

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.439/Coch/2019 : Asst.Year 2014-2015

M/s.Sahyadri Agencies Ltd. Moothedath House Kandanisseri Thrissur – 680 102. PAN : AAICS5338J.	Vs.	The Income Tax Officer Ward 1(3) Trichur.
(Appellant)		(Respondent)

Appellant by : Sri.Bomi Daruwala, Advocate
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 15.10.2019	Date of Pronouncement : 05.11.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT's order dated 29.03.2019 passed u/s 263 of the I.T.Act. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:-

"1. That on the facts and circumstances of the case and in law, the order passed by the Principal Commissioner of Income Tax ('PCIT') setting aside the assessment framed under section 143(3) of the Act as erroneous and prejudicial to the interest of the Revenue is without jurisdiction, bad in law and void ab initio.

2. That on the facts and circumstances of the case and in law, the PCIT erred in exercising jurisdiction under section 263 in respect of issues which were beyond the jurisdiction of the assessing officer while

framing the original assessment under section 143(3) of the Act.

3. That on the facts and circumstances of the case and in law, the PCIT erred in exercising jurisdiction under section 263 of the Act in respect of such issue, which was debatable thus ousting jurisdiction under the said section.

4. That on the facts and circumstances of the case and in law, the PCIT erred in setting the issue for examination without recording any prima facie finding on the merits of the issues.

5. That on the facts and circumstances of the case and in law, the PCIT erred in holding that the assessment order is erroneous and prejudicial to the interests of revenue since the assessing officer did not have an occasion to examine the details.

6. The appellant craves leave to add to, alter, amend or vary any of the above grounds of appeal before or at the time of hearing."

3. Brief facts of the case are as follow:

The assessee is a private limited company engaged in the business of distribution of cleaning products of Jyoti Laboratories Limited, Mumbai. For the assessment year 2014-2015, the return of income was filed on 29.09.2014 declaring total income of Rs.14,97,300. The return of income was processed u/s 143(1) of the I.T.Act on 30.11.2014. The assessment was taken up for scrutiny under CASS for the reason that (i) large interest expenses relating to exempted income u/s 14A, and (ii) huge interest paid which is not commensurate to the loans raised and has shown less turnover. The assessment u/s 143(3) was completed vide

order dated 16.12.2016 accepting the returned income of Rs.14,97,304.

4. Subsequently the CIT issued notice u/s 263 of the I.T.Act for the following reasons:-

"During the previous year the company had issued 30,00,000 optional convertible cumulative preference shares of Rs.10 each, fully paid up amounting to Rs.3,00,00,000/- along with securities premium of Rs.57,00,00,000/- to Shri M.P.Ramachandran, one of the Directors of the company. This issue is not seen to have been examined by the Assessing Officer. The securities premium of Rs.57,00,00,000/- may have to be brought to tax under section 56(2)(viib) or 68. This issue is also be examined."

5. In response to the notice issued u/s 263 of the I.T.Act, the assessee's Chartered Accountant appeared on 25.03.2019 and the case was heard. The assessee has also filed objections. During the course of revisionary proceedings, the report of valuation of Optionally Convertible Cumulative Preference Share (OPCCPS) as prepared by a CA was filed along with submission on 29.03.2019. The CIT, however, rejected the objections and the valuation submitted by the assessee with regard to OPCCPS. The CIT was of the view that the assessee did not cooperate during the assessment proceedings, and therefore, the Assessing Officer did not have occasion to verify the details regarding the applicability of provisions of section 56(2)(viib) and section 68 of the I.T.Act in respect of issuance of OPCCPS. The CIT also relied on the judgment of the Hon'ble jurisdictional High Court in the case

of Sunrise Academy of Medical Specialities (India) (P) Ltd. v. ITO [(2018) 409 ITR 109 (Ker.)] and held that when a private limited company receives share application money above the face value, section 56(2)(viib) of the I.T.Act gets attracted. The relevant finding of the CIT while setting aside the assessment order by invoking the revisionary powers u/s 263 of the I.T.Act reads as follows:-

"8. Finance Act, 2012 inserted clause (viib) w.e.f. 01.04.2013 (A Y 2013-14) to include 'share premium' received by a company in excess of its fair market value as its income chargeable under the head 'income from other sources'. This provision applies to a closely held company which should receive any consideration for issue of shares to resident and the issue price of shares exceeds the face value of such shares (i.e. at a premium). If the aggregate consideration received for such shares exceeds the fair market value of shares, the excess consideration is considered as income of the company issuing shares. This is a measure to prevent generation and circulation of unaccounted money.

