

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.375/Kol/2023
Assessment Year: 2012-13**

Pearl Tracom Pvt. Ltd. C/o M/s. Salarpuria Jajodia & Co., 7, C. R. Avenue, 3 rd Floor, Kolkata-700072. (PAN: AABCP9934G)	Vs.	DCIT, Central Circle-3(3), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri S. Jhajharia, A.R
Respondent by : Shri Abhijit Kundu, CIT, DR

Date of Hearing : 30.08.2023
Date of Pronouncement : 10.11.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Kolkata-21 vide order no. ITBA/APL/S/250/2022-23/1051004013(1) dated 20.03.2023 passed against the assessment order by ITO, Ward-12(4), Kolkata u/s.. 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 16.12.2019, for AY 2012-13.

2. Grounds raised by the assessee are reproduced as under:

"1. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in upholding the jurisdiction assumed by the Ld. AO in respect of the proceedings initiated by notice u/s. 148 and the consequential order u/s..147 and in view of the facts and in the circumstances the action of the Ld. CIT(A) in affirming the action of the Ld. AO in such respect is bad in law and it may be held accordingly.

2. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in upholding the validity of the notice u/s. 148 and the

consequential proceedings u/s. 147 without appreciating the fact that the reasons recorded for the reopening of the assessment were not provided to appellant and hence such proceeding is bad in law and in view of the facts and in the circumstances it may be held accordingly.

3. Without prejudice to Grounds No.1 & 2 above, the Ld. CIT(A) had initiated such proceedings u/s. 147 merely on the alleged information from the Investigation Wing without conducting any enquiry of his own and as such the reopening is void ab initio and is liable to be set aside I quashed I cancelled and it may be held accordingly.

4. For that in view of the facts and in the circumstances, the Ld. CIT(A) erred in upholding the validity of the impugned order u/s.147/263/1441 263/143(3) when a simultaneous proceedings u/s. 144/263/143(3) was carried on by the Ld. AO and in view of the facts and in the circumstances and particularly in view of the judgment of Hon'ble Supreme Court such simultaneous conduct of two proceedings together is bad in law and in view of the facts and in the circumstances the Ld. CIT(A) erred in not appreciating such legal aspect and in view of the facts and in the circumstances the impugned proceedings and order u/s 147/263/144/263/143(3) is bad in law and it may be held accordingly.

5. Without prejudice to Grounds No.1 to 4 above, the impugned order u/s. 147/263/144/ 263/143(3) was passed without the Document Identification No.(DIN) and as such the impugned order is bad in law and it may be held accordingly.

6. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the addition of Rs. 2,48,50,000/- on account of alleged transaction with one Mr. Sandeep Roy (Prop. of M/s Sarika Trading Company) and in view of the facts and in the circumstances the addition so made is bad in law and is liable to be deleted and it may be held accordingly.

7. Without prejudice to Ground No.6 above, the Ld. CIT(A) failed to appreciate the fact that the Ld. AO while making such addition of Rs. 2,48,50,000/- had not been able to substantiate in any manner that the impugned sum was received by the appellant and as such the primary onus on the Ld. AO to prove such allegation is not substantiated and hence the addition so made in such respect is bad in law and is liable to be deleted and it may be held accordingly.

8. Without prejudice to Grounds No. 6 & 7 above, the appellant had not received any sum from such person (i.e. Sandeep Roy, Prop. Sarika Trading Co.) for any such amount or even any other sum and hence the allegation and consequential addition of Rs. 2,48,50,000/- is bad in law and addition so made may kindly be deleted accordingly.

9. For that in view of the facts and in the circumstances, the Ld. CIT(A) was wholly unjustified in affirming the action of the Ld. AO in charging interest of Rs. 79,46,820/- and Rs. 24,63,51,420/- u/s 234A & 234B of the Act respectively and in view of the facts and in the circumstances the AO may kindly be directed accordingly to delete the same. Without prejudice, interest u/s 234B is chargeable only upto date of regular assessment and hence it may be held accordingly.

10. For that your petitioner craves the right to put additional grounds and/or to alter/ amend/ modify the present grounds at the time of hearing.”

3. There are several events which took place prior to passing of the impugned assessment order and the appellate proceeding thereon. To have a bird's eye views of these several events, chronology of the same is tabulated as under:

Sl. No.	Order	Date
1.	Original Assessment order u/s. 143(3)	20.03.2015
2.	First Revision Order u/s. 263	17.10.2016
3.	First effect giving Assessment Order u/s. 263/143(3)	30.12.2016
4.	Second Revision Order u/s. 263	12.03.2019
5.	Notice u/s. 148 for initiating reassessment proceeding	26.03.2019
6.	Second effect giving Assessment order u/s. 263/144	06.12.2019
7.	Reassessment order u/s. 143(3)/147	16.12.2019
8.	Appellate order by ITAT in ITA No. 495/Kol/2022 quashing the second revision order passed u/s. 263.	06.03.2023

3.1. By keeping the above table in perspective, we take note of the brief facts of the case according to which assessee is a private limited company. Loss of Rs. 74,252/- was reported in the e-return filed on 06.02.2013. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Various details called for were filed by the assessee. Considering the submissions made by the assessee ld. AO completed the assessment at Rs. 79,14,03,750/-.Thereafter, ld. CIT(A) called for the assessment records and carried out the revisionary proceedings u/s 263 of the Act and vide order dated 17.10.2016 (this is referred as 'First Revision Order') held the order of ld. AO dated 20.03.2015 as erroneous and prejudicial to the interests of the Revenue and gave the following directions:

“Considering the facts and circumstances of case as discussed above and as per submission of assessee, the assessment order was passed without making inquiries and verifications which would

have been made and therefore the order passed on 20.03.2015 stands erroneous in so far as prejudicial to the interest of revenue and is set aside de novo with a direction to AO to carry out proper examination of books of accounts including Bank accounts of assessee as well as investors. A.O is also directed to examine of credits appearing in the books of assessee as share capital including premium and nature of transactions, identity of investor and its genuineness.

The assessment proceedings may be initiated at the earliest and to be completed without waiting time barring date. The A.O must provide Sufficient opportunity of being heard to the assessee in order to meet natural justice, equity and fairness.”

3.2. In compliance to the directions given u/s 263 of the Act, ld. AO carried out the assessment proceedings and after examining the complete details of the share capital and share premium totalling to Rs. 79.14 Cr., was satisfied that the assessee has duly explained the source of share capital and share premium and there is no scope of invoking the provisions of Section 68 of the Act. Accordingly, vide order dated 30.12.2016 assessed the income at Rs. 1,17,342/-.

3.4. Again, second round of revisionary proceedings u/s 263 of the Act were commenced by ld. Pr. CIT calling for the assessment records forming part of the assessment order dated 30.12.2016 by show cause notice dated 16.01.2019 raising the following issues:

“(i) The A.O passed the order without carrying out detailed investigation/ verification/ independent enquiry regarding identity, creditworthiness of the shareholders & also the genuineness of transactions relating to share capital that was intended to be carried out and merely accepted the submission of the assessee in this regard.

(ii) That A.O. has also failed to carry out detailed investigation of the shareholders on the very issue that how they decided to invest in such a company which was never known for its line of business and

also they invested at huge premium without verifying the financial position.

(iii) The A.O. further failed to examine the rationale behind raising the said share premium and also did not verify the method adopted by assessee for determining such abnormally huge premium specially keeping in view that prima facie there was no material in the balance sheet of the assessee warranting/justifying such huge premium.

(iv) The A.O. failed to collect the relevant evidences in order to reach a logical conclusion regarding the genuineness of controlling interest.

(v) The A.O. failed to examine all the bank accounts for the entire period in the course of verification to find out the money trail of the share capital.

(vi) The A.O. failed to adequately trace out the money trail to ascertain the genuineness of source of fund invested by shareholders in the assessee company.

(vii) On the whole the impugned order dated 30.12.2016 passed u/s 263/143(3) of the Income Tax Act, 1961 prima facie suffers from lack of independent and adequate enquiry on the aforesaid issues.”

