

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
SHRI PAWAN SINGH, JUDICIAL MEMBER

I.T.A. Nos. 41 to 44/RPR/2021 for (AYs : 2014-15 to 2017-18)

Hitesh Golchha,  
Prop. Mouli Investment Jeevan  
Ganga, Near Dani Bada Budha  
Para, Raipur (CG)

Vs. ACIT, Central Circle-1,  
Raipur.

PAN No. AGJPG 7698 F  
(Appellant)

(Respondent)

Assessee by : Shri R.B. Doshi, CA.  
Department by : Shri P.K. Mishra, CIT DR

Date of hearing : 13/08/2021.  
Date of pronouncement : 13/08/2021.

**Order Under Section 254(1) of Income –tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These four appeals by the assessee are directed against the separate orders of Principal Commissioner of Income Tax, Raipur (for short, “PCIT”), Raipur for A.Ys. 2014-15 to 2017-18. In all the appeals, the facts are common except variation of certain figures of addition, the assessee has raised identical grounds of appeal in all the cases, therefore with the consent of parties all the appeals are clubbed, heard and are decided by common order. For appreciation of facts appeal for A.Y. 2014-15 in ITA

No. 41/RPR/2021 has been treated as lead case. The assessee has raised the following grounds of appeal:-

- “1. *The order passed by Id. Pr.CIT is illegal, authorities below initio void & unsustainable as the same has been passed without giving any opportunity of hearing to assessee, contrary to mandatory requirement of law. Consequent revision order is illegal & is liable to be quashed/annulled.*
2. *The assessment order passed by AO is neither erroneous nor prejudicial to the interest of Revenue. Ld. Pr.CIT erred in invoking the provisions of sec. 263 and in setting aside the assessment order for fresh enquiry. Order passed u/s 263 is unsustainable and is passed without properly appreciating the facts & evidences.*
3. *Without prejudice to above grounds, on the facts and circumstances of the case and in law, Ld. Pr.CIT erred in branding assessment order as erroneous/prejudicial on an issue which itself was not covered by ambit of search assessment. Order passed u/s 263 is illegal and is liable to be quashed.*
4. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”*

2. Brief facts of the case are that the assessee is proprietor of Mouli Investment. A search was carried out on the assessee on 15/07/2016. Consequent upon search, a notice under section 153A was served for filing return of income. The assessee filed return of income in response to notice under section 153A on 16/01/2017. The assessment was completed under section 153A r.w.s. 143(3) on 21/12/2018. In the assessment order no income was added. The assessment order was revised by Id. PCIT by exercising powers under section 263 vide order dated 31/03/2012. Before revising the assessment order, the Id. PCIT issued show-cause notice under section 263 dated 30/03/2021 for filing reply by order dated 31/03/2021. In the show-cause notice, the PCIT

noted that the assessee is in the real estate business and sold flats to various persons at the lesser than the value adopted by the Stamp Valuation Authority and that the provisions of section 43CA are attracted. The ld. PCIT also noted that there is a difference of sale consideration and value determined by Stamp Valuation Authority in respect of 12 such persons of Rs. 33.02 lakhs and that the AO failed to verify and applying the correct law. The ld. PCIT considered the reply of the assessee and the same is not satisfactory. The ld. PCIT set aside the assessment order and directed to verify the sale deed for the year under consideration and pass the assessment order afresh by giving adequate opportunity to the assessee. Aggrieved by the order of ld. PCIT the assessee has filed the present appeal before this Tribunal.

3. We have heard the submissions of ld. Authorized Representative (AR) for the assessee and the ld. Departmental Representative (DR) for the revenue. The ld.AR of the assessee submits that the ld. PCIT issued show-cause notice for revising the assessment for the A.Y. 2014-15 and fixed the date of hearing on 31/03/2021. The ld. PCIT passed the order under section 263 on 31/03/2021 itself. No fair and proper opportunity was given by him. The ld. PCIT, though the assessee filed his reply, however, the contents of reply are not referred or considered by the ld.PCIT. The ld.AR for the assessee submits that similar order was passed for other three subsequent assessment years. The ld.AR for the

assessee submits that the matter may be restored back to the ld. PCIT to grant proper and fair opportunity of hearing to the assessee.

4. On the other hand, ld. Departmental Representative (DR) for the revenue submits he has no objection, if the matter is remitted back to the file of ld.PCIT to pass order afresh after giving opportunity to the assessee.
5. We have considered the rival submissions of both the parties and perused the record carefully. It is an admitted fact that ld. PCIT issued show-cause notice under section 263 dated 13/03/2021 for fixing the date of hearing on 31/03/2021. The ld. PCIT passed the order on 31/03/2021 itself. Before us, ld.AR of the assessee submits that he has filed reply to the show-cause notice, the same is not considered. We find that assessee filed copy of reply dated 31/03/2021 before the ld. PCIT. We find that ld. PCIT has not recorded the contents of reply filed by the assessee. We, instead of going on the merit and demerit of the issues identified by ld. PCIT for revision find that the ld. PCIT passed the order in a hasty manner and without giving fair and proper opportunity. Therefore we deem it appropriate to restore the case back to the file of ld. PCIT to decide the issues identified by him afresh after giving opportunity of hearing to the assessee.
6. As recorded above, the assessee has raised similar contention and grounds of appeal as raised in the appeal for A.Y. 2014-15 wherein we have restored the appeal for A.Y. 2014-15 to the restored appeal to the ld.

PCIT. Therefore, appeals for remaining three subsequent years are also restored back to the file of the ld. PCIT with similar observation. In the result, appeals filed by the assessee are allowed for statistical purpose.

Order pronounced on 13-08-2021 by placing result on notice board.

Sd/-  
**(PRADIP KUMAR KEDIA)**  
**Accountant Member**

sd/-  
**(PAWAN SINGH)**  
**Judicial Member**

*Vr SPS*

**Dated: 13<sup>th</sup> August, 2021**

*Copy to:*

1. *The Assessee – Hitesh Golchha, Prop. Mouli Investment Jeevan Ganga, Near Dani Bada Budha Para, Raipur (CG)*
2. *The Revenue – ACIT, Central Circle-1, Raipur.*
3. *Pr.CIT, Raipur.*
4. *The D.R., Raipur.*
5. *Guard file.*

By order

Sr. Private Secretary,  
ITAT, Raipur (on tour).