9. Shares can be of any kind. that is, equity or preference or any variant thereof. The assessee has not substantiated value of the assets/ shares during the course of assessment proceeding.

10. Honourable High Court of Kerala in the case of Sunrise Academy of Medical Specialities (India) (P) Ltd Vs ITO, Corporate Ward 2(1). Range-2, Kochi (2018) 257 Taxman 373 (Kerala) held that in a case of a company in which public is not substantially interested. any premium received by the said company on sale of shares, in excess of its face value would be treated as income from other sources u/s.56(2)(viib). Section 56(2) is triggered at the stage

of computation of income itself when the share application money received from a resident by a company in which the public are not substantially interested is above the face value.

Hence, the assessment order passed, in my view, is prejudicial to the interests of revenue & erroneous. Consequently, the assessment order dated 16/12/2016 is set aside with a direction to the AO to obtain all relevant details and examine the valuation of optionally convertible cumulative preference shares in accordance with Rule 11 UA for determining the net value of the shares and to verify applicability of provisions of section 56(2)(viib) / 68 and re-do the assessment de novo after giving opportunity to the assessee. Assessee is also instructed to co-operative with the Assessing Officer in fresh assessment proceedings."

6. The learned AR filed a paper book enclosing copy of notice issued u/s 143(2) of the I.T.Act for scrutiny assessment and also the case law relied on. The learned AR has also filed a brief written submission. The relevant portion of the same reads as follow:-

"Re: Reasons (or issuing notice under section 143(2) of the Act for limited scrutiny:

The reason for issuing notice under section 143(2) of the Act is recorded in Para 2 of the assessment order under section 143(3) of the Act, relevant extract of which is reproduced hereunder:

"2. The case was selected for scrutiny under CASS for the reason of "1. Large interest expenses relatable to exempt income (u/s 14A) and 2. Huge interest paid which are not commensurate to loans raised and assessee has shown less turnover". Accordingly, a notice u/s. 143(2) of the I TAct, 1961 was issued on 31/08/2015 and the same was duly served 011 the assessee on 09/09/2015."

Re: Reason given by the PCIT in the show cause notice under section 263 of the Act for treating the assessment order under section 143(3) as erroneous and prejudicial to the interests of the revenue:

In Para 3 of the show cause notice under section 263 of the Act, the PCIT has mentioned the reason for treating the assessment order under section 143(3) as erroneous and prejudicial to the interests of the revenue. Relevant extract is reproduced hereunder:

"3. Relevant IT MR was called for and perused. It is observed from records that assessment order passed on 16/12/2016 by Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue for the following reason(s):-

During the previous year the company had issued 30,00,000 optionally convertible cumulative preference shares of Rs. 10 each, fully paid up amounting to Rs. 3,00,00,000/- along with securities premium of Rs. 57,00,00,000/- to Shri. MP Ramachandran, one of the Directors of the company. This issue is not seen to have been examined by the Assessing Officer. The securities premium of Rs. 57,00,00,000/- may have to be brought to tax under section 56(2)(viib) or 68. This issue is also be examined. "

Re: Appellant's submissions:

I. In limited scrutiny assessment, the Assessing Officer has to restrict himself to issues raised in limited scrutiny and cannot make any additions on other issues.

In this regard, reliance is placed on the decisions mentioned in Annexure A, wherein it has been held that in a case selected for limited scrutiny, the assessing officer cannot expand the scope of scrutiny beyond the reasons for which it was selected for limited scrutiny unless prior administrative approval is obtained from PCIT / CIT concerned.