3.5. Revisionary proceedings were carried out and Id. Pr. CIT again held that Id. AO has not examined the source of share capital and share premium properly and has failed to note that the share capital is introduced by rotating the money to dummy companies which have been created solely for this purpose. The details/documents available in the assessment records were not examined judiciously. Thereafter, Id. Pr. CIT has referred to certain judicial pronouncements and finally held (this order is referred as the ‘Second Revision Order’) the order of Id. AO dated 30.12.2016 as erroneous and prejudicial to the interests of the Revenue observing as follows:

“7.In view of the facts and the legal position stated above, I am of the view that the order passed on an incorrect assumption of facts or incorrect application of law and without making requisite inquiries will satisfy the requirement of the order being erroneous and

prejudicial to the interest of the revenue within the meaning and scope of Section 263 of the Income Tax Act, 1961

7.1. The afore stated decisions postulate that when the officer is expected to make an inquiry of a particular item of income and if he does not make an inquiry as expected, that would be a ground for the Commissioner to interfere with the order passed by the Officer since such an order passed by the Officer is erroneous and prejudicial to the interests of the Revenue (K.A. Ramaswamy Chettiar V. CIT, (1996) 220 ITR 657).

7.2. In my considered opinion, this is a case of lack of enquiry on the part of the AO. The decision on this issue could be taken only after examining and verifying the facts / submission of the AR on this score. Not collecting the full facts and not taking enquiry to logical end which could enable AO to take decision based on the totality of facts makes this order erroneous in so far as prejudicial to the interest of revenue. After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order passed by the A.O is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the Explanation 2(c) below section 263 (1) of the Act. Accordingly, the assessment is set aside to the table of A.O on the issue as outlined in para- 2 above. The A.O. is directed to provide reasonable opportunity to the assessee company to produce documents & evidences which it may choose to rely upon for substantiating its own claim. The AO is further directed to adjudicate the said Issue de novo and pass a fresh assessment order in accordance with the relevant provisions of law.”

4. Aggrieved, assessee went in appeal before the Tribunal.
5. In the said appeal, Co-ordinate Bench took note of the findings of the Ld. AO arrived at in the first effect giving assessment order passed u/s. 263/143(3) of the Act, dated 30.12.2016 which is extracted below:

“15. The finding of ld. AO in itself makes it amply clear that complete details were filed and the directors of the investor companies personally appeared before ld. AO on being called for by issuing summons u/s 131 of the Act. Their statements were recorded u/s 131 of the Act on oath and they also referred to various books of accounts and other relevant documents. Ld. AO was satisfied with the source of funds, identity and creditworthiness of the share applicants and genuineness of the transactions.

16. The above finding clearly indicates that ld. AO conducted a complete enquiry and also examined all the relevant details as were directed by ld. Pr. CIT in the directions given in the order u/s 263 of the Act dated 17.10.2016.

We also note that this is the second round of assessment proceedings. Even in the first round of the proceedings also all the share applicants replied directly to ld. AO enclosing the details of bank statement, financial audited balance sheet and profit and loss account, income tax return and other identity proof. Again in the second round, each and every detail have been examined by ld. AO. Therefore, complete enquiry has been conducted. Directors of the investor companies were called for and they have appeared and accepted the transactions. It is not the case of no enquiry or incomplete enquiry.

17. In our view, this is a case of complete enquiry conducted by ld. AO taking into consideration all the angles which need to be taken for examining such type of transactions which in some cases are bogus or in the nature of accommodation entries. We also find that ld. Pr. CIT has merely given directions but for coming to this conclusion he ought to have first discussed that what details remained to be called for by ld. AO. Ld. Pr. CIT ought to have conducted the preliminary enquiry and had found some discrepancies or some glaring fact which could indicate that the alleged share capital and share premium are bogus in nature. In the first round of revisionary proceedings, ld. Pr. CIT/ld. CIT(A) has given detailed directions. Even though the assessee filed complete details in the first round of assessment proceedings but again in the second round of proceedings carried out subsequent to the order u/s 263 of the Act again the details have been filed. It has been properly demonstrated to the satisfaction of ld. AO that all the share applicants have sufficient net worth to make the investment in the equity share capital of the assessee company. The assessee has also satisfied ld. AO with complete documentary evidences that identity of each of the share applicants cannot be doubted as they are registered with Registrar of Companies and are regularly filing income tax return and all of these companies have been assessed to tax. The bank statements of these share applicant companies are available on record which justifies the source to make investment. Revisionary proceedings cannot give power to ld. Pr. CIT to direct ld. AO to examine again and again the same issues which have already been properly enquired for by ld. AO and satisfactory reply has been given by the assessee along with the documentary evidences which ld. AO has thoroughly examined all these details and made proper application of mind and taken a view permissible under the law. It is well settled that if the view taken by ld. AO is permissible under the law then it may or may not be prejudicial to the interests of the Revenue.”

