

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1137/Mum/2022 to 1145/Mum/2022  
(Assessment Year :2009-10 to 2017-18)**

M/s. Soma Enterprise Limited 8-2-624/1, Hi Point Road No.10, Banjara Hills Hyderabad – 500 034	Vs.	The PCIT (Central) Mumbai-1 Room No.1001, 10 <sup>th</sup> Floor Pratishtha Bhavan Old CGO Annexe, M.K.Road Mumbai-400020
<b>PAN/GIR No.AACCS8242F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Gaurav Bansal
Revenue by	Shri A.B. Koli
<b>Date of Hearing</b>	<b>28/09/2022</b>
<b>Date of Pronouncement</b>	<b>19/10/2022</b>

**आदेश / ORDER**

**PER BENCH:**

These appeals in ITA Nos.1137/Mum/2022 to 1145/Mum/2022 for A.Y.2009-10 to 2017-18 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-1, Mumbai u/s.263 of the Act dated 31/03/2022 for the A.Y.2009-10 to 2017-18.

Identical issues are involved in most of these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

**ITA No.1137/Mum/2022 (A.Y.2009-10)**

2. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects. The assessee filed its revised return of income for the A.Y.2009-10 on 03/09/2010 declaring total income of Rs.128,80,55,960/-. The assessment was completed u/s.143(3) of the Act on 27/12/2011 determining total income of the assessee at Rs.128,85,69,751/- after making disallowance u/s.14A of the Act in the sum of Rs.1,56,850/- and on account of software charges in the sum of Rs.3,56,941/-. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee. In the said assessment, TDS credit claimed by the assessee in the sum of Rs.30,73,98,902/- was restricted to Rs.28,43,90,544/- by the Id. AO. Subsequently on 10/09/2012, a rectification order u/s.154 of the Act was passed by the Id. AO revising the TDS credit figure to Rs.29,94,75,453/- after due verification of the TDS reconciliation vis a vis its income.

3.1. A search and seizure operation as carried out at the premises of the assessee u/s.132 of the Act on 04/01/2013. Pursuant to the search,

notice u/s.153A of the Act was issued on 27/11/2013 for A.Yrs.2007-08 to 2012-13. In response to the said notice, the assessee filed the return of income on 24/12/2013 for the A.Y.2009-10 declaring income of Rs.137,73,57,710/- wherein an additional income of Rs.8,87,87,959/- was offered pertaining to alleged payments made to sub-contractors and vendors which was accepted by the assessee in the statement recorded u/s.132(4) of the Act at the time of search on 04/01/2013. The first search assessment u/s.143(3) r.w.s. 153A of the Act was completed on 29/05/2014 determining the total income of the assessee at 137,73,57,710/-. In the said search assessment dated 29/05/2014, credit for TDS was given by the Id. AO at Rs.30,73,98,902/-ignoring the 154 order dated 10/09/2012 wherein the TDS credit was restricted to Rs.29,94,75,453/-.

3.2. Subsequently, the second search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2009-10. In response to the said notice, the assessee filed return of income on 11/05/2019 declaring total income of Rs.137,73,57,710/-. The second search the assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 accepting the returned income at Rs.137,73,57,710/- under normal provisions of the Act and book profit of Rs.187,25,98,009/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 6 of his assessment order. Ultimately, the TDS credit in the second search assessment order dated 19/06/2019 was given by the Id. AO at Rs.30,73,98,902/-.

3.3. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the second search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee

3.4. The main contention of the Id. PCIT is that there is a difference in contract receipts as per 26AS and figures reflected in the profit and loss account. Moreover, the TDS as per Form 26AS and TDS granted to the assessee did not match. According to Id. PCIT, non-consideration of both these issues had made the order of the Id. AO erroneous warranting revision u/s.263 of the Act. The Id. PCIT also observed that there is an amount of Rs.335.32 Crores representing increase in advance from contractees appearing in the balance sheet which has also been subjected to TDS but the same is not offered as income in the P & L account. According to the Id. PCIT, since this amount has been subjected to TDS, the same even though reflected in the balance sheet of the assessee is required to be taxed as income of the assessee for the year under consideration. The Id. PCIT issued first show-cause notice dated 17/03/2022 expressing his mind to invoke revision jurisdiction u/s.263 of the Act. In this show-cause notice dated 17/03/2022, the Id. PCIT had not even mentioned anywhere in the show-cause notice that the aforesaid aspects were not examined or verified by the Id. AO. Hence, there was not even a whisper about lack of enquiry by the Id. AO on the aforesaid two issues. Subsequently, the show-cause notice dated

23/03/2022 was issued to the assessee wherein the Id. PCIT had observed that there was a complete failure to conduct relevant enquiries by the Id. AO on the aforesaid issues, i.e. mismatch of gross receipts and mismatch in TDS credit. The assessee furnished detailed submissions in response to both the show-cause notices vide submissions dated 25/03/2022. In the said submissions, the assessee had prima facie raised a preliminary objection that both the issues pointed out by the Id. PCIT in the two show-cause notices were already the subject matter of examination and adjudication in the original scrutiny assessment proceedings framed u/s 143(3) of the Act dated 27/12/2011; next in the rectification proceedings u/s 154 of the Act dated 10/09/2012; and in the first search assessment order u/s 143(3) r.w.s. 153A of the Act dated 29/05/2014 and hence, the time limit to invoke revision jurisdiction in terms of Section 263(2) of the Act had already expired and that the present show-cause notices dated 17/03/2022 and 23/03/2022 of the Id. PCIT are barred by limitation. Further in this regard the assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Alagendran Finance Ltd., reported in 293 ITR 1 in support of its contentions. Further, the assessee also raised yet another preliminary objection that the second search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 is sought to be revised by the Id. PCIT in the instant case. The assessee submitted that this second search assessment was framed pursuant to second search conducted on 21/07/2017. Hence, on the date of its second search on 21/07/2017, assessment for the A.Y.2009-10 had already been concluded and hence it becomes an unabated assessment. There was absolutely no incriminating material found during the course of search which is relatable to this TDS mismatch or mismatch in gross receipts. Hence, the Id. AO could not have looked into these two issues in the second search assessment

proceedings which has already been concluded, being an unabated assessment. Reliance in this regard was placed on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Murli Agro Products Ltd., in ITA No.36/2009.