II. If the Assessing Officer has no power to pass an order on a particular issue, then PCIT also has no power on that issue under section 263:

At the outset, it is respectfully submitted that scope of revisionary jurisdiction depends upon the scope of order sought to be revised under section 263 of the Act. Issues which are outside the scope of particular assessment would, as a necessary corollary, be outside the scope of revisionary proceedings undertaken to revise the said assessment. In other words, what the assessing officer could not do directly, the PCIT cannot do indirectly. In this regard, reliance is placed on the following decisions:

Paul John, Delicious Cashew Co: 94 1TD 131 (Cochin Trib.) (Upheld by Kerala HC in 200 Taxman 154)

Abad Fisheries v. DCIT: 80 ITD 153 (Cochin Trib.)

In this regard, reliance is placed on the decisions mentioned in Annexure B, wherein it has been held that where a case was selected for 'limited scrutiny', the PCIT/CIT cannot hold the assessment order as erroneous and prejudicial to the interest of the revenue in respect of an issue which was not a reason for selection of the case for 'limited scrutiny'.

In the present case, the revisionary jurisdiction under section 263 has been exercised in relation to assessment completed by the assessing officer, as a consequence of the case being selected for limited scrutiny by CASS. Therefore, jurisdiction under section 263 could not have been exercised in respect of issues, which were outside the scope and ambit of limited scrutiny.

III. In response to show cause notice under section 263, where replies have been filed by the assessee before PCIT, the PCIT has to give positive finding on how the assessment order is erroneous and if erroneous, how it is prejudicial to interest of revenue while setting aside the matter under section 263 of the Act:

It is submitted that the PCIT's order does not state how the Assessing Officer's order is erroneous or prejudicial to the interest of the revenue. The PCIT's order states that the valuation report is as per Discounted Cash Flow (OCF) method but then states that the valuation is not as per Rule 11UA. The said conclusion of PCIT is erroneous. The applicable Rule 11UA(1)(c)(c) states that the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation. The accountant has been given freedom to adopt any methodology including DCF as he deems fit to determine the value of optionally convertible preference shares. Accordingly, the order passed by the PCIT under section 263 of the Act is bad in law.

In this regard, reliance is placed on the decisions mentioned in Annexure C.

IV. The PCIT's conclusion that the assessee has not cooperated during the original assessment proceedings is not correct. Para 5 and 6 of the assessment order shows that the Assessing Officer had received all the information required for completion of limited scrutiny. Para 7 of the assessment order shows that the Assessing Officer was pleased to accept the returned income.

7. The learned Departmental Representative strongly supported the impugned order of the Pr.CIT.

8. We have heard the rival submissions and perused the material on record. Admittedly in this case, the assessment was taken up for limited scrutiny under CASS for the reason

of (i) large interest expenses relatable to exempt income u/s 14A of the I.T.Act, and (ii) huge interest paid which are not commensurate with the loans raised and had shown less turnover. The assessment was set aside in proceedings u/s 263 of the I.T.Act for the purpose of examination of impact of section 56(2)(viib) or section 68 of the I.T.Act, as regards the issue of 30 lakh OPCCPS of Rs.10 each fully paid up amounting to Rs.3 crore along with security premium of Rs.57 crore to Sri.M.P.Ramachandran. (one of the Directors of the assessee-company). The procedure for assessment is mentioned in Chapter XIV of the Income-tax Act. The concept of limited scrutiny and complete scrutiny assessment is alien to the provisions of the Act. The CBDT Instructions have laid down guidelines for a limited scrutiny assessment and circumstances when limited scrutiny assessment can be converted into a complete scrutiny assessment. The CBDT has the power to issue such instructions as per provisions of section 119 of the I.T.Act. The CBDT Instruction relevant for the period as regards the limited scrutiny assessment is Instruction No.7/2014 dated 26.09.2014. Instruction No.7/2014 reads as follow:-

“Subject: - Scope of enquiry in cases selected for scrutiny during the Financial Year 2014- 2015 on basis of mis-match-regarding-

It has come to the notice of the Board that during the scrutiny assessment proceedings some of the AOs are routinely calling for information which is not relevant, for enquiry into the issues to be considered. This has been causing undue harassment to the taxpayers and has also drawn adverse criticism from several quarters. Further, feedback and analysis of such orders indicates that many times the core issues, which formed the basis of selection of the case for scrutiny were not examined properly. Such instances primarily occurred in cases selected for

scrutiny under Computer Aided Scrutiny Selection ('CASS') for verification of specific information obtained from third party sources which apparently did not match with the details submitted by the tax payer in the return of income.