5.1. By considering the above merit based factual finding of the Ld. AO as extracted above, the Co-ordinate Bench arrived at its conclusion to hold that Ld. Pr. CIT has grossly erred in assuming the jurisdiction u/s. 263 of the Act and holding the assessment order dated 30.12.2016 as erroneous and prejudicial to the interest of the revenue, thus the second revision order passed u/s. 263 of the Act dated 12.03.2019 was quashed. The relevant findings by the Co-ordinate Bench in this respect are reproduced as under:

“21. We, therefore, respectfully following the judicial pronouncements stated herein above and also considering the fact that in a case where ld. AO conducted detailed enquiry and the assessee has filed complete documentary evidences to the satisfaction of ld. AO and coupled with these documentary evidences the investors of the alleged share applicant companies have appeared before ld. AO and recorded the statements on oath explaining that the investor companies had sufficient legitimate fund to justify the investment in equity share capital of the assessee company and based on these details and submissions and detailed enquiry ld. AO after making proper application of mind and taking a view permissible under the law was satisfied that the assessee has duly explained the alleged share capital and share premium and which thus, do not call for any addition u/s 68 of the Act.

22. Under these given circumstances, we are of the considered view that ld. Pr. CIT grossly erred in assuming the jurisdiction u/s 263 of the Act and also erred in holding the assessment order dated 30.12.2016 as erroneous and prejudicial to the interests of the Revenue. We, therefore quash the impugned order u/s 263 of the Act dated 12.03.2019 and restore the assessment order u/s 143(3) r.w.s. 263 of the Act dated 30.12.2016. Thus, all the grounds raised by the assessee are allowed.”

6. Meanwhile, a reassessment proceeding u/s. 147 was initiated by issuing notice u/s. 148 on 26.03.2019. It is important to note at this juncture that second revision order u/s. 263 had already been passed on 12.03.2019 setting aside the first effect giving assessment order u/s. 263/143(3) dated 30.12.2016. Thus, an effect giving assessment proceeding was already lying pending before the Ld. AO pursuant to second revision order on 12.03.2019. It is also important to note the date of passing of second effect giving assessment order u/s. 263/144 which is dated 06.12.2019 and immediately after ten days of passing this order, the same incumbent AO has passed the reassessment order u/s. 143(3) read with 147 on 16.12.2019. In the impugned reassessment order, Ld. AO has taken note of this fact of passing of an order u/s. 263/144 on 06.12.2019, determining total income at Rs.79,15,95,340/-.

6.1. In the impugned assessment order Ld. AO observed that case of the assessee is reopened u/s. 147 based on credible information which was received on 12.03.2019 from DDIT (Inv.) Unit-4(2), Kolkata according to which assessee had taken accommodation entry and

brought back its unaccounted income of Rs.2,48,50,000/- into its regular books of account through banking channel from Mr. Sandeep Roy, proprietor of Sarika Trading Co. (PAN: APGPR1616A), a shell entity. The observations made by the Ld. AO in this respect are as under:

“The Assessing officer passed order u/s. 263/144 of the Income Tax Act , 1961 on 06.12.2019 determining total income at Rs.79,15,95,340/-. The case has been transferred from ITO Ward 12(3), Kol vide order u/s. 120 of I. T. Act, 1961 dated 24.09.2019.

Again, the case has been reopened u/s. 147 with a credible information was received on 12.03.2019 from DDIT (Inv.), Unit-4(2), Kolkata vide his letter bearing No. F. No. DDIT(Inv.)/Unit-4(2)/Info/2018-19/75091 dated 27.02.2019, that M/s. Pearl Tracom Pvt. Ltd., whose current jurisdiction is with this end, has taken accommodation entry and brought back its unaccounted income to the tune of Rs.2,48,50,000/- into its regular books of accounts through banking channel from Mr. Sandeep Roy, Prop. of Sarika Trading Co. (PAN: APGPR1616A), a shell entity. As per the observation of the investigation wing, the cash is deposited in the accounts of the fictitious entity and simultaneously followed by debits to various accounts. These accounts have frequently been used for layering the fund through the several bank account of jamakharchi/shell concerns and immediately transferred to the interlinked bank accounts and then ultimately to the bank accounts of the concerned beneficiary.

Necessary approval and sanction has duly been taken from the appropriate sanctioned authority for issuing of notice u/s. 148 of the I. T. Act, 1961 dated 26.03.2019 and the notice u/s. 148 is duly served to the assessee. The assessee is not responsive against the notice u/s. 148.”

6.2. For the purpose of conducting this reassessment proceeding, Ld. AO issued notices to the assessee u/s. 142(1) on 14.10.2019 and 24.10.2019. According to Ld. AO, assessee failed to furnish the explanation and details in respect of the alleged accommodation entry taken by it. He thus, completed the reassessment by observing as under:

“During the financial year 2011-12, huge amount in lakhs were deposited in the bank account of M/s. Sarika Trading Co. and routed through related accounts and finally remitted back through RTGS to the assessee. The series of transactions didn't seem to be normal transactions and there was no business rationale and financial logic behind that. This could not be verified from the return of income of the assessee as the assessee did not file its return or income. Further, it was also could not be verified from the related bank statements of the assessee. Accordingly, proceedings u/s. 147 of I. T. Act was initiated against the assessee as stated above.”

6.3. Ld. AO thus completed the reassessment by taking the already assessed income of Rs.79,15,95,340/- vide second effect giving assessment order u/s. 263/144 dated 06.12.2019 and added to it Rs.2,48,50,000/- in respect of accommodation entry as unaccounted income, thereby assessing the total income at Rs.81,64,45,340/-.

6.4. Aggrieved, assessee went in appeal before the Ld. CIT(A), who confirmed the addition so made. Aggrieved, assessee is now in appeal before the Tribunal.

7. Before us, Ld. Counsel elaborated on the chronology of several events tabulated above to point out that reliance placed by the Ld. AO on the second effect giving assessment order passed u/s. 263/144 dated 06.12.2019 is baseless since the second revision order u/s. 263 dated 12.03.2019 has been quashed by the Coordinate Bench making it non-est. According to Ld. Counsel, Ld. AO is absolutely wrong in taking total assessed income from this second effect giving assessment order and making further addition in the impugned reassessment proceeding.

7.1. Ld. Counsel strongly submitted on the jurisdictional aspect of the impugned reassessment proceedings by contending that during the pendency of an assessment proceeding, reassessment notices cannot be issued. According to him, the impugned notice u/s. 148 has been issued when the set aside assessment proceedings by way of second revisionary order were pending. Accordingly, the entire reassessment proceeding and consequent order u/s. 147 read with section 143(3) is bad in law. To buttress his contention, he placed reliance on the decision of Hon'ble Supreme Court in the case of S. M. Overseas Pvt. Ltd. Vs. CIT (2023) 450 ITR 1 (SC) and Trustees of HEH Nizam Supplemental Family Trust Vs. CIT (2000) 242 ITR 381 (SC).

7.2. His other legs of contention on the jurisdictional aspect relates to Ld. AO proceeded to issue notice u/s. 148 solely on the basis of some information received from Investigation Wing without even specifying as to which correspondence/document of the Investigation Wing received by him prompted to form a reason to believe that income has escaped assessment. According to the Ld. Counsel, the information so alleged in the reasons to believe recorded by the Ld. AO refers to information that accommodation entry has been received from Shri Sandeep Roy, proprietor of M/s. Sarika Trading Co. According to the Ld. Counsel, the said information does not speak as to how it is connected to the assessee and the layers through which the assessee has received the alleged amount of Rs.2,48,50,000/- from the said M/s. Sarika Trading Co.

7.3. According to the Ld. Counsel, reasons so recorded nowhere says that the said sum has directly come from the said person. The entire assumption of money having travelled to the assessee is without any material or verification of any kind undertaken by the Ld. AO. Further, he submitted that Ld. AO had neither supplied along with the reasons, any material or evidence to demonstrate various layers through which the money has ultimately reached the hands of the assessee from or through M/s. Sarika Trading Co. According to the Ld. Counsel, if the general modus operandi of the said entry provider Mr. Sandeep Roy is taken as the basis for forming reasons to believe that income has escaped assessment then it only tantamount to exercise of arbitrary powers which are without sanction of law. According to him, in the reasons to believe, Ld. AO has not named any one while referring to large number of dubious account, fictitious/fake concerns. The reasons also do not mention anything about entry operator or any statement of such borrower recorded in any of the proceeding whereby involvement of the assessee has been identified.

He further submitted that Ld. AO has not even mentioned the nature of alleged accommodation entry as to whether it is income or expenses or allowance or whether it is in the nature of share capital or loan. This reflects nothing but non-application of mind by the Ld. AO. According to Ld. Counsel, Ld. AO has failed to establish the live link between the information received and escapement of income from assessment in the hands of the assessee, thus assumption of jurisdiction by the Ld. AO to initiate reassessment proceeding is void ab initio.

7.4. According to him, the reasons to believe recorded by the Ld. AO failed to demonstrate the link between the tangible material and the formation of reason to believe that income has escaped assessment. Ld. Counsel also raised the contention that despite repeated request made to the Ld. AO, certified copy of reasons to believe recorded before issuing notice u/s. 148 have not been supplied to the assessee. What Ld. AO furnished is by way of show cause notice dated 15.11.2019 wherein it was stated that assessee had made an accommodation entry of Rs.2,48,50,000/- from Mr. Sandeep Roy, proprietor of Sarika Trading Co. (PAN: APGPR1616A) in the year under consideration through banking channel. Thus, taking clue from this piece of information available in the show cause notice issued by the Ld. AO, it was strongly and very categorically refuted that assessee had not undertaken any transaction with any person named Mr. Sandeep Roy or any concern named M/s. Sarika Trading Co. for the stated amount. In this respect it was submitted that it is merely on a wrong belief that such addition was proposed in the hands of the assessee. According to the Ld. Counsel, Ld. AO has neither examined such alleged person nor has provided any opportunity to the assessee to cross examine the said alleged person namely Mr. Sandeep Roy. Entire addition is without any material, without taking any examination of the alleged

person and is based merely on information which remained unverified, therefore, the impugned addition is liable to be deleted.

7.5. On the merits of the case, Ld. Counsel stated that the second revisionary order passed u/s. 263 dated 12.03.2019 has been quashed by the Coordinate Bench, thus the valid assessment order which holds the fort is the first effect giving assessment order passed u/s. 263/143(3) dated 30.12.2016. In respect of this order, the Coordinate Bench has already given its factual finding relating to examination and verification undertaken by the Ld. AO on account of share capital and share premium raised by the assessee during the year of Rs.79,14,00,000/-. This amount of share capital and share premium has already been accepted by the Ld. AO and has attained finality. To clarify the facts on record, ld. Counsel referred to the audited Balance Sheet as at 31.03.2012. From this Balance Sheet, it was pointed out that there is a change in the shareholders' fund including share capital, reserves and surplus since share capital including share premium was raised by the assessee during the year. However, there is no change in the short term borrowings of Rs.13,90,000/- when compared with the immediately preceding year. This figure is unchanged. Apart from these borrowings, there are no other borrowings by the assessee reported in its audited Balance sheet. Further, total revenue from operations during the year as reported in the P& L Statement is of Rs.1,23,960/- with the net result of loss for the year of Rs.74,252/-. Accordingly, the accommodation entry alleged by the Ld. AO of Rs.2,48,50,000/- received by the assessee during the year cannot be linked to any of the three components in the audited financial statements of the assessee. The borrowings are unchanged. The revenue is not of that magnitude and the share capital and share premium has already been exhaustively

examined and verified as well as accepted in the first effect giving assessment order passed u/s. 263/143(3) dated 30.12.2016.

7.6. For ease of reference the Balance Sheet and Profit & Loss Statement referred by the Ld. Counsel are extracted below :

PEARL TRACOM PRIVATE LIMITED			
Balance Sheet as at 31st March, 2012			
<u>Particulars</u>	<u>Note No</u>	<u>As at 31.03.2012 (Amounts)</u>	<u>As at 31.03.2011 (Amounts)</u>
I. EQUITY AND LIABILITIES			
(1) Shareholder's Funds			
(a) Share Capital	2	10,990,900.00	2,707,000.00
(b) Reserves and Surplus	3	792,641,809.30	9,599,961.30
		803,632,709.30	12,306,961.30
(2) Current Liabilities			
(a) Other Current Liabilities	4	7,718.00	6,618.00
(b) Short-term Borrowings	5	1,390,000.00	1,390,000.00
(b) Short-term Provisions	6	-	1,500.00
Total		805,030,427.30	13,705,079.30
II.Assets			
(1) Non-current assets			
(a) Non-Current Investments	7	785,140,000.00	10,290,000.00
(b) Other Non-Current Assets	8	312,000.00	390,000.00
(2) Current assets			
(a) Cash and cash equivalents	9	1,560,257.30	1,352,879.30
(b) Short term Loans and Advances	10	18,018,170.00	1,672,200.00
Total		805,030,427.30	13,705,079.30