3.5. The assessee specifically pointed out that the Id. PCIT is seeking to revise the order passed by the Id. AO by treating it as erroneous and prejudicial on the ground that the Id. AO had not brought on record that amount which was shown as advances from contractees in the sum of Rs.332 Crores was subjected to TDS but not offered to tax by the assessee and similarly there was an excess TDS credit granted by the Id. AO in the sum of Rs.67,84,772/-. In this regard the assessee submitted that there were three proceedings that had been completed on the assessee wherein the aforesaid issues were duly examined by the Id. AO:-

- (i) During original assessment proceedings completed on 27/12/2011 u/s.143(3) of the Act
- (ii) During rectification proceedings u/s 154 of the Act completed on 10/09/2012
- (iii) During first search assessment proceedings completed u/s.143(3) r.w.s. 153A of the Act dated 29/05/2014

3.6. It was submitted that in all these proceedings, the detailed reconciliation statement was filed by the assessee with regard to turnover as per Form 26AS and turn over as per profit and loss account and the TDS credit as per Form 26AS vis a vis TDS claimed by the assessee. It was specifically brought to the attention of the Id. PCIT that a sum of Rs.332 Crores was shown as advance in the balance sheet towards mobilisation advance on which tax has been deducted at source but

income is not eligible to be offered by the assessee during the year under consideration. It was explained that mobilisation advance is primarily received after furnishing all bank guarantees in favour of the payee customer for the execution of work allotted. The payee has a right over the bank guarantees to invoke it, in case of any issue such as cancellation of the order, stopping of work and even after partial execution of work, without compensating for TDS deducted. Therefore, the advance received by the contractor i.e. assessee, in the form of mobilisation / secured advance is recoverable by the contractee, in case of non-execution of contract, delay in execution of contract etc. Therefore, it is more like a loan or capital receipt given by the contractee to a contractor in order to enable it to deploy machinery and manpower in sufficient quantity at the work site awarded to the assessee. The assessee also explained the provisions of Section 198 and 199 of the Act read with Rule 37BA of the Income Tax Rules wherein it only says that these are only machinery provisions dealing with the matters of the procedure and they do not deal with either the computation of income or chargeability of income and that it only says that TDS shall be given credit for the year in which such income becomes assessable and not vice versa. In other words, if a particular receipt though subjected to TDS would never be assessable to tax in the hands of the recipient assessee, still the assessee would be eligible to claim TDS credit for the same. It was specifically pointed out that the provisions of Section 198 and 199 had to be understood in the context of giving credit for TDS vis a vis Revenue receipts chargeable to tax but which are getting spread over more than one assessment year. The said provisions never contemplate bringing to tax the capital receipt merely because such receipt is subjected to TDS. Accordingly, it was submitted factually and legally that mobilisation advance is not in the nature of income at all and hence, the same would be never offered to

tax by the assessee as income, but still the assessee would be eligible for TDS credit thereon. The assessee by way of aforesaid explanations before the Id. PCIT stated that there would always be mismatch in gross receipts and TDS credit between form 26AS and what is reflected in the profit and loss account of the assessee. That is why the assessee had also filed detailed reconciliation statement for both before all the authorities including the Id. PCIT during the revision proceedings.

3.7. The Id. PCIT completely ignored all the aforesaid contentions of the assessee and proceeded to treat the order passed by the Id. AO as erroneous and prejudicial to the interest of the Revenue on the ground that the Id. AO had not made complete enquiries with regard to these issues and by invoking Explanation 2 to Section 263 of the Act which came into effect only from 01/06/2015, set aside the assessment order to redo the assessment in respect of aforesaid two issues after conducting necessary enquiries thereon. Aggrieved, the assessee is in appeal before us.

3.8. At the outset, we find that assessment for A.Y.2009-10 was an unabated assessment as on the date of second search conducted on 21/07/2017. Admittedly, there was absolutely no incriminating material found during the course of second search relating to mismatch in turnover between 26AS and profit and loss account and mismatch in TDS credit by the search party. The Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645 had categorically held that unabated assessments should not be disturbed while framing search assessment if there is no incriminating material found during the course of search relating to each addition that is contemplated in the search assessment. The Id. AO in true spirit and

correct understanding of the provisions of the Act had resorted not to make any disturbance in the already assessed income of the assessee for A.Y.2009-10, had accepted the contentions of the assessee and not examined this issue of mismatch in gross receipts and mismatch in TDS during the course of second search assessment proceedings completed on 19/06/2019. This can by any stretch of imagination cannot be considered as erroneous order on the part of the Id. AO . Infact, the Id. AO had passed a correct legal order in this regard. On the contrary, if he had sought to disturb the original concluded assessment order, only then his order would become erroneous in view of the decision of the Hon'ble Jurisdictional High Court referred to supra. Hence, invocation of revision jurisdiction u/s.263 of the Act for the A.Y.2009-10 grossly fails on this count.

3.9. Moreover, we find from the primary facts narrated hereinabove with regard to series of assessments framed in the case of the assessee, the mismatch of gross receipts/ turnover and mismatch of TDS between Form 26AS and the claim of the assessee were already existing during the course of original scrutiny assessment proceedings itself which got completed on 27/12/2011. Irrespective of the fact that proper examination and enquiries had already been conducted by the Id. AO in that assessment proceedings and irrespective of the fact that assessee had already filed a detailed reconciliation statement for mismatch in gross receipts as well as for mismatch in TDS, any error, if at all, could be attributable only in that first scrutiny assessment order dated 27/12/2011. Hence, time limit to invoke revision jurisdiction u/s.263 of the Act by the Id. PCIT should have been done on or before 31/03/2014 in terms of Section 263(2) of the Act. Further, there was yet another search assessment order passed u/s.143(3) r.w.s. 153A of the Act dated

29/05/2014 wherein again the assessee had filed detailed reconciliation statement for mismatch in the gross receipts and mismatch in TDS credit before the Id. AO. The Id. AO after due examination of the same had accepted to the contentions of the assessee in the said search assessment. Even if there is some error in that order, again the section 263 time limit for the Id. PCIT would expire by 31/03/2017 in terms of Section 263(2) of the Act. Hence, by in any case, the invocation of the revisionary jurisdiction by the Id. PCIT u/s.263 of the Act in March 2022 is squarely barred by limitation. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Alagendran Finance Ltd reported 293 ITR 1 wherein it was held as under:-

*“15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity.”*

3.10. Hence, we hold that the 263 order passed by the Id. PCIT on 31/03/2022 for A.Y.2009-10 is barred by limitation and hence, is hereby quashed.

3.11. We also found that the Id. PCIT had sought to invoke provisions of Explanation-2 to Section 263 of the Act in the instant case on the ground that the Id. AO had not made proper enquiries or verification which should have been made in the instant case. From the perusal of the two show-cause notices dated 17/03/2022 and 23/03/2022 which are enclosed in pages 1-5 of the paper book, we find that the Id. PCIT

nowhere had sought to invoke the provisions of Explanation 2 to Section 263 of the Act. We find that the provisions of Explanation 2 to Section 263 of the Act had been directly invoked by the Id. PCIT only in the final revision order passed u/s.263 of the Act. Hence, no opportunity at all was given to the assessee to give its explanation on the applicability of provisions of Explanation 2 to Section 263 of the Act. In this regard, reliance has been rightly placed by the Id. AR on the decision of the Hon'ble Gujarat High Court in the case of PCIT vs. Shreeji Prints (P) Ltd., reported in 130 taxmann.com 293 (Guj) wherein it was held as under:-

*“5 The Tribunal has found that in the order passed by the PCIT, Explanation 2 of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the show cause notice to invoke the Explanation 2 of section 263 of the Act 1961. Therefore, by invocation of Explanation in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law.”*

3.12. It is pertinent to note that Special Leave Petition preferred by the Revenue against this order has been dismissed by the Hon'ble Supreme Court which is reported in 282 Taxman 464. Hence, respectfully following the decision of the Hon'ble Gujarat High Court referred to supra, we hold that the Id. PCIT grossly erred in invoking provisions of Explanation 2 to Section 263 of the Act in the instant case. On this count also, the order of the Id. PCIT u/s.263 of the Act deserves to be quashed.

3.13. In view of the above, the revision order passed by the Id. PCIT u/s.263 of the Act deserves to be quashed on the following grounds:-

- a) It is barred by limitation;
- b) A.Y.2009-10 being unabated assessment as on the date of search on 21/07/2017 and admittedly there was no incriminating material

found during the course of search relating to mismatch in gross receipts and mismatch in TDS credit. Hence, the Id. AO could not have disturbed the earlier concluded assessments in view of the decision of the Hon'ble Jurisdictional High Court in the case of Continental Warehousing Corporation reported in 374 ITR 645;

- c) Explanation 2 to Section 263 of the Act has been invoked only in the revision order passed in the 263 of the Act without giving show-cause notice to the assessee in that regard. Hence, by placing reliance on the decision of the Hon'ble Gujarat High Court in the case of Shreeji Prints Pvt. Ltd., reported in 130 taxmann.com 293, the order passed by the Id. PCIT u/s.263 of the Act becomes unsustainable in the eyes of law;
- d) Adequate enquiries with regard to the disputed issues were already carried out by the Assessing Officer in three independent proceedings;
- e) Even on merits, the assessee had furnished detailed reconciliation statement explaining the mismatch in receipts and mismatch in TDS credit before the Id. AO in three independent proceedings and before the Id. PCIT in Section 263 proceedings;
- f) The Id. PCIT had never pointed out by any error in the order of the Id. AO by making preliminary enquiries with regard to submissions made by the assessee before him. Reliance in this regard is placed on the decision of Jabalpur Tribunal in the case of Jashn Beneficiary Trust vs. ACIT reported in 88 taxmann.com 824.

3.14. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.w.s. 143(3) after getting*

*mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

3.15. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed the adjudication of additional ground becomes academic in nature and hence, it is left open.

3.16. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2009-10. Accordingly, the original grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee for A.Y.2009-10 is partly allowed.

**ITA No.1138/Mum/2022 (A.Y.2010-11)**

5. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects. The assessee filed its revised return of income for the A.Y.2010-11 on 29/03/2012 declaring total income of Rs.Nil after claiming deduction u/s.80IA of the Act and declared book profit of Rs.227,87,65,749/- u/s.115JB of the Act. The assessment was completed u/s.143(3) of the Act. In the said

assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee.

5.2. A search and seizure operation as carried out at the premises of the assessee u/s.132 of the Act on 04/01/2013. Pursuant to the search, notice u/s.153A of the Act was issued on 27/11/2013 for A.Yrs.2007-08 to 2012-13. In response to the said notice, the assessee filed the return of income on 24/12/2013 for the A.Y.2010-11 declaring income of Rs.82,82,95,860/- as additional income pertaining to alleged payments to sub-contractors and vendors which was accepted by the assessee in the statement recorded u/s.132(4) of the Act at the time of search on 04/01/2013. The first search assessment u/s.143(3) r.w.s. 153A of the Act was completed on 29/05/2014 determining the total income of the assessee at 79,66,03,129/- under normal provisions of the Act and book profit of Rs.22,87,65,750/- u/s.115JB of the Act. In the said search assessment dated 29/05/2014, credit for TDS was given by the Id. AO at Rs.38,95,20,180/-.

5.3. Subsequently, a rectification order u/s.154 of the Act was passed on 14/07/2014 wherein credit for advance tax of Rs.9,12,19,787/- was given by the Id. AO. Further, yet another rectification order u/s.154 of the Act was passed on 03/09/2014 wherein again the income determined under normal provisions of the Act and book profit u/s.115JB of the Act was not disturbed but further TDS credit of Rs.9,64,84,656/- (48,60,04,836-38,95,20,180) was granted by the Id. AO.

5.4. Assessment was reopened for the A.Y.2010-11 to bring to tax the share of profit from AOP in the sum of Rs.10,53,43,872/- while computing

book profit u/s.115JB of the Act. This was added vide order u/s.143(3) r.w.s. 147 of the Act dated 05/12/2017. In this reassessment, TDS credit of Rs.48,55,95,799/- was granted to the assessee as against Rs.48,60,04,836/- already granted by the Id. AO vide 154 order dated 03/09/2014.

5.5. Subsequently the second search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2010-11. In response to the said notice, the assessee filed return of income on 11/05/2019. The second search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income of the assessee at Rs.79,66,03,130/- under normal provisions of the Act and book profit of Rs.238,48,20,809/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 7 of his assessment order. Ultimately, the TDS credit in the second search assessment order dated 19/06/2019 at Rs.48,55,95,799/-.

5.6. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the second search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2010-11:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.

(c) Directing the Id. AO to verify the computation of book profits u/s.115JB of the Act vis-à-vis share of income from AOP in the sum of Rs.10.53 Crores exempt under proviso (a) to Section 86 of the Act.

5.7. We hold that the observations given by us hereinabove for the A.Y. 2009-10 in respect of items (a) and (b) above would hold good for A.Y. 2010-11 also except with variance in dates and variance in figures. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

5.8. With regard to direction given by the Id. PCIT to the Id. AO to verify with regard to taxability of share of profit from AOP in the sum of Rs.10.53 Crores while computing book profit u/s.115JB of the Act is concerned, we find that the said sum has already been added by the Id. AO in the second search assessment completed on 19/06/2019. This goes to prove complete non-application of the mind on the part of the Id. PCIT. Hence, the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (c) above is hereby quashed.

5.9. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.w.s. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

5.10. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed,

the adjudication of additional ground becomes academic in nature and hence, it is left open.

5.11. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2010-11. Accordingly, the original grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee for A.Y.2010-11 is partly allowed.

**ITA No.1139/Mum/2022 (A.Y.2011-12)**

7. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

7.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects. The assessee filed its revised return of income for the A.Y.2011-12 on 19/04/2012 declaring total income of Rs.Nil after claiming deduction u/s.80IA of the Act and declared book profit of Rs.282,08,14,515/- u/s.115JB of the Act. The assessment was completed u/s.143(3) of the Act. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee.

7.2. A search and seizure operation as carried out at the premises of the assessee u/s.132 of the Act on 04/01/2013. Pursuant to the search, notice u/s.153A of the Act was issued on 27/11/2013 for A.Yrs.2007-08 to 2012-13. In response to the said notice, the assessee filed the return of income on 24/12/2013 for the A.Y.2011-12 declaring income of Rs.51,28,16,163/- as additional income pertaining to alleged payments to sub-contractors and vendors which was accepted by the assessee in the statement recorded u/s.132(4) of the Act at the time of search on 04/01/2013. The first search assessment u/s.143(3) r.w.s. 153A of the Act was completed on 29/05/2014 determining the total income of the assessee at Rs.48,04,14,362/- under normal provisions of the Act and book profit of Rs.282,08,14,510/- u/s.115JB of the Act. In the said search assessment dated 29/05/2014, credit for TDS was given by the Id. AO at Rs.47,72,11,950/-.

7.3. Subsequently, a rectification order u/s.154 of the Act was passed on 24/06/2014 wherein further TDS credit of Rs.6,59,95,848/- was allowed by the Id. AO.. Further, yet another rectification order u/s.154 of the Act was passed on 29/12/2014 wherein again the income determined under normal provisions of the Act and book profit u/s.115JB of the Act was not disturbed therein but the excess TDS credit granted vide 154 order dated 24/06/2014 in the sum of Rs.6,59,95,848/- was reduced to Rs.3,44,56,725/-.

7.4. Subsequently the second search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2011-12. In response to the said notice, the assessee filed return of income on 11/05/2019. The second search assessment was

completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income of the assessee at Rs.51,60,99,980/- under normal provisions of the Act and book profit of Rs.285,63,64,560/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 8 of his assessment order. Ultimately, the TDS credit in the second search assessment order dated 19/06/2019 was given by the Id. AO at Rs.51,16,68,675/-.

7.5. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the second search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2011-12:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.
- (c) Directing the Id. AO to verify the computation of book profits u/s.115JB of the Act vis-à-vis share of income from AOP in the sum of Rs.3.43 Crores exempt under proviso (a) to Section 86 of the Act.
- (d) Directing the Id. AO to verify the computation of book profits u/s.115JB of the Act vis-à-vis alleged bogus payment made to sub-contractors and vendors i.e. in respect of non-genuine purchases. of Rs.51.28 Crores.

7.6. We hold that the observations given by us hereinabove for the A.Y. 2009-10 in respect of items (a) and (b) above would hold good for A.Y. 2011-12 also except with variance in dates and variance in figures. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

7.7. With regard to direction given by the Id. PCIT to the Id. AO to verify with regard to taxability of share of profit from AOP in the sum of Rs.3.43 Crores while computing book profit u/s.115JB of the Act is concerned, we find that the said sum has already been added by the Id. AO in the second search assessment completed on 19/06/2019. This goes to prove complete non-application of the mind on the part of the Id. PCIT. Hence, the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (c) above is hereby quashed.

7.8. With regard to direction given by the Id. PCIT to the Id. AO to verify with regard to adding back the non-genuine purchases in the sum of Rs 51.28 crores while computing book profit u/s 115JB of the Act is concerned, we hold that the Id. AO could only add those list of items that had been stipulated in Explanation 1 to section 115JB(2) of the Act and he cannot tinker with the audited accounts of the assessee which had been approved by the shareholders in Annual General Meeting. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Apollo Tyres Ltd reported in 255 ITR 273(SC). Hence we hold that the Id. AO had correctly followed the ratio decidendi of Hon'ble Apex Court in Apollo Tyres Ltd referred supra. Hence there cannot be any addition to book profit u/s 115JB of the Act in respect of alleged non-genuine purchases. Accordingly, there cannot be any error in the order of the Id. AO in this regard. Hence the revision order u/s 263 of the Act

passed by the Id. PCIT in this regard deserves to be quashed and is hereby quashed.

7.9. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.ws. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

7.10. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed, the adjudication of additional ground becomes academic in nature and hence, it is left open.

7.11. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2011-12. Accordingly, the original grounds raised by the assessee are allowed.

8. In the result, appeal of the assessee for A.Y.2011-12 is partly allowed.

**ITA No.1140/Mum/2022 (A.Y.2012-13)**

9. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

9.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects. The assessee filed its revised return of income for the A.Y.2012-13 on 24/01/2013 declaring total income of Rs.Nil after claiming deduction u/s.80IA of the Act and long term capital loss of Rs. 204,58,71,007/- and declared book profit of Rs.198,00,22,264/- u/s.115JB of the Act. The assessment was completed u/s.143(3) of the Act. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee.

9.2. A search and seizure operation as carried out at the premises of the assessee u/s.132 of the Act on 04/01/2013. Pursuant to the search, notice u/s.153A of the Act was issued on 27/11/2013 for A.Yrs.2007-08 to 2012-13. In response to the said notice, the assessee filed the return of income on 24/12/2013 for the A.Y.2012-13 declaring income of Rs.46,95,66,799/- as additional income pertaining to alleged payments to sub-contractors and vendors which was accepted by the assessee in the statement recorded u/s.132(4) of the Act at the time of search on 04/01/2013. The first search assessment u/s.143(3) r.w.s. 153A of the Act was completed on 29/05/2014 determining the total income of the assessee at Rs.201,58,86,516/- under normal provisions of the Act and allowing long term capital loss to be carried forward to subsequent years. In the said search assessment dated 29/05/2014, credit for TDS was given by the Id. AO at Rs.67,50,20,743/-.

9.3. Pursuant to the order of Id. CIT(A) dated 28/08/2014, the Id. AO passed a consequential order thereon on 25/09/2014 determining total

income of the assessee at Rs.49,25,40,739/- under normal provisions of the Act and book profit of Rs.198,00,22,260/- u/s.115JB of the Act. In the said order dated 25/09/2014, the Id. AO granted TDS credit of Rs.67,50,20,743/-. Subsequently, a rectification order u/s.154 of the Act was passed on 29/10/2014 wherein credit for advance tax of Rs.15 Crores was granted to the assessee and TDS credit already granted in the sum of Rs.67,50,20,743/- was not disturbed.

9.4. Subsequently the second search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2012-13. In response to the said notice, the assessee filed return of income on 11/05/2019. The second search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income of the assessee at Rs.51,08,51,558/- under normal provisions of the Act and book profit of Rs.200,03,29,415/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 6 of his assessment order. Ultimately, the TDS credit in the second search assessment order dated 19/06/2019 was given by the Id. AO at Rs.67,49,76,609/-.

9.5. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the second search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2012-13:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.

(b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.

(c) Directing the Id. AO to verify the computation of book profits u/s.115JB of the Act vis-à-vis share of income from AOP in the sum of Rs.2.03 Crores exempt under proviso (a) to Section 86 of the Act.

(d) Directing the Id. AO to verify the computation of book profits u/s.115JB of the Act vis-à-vis alleged bogus payment made to sub-contractors and vendors i.e. in respect of non-genuine purchases. of Rs.46.96 Crores.

9.6. We hold that the observations given by us hereinabove for the A.Y. 2009-10 in respect of items (a) and (b) above would hold good for A.Y. 2012-13 also except with variance in dates and variance in figures. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

9.7. With regard to direction given by the Id. PCIT to the Id. AO to verify with regard to taxability of share of profit from AOP in the sum of Rs.2.03 crores and adding the non-genuine purchases in the sum of Rs 46.96 crores while computing book profit u/s.115JB of the Act is concerned, we hold that the decision rendered by us hereinabove for A.Y. 2011-12 shall hold good for A.Y. 2012-13 also except with variance in figures.

9.8. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.ws. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

9.9. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed, the adjudication of additional ground becomes academic in nature and hence, it is left open.

9.10. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2012-13. Accordingly, the original grounds raised by the assessee are allowed.

10. In the result, appeal of the assessee for A.Y.2012-13 is partly allowed.

**ITA No.1141/Mum/2022 (A.Y.2013-14)**

11. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

11.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects. A search and seizure operation as carried out at the premises of the assessee u/s.132 of the Act on 04/01/2013. Being the year of search, notice u/s.143(2) was issued to the assessee. The assessee filed its return of income for the A.Y.2013-14 on 30/11/2013 declaring total loss of Rs.165,27,85,649/-. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those

details were duly filed before the Id. AO by the assessee. The assessment was completed u/s 143(3) of the Act on 29/05/2014 determining the total loss at Rs 165,12,14,527/- after making disallowance u/s 14A of the Act in the sum of Rs 15,69,613/-. In the said assessment dated 29/05/2014, credit for TDS was given by the Id. AO at Rs.Nil.

11.2. Subsequently, a rectification order u/s.154 of the Act was passed on 30/03/2015 wherein TDS& TCS credit was granted at Rs 39,04,86,084/-.

11.3. Subsequently the second search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2013-14. In response to the said notice, the assessee filed return of income on 11/05/2019. The second search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total loss of the assessee at Rs.106,74,19,640/- under normal provisions of the Act and book loss of Rs.143,31,38,817/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 11 of his assessment order. Ultimately, the TDS credit in the second search assessment order dated 19/06/2019 was given by the Id. AO at Rs.39,35,72,358/-.

11.4. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the second search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2013-14:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.

11.5. We hold that the observations given by us hereinabove for the A.Y. 2009-10 in respect of items (a) and (b) above would hold good for A.Y. 2013-14 also except with variance in dates and variance in figures. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

11.6. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.w.s. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

11.7. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed, the adjudication of additional ground becomes academic in nature and hence, it is left open.

11.8. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2013-14. Accordingly, the original grounds raised by the assessee are allowed.

12. In the result, appeal of the assessee for A.Y.2013-14 is partly allowed.

**ITA No.1142/Mum/2022 (A.Y.2014-15)**

13. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

13.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects. The assessee filed its return of income for the A.Y.2014-15 on 28/11/2014 declaring total income of Rs.Nil. The assessment was completed u/s.143(3) of the Act on 29/07/2016 determining total income at Rs.Nil. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee. In the said assessment, TDS credit granted by the Id. AO was Rs.21,61,32,192/-.

13.2. Subsequently the search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2014-15. In response to the said notice, the assessee filed return of income on 11/05/2019. The search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income of the assessee at Rs.27,88,05,491/- under normal provisions of the Act and book loss of Rs.190,89,69,029/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 10 of his assessment order. Ultimately, the TDS credit in the search

assessment order dated 19/06/2019 was given by the Id. AO at Rs.21,61,77,879/-.

13.3. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2014-15:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.
- (c) Directing the Id. AO to verify how the unbilled Revenue amounting to Rs.91.11. Crores has been accounted by the assessee in its books of accounts.

13.4. We hold that the observations given by us hereinabove for the A.Y. 2009-10 in respect of items (a) and (b) above would hold good for A.Y. 2014-15 also except with variance in dates and variance in figures. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

13.5. With regard to directions of the Id. PCIT to the Id.AO to verify as to how the unbilled revenue of Rs 91.11 crores is accounted by the assessee in its books, we find that the assessee had given detailed explanation as to why this sum of Rs 91.11 crores is not to be routed through profit and loss account before the Id. PCIT in para 6.4. of submissions dated 25/03/2022 . This submission has been ignored by the Id. PCIT. We find that this issue in any case would get covered in the original directions

given by the Id. PCIT in respect of items (a) and (b) above and we hold that the directions given in item (c) above is actually redundant. In respect of this issue, we hold that the Id. PCIT had invoked his revision jurisdiction in the instant case u/s 263 of the Act by directing the Id. AO to make roving and fishing enquiries , which is not permissible u/s 263 of the Act. We find from the perusal of the order of the Id. PCIT u/s 263 of the Act, no where the Id. PCIT had stated as to how the order of the Id. AO is erroneous in respect of item (c) above. As stated earlier, this issue in item (c) above gets already covered in items (a) and (b) above and hence the direction of the Id. PCIT in this regard is treated as redundant and since the Id. PCIT's order u/s 263 of the Act is quashed in respect of items (a) and (b) above, the same is hereby quashed for item (c) also above.

13.6. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.ws. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

13.7. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed, the adjudication of additional ground becomes academic in nature and hence, it is left open.

13.8. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2014-15. Accordingly, the original grounds raised by the assessee are allowed.

14. In the result, appeal of the assessee for A.Y.2014-15 is partly allowed.

**ITA No.1143/Mum/2022 (A.Y.2015-16)**

15. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

15.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects and also engaged in hospitality industry. The assessee filed its return of income for the A.Y.2015-16 on 30/09/2015 declaring total loss of Rs. 1,61,59,059/- . The revised return of income was filed on 16/12/2015 declaring the same loss. The assessment was completed u/s.143(3) of the Act on 07/11/2016 determining total income at Rs.Nil. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee. In the said assessment, TDS credit granted by the Id. AO was Rs.25,59,02,323/-.

15.2. Subsequently the search u/s.132 of the Act took place in the premises of the assessee alongwith ABIL group on 21/07/2017. Pursuant to the search fresh notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2015-16. In response to the said notice, the assessee filed return of income on 11/05/2019. The search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income

of the assessee at Rs.18,21,47,223/- under normal provisions of the Act and book loss of Rs.204,31,39,264/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 13 of his assessment order. Ultimately, the TDS credit in the search assessment order dated 19/06/2019 was given by the Id. AO at Rs.25,59,97,832/-.

15.3. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2015-16:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.
- (c) Directing the Id. AO to verify how the unbilled Revenue amounting to Rs.292.27 crores has been accounted by the assessee in its books of accounts.
- (d) Directing the Id. AO to verify the nature of transactions entered by the assessee with its Subsidiaries / Associates and consequently to verify whether the assessee company had failed to comply with the provisions of section 92E of the Act.

15.4. We hold that the observations given by us hereinabove for the A.Y. 2009-10 in respect of items (a) and (b) above would hold good for A.Y. 2014-15 also except with variance in dates and variance in figures.

Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

15.5. With regard to directions of the Id. PCIT to the Id. AO to verify as to how the unbilled revenue of Rs 292.27 crores is accounted by the assessee in its books, we hold that the decision given by us hereinabove for A.Y. 2014-15 would hold good for A.Y. 2015-16 also except with variance in figures.