2. Therefore, for proper administration of the Income-tax Act, 1961 ('Act'), Central Board of Direct Taxes, by virtue of its powers under section 119 of the Act, in supersession of earlier instructions/ guidelines on this subject, hereby directs that the cases selected for scrutiny during the Financial Year 2014-2015 under CASS, on the basis of either AIR data or CIB information or for non re-conciliation with 26AS data, the scope of enquiry should be limited to verification of these particular aspects only. Therefore, in such cases, an Assessing Officer shall confine the questionnaire and subsequent enquiry or verification only to the specific point(s) on the basis of which the particular return has been selected for scrutiny.

3. The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark "Selected under Computer Aided Scrutiny Selection (CASS)". The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in cases. This functionality is expected to be operationalised by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date.

4. In case, during the course of assessment proceedings it is found that there is potential escapement of income exceeding Rs. 10 lakhs (for non-metro charges, the monetary limit shall be Rs. 5 lakhs) on any other issue(s) apart from the information based on which the case was selected under CASS requiring substantial verification, the case may be taken up for comprehensive scrutiny with the approval of the Pr.CIT/DIT concerned. However, such an approval shall be accorded by the Pr. CIT/DIT in writing after being satisfied about merits of the issue(s) necessitating wider and detailed scrutiny in the case. Cases so taken up for detailed scrutiny shall be monitored by the Jt. CIT/Addl. CIT concerned.

5. The contents of this Instruction should be immediately brought to the notice of all concerned for strict compliance."

8.1 The above Instructions have been modified subsequently vide Instruction No.20/2015 dated 29.12.2015 and

Instruction No.5/2016 dated 14.07.2016. From para 4 of the above Instruction, it is clear that when potential escapement of income exceeds Rs.10 lakh on issues other than selected under CASS, the Assessing Officer has the power to take up the assessment for comprehensive scrutiny with the approval of the Pr.CIT / DIT concerned. In the instant case, the potential escapement of income is far exceeding Rs.10 lakh prescribed under the above mentioned CBDT Instructions (the potential escapement of tax is Rs.19,37,89,266). Therefore, the Assessing Officer could have converted the limited scrutiny assessment in this case to a complete scrutiny assessment by taking approval / permission from the Pr.CIT / DIT concerned. Now the limited question for our consideration is whether the Assessing Officer having failed to convert the limited scrutiny to a complete scrutiny, the assessment order would be rendered erroneous and prejudicial to the interest of revenue for the Pr.CIT to invoke his jurisdiction u/s 263 of the I.T.Act.

8.2 Section 56(2)(viib) of the I.T.Act was inserted by the Finance Act, 2012 with effect from 01.04.2013 to include the 'share premium' received by a company in excess of its fair market value as its income chargeable under the head 'income from other sources'. This section applies to a closely held company which receives any consideration for issue of shares to a resident and the issue price of shares exceeds the face value of such shares. In the event, the aggregate consideration received for such shares exceeds the fair

market value of shares, the excess consideration is considered as income of the company issuing the shares. The Hon'ble High Court of Kerala in the case of *Sunrise Academy of Medical Specialities (India) (P) Ltd. v. ITO (supra)* had held in a case of a company in which public are not substantially interested that any premium received by the said company on sale of shares in excess of its face value would be treated as income from other sources u/s 56(2)(viib) of the I.T.Act. The Hon'ble High Court further opined that section 56(2) is triggered at the stage of computation of income itself when the share application money received from a resident by a company, in which the public are not substantially interested, is above the face value.