Significant Accounting Policies & Notes 1 To 18

As per our report of even date

For MAHATO PRABIR & ASSOCIATES

Chartered Accountants

F.R.N. 325966E

(CA. Prabir Mahato)

Proprietor

Membership No. 060238

Date: 03rd Day of September 2012

Place: Kolkata

PEARL TRACOM PRIVATE LIMITED**Profit and Loss statement for the year ended 31st March, 2012**

Particulars	Note No	For the Year ended 2012	For the Year ended 2011
I. Revenue:			
Revenue from operations		-	-
Other Income			
Total Income	11	<u>123,960.00</u>	<u>166,216.00</u>
II. Expenses:			
Employee benefit Expenses	12	72,000.00	136,000.00
Other expenses	13	126,212.00	25,308.00
Total Expenses		<u>198,212.00</u>	<u>161,308.00</u>
III. Profit/(Loss) before tax (I-II)		(74,252.00)	4,908.00
IV. Tax expense:			
(1) Current tax			1,500.00
(2) Deferred tax			
V. Profit/(Loss) after tax for the year		<u>(74,252.00)</u>	<u>3,408.00</u>
VI. Earning per equity share:			
(1) Basic	14	(0.068)	0.01
(2) Diluted		(0.068)	0.01

Significant Accounting Policies & Notes

1 To 18

As per our report of even date

For MAHATO PRABIR & ASSOCIATES

Chartered Accountants
F.R.N. 325966E(CA. Prabir Mahato)
Proprietor
Membership No. 060238Date: 03rd Day of September 2012
Place: Kolkata

7.7. Ld. Counsel thus contended that even on merits, the reasons to believe recorded by the Ld. AO do not have any legs to stand and are devoid of facts on record. According to him, the addition so made is ought to be deleted.

8. Per contra, Ld. CIT, DR placed reliance on the orders of the authorities below.

9. We have heard the rival contentions and perused the material available on record. We have given our thoughtful consideration to the submissions made by the Ld. Counsel, both on the jurisdictional

issues as well as merits of the case. From the chronology of events tabulated above, we take note of the fact that second revision order passed u/s. 263 dated 12.03.2019 has been quashed by the Coordinate Bench making the second effect giving assessment order dated 06.12.2019 as non-est. Reference made by the Ld. AO in the impugned assessment order of this proceeding and basing it to arrive at the assessed total income is not justified. From the perusal of the reasons to believe recorded by the Ld. AO and as contended by the Ld. Counsel in respect of the contents mentioned therein, we are in agreement with the facts narrated by the Ld. Counsel that Ld. AO never disclosed the details of layers through which alleged money has been routed into the bank account of the assessee. Ld. AO has also never shared the information in respect of documentary evidence for the alleged transactions of accommodation entry. We also do not find conduct of any examination of the alleged layering of the transaction to unearth sequencing of the flow of money alleged by the Ld. AO escaping assessment.

9.1. We have gone through the observations made by the Ld. AO in the impugned reassessment order which shows they are vague in nature, the same are extracted below for ease of reference:

“M/s. Sarika Trading Co. a proprietorship firm has a current account with our Mission Row Branch (Kolkata) from 19.01.2012 onwards. Sri Sandeep Roy is the proprietor of the firm. The business of the firm is said to be good grain supplier. The pattern of transactions in the account is by way of large value credit received through RTGS from various accounts i.e. M/s. Jasmine Enterprise, M/s. Aniket Food Products, M/s. Rimjhim Enterprises, M/s. Marlboro Trading Co., M/s. Bhagyalaxmi Electronics, etc. The credits so received are immediately transferred to various current deposit accounts with the branch i.e. M/s. Luckydhan Distributors, M/s. Salasar Garments, M/s. Dhara Suppliers, M/s. Fairlawn Commercial etc. There is no common business relation found as per branch’s observations in all the above accounts & hence it seems that the huge funds are just routed from one account to another without any economic rationale. Besides that there is large value round amount cash deposits in the account followed by debits by way of transfer to above mentioned C/D accounts with the same branch. Most of the deposits are just below Rs.10 lacs which indicates the intention of avoiding reporting to the regulatory authority. During current FY 2012-13 the credit & debit

turnover in this account is Rs.4.73 crores & Rs.4.72 crores. Nearly 40% of the total credit turnover is by way of cash deposits. All these transactions without any economic rationale creates the ground of suspicion. Considering the same as suspicious, we are filing this STR.”

