

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.129/Bang/2022
Assessment Year: 2017-18

M/s. Samprasiddhi Infratech No.1256, 4 th Block, 1 st Stage 9 th C Cross, HBR Layout Bangalore 560 043. PAN NO : ACFFS3827C	Vs.	Principal CIT Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep Chalapathy, A.R.
Respondent by	:	Shri G. Manoj Kumar, D.R.

Date of Hearing	:	18.07.2022
Date of Pronouncement	:	20.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of PCIT passed u/s 263 of the Income Tax Act, 1961 (hereinafter called as “The Act”) dated 28.1.2022. The assessee has raised following grounds of appeal:-

1. *“That the order of the Principal Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and on the facts and circumstances of the case.*
2. *That the learned Principal Commissioner of Income-Tax erred in law and on facts in invoking provisions of section 263 of the Act even though the assessment order is neither erroneous nor prejudicial to the interests of the revenue.*

3. *That the learned Principal Commissioner of Income Tax erred in law and on facts in holding that the appellant's case is a case of inadequate enquiry.*
 4. *That the learned Principal Commissioner of Income Tax erred in law and on facts in holding that the assessment order is erroneous in law in so far it is prejudicial to the interests of the revenue even though the assessment was completed after making necessary enquiries considering all the submissions of the appellant and has arrived at one possible view that the provision for expenses of Rs. 92,35,970 is an allowable deduction.*
 5. *That the learned Principal Commissioner of Income Tax erred in law and on facts in holding that the provision of Rs. 92,35,970 is for future expenses even though it is a provision for work done but not billed.*
 6. *That the learned Principal Commissioner of Income Tax erred in law and on facts in holding that the provision of Rs 92,35,970 is not allowable.”*
2. The facts of the case are that the assessee is a partnership firm engaged in the business of real estate development. For AY 2017-18, the assessee filed its return of income on 6.11.2017 declaring total income of Rs. 66,68,920 The assessee's case was selected for scrutiny and notice u/s 143(2) of the Act dated 16.8.2018 was issued. During the course of assessment proceedings, a notice u/s 142(1) of the Act dated 12.11.2019 was issued seeking explanation as to why provision of expenses of Rs. 92,35,970 should not be disallowed. The relevant portion of the notice is reproduced below:-
- “Question 4: Please explain why the provision for expenses of Rs.92,35,970/- debited to the operating expenses against the completed projects should not be disallowed and added back in the computation of total income as it is not a liability incurred by you and you have only provided for such expenses.”*
- 2.1 In response to the above said notice, the assessee filed letters dated 18.11.2019 and 26.11.2019 explaining the nature of provision along with the copy of invoices, relevant circulars issued by CBDT

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and Accounting standards. (The copy of the submissions filed is placed at pages no 10 to 41 of Paper book). The assessment was completed by accepting the returned income based on the submissions of the assessee. (The copy of the assessment order u/s. 143(3) is enclosed at page no. 12 to 18 of appeal memo). A perusal of the above facts would show that there was a detailed enquiry about claim of the assessee towards provision for expenses of Rs. 92,35,970. After hearing the assessee and considering the submissions filed on record, the assessing officer was satisfied and allowed the deduction.

2.2 A notice u/s 263 of the Act was issued on 30.12.2021 with respect to order u/s 143(3) passed on 27.11.2019 (The copy of notice u/s. 263 is enclosed at page no 5 to 11 of appeal memo). The notice states that Schedule 12 of the statement of profit and loss account for AY 2017-18 shows a sum of Rs. 92,35,970 towards provision for future expenses and this expenditure is in the nature of contingent liability which is not allowable under Income-tax Act, 1961. Therefore, the assessment order passed u/s 143(3) of the Act allowing the above deduction is erroneous and prejudicial to the interests of the revenue.

2.3 In response to the above notice, the assessee filed submissions on 10.1.2022 stating that an enquiry was made in detail by the assessing officer during the assessment proceedings on this issue and the assessee had filed submissions on various dates. (The copy of the submissions dated 10.01.2022 are enclosed at page no 42 to 79 of paper book). Based on the submissions made by the assessee which contains the circulars issued by CBDT and relevant accounting standards, the assessing officer was satisfied with the claim made by the assessee and allowed the deduction. Therefore,

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the assessment order is not erroneous in so far it is prejudicial to the interests of the revenue.