8.3 In this case the Assessing Officer had mentioned that there was no response to the notices issued u/s 142 of the I.T.Act by the assessee. Therefore, the Assessing Officer had proceeded to initiate penalty proceedings u/s 271B of the I.T.Act. In para 4 of the A.O., it was stated as follows – *"Since the assessee has not complied with the notices issued from time to time and also had not been cooperating with the department to complete the assessment, the case was found to be a fit case for levying a penalty u/s 271(1)(b) r.w.s. 274 of the I.T.Act."* Due to assessee's non-cooperation during the assessment proceedings, the Assessing Officer did not have occasion to verify the details regarding the applicability of provisions of section 56(2)(viib) and section 68 of the I.T.Act in respect of the issue / allotment of shares (OPCCPS). The

Assessing Officer ought to have, even in a limited scrutiny assessment, prima facie examined whether there is a case of escapement of income exceeding the amount prescribed under the Board Instructions. The A.O. after prima facie examination, has found this a fit case for expanding the scope of scrutiny assessment, ought to have sought the permission / approval of Pr.CIT / DIT for comprehensive scrutiny assessment. The Assessing Officer in this case had totally failed to examine this aspect of the matter. Therefore, the assessment order passed in our view is erroneous and prejudicial to the interest of the revenue.

8.4 The learned AR had submitted that in a limited scrutiny assessment, the Assessing Officer has to restrict himself to the issues raised in the limited scrutiny and cannot make any addition on other issues. In support of this submission, the learned AR had relied on the following Tribunal orders:-

(i) Nitin Killawala & Associates v. ITO [ITA No.1611/Mum/2013 – order dated 16.09.2015] ITAT Mumbai Benches.

(ii) Ms.Yikti Tiwari v. ITO [ITA No.660/Lkw/2018 – order dated 22.02.2019] ITAT Lucknow Benches.

(iii) Suresh Jugraj Mutha v. Addl.CIT [ITA No.05/Pun/2016 – order dated 04.05.2018] ITAT Pune Benches.

(iv) M/s.Srinidhi Mines v. ITO [3084/Bang/2018 – order dated 25.04.2019] ITAT Bangalore Benches.

(v) Smt.Gurpreet Kaur v. ITO [87/Asr/2016 – order dated 24.03.2016] ITAT Amritsar Bench.

8.5 The above mentioned judicial pronouncements would not be of any assistance to the assessee. In those cases, it was held that when an assessment is selected for limited scrutiny, the Assessing Officer cannot expand the scope of limited scrutiny beyond the reasons for which the case was selected for scrutiny unless prior administrative approval is obtained from the Pr.CIT / DCIT concerned. In the above mentioned cases, additions were made by the Assessing Officer in a limited scrutiny assessment other than those mentioned under the CASS without seeking approval / permission of the concerned CIT. In this case, we are only examining the CIT's powers u/s 263 of the I.T.Act to set aside an assessment wherein the A.O. did not even verify prima facie, whether in limited scrutiny assessment, escapement of income exceeded the amount prescribed in the relevant CBDT's Instruction. Therefore, the above judicial pronouncements cannot be of any assistance to the assessee in the instant case.

8.6 The learned AR had also submitted that if the Assessing Officer has no power to pass an order on a particular issue, then Pr.CIT also has no power on that issue u/s 263 of the I.T.Act. In this context, the learned AR relied on the order of the Tribunal in the case of *Paul John, Delicious Cashew Co.* 94 ITD 131 (Cochin Tribunal), which was upheld by the Hon'ble High Court in the case reported in 200 Taxmann 154. In the

case of *Paul John, Delicious Cashew Co. (supra)* considered by the Cochin Bench of the Tribunal, it was held that the completed assessment cannot be reopened by the A.O. in view of the proviso to section 14A of the I.T.Act. It was further held by the Tribunal that if the Assessing Officer does not have power to reopen an assessment, which is already concluded, the CIT could not have exercised his powers u/s 263 of the I.T.Act directing the A.O. to pass assessment making disallowance u/s 14A of the I.T.Act. The above view taken by the Tribunal was upheld by the Hon'ble High Court. In this case, the Assessing Officer has the power to convert a limited scrutiny assessment into a complete scrutiny assessment if the escapement of income exceeds Rs.10 lakh with permission of the authorities concerned. Therefore, the case relied on by the learned AR does not render any assistance to the assessee.

8.7 The learned AR further submitted that when the assessment is taken up for 'limited scrutiny', the Pr.CIT / CIT cannot hold the assessment order as erroneous and prejudicial to the interest of the revenue in respect of an issue which was not a reason for selection of the case for 'limited scrutiny'. In this context, the learned AR had relied on the following Tribunal orders:-

- (i) The Deccan Paper Mills Co. Ltd. v. CIT [1013 & 1035/Pun/2014 – order dated 10.10.2017], ITAT Pune Benches.

