

I.T.A. No. 174/Kol/2021
Assessment Year: 2010-11

Concord Infra Projects Pvt. Ltd. (PAN: AADCC7077K)	Vs.	Principal Commissioner of Income-tax -3, Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	15.09.2021
Date of Pronouncement	13.10.2021
For the Appellant	Shri Anil Kochar, Advocate
For the Respondent	Shri Sandeep Chaube, CIT, DR

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal filed by the Assessee against the order of Ld. Pr. CIT-3, Kolkata dated 10.08.2020 passed u/s 263 of Income Tax Act, 1961 (*hereinafter referred to as the* 'Act') for Assessment year 2010-11.

2. The assessee's appeal is time barred by 210 days and a petition seeking condoning the delay has been filed stating that the delay in filing of the appeal was attributable to the restrictions imposed due to Covid -19 pandemic. We have heard both the sides and find that there is a reasonable cause for delay in filing of the appeal on time due to Covid -19 pandemic. Hence, we condone the delay and admit the appeal for hearing.

3. The ground of appeal of the assessee reads as under:

> 1. For that the assumption of jurisdiction u/s 263 of the Act by the Ld. Pr. CIT is wrong and uncalled for.
>
> 2. For that the Ld. Pro CIT having not examined the records of the appellant and proceeded to issue notice u/s 263 upon the proposal of the A.O. there is nothing on record to justify the impugned proceedings which required formation of opinion by the Pr. Commissioner

of Income Tax that the assessment framed was erroneous and/or prejudicial to the interest of revenue.

3. For that the source relating to the receipts of share subscription having been fully explained by the appellant supported by direct evidences and there being no adverse finding thereupon the Ld. Pr. CIT having rightly accepted the source in the hands of the appellant but without there being any valid reason erred in directing the A.O. to make addition @ 0.25% of the amount involved as the income of the appellant as entry operator.

4. For that the Ld. Pr. CIT ought to have dropped the proceedings initiated u/s 263 as there was no finding of the assessment framed being erroneous and prejudicial so as to assume jurisdiction u/s 263.

5. For that the Ld. Pr. CIT though discussed all relevant facts and the Law applicable thereon ought not to have held the appellant as an entry operator.

6. For that the Ld. Pr. CIT could not refer to any evidence on record so as to treat the appellant as a name lender I the directions given by him to the A.O. to make addition @ 0.25% in respect of the funds involved was without any basis.
7. For that further grounds of appeal may kindly be allowed to be taken at the time of hearing of the appeal.*"*

4. From the grounds of appeal raised, we note that the ground no. 7 is general, so it is dismissed. By preferring ground nos. 1 and 2 the assessee has raised the legal issue challenging the invocation of revisional jurisdiction u/s. 263 of the Act, without satisfying the essential pre-conditions as stipulated in section 263 of the Act. Explaining this ground, the Ld. AR submitted that the Ld. Pr. CIT has interdicted the order of the AO passed u/s. 44/147 of the Act dated 29.12.2017 which order itself of the AO is bad in the eyes of law, so according to him it is a nullity. Explaining further on this contention as to how the order of AO u/s 144/147 dated 29.12.2007 which has been interdicted by the Ld. PCIT u/s 263 of the Act is bad in law, the Ld. A.R. pointed out that the AO had reopened the original assessment for AY 2010-11 on the reason that he had received information from authentic source that one company named M/s. Miracle Commodities Pvt. Ltd. (*hereinafter referred to as* "M/s. Miracle") got high value deposits frequently in their bank account and thereafter it made immediate transaction to some third party account and it revealed from investigation that large value of amount has been routed to the assessee i.e. M/s. Concord Infra Projects Pvt. Ltd. implying that the assessee has routed this money in the form of share on high premium to the tune of Rs. 8.34 crores. According to Ld. A.R. based on this factual information the AO formed his reason to believe escapement of income as stipulated