2.4 After hearing the assessee, the learned Principal Commissioner of Income-Tax passed an order u/s. 263 of the Act holding that the assessment order u/s. 143(3) of the Act is erroneous and prejudicial to the interests of the revenue and therefore, the order u/s. 143(3) is set-aside.

3. Against this the assessee is in appeal before us and the Ld. A.R. submitted as follows:-

Ground No. 2 – Validity of order u/s. 263 of the Act

3.1 Ld. A.R. submitted that that only if the assessment order is both erroneous and prejudicial to the interests of the revenue, the provision of S. 263 of the Act can be invoked. Therefore, the twin conditions have to be satisfied for invoking the provisions of S. 263 of the Act.

3.2. He submitted that the assessing officer has allowed a deduction based on the submissions of the assessee by taking one possible view. Therefore, such action of the assessing officer does not amount to erroneous in-law. In addition to the above, there is no loss of revenue to the department as the said provision is allowable as deduction in the subsequent year where invoice was received. Therefore, it is not a case of prejudicial to the interests of the revenue. Therefore, none of the conditions for invoking the provisions of S. 263 of the Act are satisfied. Hence, notice u/s 263 is bad in law. The Hon'ble Supreme Court in Malabar Industrial Co. Ltd Vs CIT (243)

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ITR 83 (enclosed at page no 80 to 84 of the paper book) explained the scope of the expression “Erroneous in so far as it is prejudicial to the interest of revenue”. At page 88 of the report the Hon’ble Supreme Court observed as under:

For example, when an Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law.

In view of the above submissions, it is prayed that the Hon’ble Tribunal be pleased to hold that the provisions of section 263 of the Act cannot be invoked in the present case and quash the order u/s. 263 of the Act.

Ground No. 3 and 4 – Lack of enquiry v. Inadequate enquiry

3.3 The order u/s 263 of the Act states that the assessing officer has made an inadequate enquiry with respect to provision for future expenses and therefore, the order is erroneous and prejudicial to the interests of the revenue. In this connection, it is submitted that the Explanation 2 to S. 263(1) of the Act clearly states that an order passed by the assessing officer shall be deemed to be erroneous in so far it is prejudicial to the interests of the revenue if the order is passed without making enquiries or verification which should have been made or the order is passed allowing any relief without making an enquiry into the claim. Therefore, a case of “inadequate enquiry” does not fall under section 263 of the Act. Hence, on this ground also, the order passed by the assessing officer is not erroneous in so far it is prejudicial to the interests of the revenue. We rely on the decision of the Hon’ble Karnataka High court in the case of CIT Vs Sarvana Developers 387 ITR 239 (enclosed at page no 85 to 90 of the paper book) wherein it was held that the lack of enquiry cannot be equated

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with inadequate enquiry and therefore, the order cannot be faulted with. There is no doubt that assessing officer has sought for explanation from the assessee about the provision for future expenses. The information was furnished vide letter dated November 18, 2019 & November 26, 2019. The assessee clearly demonstrated as to why the provision for future expenses should be disallowed. After considering the submissions, the learned assessing officer has applied his mind and accepted the returned income of the assessee. The assessee relies on the decision of the Hon'ble Delhi High court in CIT Vs Sunbeam Auto Ltd 332 ITR 167 (enclosed at page no 91 to 100 of the paper book) wherein it is held that lack of enquiry cannot be equated with inadequate enquiry. It was also held that if there was an enquiry, even inadequate, that could not by itself give an occasion to the Commissioner to pass orders u/s 263 of Income Tax Act, merely because he had a difference of opinion in the matter.

3.4 A perusal of the submissions made in paragraph 1.2 shows that a detailed enquiry and verification of the issues have been made before allowing the deduction claimed by the assessee. Hence, the finding of the learned CIT(A) stating that the assessing officer has made an inadequate enquiry is incorrect. The following submissions were made before the assessing officer during the assessment proceedings;

- a. Proved the genuineness of the expenditure by providing invoice copies raised by the contractor.
- b. Explained the nature of provision.
- c. Provided the details of arriving at the provision amount.
- d. Referred to the relevant circulars issued by CBDT.

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3.5 Therefore, the assessee has made the best efforts and extensive submissions to support the claim made in the nature of provision. Based on the submissions of the assessee, the learned assessing officer was satisfied and allowed the claim by adopting one possible view. No further enquiry can be done on the issue involved. Therefore, holding that the order u/s. 143(3) of the Act is erroneous and prejudicial to the interests of the revenue is unacceptable. The order u/s. 263 is bad in law.

3.6 It is further submitted that just because the above issue was not discussed in the assessment order, it cannot be said that order passed by the assessing officer is erroneous and prejudicial to the interests of the revenue. It is a settled law. He relied on the decision of Hon'ble Bombay High Court in Gabriel India Ltd.'s case (203) ITR 108 at page no. 115 reads as under:

“This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquires, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.”

3.7 He relied on the decision of Hon'ble Bombay High court in CIT v. Nirav Modi 390 ITR 292 (enclosed at page no 101 to 106 of the paper book) for the above proposition. The relevant extract of paragraph 7 of the judgement is reproduced below for your reference

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“This issue is no longer res integra as this court in Idea Cellular Ltd v. Deputy CIT reported in [2008] 301 ITR 407 (Bom) has held that if during the assessment proceedings queries were raised and the assessee responded to the same, then even if the assessment order does not mention the same, it does not mean that the Assessing Officer has not applied his mind to the issues.”

3.8 According to Ld. A.R. the learned Principal Commissioner of Income Tax has simply held that the present case is a case of inadequate enquiry, and it is ought to be revised as per provisions of S. 263 of the Act. It is submitted that the intention of invoking provisions of S. 263 of the Act is to pass an order directing the assessing officer to enhance or modify or cancel the assessment and directing a fresh assessment. In the absence of such direction in the order u/s 263 of the Act, the intention of the provision is not satisfied and therefore, the order u/s 263 of the Act is bad in law.

3.9 According to Ld. A.R., the learned Principal Commissioner of Income Tax wrongly relied on the decision of the Hon'ble Supreme Court in M/s. Deniel Merchants Pvt Ltd Vs ITO dated 29.11.2017 for the proposition that the revisionary provisions u/s 263 of the Act are upheld in a case where the assessing officer has not made proper enquiry while making the assessment. It is submitted that no facts are discussed in the order of the Hon'ble Supreme and Hon'ble High Court. Therefore, the facts might have been discussed in the order of the Hon'ble ITAT. We request the Hon'ble Tribunal be pleased to direct the Department to provide the full copy of the above referred judgment of ITAT which explains the facts of the case. We further pray this Hon'ble Tribunal to provide sufficient time to rebut to the above judgment.

3.10 It is further submitted that the learned Principal Commissioner of Income Tax has not stated that what enquiry should have been made by the assessing officer. On mere statement that the

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expenditure is in the nature of contingent liability and therefore, it is not allowable as expenditure is not sufficient since the assessee in its submissions has justified for arriving at such provision for expenses and furnished the workings. Hence, on this ground also the order u/s 263 is bad in law.

Ground Nos. 5 and 6 – Provision v. contingent liability

3.11 On facts as well, the learned Principal Commissioner of Income Tax ought to have appreciated the fact that the provision was not towards any future work to be carried out. The provision is towards work completed but not certified and it is an ascertained contractual liability. Therefore, the finding of the learned Principal Commissioner of Income Tax that the provision is contingent liability is bad in law. It is further submitted that the assessee has received the bills for the provision amount from the contractors in the month of April and May 2017 for all the works carried out. Normally there will be delays in final bill since there will be an inspection and certification of work. Though the bills raised in the month of April and May 2017, the work was already completed before March 2017 and hence, the assessee has recognized the revenue in the financial year relevant to assessment year 2017 – 2018. It is further submitted that even though the registration of the apartment was not made before March 31, 2017 in some cases, the assessee has offered the same to tax.

Particulars	Number of apartments	Value of sales	Remarks
Sale deed registered before March 31, 2017	16	11,44,90,290	Sale deed registered and hand over made before March 31, 2017
Agreement entered, sale deed executed after March 31, 2017 but revenue is	10	6,67,67,121	Though sale deed was not made, assessee has recognized the revenue as the project issue completed.

recognized as 100%			
Total		18,12,57,411	

3.12 In view of the above, even if a matching concept is applied, the provision for expenditure towards the work completed but not billed has to be allowed as deduction. Hence, the view taken by the learned assessing officer in the original proceedings is correct and the assessment order does not amount to erroneous and prejudicial to the interests of the revenue.

4. The Ld. D.R. submitted that there was no proper enquiry by AO while passing the order u/s 143(3) of the Act. He just collected the information and kept it on record without applying mind to the facts of the case. Hence, the assumption of facts by AO itself is wrong which made the PCIT to invoke the provisions of section 263 of the Act and there was failure on the part of AO to make proper enquiry and take a decision on the subject matter for which PCIT exercised jurisdiction under the provisions of section 263 of the Act.

5. We have carefully considered the rival submissions in the light of material placed before us and also gone through all the judgements cited by the parties before us. First, we take up the legal issue with reference to the jurisdiction of invoking the provisions of section 263 of the Act by the learned CIT. The scheme of the IT Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to erroneous order of the assessing officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interest of the revenue. As held in the case of Malabar Industries Co. Ltd., Vs. CIT (243 ITR

83 (SC), the Commissioner can exercise revision jurisdiction u/s 263 if he is satisfied that the order of the assessing officer sought to be revised is (i) erroneous; and also (ii) prejudicial to the interests of the revenue. The word 'erroneous' has not been defined in the Income Tax Act. It has been however defined at page 562 in Black's Law Dictionary (seventh Edition) thus';

'erroneous, adj. Involving error, deviating from the law'.

The word 'error' has been defined at the same page in the same dictionary thus:

'error No. 1 : A psychological state that does not conform to Objective reality; a brief that what is false is true or that what is true is false'.

At page 649/650 in P. Ramanatha Aiyer's Law Lexicon Reprint 2002, the word 'error' has been defined to mean-

'Error: A mistaken judgement or deviation from the truth in matters of fact, and from the law in matters of judgement 'error' is a fault in judgement, or in the process or proceeding to judgement or in the execution upon the same, in a Court of Record; which in the Civil Law is called a Nullitye" (termes de la ley).

Something incorrectly done through ignorance or inadvertence S.99 CPC and S.215 Cr.PC.

'Error, Fault, Error respects the act; fault respect the agent, an error may lay in the judgement, or in the conduct, but a fault lies in the will or intention.'

5.1. At page 650 of the aforesaid Law Lexicon, the scope of Error, Mistake, Blunder, and Hallucination has been explained thus:

"An error is any deviation from the standard or course of right, truth, justice or accuracy, which is not intentional. A mistake is an error committed under a misapprehension of misconception of the nature of a case.

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An error may be from the absence of knowledge, a mistake is from insufficient or false observation. Blunder is a practical error of a peculiarly gross or awkward kind, committed through glaring ignorance, heedlessness, or awkwardness. An error may be overlooked or atoned for, a mistake may be rectified, but the shame or ridicule which is occasioned by a blunder, who can counteract. Strictly speaking, Hallucination is an illusion of the perception, a phantasm of the imagination. The one comes of disordered vision, the other of discarded imagination. It is extended in medical science to matters of sensation, whether there is no corresponding cause to produce it. In its ordinary use it denotes an unaccountable error in judgement or fact, especially in one remarkable otherwise for accurate information and right decision. It is exceptional error or mistake in those otherwise not likely to be deceived."

5.2 In order to ascertain whether an order sought to be revised under Section 263 is erroneous, it should be seen whether it suffers from any of the aforesaid forms of error. In our view, an order sought to be revised under Section 263 would be erroneous and fall in the aforesaid category of "errors" if it is, inter alia, based on an incorrect assumption of facts or an incorrect application of law or non-application of mind to something which was obvious and required application of mind or based on no or insufficient materials so as to affect the merits of the case and thereby cause prejudice to the interest of the revenue.

5.3 Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials

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available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner will be well within his powers to regard an order as erroneous on the ground that in the circumstances of the case, the Assessing Officer should have made further inquiries before accepting the claim made by the assessee in his return. The reason is obvious. Unlike the Civil Court which is neutral in giving a decision on the basis of evidence produced before it, the role of an Assessing Officer under the Income-tax Act is not only that of an adjudicator but also of an investigator. He cannot remain passive in the face of a return, which is apparently in order but calls for further enquiry. He must discharge both the roles effectively. In other words, he must carry out investigation where the facts of the case so require and also decide the matter judiciously on the basis of materials collected by him as also those produced by the assessee before him. The scheme of assessment has undergone radical changes in recent years. It deserves to be noted that the present assessment was made under Section 143(3) of the Income-tax Act. In other words, the Assessing Officer was statutorily required to make the assessment under Section 143(3) after scrutiny and not in a summary manner as contemplated by Sub-section (1) of Section 143. Bulk of the returns filed by the assessee across the country is accepted by the Department under Section 143(1) without any scrutiny. Only a few cases are picked up for scrutiny. The Assessing Officer is therefore, required to act fairly while

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accepting or rejecting the claim of the assessee in cases of scrutiny assessments. He should be fair not only to the assessee but also to the Public Exchequer. The Assessing Officer has got to protect, on one hand, the interest of the assessee in the sense that he is not subjected to any amount of tax in excess of what is legitimately due from him, and on the other hand, he has a duty to protect the interests of the revenue and to see that no one dodged the revenue and escaped without paying the legitimate tax. The Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return when the circumstances of the case are such as to provoke inquiry. Arbitrariness in either accepting or rejecting the claim has no place. The order passed by the Assessing Officer becomes erroneous because an enquiry has not been made or genuineness of the claim has not been examined where the inquiries ought to have been made and the genuineness of the claim ought to have been examined and not because there is anything wrong with his order if all the facts stated or claim made therein are assumed to be correct. The Commissioner may consider an order of the Assessing Officer to be erroneous not only when it contains some apparent error of reasoning or of law or of fact on the face of it but also when it is a stereo-typed order which simply accepts what the assessee has stated in his return and fails to make enquiries or examine the genuineness of the claim which

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are called for in the circumstances of the case. In taking the aforesaid view, we are supported by the decisions of the Hon'ble Supreme Court in Rampyari Devi Saraogi v. CIT (67 ITR 84) (SC), Smt. Tara Devi Aggarwal v. CIT (88 ITR 323) (SC), and Malabar Industrial Co. Ltd's case (243 ITR 83) (SC).

5.4 In Malabar Industrial Co. Ltd. case the Hon'ble Court has held as under:

“There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall the orders passed without applying the principles of natural justice or without application of mind.

In our humble view, arbitrariness in decision-making would always need correction regardless of whether it causes prejudice to an assessee or to the State Exchequer. The Legislature has taken ample care to provide for the mechanism to have such prejudice removed. While an assessee can have it corrected through revisional jurisdiction of the Commissioner under Section 264 or through appeals and other means of judicial review, the prejudice caused to the State Exchequer can also be corrected by invoking revisional jurisdiction of the Commissioner under Section 263. Arbitrariness in decision-making causing prejudice to either party cannot therefore be allowed to stand and stare at the legal system. It is difficult to countenance such arbitrariness in the actions of the Assessing Officer. It is the duty of the Assessing Officer to adequately protect the interest of both the parties, namely, the assessee as well as the State. If he fails to discharge his duties fairly, his arbitrary actions culminating in erroneous orders can always be corrected either at the instance of the assessee, if the assessee is prejudiced or at the instance of the Commissioner, if the revenue is prejudiced. While

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making an assessment, the ITO has a varied role to play. He is the investigator, prosecutor as well as adjudicator. As an adjudicator he is an arbitrator between the revenue and the taxpayer and he has to be fair to both. His duty to act fairly requires that when he enquires into a substantial matter like the present one, he must record a finding on the relevant issue giving, howsoever briefly, his reasons therefor. In S.N. Mukherjee v. Union of India AIR 1990 SC 1984, it has been observed by the Hon'ble Supreme Court as follows:

“Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances or arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

5.5 Similar view was earlier taken by the Hon'ble Supreme Court in Siemens Engg. & Mfg. Co. Ltd. v. Union of India AIR 1976 SC 1785. It is settled law that

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while making assessment on assessee, the ITO acts in a quasi-judicial capacity. An assessment order is amenable to appeal by the assessee and to revision by the Commissioner under Sections 263 and 264. Therefore, a reasoned order on a substantial issue is legally necessary. The judgments on which reliance was placed by the learned Counsel for the assessee also points to the same direction. They have held that orders, which are subversive of the administration of revenue, must be regarded as erroneous and prejudicial to the interests of the revenue. If the Assessing Officers are allowed to make assessments in an arbitrary manner, as has been done in the case before us, the administration of revenue is bound to suffer. If without discussing the nature of the transaction and materials on record, the Assessing Officer had made certain addition to the income of the assessee, the same would have been considered erroneous by any appellate authority as being violative of the principles of natural justice which require that the authority must indicate the reasons for an adverse order. We find no reason why the same view should not be taken when an order is against the interests of the revenue. As a matter of fact such orders are prejudicial to the interests of both the parties, because even the assessee is deprived of the benefit of a positive finding in his favour, though he may have sufficiently established his case.

5.6 In view of the foregoing, it can safely be said that an order passed by the Assessing Officer becomes

erroneous and prejudicial to the interests of the Revenue under Section 263 in the following cases:

- (i) *The order sought to be revised contains error of reasoning or of law or of fact on the face of it.*

- (ii) *The order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law. In the same category fall orders passed without applying the principles of natural justice or without application of mind.*

- (iii) *The order passed by the Assessing Officer is a stereotype order which simply accepts what the assessee has stated in his return or where he fails to make the requisite enquiries or examine the genuineness of the claim which is called for in the circumstances of the case.*

5.7 Adverting the facts of present case at the time of assessment, AO issued notice on 12.11.2019 seeking information from the assessee as follows:-



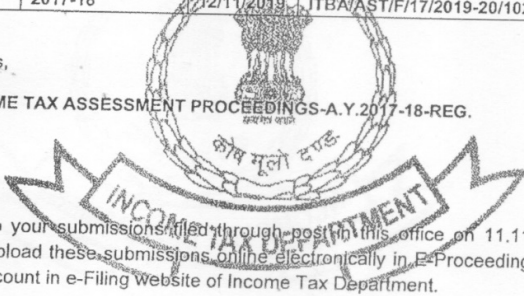
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 1(2)(2), BANGALORE

To, SAMPRASIDDHI INFRA TECH NO.107 & 108 SLV ARCADE, SHIVARAM KARANATH NAGAR POST, THANISANDRA BANGALORE 560077, Karnataka India

PAN: ACFFS3827C	Assessment Year: 2017-18	Dated: 12/11/2019	Letter No : ITBA/AST/F/17/2019-20/1020248813(1)
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Sir/ Madam/ M/s,

Subject: INCOME TAX ASSESSMENT PROCEEDINGS-A.Y.2017-18-REG.



Please refer to your submissions filed through post in this office on 11.11.2019. You are requested to upload these submissions online electronically in e-Proceeding facility through your e-filing account in e-Filing website of Income Tax Department.

- 2) Please furnish Ledger account copy for all the sundry creditors as per your books of account for the period from 1/4/16 to 31/3/17 with outstanding balance exceeding Rs.10,00,000/- as on 31.03.2017.
- 3) Please furnish the details for project revenue in the following format:

S. No.	Name, address & PAN of the customer	Date of agreement	Apartment No.	Land Cost	Total sale value	Collections upto 31.03.2017	Revenue accounted upto 31.03.2016
						.	

4) Please explain why the provision for expenses of Rs.92,35,970/- debited to the operating expenses against the completed projects should not be disallowed and added back in the computation of total income as it is not a liability incurred by you and you have only provided

Note: If digitally signed, the date of digital signature may be taken as date of document.
BMTc BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095
Email: BANGALORE.DCIT1.2.2@INCOMETAX.GOV.IN,

* The Notice/Letter/Order No. mentioned above may be treated as DIN for the purpose of procedure for issuance of Income Tax Notice prescribed by Circular No.19/2019 dt. 14 August 2019.


TRUE COPY

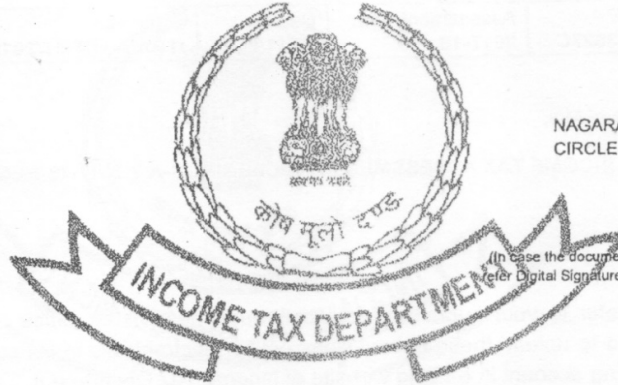
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ACFFS3827C- SAMPRASIDDHI INFRATECH
A.Y. 2017-18
ITBA/AST/F/17/2019-20/1020248813(1)

for such expenses.

5) For the sub-contract expenses debited to the operating expenses, you are requested to furnish the name, address, PAN and the ledger account copies of the sub-contractor parties to whom such amounts were paid/payable during the financial year 2016-17.

You are requested to furnish the above details to this office on or before 18.11.2019 online electronically in E-Proceeding facility through your e-filing account in e-Filing website of Income Tax Department. It may please be noted that if there is no response to this notice, it shall be presumed that you have no explanation to offer and the assessment shall be completed on the basis of materials available on record



NAGARAJAN KASI SHANKAR
CIRCLE 1(2)(2), BANGALORE

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

₹

TRUE COPY.

This document is digitally signed

Signer: NAGARAJAN KASI SHANKAR
Date: 12 November 2019 11:20
Location: KARNATAKA, GOA, India

5.8 The assessee replied to this vide its reply dated 18.11.2019 as follows:-

“Details of provision for expenses:

Assessee has given turnkey project to M/s RR Fab Constructions for construction of apartment called Samprasiddhi Green edge Block A — Cassia for a total consideration of Rs. 18,75,00,000/- Upto March 31, 2017 the project was substantially completed and firm has recognized 100% of the revenue by providing the balance cost to be incurred. As on March 31, 2017, the following revenue was recognised.

<i>Particulars</i>	<i>Number of apartments</i>	<i>Value of sales</i>	<i>Remarks</i>
<i>Sale deed registered before March 31, 2017</i>	<i>16</i>	<i>11,44,90,290</i>	<i>Sale deed registered and hand over made before March 31, 2017</i>
<i>Agreement entered, sale deed executed after March 31, 2017 but revenue is recognized as 100%</i>	<i>10</i>	<i>6,67,67,121</i>	<i>Though sale deed was not made, assessee has recognized the revenue as the project issue completed.</i>
<i>Total</i>		<i>18,12,57,411</i>	

Kindly note that the assessee has already issued work order for Rs. 18,75,00,000/- and received bills for Rs. 17,82,64,030/- and balance work pending for certification and final touch up work.

The above provision of Rs. 92,35,970/- is ascertained contractual liability. Since the assessee has offered 100% of the revenue to tax, the associated cost needs to be given as a deduction.

Without prejudice to above it is submitted that though assessee has debited Rs. 92,35,970/- as provision, ultimately Rs. 72,73,228/- is claimed as expenses and balance is a part of closing stock.

The same is determined as follows.