15.6. With regard to directions of the Id. PCIT to the Id. AO to verify nature of transactions entered by the assessee with its Subsidiaries / Associates and consequently to verify whether the assessee company had failed to comply with the provisions of section 92E of the Act, we find that the hat the assessee had given detailed explanation as to why the provisions of section 92, 92C, 92D and 92E of the Act in respect of 'specified domestic transaction' is not applicable to the assessee herein. This explanation is given in para 6.5. and 6.6. of submissions dated 25/03/2022 before the Id. PCIT. It was specifically submitted that income derived from the transactions entered into with Subsidiaries / Associates are tax neutral and that no claim of deduction u/s 80IA of the Act has been made thereon in respect of works undertaken from the Subsidiaries , Associates and Joint Ventures formed for the specific purpose of the eligible works and accordingly the provisions of section 92, 92C, 92D and 92E of the Act per se would not be applicable at all in the instant case. This submission has been ignored by the Id. PCIT. In respect of this issue, we hold that the Id. PCIT had invoked his revision jurisdiction in the instant case u/s 263 of the Act by by directing the Id. AO to make roving and fishing enquiries , which is not permissible u/s 263 of the Act. We find from the perusal of the order of the Id. PCIT u/s 263 of the Act, no

where the Id. PCIT had stated as to how the order of the Id. AO is erroneous in respect of item (d) above. In any case, we find that the Id. AO in the original scrutiny assessment proceedings framed u/s 143(3) of the Act on 07/11/2016 had duly examined this aspect which is evident from the reply given by the assessee vide letter dated 11/07/2016 in response to notice u/s 142(1) of the Act letter dated 04/07/2016. In this letter, the assessee had duly furnished the complete details of related party transactions before the Id. AO. The Id. AO after examination of the same had come to a conscious conclusion that the domestic transfer pricing issues cannot be made applicable to the assessee in the instant case and hence there was no need to refer the case to Learned Transfer Pricing Officer. We hold that the Id. PCIT is only trying to substitute his view, which is patently illegal, in the place of view already taken by the Id. AO, which, in our considered opinion, cannot be done by invoking revision jurisdiction u/s 263 of the Act. Hence we have no hesitation in quashing the revision order passed u/s 263 of the Act by the Id. PCIT in respect of item (d) above.

15.7. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.w.s. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

15.8. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed, the adjudication of additional ground becomes academic in nature and hence, it is left open.

15.9. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2015-16. Accordingly, the original grounds raised by the assessee are allowed.

16. In the result, appeal of the assessee for A.Y.2015-16 is partly allowed.

**ITA No.1144/Mum/2022 (A.Y.2016-17)**

17. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

17.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects and also engaged in hospitality industry. A search and seizure action u/s.132 of the Act took place in the premises of the assessee along with ABIL group on 21/07/2017. Pursuant to the search, notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2016-17. In response to the said notice, the assessee filed return of income on 11/05/2019. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee. The search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income of the assessee at Rs.52,16,83,323/- under normal provisions of the Act and book profit of Rs.8,45,97,392/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that

the credit for TDS and prepaid taxes need to be given after due verification in para 13 of his assessment order. Ultimately, the TDS credit in the search assessment order dated 19/06/2019 was given by the Id. AO at Rs.32,89,30,132/-.

17.2. Against this assessment order, the assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals) Mumbai [ Id. CIT(A) in short]. This appeal was disposed of by the Id. CIT(A) vide his order dated 23/07/2021 granting partial relief to the assessee. The Id. AO passed giving effect order to Id. CIT(A) order on 06/09/2021 determining total income of the assessee at Rs 37,22,55,070/- under normal provisions of the Act and book profit of Rs 5,15,60,633/- u/s 115JB of the Act. In the said giving effect order, the Id. AO granted TDS credit of Rs 33,04,95,566/-.

17.3. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2016-17:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.

17.4. We are conscious of the fact that assessment for the A.Y. 2016-17 is an abated assessment as on the date of search on 21/07/2017 and hence there is no need for existence of any incriminating material found during the course of search relating to TDS mismatch and mismatch in

turnover. The only assessment framed for this A.Y. 2016-17 is u/s 143(3) r.w.s. 153A of the Act dated 19/06/2019 determining total income of the assessee. Hence the observations made by us for the A.Y. 2009-10 hereinabove with regard to non-existence of incriminating material and revision proceedings u/s 263 of the Act barred by limitation, would not be applicable for the A.Y. 2016-17. However, it is a fact that the assessee had duly furnished the entire TDS reconciliation and reconciliation statement for mismatch in gross receipts during the course of assessment proceedings u/s 143(3) rws 153A of the Act dated 19/06/2019. Hence the Id. AO after due verification of the said statements had granted the TDS credit eligible to the assessee and had resorted not to make any addition towards the mismatch in gross receipts. Hence it could be safely concluded that adequate enquiries were indeed carried out by the Id. AO in the scrutiny assessment proceedings in respect of items (a) and (b) above. Hence on merits and for incorrect application of provisions of Explanation 2 to section 263 of the Act by the Id. PCIT, our order for the A.Y. 2009-10 hereinabove would hold good for A.Y. 2016-17 also. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above is hereby quashed.

17.5. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.w.s. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

17.6. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed,

the adjudication of additional ground becomes academic in nature and hence, it is left open.

17.7. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2016-17. Accordingly, the original grounds raised by the assessee are allowed.

18. In the result, appeal of the assessee for A.Y.2016-17 is partly allowed.

**ITA No.1145/Mum/2022 (A.Y.2017-18)**

19. Though the assessee has raised several grounds of appeal, the effective issue to be decided is as to whether the Id. PCIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the instant case both on law as well as on merits of the case.

19.1. We have heard rival submissions and perused the materials available on record. We find that assessee is involved in the activities of civil work by being a developer of infrastructure projects and also engaged in hospitality industry. A search and seizure action u/s.132 of the Act took place in the premises of the assessee along with ABIL group on 21/07/2017. Pursuant to the search, notice u/s.153A of the Act was issued on 13/04/2019 for the A.Y.2017-18. In response to the said notice, the assessee filed return of income on 11/05/2019 declaring total income of Rs 9,29,92,541/-. In the said assessment proceedings, the Id. AO did ask for queries for complete reconciliation of TDS vis a vis its related income. All those details were duly filed before the Id. AO by the assessee. The search assessment was completed u/s.143(3) r.w.s. 153A of the Act on 19/06/2019 determining total income of the assessee at

Rs.56,96,93,250/- under normal provisions of the Act and book loss of Rs.7,08,73,854/- u/s.115JB of the Act. In the said assessment order, the Id. AO had specifically stated that the credit for TDS and prepaid taxes need to be given after due verification in para 10 of his assessment order. Ultimately, the TDS credit in the search assessment order dated 19/06/2019 was given by the Id. AO at Rs.29,74,05,169/-.

19.2. Against this assessment order, the assessee preferred an appeal before the learned Commissioner of Income Tax (Appeals) Mumbai [ Id. CIT(A) in short]. This appeal was disposed of by the Id. CIT(A) vide his order dated 06/08/2021 granting partial relief to the assessee. The Id. AO passed giving effect order to Id. CIT(A) order on 06/09/2021 determining total income of the assessee at Rs 42,91,89,970/- under normal provisions of the Act and book loss of Rs 7,08,73,854/- u/s 115JB of the Act. In the said giving effect order, the Id. AO granted TDS credit of Rs 29,74,05,169/-.

19.3. We find that the Id. PCIT by invoking his revision jurisdiction u/s.263 of the Act is seeking to revise the search assessment framed u/s. 143(3) r.w.s. 153A of the Act dated 19/06/2019 on the following grounds for the A.Y.2017-18:-

- (a) Mismatch of receipts as per 26AS with receipts as per profit and loss account.
- (b) Mismatch of TDS credit as per 26AS and TDS claimed by the assessee.

19.4. We hold that the observations given by us hereinabove for the A.Y. 2016-17 in respect of items (a) and (b) above would hold good for A.Y.

2017-18 also except with variance in dates and variance in figures. Hence the revision order passed u/s 263 of the Act by the Id. PCIT in respect of these two issues i.e. (a) and (b) above are hereby quashed.

19.5. We find that assessee vide letter dated 05/09/2022 had raised the following additional ground:-

*“That the Ld. Pr. CIT erred in law and on facts in invoking the provisions of section 263 of the Act as the order passed u/s 153A r.w.s. 143(3) after getting mandatory approval of JCIT u/s 153D of the Income tax Act cannot be subjected to revision without revising the approval of JCIT.”*

19.6. We find that this is purely a legal issue raised by the assessee and it does not require examination of any fresh facts. Hence, the said additional ground is admitted herein. But in view of the decision rendered by us hereinabove wherein 263 order passed by the Id. PCIT is quashed, the adjudication of additional ground becomes academic in nature and hence, it is left open.

19.7. In view of the above, we have no hesitation in quashing section 263 order by the Id. PCIT for the A.Y. 2017-18. Accordingly, the original grounds raised by the assessee are allowed.

20. In the result, appeal of the assessee for A.Y.2017-18 is partly allowed.

21. Before parting, we would like to bring on record the conduct of the assessee and the revenue with regard to common issue of mismatch in gross receipts and mismatch in TDS credit for various assessment years in a tabular form as under:-

**TDS CHART**

Asst. Year	TDS as per Return (11.05.2019) 2nd Search	TCS	Total TDS/TCS as per return	TDS allowed by AO in the Asst. Order Dated 19.06.2019	As per last order (Prior to order dated 19.06.2019)
2009-10	30,65,93,960	8,04,942	30,73,98,902	30,73,98,902	30,73,98,902
2010-11	49,78,18,576		49,78,18,576	48,55,95,799	48,55,95,799
2011-12	54,17,28,744		54,17,28,744	51,16,68,675	51,16,68,675
2012-13	67,42,86,638		67,42,86,638	67,49,76,609	67,50,20,743
2013-14	39,81,82,525		39,81,82,525	39,35,72,358	39,04,86,084
2014-15	21,81,85,723		21,81,85,723	21,61,77,879	21,61,32,192
2015-16	26,18,91,817		26,18,91,817	25,59,97,832	25,59,02,323
2016-17	32,88,79,112		32,88,79,112	32,89,30,132	Not applicable
2017-18	30,48,47,600		30,48,47,600	29,74,05,169	Not applicable

**RECONCILIATION OF REVENUE**

<u>S. NO.</u>	<u>Asst. Year</u>	<u>Revenue as per P&amp;L</u>	<u>Revenue as per form 26AS</u>	<u>Difference</u>
		<b>[A]</b>	<b>[B]</b>	<b>[A-B=C]</b>
1	2009-10	20,12,45,86,420	20,59,13,14,629	(46,67,28,209)
2	2010-11	25,00,16,07,303	25,48,29,23,492	(48,13,16,189)
3	2011-12	31,93,92,79,186	23,56,17,63,309	8,37,75,15,876
4	2012-13	39,16,47,99,610	32,21,19,47,425	6,95,28,52,185
5	2013-14	21,22,76,15,105	18,51,64,25,086	2,71,11,90,018
6	2014-15	13,45,80,37,030	11,05,12,25,653	2,40,68,11,378
7	2015-16	14,99,46,30,000	12,99,39,03,344	2,00,07,26,656
8	2016-17	20,14,03,65,307	16,04,35,82,744	4,09,67,82,563
9	2017-18	17,44,06,65,835	13,58,91,99,435	3,85,14,66,400

21.1. From the above tabulation, we find that the revenue declared by the assessee in its profit and loss account from Asst Years 2011-12 to 2017-18 is much more than the revenue reflected in Form 26AS. This goes to prove that there would always be mismatch in revenue with corresponding impact in TDS. Hence the revenue reconciliation statement and TDS reconciliation statement filed by the assessee assumes greater importance, which had been duly verified by the Id. AO in all the assessment years. We find that the assessee had duly explained as to why certain receipts though subjected to TDS, would not be liable to be offered to tax such as mobilization advance. This had been completely ignored by the Id. PCIT while exercising his revision jurisdiction u/s 263 of the Act. This goes to prove that the revision jurisdiction u/s 263 of the Act had been exercised by the Id. PCIT in a mechanical and cavalier manner for all the assessment years under consideration and hence they deserve to be quashed.

**22. In the result, all the appeals of the assessee are partly allowed.**

Order pronounced on 19/10/2022 by way of proper mentioning in the notice board.

**Sd/-**  
**(RAHUL CHAUDHARY)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 19/10/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)  
**ITAT, Mumbai**