u/s 147 of the Act and thereafter had issued notice u/s. 148 of the Act on 17.03.2017 expressing his desire to re-open the assessment in order to examine the genuineness of the shares issued by assessee which were valued at a face value of Rs. 10/- and at premium to sixteen (16) Kolkata based companies total amounting to Rs.8.34 cr.; and the AO on the aforesaid reason presuming escapement of income thereafter issued statutory notices, but the AO records in his re-assessment order u/s 144/147 dated 29.12.2007, that there was non-compliance from the part of the assessee. So he issued notice u/s 133(6) notice to UCO Bank in respect of two bank accounts and acknowledges to have received KYC of those accounts on 17.11.2017. The AO thereafter acknowledges that on 18.09.2017 assessee's AR was present before him and produced the details requisitioned by him in the notice and in the re-assessment proceeding he also challenged the veracity of the claim of the Department on the issue of issuance and service of notice upon the assessee i.e. service of notice u/s 148 of the Act and other notices were challenged. According to the Ld. A.R, the AO in the assessment order accepts the fact that in the month of December, 2017 the Ld. AR of the assessee had submitted some more documents to justify the share premium and shares worth Rs.8.23 cr. issued to the share subscribers. Thereafter according to Ld. A.R, the AO records that du to the paucity of time, he could not conduct intensive verification and therefore, the AO accepted the returned income submitted by the assessee by order dated 29.12.2017, which action/order of the AO, the Ld. A.R. contends to be a nullity/bad in eyes of law for want of jurisdiction of the AO to initiate the re-opening of the assessment itself because the *very factual basis* on which the AO based *his belief of escapement of income* was on erroneous factual basis, which fact according to Ld. A.R. has been acknowledged by the Ld PCIT in his impugned order. Explaining further on this legal & factual issue, the Ld AR pointed out that the AO has resorted to reopening the assessment based on receipt of information about large funds/deposit in the bank account of a third party company called M/s Miracle, which thereafter has supposed to have transferred the same to and another party/company and which money was routed back to assessee in the form of share capital with premium, which fact has been held by the Ld PCIT in his impugned order as wrong/erroneous. So, according to Ld. A.R., the very reopening of the assessment by the AO for the

assessment year 2010-11 was on wrong assumption of facts or in other words, the re-opening of assessment was an erroneous act for want of jurisdiction and so is a nullity. According to the Ld. AR, since this order of AO dated 29.12.2017 was itself a nullity, therefore, this nullity order of AO which has been interdicted by the Ld. Pr. CIT by passing the impugned order dated 10.08.2020 is also a nullity. Consequently according to Ld.. A.R, when the reasons recorded for reopening of assessment for AY 2010-11 was itself was on wrong assumption of fact, so the action of AO to initiate reassessment proceedings by issue of notice u/s 148 of the Act, was, itself therefore, an act without jurisdiction; Ergo the Re-assessment order of AO dated 29.12.2017 is *non-est* in the eyes of law, so accordingly to Ld. A.R, the Ld. PCIT could not have interdicted a *non-est order*, so the impugned order of Ld. PCIT is also a *nullity* or *non-est* in the eyes of law.

5. Per contra, the Ld. CIT, DR vehemently opposing the contention of the Ld. AR, submitted that if the AO's reopening proceedings was bad in law it should have been challenged by the assessee and not in this proceedings which is emanating from the action of Ld. Pr. CIT u/s. 263 of the Act. According to Ld. CIT, DR, the assessee having kept quiet on the reassessment order of AO cannot now in this proceedings agitate about AO's action in the proceeding while assailing the action of Ld. PCIT. Further, according to Ld CIT, DR, the Ld. Pr. CIT finding in the impugned order that the AO's omission not to have enquired into and levied taxes on the money routed to the assessee in the form of share capital and premium has been an erroneous action/omission on the part of the AO; and moreover, he pointed out that the Ld. PCIT has held the assessee company to be provider of accommodation entry and therefore has directed the AO to assess the income only of commission at the rate of 0.25% as held by Hon'ble Calcutta High Court in this case of M/s Safeco Projects Pvt. Ltd. dated 07.03.2019 which is a reasonable order of Ld PCIT. So according Ld. CIT D.R., the Ld. Pr. CIT rightly interfered in the order of AO by exercising his revisional jurisdiction and passed a reasonable order to bring to tax only the commission income of 0.25% which impugned action does not require our interference.

6. In his rejoinder, the Ld. AR submitted that the assessee did not challenge the action of reopening and order passed by the AO dated 29.12.2017 because the AO accepted the return of income filed by the assessee and since the AO did not make any addition/adverse view against the share capital/premium issued by the assessee there was no grievance against the action of AO. So, the assessee did not prefer any appeal before the Ld. CIT(A). However when the Ld. Pr. CIT through his impugned order tried to interdict this order of AO, the assessee has raised the legal issue which assessee is entitled to do because it is settled law that the jurisdiction can be challenged at any stage/proceedings and even that it can be raised before the Hon'ble Apex Court for the first time. And according to Ld. A.R, in this case, the primary p oceedings is the AO's action of re-opening the assessment by issuance of notice u/s 148 of the Act which was an action without jurisdiction because the factual basis on which he relied to base his belief escapement of income was erroneous (*as held by Ld. PCIT in his impugned order itself*). So the action of AO can be challenged in collateral proceedings u/s 263 of the Act as held by the Tribunal in which seve al decision of Hon'ble Supreme Court has been taken note and relied on the following decision of the Tribunal as under:

