

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No. 164/MUM/2025
Assessment Year: 2018-19**

Sameer Ramesh Vashi 702, Samrock Apartment, C.D. Barfiwala Road, Andheri-West, Mumbai - 400058 [PAN: AAAPV6356Q]	vs	The Principal Commissioner of Income Tax, Mumbai-17
Appellant		Respondent

Present for:

Assessee : Dr. K. Shivaram, Sr. Advocate
and Shri Rahul Hakani, Advocate
Revenue : Shri Satyaprakash R. Singh, CIT DR

Date of Hearing : 06.08.2025
Date of Pronouncement : 30.10.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the revisionary order of PCIT, Mumbai-17, vide order no. ITBA/COM/F/17/2024-25/1070374871(1), dated 14.11.2024 passed u/s. 263 against the assessment order by National e-Assessment Centre, Delhi, u/s.143(3) r.w.s. 143(3A) and 143(3B) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 14.03.2023 for AY 2018-19.

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

- 1. The PCIT, Mumbai-17 erred in passing order u/s 263 and holding that order passed u/s 143(3) dt 24-03-2021 is erroneous and prejudicial to the interest of revenue and hence directed the AO to reframe the assessment.*

2. *The said PCIT erred in appreciating the fact that the AO has passed the order after detailed scrutiny and examining the issue of allow ability of Business Loss of Rs. 1,24,19,223/- by raising various queries by notice dt 23-09-2019, dt. 02-01-2021, dt. 16- 02-2021, dt. 04-03-2021.*
3. *The PCIT also erred in not appreciating the fact that the scrutiny u/s 143(3) for the above year was "Limited Scrutiny" as mentioned in notice u/s 143(2) dt 23-09-2019 and therefore the AO was not required to go beyond the issue raised in the limited scrutiny for completing assessment as per instructions of CBDT and therefore there was no failure on his part for examining the issue of Notional income.*
4. *The Appellant craves leave to add, to amend, to alter, to withdraw, to modify and/or to substitute any or all the foregoing grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.*

2.1. The sole issue raised by the assessee is in respect of ld. PCIT invoking the provisions of section 263 for revision of the assessment order passed u/s. 143(3) dated 24.03.2021 and thereby passing the impugned revisionary order u/s. 263 r.w.s. 254 dated 14.11.2024.

3. Brief facts of the case are that assessee is an individual engaged in the business of real estate as builder and developer in the name of his proprietary concern M/s. Samrock Developers. Assessee filed his return of income on 31.10.2018 along with tax audit report in Form 3CD and reported total income at Rs.1,15,93,120/- consisting of income from house property and from other sources after setting of current business loss of Rs.1,24,19,223/-. Case of the assessee was selected for limited scrutiny under CASS to verify -

- i. business loss
- ii. agriculture income.

3.1. Ld. AO in the course of assessment proceedings issued notices u/s. 142(1) to which assessee furnished detailed replies, all of which are placed on record in the paper book before us. Having gone through

the submissions made by the assessee, assessment was concluded by accepting the returned income at Rs.1,15,97,120/-. Later the said assessment was subjected to revision u/s. 263 vide order dated 25.03.2023 by which it was set aside. The assessment was remitted back by the ld. PCIT to the Assessing Officer for fresh consideration. Assessee moved an appeal against the said order u/s. 263 before the Tribunal which was adjudicated upon vide order dated 10.08.2023. Tribunal had set aside the order passed u/s. 263 back to the file of ld. PCIT for fresh consideration.

3.2. Proceedings u/s.263 were re-initiated by issuing notice to the assessee. Necessary compliances were made and details were filed explaining the case of the case on the issues raised by the ld. PCIT for invoking the revisionary proceedings. Assessee reiterated that allowability of business loss was examined by the ld. AO during the assessment proceedings in detail, while issuing notice u/s. 142(1) for which all the details and submissions were made. According to the assessee, conditions mentioned in explanation 2 to section 263 are not satisfied. It was also pointed out by the assessee that specific enquiries were made by the ld. AO regarding allowability of business loss through notices u/s. 142(1) dated 30.10.2020 and 04.03.2021 which were duly replied by the assessee. It was also submitted that assessee is a builder and the expenditure debited to the profit and loss account resulting in business loss are merely administrative overhead expenses which are allowable for set off.

3.3. It was also submitted that method of recognition of revenue for the real estate projects undertaken by the assessee is by following project completion method which has been accepted by the Department

since past several years. Claim of expenditure are in respect of administrative expenses for running the business and are not attributable to any specific project carried out by the assessee. Further, it was contended that the case of the assessee was selected for limited scrutiny to verify the business loss and agriculture income. On the applicability of provisions of accounting standard IND AS-115, assessee submitted that it applies only to the companies and not to the individual proprietary concerns and therefore, the consideration made by the Id. PCIT is on a totally wrong footing.

3.4. In respect of the issue relating to deemed rental income from a flat at Greater Noida whereby Id. PCIT contended that assessee has not offered the deemed rental income which was added in the immediately preceding assessment year AY 2017-18 and assessee had accepted the same, contention of the assessee is that the present year under consideration was subjected to limited scrutiny and the issue relating to deemed rental income was not part of the limited scrutiny assessment. Hence, no revisionary proceedings can be undertaken in respect of the issue not covered by the limited scrutiny assessment. In respect of the preceding assessment year that is AY 2017-18, the case was selected for complete scrutiny and was not a limited scrutiny assessment. Hence, the facts for the two years are different.

4. After taking into account the submissions made by the assessee, Id. PCIT concluded that the assessment was made without proper application of the provisions of the Act and Assessing Officer was expected to make all the enquiries and examination which he failed to do so. He thus, set aside the assessment directing the Id. AO to frame

the assessment *de novo*. Aggrieved by the revisionary order, assessee is in appeal before the Tribunal in the second round.

5. Before us, ld. Counsel for the assessee reiterated the above stated facts. He also referred to various notices issued u/s.142(1) by the ld. AO in the course of assessment proceedings, more particularly to the notice dated 04.03.2021, whereby specific queries were raised for each of the expense item debited in the profit and loss account enquired by the ld. AO. Assessee had made detailed submissions in respect of the said notice and enquiry made by the ld. AO, all of which are placed in the paper book before us. The annexure to said notice u/s. 142(1) is extracted below for ready reference which evidently demonstrates the specific enquiries made by the ld. AO in respect of business loss claimed as set off by the assessee in the current year as well as in respect of deemed rental income from the flat owned by the assessee at Greater Noida.

ANNEXURE

Your Submissions date 02.03.2021 and 02.02.2021 have been perused. There are certain clarifications required in this regard.

2. It is seen that the assessee has mentioned that the assessee is in Real Estate Business as Builders and Developers in the name of "Samrock Developers", a proprietary concern. However no details have been submitted in regard to the assessee's modus operandi during the F.Y 2017-18 relevant to A.Y 2018-19. You are requested to produce in detail the nature and mode of operation of assessee's business. Produce the details in regard to nature of goods sold and purchases made in the course of assessee's business.

In the Profit and Loss account for the year, the assessee has claimed expenses that include majorly operation expenses like assessment charges of Rs.30.69,922/-, water charges of Rs.23,84,711/-The assessee is requested to produce entire bills/vouchers along with documentary evidence in relation to these expenses. Produce the bank statement reflecting the flow of funds to further substantiate your expenditure. The assessee is required to explain how all these expenses are related to the business being carried out by the assessee.

3.1 Further expense like insurance charges of Rs.2,72,832/-, lift maintenance of Rs.9,20,488/-, professional fee of Rs.7,23,385/-are claimed by the assessee.

The assessee is required to explain how these expenses are related to the business being carried out by the assessee.

3.2 The assessee has claimed depreciation of Rs. 10,66,080/- during the year. On perusal of ledger extracts for depreciation, it is seen that depreciation(@7.5%) on motor car amounts to Rs.9,90,980/- In this regard you are requested to explain as to how the motor cars are being used for business purpose and justify the claim for depreciation.

3.3 Further in the P&L Account the assessee has shown income from maintenance charges received of Rs. 17,40,000/-, property tax collection of Rs. 18,69,200/-. Assessee is required to explain how these incomes are related to assessee's business.

4. Further in your submissions it is seen that the assessee owns a 4BHK flat Greater Noida whose value amounts to Rs.1,30,69,302/-However you have not shown income from House property arising from this property. On verification of Fair market rent online for a similar flat, the annual rent is Rs.6,80,500/- during the F.Y 2017-18. Therefore you are requested to explain as to why the amount of Rs.6,80,500/- should not be treated as deemed annual lettable value of the said flat and add to your ROI.

5. In regard to agricultural income, in assessee's reply the assessee mentioned that Patta passbooks along with supporting evidences are enclosed. However on perusal of enclosures, no patta passbooks are enclosed by the assessee. You are requested to produce the patta passbook, details with documentary evidences showing types of crops grown in the agricultural land. Further the bills produced don't reflect the crops you claim to have cultivated. You are requested to produce the confirmations of the buyers of the assessee's agricultural produce. Produce the details of buyers along with their PAN's and details. Also produce the bank statements reflecting the payments received from the parties.

5.1 Further the assessee in his submission claims that he is enclosing certificate from Gram panchayat that he is cultivator and also letters from joint owners confirming that they had given him plots for cultivation. However no attachments/ enclosures have been made in this regard. You are requested to produce the documents as claimed by you. Further produce the copies of registered agreements entered between you and other joint owners in relation to plot given by them to the assessee. Kindly produce the English translated copies of the agreements, bill/ vouchers and other documentary evidences.

5.1. There are other notices issued u/s. 142(1) by the ld. AO enquiring about the nature of business, details of business loss set off against other heads of income as reported in the return along with justification of the claim. Ld. Counsel for the assessee demonstrated before us that assessee had filed all the responses which included copies of ledger account, bills and vouchers for various expenses, all of which are placed

in the paper book. Assessee also justified claim of various expenses which are administrative expenses and allowable as deduction since these did not pertain to specific projects and therefore, they were not capitalized. According to him, both the issues relating to claim of business loss and deemed rental income were specifically enquired into and thus, invocation of revisionary proceedings u/s. 263 are not in accordance with the provisions of law. Ld. AO had taken one of the possible views on the two issues and has accepted the income returned by the assessee.

5.2. He further contended that ld. PCIT applied IND AS-115 without understanding its applicability as it applies only to companies under the Companies Act, 2013, whereas assessee is a proprietary concern. He further pointed out that issue relating to deemed rental income in respect of flat at Greater Noida was not part of the limited scrutiny assessment and therefore, ld. PCIT could not have invoked revisionary proceeding in respect of the said issue as the provisions contained in section 263 gave the power to ld. PCIT only to examine the issues which were before the Assessing Officer during the course of scrutiny assessment and not any other issue which has not been subject matter before the Assessing Officer for the assessment completed under limited scrutiny. He further asserted that even if there is no business income in a year, the expenses cannot be disallowed, as the expenses incurred by the assessee relating to administration, selling, marketing etc., are legitimate business expenses incurred by the assessee and are not of the nature which are to be capitalized to work in progress, since they are not specific to the construction project undertaken by the assessee.

6. Per contra, ld. CIT DR asserted that even though submissions were made by the assessee in the course of assessment proceedings, the same were not subjected to due examination and verification by the ld. AO and hence, justifies the invocation of revisionary proceedings and the revisionary order passed by ld. PCIT.

7. We have heard both the parties and perused the material on record. We have also given our thoughtful consideration to the submissions made before us as well as the orders of the authorities below. Admittedly, it is on record that ld. AO had issued notices u/s. 142(1) on the two specific issues for which the case of the assessee was selected for limited scrutiny assessment, namely verification of business loss and agriculture income. Issue relating to deemed rental income from the flat at Greater Noida was not part of the limited scrutiny assessment proceedings. Ld. AO had raised specific queries in respect of claim of business loss by enquiring into various expenditure incurred by the assessee for which all the relevant documentary evidences including bills and vouchers as well as ledger accounts were placed on record in the course of assessment proceedings. It is not a case of lack of enquiry on the issue which formed the basis for the impugned revisionary order passed by the ld. PCIT. In respect of issue raised by ld. PCIT for deemed rental income, we hold that it is not open for the ld. PCIT to while exercising powers u/s. 263 to find fault with assessment order on issue which is not covered by the limited scrutiny when assessing officer could not have possibly examined the said issue.

7.1. From the perusal of the questionnaire to notice u/s 142(1) and the replies made by the assessee in respect of the issues which formed the basis for passing the order u/s. 263 of the Act, we note that it is not

a case of lack of enquiry. We observe that Ld. CIT has not applied his mind to arrive at a consideration which is erroneous in so far as prejudicial to the interest of revenue for passing the impugned order u/s. 263 of the Act. We observe that in the course of proceeding u/s. 263 of the Act, assessee had furnished the relevant details and explained the issues raised through the show cause notice, supporting his contentions by corroborative documentary evidence. It is well settled law that for invoking the provisions of section 263 of the Act, both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

7.2. For this, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordships have held that *twin* conditions need to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer *must be erroneous and in so far as prejudicial to the interest of the Revenue*. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed *on incorrect assumption of fact*; or (ii) *incorrect application of law*; or (iii) Assessing Officer's order is in *violation of the principle of natural justice*; or (iv) if the order is passed by the Assessing Officer *without application of mind*; (v) if the AO *has not investigated the issue* before him; [*because AO has to discharge dual role of an investigator as well as that of an adjudicator*] then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to

understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (*supra*) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

7.3. The aspect of application of mind by Id. PCIT as contended by the Id. Counsel has been succinctly dealt by the Hon'ble Delhi High Court in the judgment of DG Housing Finance Co. Ltd. [2012] 20 taxmann.com 587 (Del) which is dealt hereunder.

7.3.1. While advertng on the issue, Hon'ble High Court held that the CIT has to come to the conclusion and himself decide that order is erroneous, by conducting necessary enquiry, if required and necessary before the order u/s 263 of the Act is passed. In such cases, the order of the AO will be erroneous because the order passed is not sustainable in law and the said finding must be recorded by CIT who cannot remand the matter to the assessing officer to decide whether the findings recorded are erroneous.

7.3.2. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/enquiry made is erroneous. This can happen if an enquiry and

verification is conducted by the CIT and he is able to establish and show the error or mistake made by the AO, making the order unsustainable in law.

7.3.3. In some cases, possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the AO had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the AO to conduct further enquiries without a finding that the order is erroneous, the condition or requirement which must be satisfied for exercise of jurisdiction u/s 263 of the Act. In such matters, to remand the matter/issue to the AO would imply and mean that the CIT has not examined and decided whether or not the order is erroneous but has directed the AO to decide the aspect/question.

7.3.4. The Hon'ble Court further held that this distinction must be kept in mind by the CIT while exercising jurisdiction u/s 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the AO, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/enquiry himself. The order of the AO may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the AO to decide whether the order was erroneous. This is not permissible. An order is erroneous, unless the CIT holds and records reason why it is erroneous. Therefore, CIT

must after recording reasons, hold that order is erroneous. The jurisdictional pre-condition stipulated is that CIT must come to the conclusion that the order is erroneous and is unsustainable in law.

7.3.5. It was further observed by the Hon'ble High Court that the material, which the CIT can rely up on includes not only the records as it stands at the time when the order in question was passed by the AO but also records as it stands at the time of the examination by the CIT. Nothing prohibits CIT from collecting and relying new/additional material which evidence to show and state that the order of the AO is erroneous.

7.4. In the present case before us, we note that the issues raised by the ld. Pr. CIT in the show cause notice u/s 263 had already been examined in the assessment proceedings. The extent of enquiry undertaken and replies filed in the assessment proceedings forms part of the records of the case on which ld. PCIT ought to have applied his mind before embarking upon the journey of initiating the revisionary proceedings.

8. We find that the issues in the present case considered by the ld. Pr. CIT for exercising revisionary proceedings u/s. 263 of the Act are purely on facts which are verifiable from the records of the assessee. Moreover, the same have been examined by the Ld. AO in the course of assessment proceedings for which all the relevant details and explanations were placed on record which also forms part of the paper book before us. Further, ld. CIT, DR could not bring any material on record to controvert the factual position as submitted before us.

8.1. Accordingly, on the issues raised by the ld. Pr. CIT in the revisionary proceedings, no action u/s 263 of the Act is justifiable which in our considered view cannot be sustained under the facts and circumstances of the present case and judicial precedents dealt herein above. We, therefore, quash the impugned order u/s 263 of the Act and allow the grounds raised by the assessee.

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

Order pronounced in the open court on 30.10.2025.

Sd/-
[Amit Shukla]
Judicial Member

Sd/-
[Girish Agrawal]
Accountant Member

Dated: 30 October, 2025

MP, Sr.P.S.

Copy to:

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai