



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

**BEFORE S/SHRI P.M. JAGTAP, VICE PRESIDENT  
AND CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.168/CTK/2020**  
Assessment Year: 2015-16

Jamuna Realty Pvt Ltd., Aditya Complex, Chauliaganj, Cuttack	Vs.	Pr. CIT, Cuttack
PAN/GIR No.AAACE 4871 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri J.M.Patnaik, AR  
Revenue by : Shri S.M.Keshkamat, CIT DR

**Date of Hearing : 25 /6/ 2021**  
**Date of Pronouncement : 22 /7/2021**

**ORDER**

**Per Bench**

The assessee has filed this appeal against the order u/s. 263 of the Income tax Act, 1961, dated 10.6.2020 of the Pr. CIT, Cuttack for the assessment year 2015-16.

2. Although the assessee has raised various grounds of appeal, but the effective issue raised in the grounds of appeal is that the Ld. Pr. CIT is not justified in setting aside the assessment order passed u/s.143(3) of the Act dated 26.12.2017 exercising his power conferred u/s.263 of the Act by directing the AO to adopt percentage completion method to determine the profit of the project as according to AS-7 revised in 2002 w.e.f. 1.4.2003 the completed contract method has been scrapped and ICAI guidelines

preferred the percentage completion method and interest on advances received from customers cannot be treated as business income and should be treated as income from other sources.

3. The assessee has also raised additional ground, which reads as under:

'For that the impugned order dated 18.6.2020 is bad in law and is "liable to be quashed for the same being passed beyond the period fixed under the statute sub-section (2) of Section 263 of the I.T.Act, 1961."

4. At the outset, Id CIT DR with regard to additional ground raised by the assessee, submitted that in this case proceedings u/s.263 of the Act for the assessment in question were getting time barred on 31.3.2020. However, the Govt. of India, Gazette Notification dated 31.3.2020 under the Taxation & Other Laws (Relaxation of Certain provisions) Ordinance , 2020 (No.2 of 2020) extended the time barring date for such matters till 30.6.2020. In view of above Notification of Govt. of India, the order u/s.263 is passed by Ld. Pr. CIT and, therefore, the additional ground raised by the assessee does not deserve to accept for adjudication, to which, Id A.R. had no objection. In view of above, we did not accept the additional ground of appeal of the assessee.

5. The assessee before us is engaged in the real estate business, and filed its return of income on 30.9.2015 disclosing a total taxable

income at Nil. The case was selected for limited scrutiny under CASS. The Assessing Officer completed regular assessment u/s.143(3) of the I.T.Act on 26.12.2017 accepting the returned total income. The matter, however, did not rest there. Vide notice dated 25.2.2020, the Pr. Commissioner of Income Tax required the assessee to show cause as to why the assessment order under section 143(3) not be subjected to revision under section 263 on the following grounds :

“ On verification of assessment records, it is revealed that the assessee company had disclosed the following in its books of account, as given hereunder:

Particulars of books of a/c	Nature of transaction	A.Y. 2015-16	A.Y.14-15
Other current liabilities(B/S,Note-06	Flat booking advance	23,82,20,000	23,82,40,000
Inventory (B.S. Note-11)	Closing work-in-progress	21,87,23,085	16,96,04,756
Income account) (P&L	Revenue from operation	Nil	Nil
	Other income	1,46,79,924I	1,58,07,715

3.1 As is evident from the above, the assessee company has not recognised revenue by following percentage completion method even though substantial amount was received from customers as advance and the stage of completion of the projects is at reasonable stage, since the value of closing work-in-progress is at Rs.21,87,23,085/- .

3.2 However, in the audited accounts and report for the year ending 31<sup>st</sup> March, 2015, the auditor, vide his report on other legal and regulatory requirements, in para 2(d) has certified in the following manner:

'In our opinion, the aforesaid standalone financial statements comply with the Accounting Standards specified under section 133 of the Act, read with Rule 7 of the Companies (Accounts) Rule, 2014.'