> *Supersonic Technologies (P) Ltd. vs. PCIT in ITA No. 2269/D/2017 dated 10.12.2018 (ITAT, Delhi Bench) ITA. No.3009 to 3012/DEL/2017*
>
> *"6.1……..It is well settled Law that assessee can challenge the validity of the re-assessment proceedings in the collateral proceedings (relating to examination of validity of Order passed) under section 263 of the I.T. Act. We rely upon the Order of ITAT, Mumbai Bench in the case of Westlife Development Ltd., vs. PCIT 49 ITR (Tribu.) 406 in which it was held "allowing the appeal (i) that jurisdiction aspect of the Order passed in the primary proceedings can be examined in collateral proceedings also. Thus, the assessee could be permitted to challenge the validity of the Order passed under section 263 on the ground that the assessment order was non-est." Since the reassessment order itself is bad in law, therefore, Learned Counsel for the Assessee, rightly contended that the same cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I.T. Act. On this ground itself the proceedings under section 263 of the I.T. Act are bad in law and liable to be quashed. We, accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same."*

- M/s CharbhujaMarmo (India) (P) Ltd. vs. PCIT in ITA No. 4749/D/2019 dated 31.12.2019 (ITAT, Delhi)

> *"6. We have considered the rival submissions. It is well settled Law that since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. It is also well settled Law that validity of*

the re-assessment proceedings are to be judged on the basis of the reasons recorded for reopening of the assessment."

He further placed reliance upon the following judgments: -

" M/s Westlife Development Ltd. vs. PCIT in ITA No. 688/Mum/2016 dated24.06.2016 (ITAT, Mumbai) - Krishna Kumar Saraf vs. CIT in ITA No. 4562/Del/2011 dated 24.09.2015 (ITAT, Delhi) - M/s Classic Flour & Food Processing (P) Ltd. vs. CIT in ITA No. 764 to 766/Kol/2014 dated 05.04.2017 (ITAT, Kolkata)"

In the light of the aforesaid averments, and other decisions discussed infra, the Ld AR wants us to adjudicate this legal issue.

7. Having heard both parties, the first aspect which needs to be examined is as to whether the assessee is entitled to challenge the validity of initiation of proceedings by AO u/s 147 of the Act in the present appeal in which he has challenged the validity of order passed by Ld PCIT u/s 263 of the Act. The Ld Counsel for the assessee submitted before us that it is open to an assessee in an appeal against the order u/.s 263 of the Act which seeks to revise an order passed u/s 147 of the Act, to challenge the validity of the order passed u/s.147 of the Act as well as initiation of proceedings u/s 147 of the Act. In this regard other than the case laws cited supra, the Ld. Counsel for the assessee placed before us two decisions one rendered by Lucknow Bench of ITAT in the case of Inder Kumar Bachani (HUF) vs ITO 99 ITD 621 (Luck) and ITAT Mumbai ' G ' Bench in the case of M/s. Westlife Development Ltd. Vs Principal C.I.T. in ITA NO.688/Mum/2016. In both the decisions a view has been taken by the Tribunal that when an Assessment order passed u/s 147 of the Act was without jurisdiction, the Ld. PCIT cannot invoke the jurisdiction u/s 263 of the Act against such void or non-est order. In the second decision cited the Mumbai bench of the Tribunal has specifically framed the following questions :-

" 1. Whether the assessee can challenge the validity of an assessment order during the appellate proceedings pertaining to examination of validity of order passed u/s 263?

2. Whether the impugned assessment order passed u/s 143(3) dated 24-10-2013 was valid in the eyes of law or a nullity as has been claimed by the assessee?

3. If the impugned assessment order passed u/s 143(3) was illegal or nullity in the eyes of law, then, whether the CIT had a valid jurisdiction to pass the impugned order u/s 263 to revise the non est assessment order?"