(ii) M/s.Aggarwal Promoters v. Pr.CIT [1708/Chd/2017 – order dated 16.04.2019] ITA Chandigarh Benches.

(iii) Sanjeev Kr. Khemka v. Pr.CIT [1361/Kol/2016 – order dated 02.06.2017] ITAT Kolkata Benches.

(iv) Rakesh Kumar v. CIT [6187/Del/2015 – order dated 20.12.2018] ITAT New Delhi Benches.

(v) M/s.R & H Property Developer Pvt.Ltd. v. Pr.CIT [1906/Mum/2019 – order dated 30.07.2019] ITAT Mumbai Benches.

(vi) Mrs.Sonali Hemant Bhavsar v. Pr.CIT [742/Mum/2019 – order dated 17.05.2019] ITAT Mumbai Benches.

8.8 In the above cases, there has been no issue raised as regards the powers of the Assessing Officer to convert a limited scrutiny assessment to a complete scrutiny assessment and failure of the Assessing Officer to prima facie examine whether there was escapement of income exceeding the amount prescribed in the CBDT Instructions, would render the assessment order as erroneous and prejudicial to the interest of revenue. As mentioned earlier, in this case, the A.O. failed to examine the applicability of provision of section 56(2)(viib) and section 68 of the I.T.Act for the issue / allotment of OPCCPS would have a potential tax escapement of income far exceeding the amount prescribed in the CBDT Instructions. Therefore, we are of the view that this is a fit case for invoking the revisionary jurisdiction u/s 263 of the I.T.Act, especially in the light of the judgment of the Hon'ble

jurisdictional High Court in the case of *Sunrise Academy of Medical Specialities (India) (P) Ltd. v. ITO (supra)*.

8.9 The learned AR had submitted that in response to the show cause notice u/s 263 of the I.T.Act, when the assessee has filed replies, the CIT has to give positive finding on merits while setting aside the matter u/s 263 of the I.T.Act on how the assessment order is erroneous and prejudicial to the interest of the revenue. In support of his submission, the learned AR relied on the judgment of the Hon'ble Karnataka High Court in the case of *CIT v. Narayana Pai (T)* [98 ITR 422]. The *Explanation 2(a)* to section 263 of the I.T.Act, states that the assessment order shall deem to be erroneous and prejudicial to the interest of the revenue if such an order was passed without making inquiry or verification, which should have been made. As mentioned earlier, in this case the assessment order was passed without making inquiry / verification as regards the potential escapement of income mentioned in the Board Instructions for the relevant period. Therefore, even in case of limited scrutiny assessment, the A.O. is duty bound to make a prima facie inquiry as to whether there is any other items which requires examination and in the event, the potential escapement of income would have exceeded Rs.10 lakh and he ought to have sought the permission of the CIT / DIT to convert a 'limited scrutiny assessment' to a 'complete scrutiny assessment'. Having failed to do so, the CIT, who was the authority to have granted permission for converting a 'limited scrutiny assessment' to a

`complete scrutiny assessment' is fully justified in invoking his revisionary jurisdiction u/s 263 of the I.T.Act. The CIT in his 263 order has categorically found that the A.O. is erroneous and prejudicial to the interests of revenue on account of failure of the A.O. to examine the applicability of section 56(2)(viiia) or section 68 of the I.T.Act for the issue / allotment of OPCCPS. The CIT had only set aside the assessment and directed the AO, to examine the valuation of OPCCPS. The CIT need not in view of *Explanation 2(a)* to section 263 of the I.T.Act, come to a categorical finding that the valuation of OPCCPS is far exceeding the fair market value of shares. The A.O. has to examine these issues whether issue price of OPCCPS is exceeding FMV of shares, since he did had occasion to examine the valuation of OPCCPS. For the aforesaid reasoning, we uphold the CIT's order passed u/s 263 of the I.T.Act as correct and in accordance with law. It is ordered accordingly.

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

Order pronounced on this 05th day of November, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 05th November, 2019.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The P.CIT, Thrissur.
4. DR, ITAT, Cochin
5. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin