

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**

**BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITANo.114/Ind/2021**  
**Assessment Year: 2015-16**

Malwa Real Estate Developing Co. P. Ltd., Indore	<b><u>बनाम/</u></b> Vs.	DCIT 3(1) Indore
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: AAECM 0971 B</b>		
Assessee by	None	
Revenue by	Shri P.K. Mitra, CIT-DR	
Date of Hearing	17.10.2022	
Date of Pronouncement	19.10.2022	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by revision-order dated 24.03.2021 passed by learned Pr. Commissioner of Income-Tax (Central) Bhopal [**Ld. PCIT**], u/s 263 of the Income Tax Act 1961 [**the Act**] which in turn arises out of assessment-order dated 30.12.2017 passed by learned DCIT-3(1), Indore [**Ld. AO**] u/s 143(3) of the act concerning Assessment-Year [**AY**] 2015-16, the assessee has filed this appeal.

2. None appeared on behalf of the assessee, however Ld. DR was ready to argue the case. Since the assessee has not appeared on several hearings fixed in past and the issue involved is also very limited, the appeal was

proceeded with after hearing the Ld. DR and considering the material held on record.

3. The registry has informed that the present appeal has been filed after a delay of 9 days. It is observed that the delay has occurred due to Covid-19 Pandemic. Reliance is placed on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted. Hence there is no delay in fact. We confronted the Ld. DR who agreed. In view of this, the appeal is proceeded with for hearing, there being no delay.

4. Briefly stated the facts are such that the assessee submitted return of the relevant AY 2015-16 declaring a total income of Rs. 24,22,010/- which was subjected to "limited scrutiny" through CASS. Statutory notices u/s 143(2) and 142(1) of the Act were issued to the assessee which were duly complied with by assessee. Finally, the Ld. AO completed assessment u/s 143(3) on the returned-income.

5. Subsequently, Ld. PCIT examined the records of assessment-proceeding and found that the Ld. AO has failed to make enquiries and verification with regard to the closing stock which should have been valued at Rs. 1,26,84,726/- as against the value of Rs. 67,44,615/- shown by assessee in books of account due to which the taxable income of assessee had been under-assessed by Rs. 59,40,111/-. With such observation, Ld. PCIT found that the assessment-order passed by Ld. AO is erroneous as well as prejudicial to the interest of revenue. Accordingly, Ld. PCIT issued notice u/s 263 of the Act.

6. During revision-proceeding, the assessee made submission before Ld. PCIT, but however the Ld. PCIT rejected submission and passed revision-order on 24.03.2021 whereby the assessment-order was set aside and the Ld. AO was directed to reframe assessment after examining the issue of closing-stock.

7. Being aggrieved by revision-order, the assessee has come in appeal before us.

8. Grounds of appeal taken by assessee in Form No. 36 are as many as five in number with multiple sub-grounds as well. However, we observe that Ground No. 1(iii) is a legal ground which reads as under:

*“1. The impugned order u/s 263 is bad in law and without jurisdiction, because*

*(i) XX*

*(ii) XX*

*(iii) As the case was selected for “Limited Scrutiny” under the “CASS” scheme vide Notice u/s 143(2) dated 05.04.2016, the Pr. CIT could not go beyond the reasons stated in AO’s letter dated 20.12.2017.”*

9. Thus, the essence of claim of assessee is that the case was selected under “Limited Scrutiny” to examine and verify specific points and, therefore, neither the AO nor the Ld. PCIT was having jurisdiction to travel beyond the specific points of “Limited Scrutiny”. Hence the revision-proceeding itself is bad and without jurisdiction.

10. With the able assistance of Ld. DR, we have perused Page No. 1 of assessment-order wherein the Ld. AO has clearly mentioned that the case was selected for “Limited Scrutiny” to verify following items:

- i. Large squared up loans during the year
- ii. Large other expenses claimed in the Profit & Loss A/
- iii. Mismatch in amount paid to related persons u/s 40A(2)(b) reported in Audit Report and ITR

11. During hearing, we confronted Ld. DR on the point whether the reason adopted by Ld. PCIT as basis for revision-proceeding i.e. the closing-stock, was a point of limited scrutiny or not? Ld. DR fairly accepted that it was not. Thus, in such a situation, the present case is directly covered by the decision of **Hon'ble Co-ordinate Bench of I.T.A.T., Indore in M/s Sahita**

**Construction Company vs. Pr. CIT, Bhopal, ITA No. 119/Ind/2021**  
**dated 07.02.2022** where it was held thus:

“8. Now first we need to examine that “whether the ld. AO was required to examine the issue for payment to contractors and tax deducted thereon” Perusal of records shows that assessee’s case was selected for limited scrutiny through CASS for verification of “contract receipts/fees mismatch, sales turnover mismatch and tax credit mismatch”. The issue of payment to contractors and tax deducted thereon was never a part of reasons for the limited scrutiny. Therefore, there was no occasion for the Ld. AO to examine this issue for payment to contractors. It is well settled that in case of limited scrutiny matter Ld. AO has to work within the parameters observed by the Central Board of Direct Taxes; instruction dated 29.12.2015 and various other circular issued in this behalf. Since the assessee’s case was selected for limited scrutiny on certain issues and Ld. AO has examined these issues and framed the assessments and the issue of examination of payment to contractors was not a part of the limited scrutiny reasons, in our considered view, Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act and also erred in holding that assessment order is erroneous and prejudicial to the interest of revenue. 9. We find that our view is supported by the decision of Coordinate Bench Delhi in the case of **Rakesh Kumar vs. CIT ITANo.6187/Del/2015 dated 20.12.2018** which has adjudicated the similar issue observing as follows:

“On the 2nd Issue the learned CIT has held that the AO has failed to verify the cash payment made for purchase of goods which are not in conformity with the provisions of section 40A (3) of the income tax act. It is apparent from the audit objection filed before us at page number 30 of the paper book that the case of the assessee was selected for the scrutiny to verify only the cash deposit in the bank account of the assessee. The issue before us is whether assessing officer has made any enquiry with respect to the above purchases. Though, learned assessing officer has obtained the explanation of the assessee with respect to the purchases made by the assessee in cash, whether the learned assessing officer is required to make any such enquiry or not is also an issue. This because of the reason that the learned assessing officer was only required to verify the cash deposit in the bank account of the assessee. In this respect instruction dated 29/12/2015 issued by the central board of direct taxes is very relevant. Apparently the selection of the scrutiny in case of the assessee was also only on the parameters of AIR information. According to para number 2 (iii) the scope of enquiry should be limited only on that aspect only. In such cases, the assessing officer are also directed to confine themselves by questionnaire

*only to the specific issues pertaining to AIR data and further the wider scrutiny in those cases can only be conducted as per the guidelines and procedures stated in instruction number 7/2014. Therefore according to us when the learned assessing officer was not required to enquire on those issues such as purchases in cash more than specified sum, the learned CIT was not correct in holding that the learned assessing officer has not made due inquiries on that ground as the verification of the purchases exceeding specified limit in cash was not an issue before the assessing officer. Naturally, he should not have made any enquiry on that aspect. Even though the learned assessing officer has raised the specific questions on that aspect and verified the requisite detail. Therefore, it cannot be said that the order of the learned assessing officer is erroneous and prejudicial to the interest of the revenue on this ground also.*

10. *In view of this, according to us the order of the learned CIT in assuming jurisdiction under section 263 of the income tax act holding that the order of the learned assessing officer passed under section 143 (3) of the act is erroneous and prejudicial to the interest of the revenue is not correct. Accordingly, the order passed by the learned CIT is unsustainable. 10. In the above referred decision Tribunal has held that when the assessment is taken up for limited scrutiny, Ld. Pr. CIT/CIT cannot hold the assessment order as erroneous and prejudicial to the interest of revenue in respect of issue which was not a reason for selection of the case for limited scrutiny. Similar view also taken in the following decision:*

- (i) The Deccan Paper Mills Co. Ltd. v. CIT [1013 & 1035/Pun/2014 - order dated 10.10.2017], ITAT Pune Benches.*
- (ii) M/s. Aggarwal Promoters v. Pr.CIT [1708/Chd/2017 - order dated 16.04.2019] ITA Chandigarh Benches.*
- (iii) Sanjeev Kr. Khemka v. Pr.CIT [1361/Kol/2016 - order dated 02.06.2017] ITAT Kolkata Benches.*
- (iv) M/s. R & H Property Developer Pvt.Ltd. v. Pr.CIT [1906/Mum/2019 - order dated 30.07.2019] ITAT Mumbai Benches.*
- (v) Mrs. Sonali Hemant Bhavsar v. Pr.CIT [742/Mum/2019 - order dated 17.05.2019] ITAT Mumbai Benches.*

11. *We, therefore, respectfully following the judicial precedents and the finding of Coordinate Bench Delhi in the case of Rakesh Kumar (supra) hold that Ld. Pr. CIT erred in assuming revisionary powers u/s 263 of the Act. The impugned order of Ld. Pr. CIT is quashed. Thus in our considered view assessment order dated 11.09.2017*

*u/s 143(3) of the Act is neither erroneous nor prejudicial to the interest of revenue and the same is restored. All the grounds raised by the assessee are allowed.”*

12. Thus, we find that the plea taken by assessee in ground No. 1(iii) is directly governed by aforesaid decision in assessee’s favour. We do not find any valid reason to deviate from the decision taken by Hon'ble Coordinate Bench. Therefore, respectfully following the decision, we are inclined to hold that the revision-order passed by Ld. PCIT is not sustainable for the very simple reason that the issue raised by Ld. PCIT was not a subject-matter of “Limited Scrutiny” and therefore Ld. AO was not required to look into the same. Hence, on this legal ground itself the revision-order is not sustainable.

13. Resultantly, the revision-order passed by Ld. PCIT is quashed and the original assessment-order passed by Ld. AO is restored.

14. Since, we have already quashed revision-order, there is no need to adjudicate other grounds raised in appeal memo. Accordingly, other grounds are not being adjudicated.

**15. In the result, appeal of Assessee is allowed.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 19/10/2022.*

Sd/-

(SUCHITRA R. KAMBLE)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 19.10.2022

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore

1.	Date of taking dictation	17.10.22
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	