As per AS-7, it is mandatory on the part of a company to follow percentage completion method to recognised revenue. The Institute of Chartered Accountants of India (ICAI) has also declared AS-7 as mandatory from F.Y. 2003-04. It is further seen that the assessee company has also not made any disclosure as required in Paragraph 38 to 43 of AS-7. From this, it is evident that the financial statement of the assessee company was prepared in violation of the requirements under AS-7.

3.3 The AO has not considered the above aspects while completing the assessment. He ought to have converted the case from "limited scrutiny" to "complete scrutiny" as per CBDT's instruction No.20/2-15 dated 29.12.2015, to ascertain whether non-recognition of revenue by following percentage completion method yield any result which prejudicial to the interests of revenue. The assessee had disclosed Nil income for the year under consideration. But, the AO had not inquired/investigated the issue in question from revenue's perspective, which ought to have done by him on the facts of the case discussed above. Such failure on part of the AO had made the assessment both erroneous and prejudicial to the interests of revenue.

4. Further, in the P&L account for the year ending 31.03.2015, you had not recognized any revenue from operation. Only 'other income' i.e. interest received during the year under consideration was credited to P&L account. As such, no expense relating to construction activities should have been debited to the P&L account, but the same could have debited following expenditures incurred towards construction of flats under the head other expenses in the P&L account (Schedule-18) as given hereunder:

1. Construction material	;	Rs.3,06,94,933/-
2. Labour Charges	:	Rs.1,09,20,418/-
3. Construction	:	<u>Rs. 1,14,48,136/-</u>

Rs.5,30,58,487/-

4.1 Thus, total expenditure claimed under the head "other expenses" of Rs.5,33,27,063/- includes Rs.5,30,58,487/- debited under the above three heads of expenses related to construction activities, whereas no revenue has been recognized by you.. The above expenses were-required to be included in the work-in-progress account instead of debiting the same to P&L account as no revenue from operation was recognized .in P&L account. Had that been the case, the profit before tax would have been computed at Rs.39,4p,158/- instead of loss of Rs.4,91,18,329/- as shown in the P&L account. The detail of such computation is given as under:

I.	<u>'Income</u>		
	Other Income	-	Rs.1,46,79,924/-
II.	<u>Expenditure</u>		
	Financial Cost : -Rs.96,52,863		
	Depreciation : Rs .8,18,327		
	Other Expenses: <u>Rs.2,68,576</u>		Rs.1,07,39,766/-
	Profit before tax I-II)		Rs. 39,40,158/-

4.2 Considering the profit before tax at Rs.39,40,158/- as computed above, total income of the assessee company was required to be computed at Rs.47,58,485/- instead of Nil, as determined by the AO in his assessment order dated 26.12.2017. The computation of total income is given as under:

Profit before tax as computed above	-	Rs.39,40,158/-
Add: Depreciation as per Comp. Act.	-	<u>Rs. 8,18,327/-</u>
		Rs.47,58,485/-

Less: Depreciation as per I.T.Act claimed  
By the assessee company - Rs. Nil

Total income from business and profession: Rs.47,58,485/-."

3. In response to show cause issued by Ld. Pr. CIT, the gist of the assessee is as under:

i) The issue raised now has been considered during limited scrutiny.

- ii) The company followed mercantile system of accounting based on completion of project as per AS-9.
  - iii) The company only recognized revenue at the time of execution of sale deed.
  - iv) Flat booking advance credited under head "other current liabilities" and furnished the breakup of flat booking.
  - v) When the sale was completed, entire taxes for said project were paid in A.Y. 2016-17.
  - vi) There is no revenue loss to the Department.
- vi. In Assessment year 2014-15, the AO had raised demand and on further appeal, the Id CIT(A) dropped the demand.

Reliance was placed on the following decisions:

- (i) CIT vs Hyundai Heavy Industries co Ltd , 210 CTR (SC)178.
- (ii) CIT vs Bilahari Investment Pvt Ltd., 215 CTR (SC) 201.

### **Others income**

Taxation of other income, which includes interest income is taken care in A.Y 2016-17 and taxation of the same in A.Y. 2015-16 would amount to double taxation and more tax of Rs.1,90,282/- has been paid and hence, there is no loss to revenue.

6. None of these submissions impressed the learned Pr. Commissioner of Income Tax. Ld. Pr. CIT observed that in "limited scrutiny", the AO is required to restrict the scope of enquiry to the issues identified for the purposes whereas if the escapement of income exceeds Rs.5 lakhs, the AO is required to convert the case to the 'complete scrutiny'. In this case, the case which are not picked for scrutiny, happens to be almost 98% of the returns filed by the assessee. Hence, the matter is required to be subjected to "complete scrutiny". Accordingly, he rejected the contention of the assessee that since the 'limited scrutiny' has been completed, there was no

necessity for revision u/s.263 for "complete scrutiny". He was of the view that according to AS-7, revised in 2002, with effect from 1.4.2002, the 'completed contract method' or 'project completion method' has been scrapped. However, the assessee has not followed the prevailing method as per ICAI guidelines in the case of builder. In this case, assessee was to complete project by March, 2-014 i.e. one year before the year under consideration. Moreover, it has also received most of the consideration, hence, was liable offer income as per the percentage completion method. Further, Pr. CIT was of the view that apart from revenue recognition, there was another issue regarding claim of expenses of Rs.1,07,39,766/- from other income, i.e. interest of Rs.1,46,79,924/-. The profit before tax was computed at Rs.39,40,158/- by deducting the above expenditure from the interest income. The above expenditure was not related to other income. Therefore, the expenses are not allowable expenditure because other income comprises only interest received from two parties to whom assessee had advanced loans. He observed that there was no business activity during the year and the assessee had disclosed only other income of Rs.1,47,79,924/- being interest on money advanced to other parties and claimed various expenses. With these observations, Ld Pr. CIT in exercise his power u/s.263 of the Act, set aside the assessment order dated 8.12.2017 and direct

the AO to adopt the percentage completion method to determine profit of the project and to add interest income of Rs.1,46,79,924/- under the head "income from other sources" and reframe the assessment after providing the assessee due opportunity of hearing.

7. Hence, the assessee is in appeal before the Tribunal.

8. Ld A.R. of the assessee submitted that the assessee is a private limited company dealing with construction of residential and commercial complex and sale of apartments as a Real Estate Builder on its own supervision without engaging any building contractor. During this period, the assessee undertook a project namely; Jamuna Residency a residential complex meant for Tata Steel Ltd. He submitted that the case of the assessee was selected for scrutiny under CASS and notices u/s.143(2) and 142(1) of the Act were issued and in response thereto, the assessee furnished all details/documents/accounts for verification and same were verified and examined by the AO. Thereafter, assessment u/s.143(3) was completed accepting the returned income. He submitted that the assessee company followed the project completion method recognised by Revenue AS-7 since its inception. He submitted that the Pr. CIT has made allegation with respect to Jamuna Residency located at Chandikhole meant for Tata Steel Ltd., o residential complex having area 106817 sq.ft. The project Jamuna Residency

was completely sold to Tata Steel Ltd., as per agreement dated 18.2.2013 and under this agreement, agreed to purchase all the flats along with its entire area by making payment in a phased manner for sale consideration at Rs.28,00,00,000/-. However, due to some dispute, no advance was received by the assessee for the assessment year 2015-16. He submitted that after completion of project, the assessee has executed a sale deed in favour of Tata Steel Ltd., on 15.12.2015 for a consideration of Rs.30,27,79,725/-. The assessee company has disclosed the sale of Jamuna Residency in the return of income filed for the assessment year 2016-17 by disclosing construction cost of expenses under Note -19 at Rs.25,24,79,074/- on the declared income of Rs.7,73,07,049/- and consequent payment of tax at Rs.2,55,60,030/-. He submitted that in the assessment made u/s.143(3) of the Act, the AO has raised a demand at Rs.2,16,07,140/-. In appeal, the Id CIT(A) has accepted and recognised the project completion method of accounting adopted by the assessee and the addition made by the AO was deleted. He submitted that the department has not come in appeal against the order of the Id CIT(A) before the Tribunal.

9. Ld AR submitted that the Legislature, by Finance Act, 2018, has inserted Section 43CB to the Act w.e.f. 2017, which provides the profits and gains arising from a construction contract or a contract

for providing services shall be determined on the basis of percentage completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of Section 145 of the Act. Thus, this provision is applicable from assessment year 2017-18 onwards not from assessment year 2015-16. In support of his contention, he filed the order dated 27.7.2010 of ITAT Cuttack in ITA No.291/CTK/2018 for A.Y. 2013-14 in the case of Hitech Estates & Promoters Pvt Ltd.vs Pr. CIT.

10. Further, Id A.R. submitted that the AO having satisfied with the contention/documents and all relevant relating to issue completed the assessment u/s.143(3) for the period under consideration for A.Y. 2015-16and, therefore, there was no justification for invoking the provisions of section 263 of the Act merely on the unreasonable and unsustainable basis for a roving and fishing enquiry.

11. Ld counsel for the assessee drew our attention towards assessment order passed u/s.143(3) of the Act for immediately previous year i.e. 2014-15 dated 30.12.2016, wherein, the AO made an addition by alleging that the assessee has received amount from Tata Steel Ltd., and others during the period under consideration and the entire amount has not been shown as receipts in the profit and loss account but shown in the balance sheet as advance from customers and once the assessee is claiming TCS in its return of

income, simultaneously, the receipts should be shown in the P&L account for taxation purposes.

12. Ld counsel further drew our attention towards the order of the Id CIT(A), Cuttack dated 28.11.2018 against the said order of the Assessing Officer for assessment year 2015-16 and submitted that the addition made by the AO after considering the facts and circumstances of the case, of CIT(A), the addition made by the AO had been dismissed and deleted by observing that the appellant sale was completed on the revenue from the project was recognised only in A.Y. 2016-17 as the assessee was following the project completion of method of accounting. Ld counsel further submitted that as per the proposition rendered by Hon'ble Delhi High Court in the case of CIT vs DLF Universals Ltd in ITA No.159 & 326/2010 order dated 21.12.2016, the assessee is doing only project, which was completed in subsequent assessment year 2016-17 and on completion of project, the assessee has offered to tax on the entire income pertaining to the project and has paid all due tax to the exchequer. Ld counsel also drew our attention to page 106 of APB and submitted that the assessee being a honest tax payer, on the completion of project, the assessee has offered the income to tax etc to the Revenue and no payment is lying against the assessee.

13. Ld counsel strenuously contended that when the CIT(A) has taken a view for immediately preceding assessment year 2014-15 deleting the addition and consequently, approving the project completion method of accounting adopted by the assessee for immediately previous year 2014-15 by order dated 28.11.2018 (supra), then the Pr. CIT is not entitled or empowered to invoke revisional powers available with him u/s.263 of the Act for revising the assessment and impliedly revising the first appellate order in the garb of revisional provisions of section 263 of the Act by issuing notice dt.25.2.2020 and passing the impugned order on 10.6.2020.

14. Ld counsel relied on the decision of Hon'ble Karnataka High Court in the case of CIT vs S.N.Builders and Developers (2021) 431 ITR 241 (Karn) and submitted that the Institute of Chartered Accountants has issued a clarification that revised Accounting Standard (AS-7) is not applicable to the enterprise undertaking construction activities and the assessee was right in following project completion method of accounting in terms of AS-9 i.e. project completion method. Ld counsel has also placed reliance on the decision of ITAT Mumbai in the case of Trident Estate Pvt Ltd vs ITO in ITA No.1797/Mum/2019 A.Y. 2014-15 and other related departmental appeal order dated 27.4.2021 and submitted that in this order, the Tribunal has relied on the decision of Hon'ble Supreme

Court in the case of Union of India & Ors vs Exide Industries & Anrs (Civil Appeal No.3545/2009 dated 24.4.2020) holding that the case thrusting of percentage completion method upon by the Revenue is not sustainable, hence, computation of gains adopting the said method is not sustainable and the Tribunal has approved the project completion method adopted by the assessee.

15. On the second issue i.e. interest income, Ld counsel submitted that the Pr. CIT has grossly erred in not appreciating that there has been no prejudice to the interest of the revenue as the amount of interest that are allegedly prejudicial have been offered to tax in the immediately succeeding assessment year 2016-17 and all due taxes etc have been paid thereon, which neutralize the revenue recognition, and that the amount of tax paid on completion of project is on higher side.

16. Ld counsel for the assessee further submitted that the Ld. PCIT has erred in holding that interest earned on advances received from customers cannot be treated as "business income" and should be treated as "income from other sources" which is completely contrary to the settled position of law inasmuch as the advances due to surplus floating fund in shape of Loan to others have been created out of the advanced money received by the assessee from the prospective buyers i.e. Tata Steel Limited. He submitted that the advances due to surplus floating fund in shape of Loan to others and interest accrued thereon were very only and

actually utilized for completion of the projects. The differential amount arising out of interest received and interest paid to loan account has been adjusted in Work-in-progress (WIP), thereby the work in progress constituting of difference amount of interest as loss/profit either reduces or increases the work in progress. He submitted that in this year the work in progress has reduced to the extent of difference in interest. Thus, the interest amount on the advances due to surplus floating fund in shape of loan to other by no stretch of imagination can be taken as "income from other sources" and thus, on this score, the impugned order of Pr. CIT is not sustainable in the eye of law and is liable to be set aside.

17. Replying to above, Id CIT DR strongly supported the order of Pr. CIT passed u/s.263 of the Act and submitted that the assessee is in real estate business and under the project completion method, revenue is not recognized until the contract is complete and under the said method, costs are accumulated during the course of the contract and the profits on the amount received by the assessee during a particular assessment year also accrued to the income of the assessee and profit thereon is not recognized and due tax etc. are also not paid by the assessee in the garb of project completion method and assessee was bound to follow percentage completion method. Therefore, pr. CIT was right in invoking revisionary powers u/s.263 of the Act. Ld CIT DR also pointed out that when the assessee is receiving interest income from surplus funds available with him,

then same has to be taxed under the heard "income from other sources" and not as "business income" and the assessee is not allowed to take a benefit of set off of interest and other expenditure out of such income, which does not form part of business income. Therefore, Pr. CIT was also right in picking up second issue i.e. interest income for invoking revisionary powers against the assessee u/s.263 of the Act. Ld CIT DR submitted that on the interest income, the department was entitled to collect tax in assessment year 2015-16, which was received after one year i.e. in the assessment year 2016-17. Therefore, such delay in receiving tax etc by the revenue is also prejudicial to the interest of revenue and, on this score also, Pr. CIT was right in revising the assessment order. He, accordingly, submitted that the order of the Pr. CIT may kindly be upheld by dismissing the appeal of the assessee.

18. Placing rejoinder to above, Id counsel for the assessee vehemently pointed out that the assessee prior to issuance of notice u/s.263 of the Act, the assessment order for A.Y. 2015-16 i.e. immediately previous assessment year was modified by the Ld. CIT(A) by passing the first appellate order approving the revenue recognition method adopted by the assessee i.e. project completion method, then the Pr. CIT is not validly empowered to invoke provisions of section 263 of the Act setting aside the first appellate order, which had been passed by the Id CIT(A) after considering the entire facts and circumstances of the case. Ld counsel

placing reliance on the decision of Hon'ble Karnataka High Court in the case of Coffeeday Global Ltd vs Addl. Commissioner of Income Tax and others, 433 ITR 321 (Karn) submitted that *res judicata* does not apply to the tax proceedings but principle of consistency is always respected by the tax authorities, which has not been done by Pr. CIT while passing the impugned order. Ld counsel has also submitted that the main issue here hinges around the fact that the project completion method followed by the assessee company is proper and correct or not and reply to the said question in favour of the assessee can easily be gathered by the order of Id CIT(A) dated 28.11.2018 (supra) for immediately preceding assessment year 2014-15 in the identical facts and circumstances of the case and, therefore, the impugned order cannot be held as sustainable.

19. Ld counsel submitted that by way of impugned order u/s.263 of the Act, Id Pr. CIT has expressly set aside the assessment order but if the assessment order and first appellate order is taken together then it is clear that Pr. CIT has set aside the order of Id CIT (A) , for which he is not legally empowered.

20. On careful consideration of the rival submission and on vigilant perusal of the entire materials placed on record, we are of the considered view that first of all, we take on record that on being asked by the Bench, Id CIT DR, in all fairness, submitted that no appeal has been filed before the Tribunal against the order of Id CIT (A) dated 28.11.2018 for the

assessment year 2014-15 till date. However, Id CIT DR submitted that the department is contemplating to file an appeal with condonation petition against the said order of Id CIT(A).

21. Ld CIT DR has also not disputed that the only project undertaken by the assessee was completed in subsequent financial year i.e. 2015-16 relevant to assessment year 2016-17 and the assessee has disclosed the entire income accrued to it from the only project and all due taxes etc. have been paid thereon in subsequent assessment year 2016-17.

22. After considering the entire facts and circumstances of the case and material placed on the record i.e. submission of assessee, reply of revenue, and rejoinder of the assessee and on careful consideration of arguments advance by both the parties and materials available on record, we find that this is a peculiar situation where in the immediately preceding assessment year 2014-15, the AO made addition disputing the method of accounting adopted by the assessee for revenue recognition, which was project completion method and this addition was deleted by Id CIT(A) by passing the first appellate order dated 28.11.2018 (supra) available at pages 142 to 157 of APB, which clearly reveals that the first appellate authority observed and recorded a finding of fact that the assessee's sale was completed and the revenue from the said project was recognized only in A.Y. 2016-17, as the assessee was following project completion method and consequently the Id CIT (A) deleted the entire addition made by the Assessing Officer. As

we have noted above, no appeal has been filed by the revenue against the said order of the Id CIT(A) till date, therefore, we safely presume that the department has accepted the order of the Id CIT(A) for the assessment year 2014-15 without any further dispute and litigation. Further, since the project was completed during immediately succeeding assessment year 2016-17 and the assessee offered to tax the income accrued to it from the said project and also paid all due taxes etc. thereon. Therefore, we are unable to agree with the allegation of Pr. CIT that the orders of the authorities below are erroneous and prejudicial to the interest of the revenue. In our humble understanding, Ld. Pr. CIT is not empowered to invoke revisionary powers under section 263 of the Act in such a situation, where a view has been taken by Id CIT(A) in the similar facts and circumstances of the case, which has been accepted by the department without any further dispute or litigation. It has been held by Hon'ble Karnataka High Court in the case of Coffeeday Global Ltd (supra) and other various land mark judgments of Hon'ble Supreme Court and Hon'ble High Courts that the principle of res judicata does not applicable to tax proceedings and principle of consistency must be followed by the revenue authorities which is a mandate of tax jurisprudence. This principle supports the case of the assessee challenging the invocation of revisionary powers u/s.263 of the Act.

23. We may also point out that in the language used by the legislature in sub-section (1) of Section 263 of the Act reads as follows:

**"263.** (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

From the above, it is clear that the competent authority including Id. Pr. CIT can call and examine the record of any proceedings under the Act and if he consider that any order passed therein by the 'Assessing Officer' is erroneous and prejudicial to the interest of the revenue then he may, after giving an opportunity of being heard and after making required enquiry can pass order, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. In this sub-section (1), the legislature, to its wisdom, has not used any word that the order of higher authority i.e. CIT(A) can be reversed by invoking provisions of section 263 of the Act and thus, order of the Id. Pr. CIT revising the first appellate authority of Id CIT(A) is not sustainable as per the provisions of the Section 263 of the Act.

24. On the second issue, the core contention of Id counsel for the assessee is that the amount of interest income has been received from the surplus amount of advance from customers during the period and interest income was earned thereon which was inextricably linked with the project of the assessee and the same was rightly treated as business income and the assessee utilized the same for setting off the interest paid by it. Id counsel also submitted that if the interest income is treated as income from other sources and the assessee is not allowed to take set off or benefit of such income to meet the interest paid and other expenses of the project, then the work in progress at the end of the year has to be increased and consequently same would be brought forward to the next year which ultimately reduce the amount of profit calculated for the subsequent assessment year and such exercise is revenue neutral because the income would be taxed in the year under consideration raising demand of tax and amount of tax would be raised for that period and consequently the tax liability would be decreased due to increase of brought forward work-in-progress by the same amount in the immediately subsequent year raising a refund in favour of the assessee. Therefore, the entire exercise is revenue neutral which is not allowed in the garb of revisionary powers u/s.263 of the Act.

25. On this issue, we are in agreement with the contention of Id CIT DR that the interest income accrued from funds available with the assessee

have to be treated as "income from other sources" and this is a well settled proposition of accounting principles and findings of Id Pr. CIT in this regard is correct. In this peculiar situation and in the facts and circumstances of the case, the Pr. CIT picked up to revise the assessment order for the assessment year 2015-16 and the project was completed in the subsequent assessment year i.e. 2016-17 and undisputedly, the assessee has offered the entire income accrued to it from the said project and also paid entire tax etc thereon in A.Y. 2016-17. Obviously, when the interest income in A.Y. 2015-16 will be treated as income from other sources, then the interest and other expenses incurred by the assessee towards the project would be included in WIP calculated at the end of the year, consequently, increasing the amount of WIP brought forward to the subsequent assessment year and final effect would be of two folds, viz; (i) that the tax liability of the assessee in the year under dispute would increase on the amount of interest treated as income from other sources and (ii) that the amount of tax liability would decreased by the same amount in the subsequent assessment year due to consequent effect of increase of WIP brought forward and the assessee would be entitled to receive refund accordingly.

26. In the present case, undisputedly, the project was completed during immediately subsequent assessment year 2016-17 and all income including impugned interest income was offered to tax and due taxes etc thereon were also paid by the assessee but as we have observed above the tax on

the interest income, which was to be charged in A.Y. 2015-16, was paid by delay of one year. The total effect is that the tax on the interest income which was to be received by the department during A.Y. 2015-16 was actually received in A.Y. 2016-17 i.e. after one year and the payment of tax thereon was made by the assessee after one year. Undisputedly, since assessee is a company and rate of tax etc were the same for both the years, thus, we observe that there is no loss of tax on the interest income except delay of one year in receipt due tax by the Revenue. This factual position was emerged and agreed by both the parties during the arguments. We always follow and approve a well recognized principle of tax jurisprudence that the income should be taxed in the right hands in the right relevant period of assessment and all possible leakage of revenue including interest on delayed payment of tax should be taken care and covered in the interest of Revenue. We accordingly up-hold the impugned order of the Id. Pr. CIT passed u/s.263 to the extent that there was an error in the assessment order passed by the AO in not bringing to tax the interest income in the year under consideration under the head "income from other sources". Once, this interest income is brought to tax in A.Y. 2015-16, closing WIP for A.Y. 2015-16 will be increased to that extent and the income of the assessee chargeable to tax for A.Y. 2016-17 will be reduced consequently.

27. In view of foregoing discussion, we modify the impugned order of the Ld. Pr. CIT and direct the AO to bring to tax interest income in A.Y. 2015-16 under the head "income from other sources" and increase the closing work in progress of A.Y. 2015-16 and opening work in progress for A.Y. 2016-17 to that extent and to recalculate tax liability for both the years accordingly within a period of two months..

28. In the result, appeal of the assessee is partly allowed with the direction to the AO herein given above.

Order pronounced on 22 /7/2021 u/r 34(4) of ITAT .Rules, 1963.

Sd/-  
**(P.M Jagtap)**  
**VICE PRESIDENT**

sd/-  
**(C.M.Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 22/7/2021  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The appellant: Jamuna Realty Pvt Ltd., Aditya Complex, Chaliaganj, Cuttack
2. The respondent: Pr.CIT, Cuttack
3. The CIT(A) concerned
4. DR, ITAT, Cuttack
5. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**