<i>Particulars</i>	<i>Sq. ft.</i>	<i>Amount in Its.</i>	<i>Amount/ sq.ft</i>
<i>Total cost of project</i>	<i>59,997</i>	<i>18,75,00,000</i>	<i>3,125</i>
<i>Cost already incurred</i>	<i>59,997</i>	<i>17,82,64,030</i>	<i>2,971</i>
<i>Balance to be completed</i>		<i>92,35,970</i>	<i>154</i>

<i>Particulars</i>	<i>No. of sq.ft</i>	<i>Amount per sq.ft</i>	<i>Total</i>
<i>Sold area (as per POC):</i>			
<i>Cost already incurred</i>	<i>47,247</i>	<i>2971</i>	<i>14,03,81,030</i>
<i>Cost to be incurred</i>	<i>47,247</i>	<i>154</i>	<i>72,73,228</i>
<i>Total — A (Cost of sale)</i>		<i>3,125</i>	<i>14,76,54,258</i>
<i>Unsold area (as per POC):</i>			
<i>Cost already incurred</i>	<i>12,750</i>	<i>2971</i>	<i>3,78,83,000</i>
<i>Cost to be incurred</i>	<i>12,750</i>	<i>154</i>	<i>19,62,742</i>
<i>Total — B (Cost of sale)</i>		<i>3,125</i>	<i>3,98,45,742</i>
<i>Total (A+B)</i>			<i>18,75,00,000</i>

From the above table, out of Rs. 92,35,970/-, Rs. 19,62,742/- is a part of inventory and same is not claimed as deduction.”

5.9 Further, assessee once again given reply vide his letter dated 26.11.2019 as follows:-

“Details of provision for expenses:

In continuation of our earlier submission with respect to the provision for expenses to the extent of Rs.92,35,970/-, we wish to inform you that the assessee has received the bills for the same from the contractors in the month of April and May 2017 for all the works carried out. The invoices have been enclosed as Annexure 1 to this letter. Normally there will be delays in final bill since there will be an inspection and certification of work. Though the bills raised in the month of April and May 2017, the work is already been completed before March 2017 and hence assessee has recognized the revenue in the financial year relevant to assessment year 2017 — 2018. It is further submitted that though the registration of the apartment was not made before March 31, 2017 in some cases, assessee has offered the same to tax.

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<i>Particulars</i>	<i>Number of apartments</i>	<i>Value of sales</i>	<i>Remarks</i>
<i>Sale deed registered before March 31, 2007</i>	<i>16</i>	<i>11,44,90,290</i>	<i>Sale deed registered and hand over made before March 31, 2017</i>
<i>Agreement entered, sale deed executed after March 31, 2017 but revenue is recognised as 100%</i>	<i>10</i>	<i>6,67,67,121</i>	<i>Though sale deed was not made, assessee has recognized revenue as the project issue completed.</i>
<i>Total</i>		<i>18,12,57,411</i>	

5.10 The AO passed the assessment order on 27.11.2019, where there was no discussion whatsoever on this subject on which PCIT exercised his jurisdiction with regard to the “provision for future expenses”. It cannot be said that AO applied his mind on this subject and just he has collected various papers from the assessee and put on its records. The AO is not only the adjudicator and he is also investigator. The order of the AO is said to be erroneous on the reason that he has not made requisite enquiry which he sought to be made and the said order is prejudicial to the interest of revenue that it involves tax. Thus, AO is not called upon the assessee to furnish all the details, which are required to take a proper decision with regard to allowability of “Provision for future expenses” as a deduction and he ought to have seen whether assessee has booked this as an expenditure in this assessment year as provision and in subsequent assessment year whether assessee has claimed it as an expenditure on actual payment basis and he has not verified these facts while passing assessment order which is incumbent upon him to carry out necessary enquiry in this regard. Being so, in our opinion, the Ld. PCIT has to take up the issue u/s 263 of the Act as

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the order of AO is erroneous and so far as prejudicial to the interest of the revenue. In our considered view, Ld. PCIT justified in invoking his jurisdiction u/s 263 of the Act and given the direction to AO to verify the nature of expenditure made towards “provision of future expenses” and determine the taxable income of the assessee as per law. We do not find any infirmity in the order of Ld. PCIT passed u/s 263 of the Act and the same is confirmed.

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

Order pronounced in the open court on 20th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 20th Jul, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.