8. On question no. 1 and 3 which is relevant to the present case the Mumbai bench of the Tribunal in the aforesaid case of M/s Westlife Development Ltd. (supra) has taken the view that when the original assessment proceedings are null and void in the eyes of law for want of assumption of jurisdiction, then such validity can be challenged even in collateral proceedings. We note that the Mumbai bench took the view that the proceedings before AO u/s 147 of the Act are primary proceedings and proceedings before Ld PCIT u/s 263 of the Act are collateral proceedings and in such collateral proceedings, the validity of initiation of the re-opening u/s 147 of the Act can be challenged. The Mumbai bench of the Tribunal in this regard has placed reliance on several decisions, the main decision being that of the Hon'ble Supreme Court in the case of Kiran Singh & Ors. V. Chaman Paswan & Ors [1955] 1 SCR 117 wherein the Hon'ble Supreme Court observed as follows :-

> " It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."

9. The Mumbai bench of this Tribunal made a reference to another decision of the Hon'ble Supreme Court in the case of Sushil Kumar Mehta vs Gobind Ram Bohra, (1990) 1 SCC 193 and he decisions in the case of Indian Bank vs Manilal Govindji Khona (2015) 3 SCC 712. The Mumbai bench also held that if order of assessment passed u/s 147 of the Act was nullity in the eyes of law then that order cannot be revised by invoking powers u/s 263 of the Act by CIT. The Mumbai Bench has in this regard placed reliance on the decision of Delhi bench of the Tribunal in the case of Krishna Kumar Saraf vs CIT in ITA NO.4562/Del/2007 order dated 24.09.2015 wherein it was held as follows :-

> " 17. There is no quarrel with the proposition advanced by Id. DR that the proceedings u/s 263 are for the benefit of revenue and not for assessee.
>
> 18. However, u/s 263 the Id. Commissioner cannot revise a non est order in the eye of law. Since the assessment order was passed in pursuance to the notice U/S 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the same was non est in the eyes of law. All proceedings subsequent to the said

notice are of no consequence. Further, the decision of Hon'ble Madras High Court in the case of CIT Vs. Gitsons Engineering Co. 370 ITR 87 (Mad) clearly holds that the objection in relation to non service of notice could be raised for the first time before the Tribunal as the same was legal, which went to the root of the matter.

19. While exercising powers u/s 263 Id. Commissioner cannot revise an assessment order which is non est in the eye of law because it would prejudice the right of assessee which has accrued in favour of assessee on account of its income being determined. If Id. Commissioner revises such an assessment order, then it would imply extending/ granting fresh limitation for passing fresh assessment order. It is settled law that by the action of the authorities the limitation cannot be extended. Because the provisions of limitation are provided in the same

20. In view of above discussion ground no.3 is allowed and revision order passed u/s 263 is quashed."

After having considered the judicial precedent on the issue we are of the view that the validity of the order passed by the AO which is being interdicted by the Ld. PCIT in the impugned order assailed before us, can be examined as to whether the AO had the requisite jurisdiction to re-open/re-assess the escaped income of the assessee. Therefore, in this case we need to examine the action of AO dated 29.12.2017 passed u/s 147 of the Act which action of AO depends upon the AO assuming validly the jurisdiction to pass an order of assessment u/s 147 of the Act. It is settled law that the AO can reopen the assessment only after fulfilling the conditions laid down in the said section (section 147 of the Act) namely reason to believe that income chargeable to tax for that assessment year has escaped assessment. If this essential condition is not satisfied by the AO before initiating assuming jurisdiction u/s 147 of he Act then in such an event it cannot be said the AO has validly assumed jurisdiction u/s 147 of the Act. As discussed even if for any reason, the assessee had not challenged the validity of proceedings u/s 147 of the Act by filing appeal against the order framed u/s.147 of the Act, it can be challenged in the appeal against an order passed by the Ld. PCIT u/s 263 of the Act revising the invalid order u/s 147 of the Act. As noted this issue has been analysed by the Mumbai Bench of the Tribunal in the case of M/s. Westlife Development Ltd. (supra) wherein the Tribunal has equated the reopening assessment u/s 147 to primary proceedings and the subsequent proceedings by Ld. PCIT u/s 263 passed to be collateral proceedings. In this order the Tribunal has taken note of several ratio's of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court held that if the primary proceedings are non-est in law or void on the ground of lack of jurisdiction,

then the validity of such proceedings can be challenged even in an appeal arising out of collateral proceedings. Since we have already set out the ratio/operating portions of these decisions we do not wish to repeat the same for the sake of brevity. In the light of the aforesaid discussion we are of the view that the invalidity of the primary proceedings for lack of jurisdiction can be challenged even in appellate proceedings arising out of a collateral proceeding. In view of the aforesaid legal position we will now examine the legal issue. For doing that first of all we have to examine whether the AO in the present case, could have reopened the assessment of the assessee by issuance of notice u/s 148 of the Act (which ultimate resulted in AO order dated 29.12.2017).

10. Now for examining this legal issue we need to examine whether the jurisdictional fact and pre-conditions for re-opening an assessment as stipulated u/s 147 of the Act was present/satisfied before the AO issued notice for re-opening dated 17.03.2017. Before we do the factual analysis in respect of this legal issue, let us have a look at the scheme of the Income Tax Act which gives power to the Income Tax Authorities as per Section 116 of the Act who are appointed by the Central Government u/s 117 of the Act. The Act/Statute vest power on certain Income Tax Authorities assigned as Assessing Officer (hereinafter the AO) to assess/ascertain the income of the a subject/assessee and to determine the tax payable by that subject/assessee by framing an assessment order for an Assessment year. The concept of assessment is governed by the time barring rule and an assessee acquires a right as to the finality of proceedings. *Queitus* of the completed assessment can be disturbed only when there is information or evidence regarding undisclosed income or AO had information in his possession showing escapement of income. So when an AO receives an information regarding undisclosed income of an assessee in respect of an assessment year which has escaped assessment, then the AO has to examine the information by verifying the source of it and then also has to keep in mind that information adverse against an assessee may trigger “reason to suspect”; then the AO to make reasonable enquiry and collect material which would make him believe, that there is in fact an escapement of income. And thereafter if he believes the existence of escapement of income then record his reason to believe escapement of income and then issue notice u/s. 148 of the Act and not before that. Let us look at the settled position of law on this issue.

11. As noted (supra) the Parliament has given power to AO to reopen the assessment, if the condition precedent as discussed above are satisfied, and not otherwise. It should be kept in mind that the concept of assessment is governed by the time-barring rule and the assessee acquires a right as to the finality of proceedings. Queitus of the completed assessment is the Fundamental Rule and exception to this rule is Re-opening of assessment by AO under section 147 or exercise of Revisional jurisdiction by CIT under section 263 of the Act. Therefore, the Parliament in its wisdom has provided safeguards for exercise of the reopening of assessment jurisdiction to AO; and revisional jurisdiction of CIT by providing condition precedent which is sine qua non for assumption/usurpation of jurisdiction. In the case of reopening of assessment, the reason to believe escapement of income is the jurisdictional fact and law (mixed question of fact and law) and for revisional jurisdiction the order of the AO should be erroneous as well as prejudicial to the revenue. Unless the condition precedent is not satisfied, the AO or the CIT can exercise their reopening jurisdiction or revisional jurisdiction respectively. The legislative history is that in respect to the reopening u/s. 147 of the Act, the Parliament by Direct Tax Laws (Amendment) Act 1987 w.e.f. 01.04.1989 had substituted "for reason to believe escapement of income" to 'for reasons to be recorded by him in writing, is of the opinion" which gave unbridled subjective satisfaction to the AO was later substituted back to 'reason to believe escapement of income", by the Direct Tax Laws (Amendment) Act, 1989. The Hon'ble Apex Court as well as the Hon'ble jurisdictional High Court as well as other Hon'ble High Courts have already held in plethora of cases the test of a prudent person instructed in law in understanding jurisdictional fact and law (mixed question of fact and law) the reason to believe escapement of income (supra).

12. So the condition precedent as discussed above is the jurisdictional fact & law, which is *sine qua non* for the AO to successfully usurp the jurisdiction u/s. 147 of the Act and it has to be also kept in mind that the jurisdictional fact (mixed question of fact and law) referred to in section 147 of the Act i.e Reason to believe escapement of income should be that of AO and not that of any other authority, because then it will be against one of the basic feature of the Constitution of India ie, the Rule of Law, wherein the Parliament has empowered this reopening jurisdiction only to that of Assessing Officer and that is why if

the reason to believe escapement of income is not that of AO, the assumption of jurisdiction to re-open, has been held to be vitiated and resultantly bad in law, since it will be on the basis of borrowed satisfaction.

13. Now coming back to the present appeal, when we examine the legal issue on the touchstone of the settled judicial precedents on re-opening let us examine the reason recorded by the AO to re-open the assessment of AY 2010-11 pursuant to which the AO issued the notice u/s 148 of the Act dated 17.03.2017. According to the Ld. AR, the premises/jurisdictional fact for reopening the assessment is discernible from the assessment order dated 29.12.2017 itself wherein the AO in his own words have stated as under:

> *"Assessee submitted return on 29.07.2010, showing total income of Rs. 443/- and the case was processed accordingly, subsequently the case was selected for scrutiny u/s 147 on the basis of an information received from the authentic source that M/s Miracle Commodities Pvt Ltd there is frequent high value deposit in their bank accounts and immediate transfer to some third party account. During the course of further investigation it is found that large value of amount has been routed to M/s Concord Infra Projects Pvt. Ltd.*
>
> *From further detailed investigation and analysis of data/information it is revealed that during the FY:2009-10 corresponding t A Y :2010-11, M/s Concord Infra Projects Pvt Ltd has allotted shares @ Rs. 10 per share at high premium to as many as 16 Kolkata based companies amounting to Rs. 8,34,00,000/-.*
>
> *The fund so raised was invested in the shares of Kolkata based companies at very high premium which does not commensurate with the financial position of the company in which such investment was made. Subsequently there was change in the Directors of M/s Concord Infra Projects Pvt Ltd. It clearly shows that the company has been sold claimed as to real beneficiaries who channelized their unaccounted income and converted bogus investment to real usable assets. Funds so liquidated by way of selling bogus investment in the name of Kolkata based companies are finally converted into real assets as Short Term Loan & advances/Cash & Bank balance as claimed. The case was supposed to be examined whether it was bogus or unaccounted .*
>
> *It is further mentioned that M/s Concord Infra Projects Pvt Ltd is a designated jamakharchi company incorporated to launder unaccounted income as per Departmental Database."*

16. From a perusal of the aforesaid reasons it is evident that the jurisdictional fact/information on which the AO has based his reason to believe escapement of income was that the department received an authentic information that huge value of deposits were made in the bank account of one company called M/s. Miracle and thereafter the money was transferred to some third party account and that further investigation had revealed that large amount of money was routed to the assessee company i.e. M/s. Concord Infra Projects Pvt.

Ltd. According to the Ld. AR, this foundational fact on the basis of which the AO had based his "*reason to believe escapement of income*" is factually wrong/erroneous since the foundation fact has been found to be absent, which fact is evident from the factual findings of the Ld. PCIT in the impugned order wherein he has made a specific finding of fact in his conclusion recorded at page 40 of the impugned order wherein he concludes in his own words *"in conclusion the relevant fact which constitute the present case are that the alleged large transaction of M/s. Miracle have not been reached directly/indirectly to the assessee company as evident from bank account of the assessee company nor through share subscriber companies (shareholders) to whom the assessee company has allotted shares."* Therefore, according to the Ld. AR, this finding of fact by the Ld Pr. CIT clearly reveals that the deposits in the bank account of M/s. Miracle has not been routed to the assessee company which assertion of the Ld. A.R. could not be rebutted/contradicted by the Ld. CITDR. So Ergo, we note that the foundation on which the reason to believe escapement of income by the AO to issue notice u/s. 148 of the Act on 17.03.2017 itself was on wrong assumption of fact as is evident from the finding of fact by the Ld. PCIT that no money from M/s Miracle has been routed to the assessee company directly or indirectly whereas the foundation fact on the basis of which reopened the assessment as is evident from the reasons recorded (supra) was that high value of money was deposited in the bank account of M/s Miracle which in tu n has been routed to the assessee through third party in the form of share subscription o the une of Rs. 8.34 crores which fact was found by Ld. PCIT to be absent. So, the AO's belief of escapement of income was on wrong assumption of facts and so invocation of reopening jurisdiction by issue of notice u/s 148 of the Act is bad in law and, therefore, the consequent re-assessment order dated 29.12.2017 of the AO is a nullity and, therefore, the order of the Ld. Pr. CIT to interfere in the order of the AO dated 29.12.2017 u/s. 144/147 of the Act is also a nullity and, therefore, the action of the Ld. Pr. CIT to invoke his jurisdiction u/s. 263 of the Act itself was without jurisdiction. Ergo, we hold the impugned order as null in the eyes of law, so we quash it.

17. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 13th October, 2021.

Sd/-(Manish Borad)
Accountant Member

Sd/-(A. T. Varkey)
Judicial Member

Dated: 13.10.2021

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Concord Infra Projects Pvt. Ltd., 4th floor, 14, M. D. Road, Kolkata-700 007.
2. Respondent – Pr.CIT-3, Kolkata
3. ITO, Ward-9(3), Exemption, Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar/DDO
ITAT, Kolkata Benches, Kolkata