Details of enquiries made:

The matter has been investigated. Notices u/s. 131 was issued to the banks for obtaining relevant bank statements. Also, summon notice was issued to the subject, Sandeep Roy at his address as mentioned in the information. But the same was returned back by the postal authority. It is seen that Sandeep Roy (PAN:APGPRA1616A), is a non-filer (Source-ItD/E-filing).

On examination of above bank statements mentioned above, it is observed that cash is deposited in the account and simultaneously followed by debits to various accounts. These accounts have frequently been used for layering the fund through the several bank accounts of jamakharchi/shell concerns and immediately transferred to the interlinked bank accounts and then ultimately to the bank accounts of the concerned beneficiary. From the analysis of the above mentioned bank accounts and interlinked bank accounts, beneficiaries have been identified. The details of such beneficiary are as follows:

Sl. No.	Beneficiary	Beneficiary amount (Rs.)	F.Y	PAN
1.	Pearl Tracom Pvt. Ltd.	2,48,50,000.00	2011-12	AABCP9934G

9.2. We also find ourselves in agreement with the contention of the Ld. Counsel that there is nothing specific stated in the reasons to believe as to the nature of the transaction of accommodation entry as alleged by the Ld. AO as to whether it is an income or an expense or an allowance or share capital or loan etc. Before the Ld. AO, assessee has evidently demonstrated by furnishing its books of account and bank statement that there is no such transaction or such amount of money which has routed into the books of the assessee or into the bank account from the alleged accommodation entry provider Mr. Sandeep Roy, proprietor of M/s. Sarika Trading Co.

9.3. We are of the considered view that Ld. AO has merely on a wrong belief made such an addition without conducting any verification of any sort of any material or examining the persons involved.

9.4. We also take note of the approach adopted by the incumbent Ld. AO, who was already seized with an assessment proceeding pursuant

to the second revisionary order even though it has been subsequently quashed by the Coordinate Bench. Until the outcome of the appeal before the Coordinate Bench, the Ld. AO had an assessment proceeding pending before him to give effect to the set aside revisionary order. However, with this pendency in hand, he initiated another proceeding by taking note of information received from the Investigation Wing to record the reasons to believe and issue notice u/s. 148. It is important to note that within a period of ten days, the same incumbent AO has passed two assessment orders, first on 06.12.2019 pursuant to revisionary order u/s. 263 and the second one which is the impugned reassessment order u/s. 147/143(3) dated 16.12.2019. Certainly such an act by the Ld. AO of having two parallel proceedings for the same assessment year is contrary to the decision taken by Hon'ble Supreme Court in the cases of S. M. Overseas Pvt. Ltd. (supra) and Trustees of HEH Nizam Supplemental Family Trust (supra). Accordingly, notice issued u/s. 148 during the pendency of set aside assessment proceeding and subsequent reassessment order passed is bad in law.

9.5. On the merits of the case, it is an undisputed fact that there is no change in short term borrowings and the revenue from operations is a small/meagre amount of Rs.1,23,960/-. Thus, the alleged amount of accommodation entry received by the assessee cannot in any way pertain to loan or revenue received by the assessee during the year. As far as share capital and share premium is concerned which has been raised during the year, elaborate detailed examination and verification exercise has already been conducted by the Ld. AO and has been accepted vide first effect giving assessment order u/s. 263/143(3) dated 30.12.2016. The Coordinate Bench has already taken note of factual findings given in this assessment order and remains uncontroverted. Thus, on the merits of the case also, we do

not find any reason to sustain the addition made by the Ld. AO. Accordingly, the grounds taken by the assessee are allowed.

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

Order is pronounced in the open court on 10th November, 2023

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 10th November, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), Kolkata-21, Kolkata
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata