

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH: RAIPUR**

श्री रवीश सूद , न्यायिक सदस्य, एवं  
श्री अरुण खोडपिया, लेखा सदस्य के समक्ष

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND  
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.101, 102, 103 & 104/RPR/2022

(निर्धारण वर्ष /Assessment Years: 2014-15, 2015-16, 2016-17 & 2017-18)

Hitesh Golchha  
Prop. Of Mouli Investment,  
Jeevan Ganga, Near Dani Bada,  
Budha Para, Raipur – 492 001  
Chhattisgarh

v. ACIT,  
Central Circle-1  
Raipur

[PAN: AGJPG 7698 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri B. Subramanyam, C.A.

प्रत्यर्थी की ओर से /Respondent by : Shri S. K. Meena, CIT-D.R.

सुनवाई की तारीख/Date of Hearing : 13.09.2023

घोषणा की तारीख /Date of Pronouncement : 02.11.2023

**आदेश / ORDER**

**PER ARUN KHODPIA, ACCOUNTANT MEMBER:**

These four appeals filed by the assessee are directed against the four different orders of the Pr. Commissioner of Income Tax-1, Raipur, all dated 31.03.2022, for assessment years 2014-15, 2015-16, 2016-17 & 2017-18, respectively. Since, these appeals pertains to the captioned assessee, having common and inter linked issues, arose from common order of Learned ACIT,

Central Circle-1, Raipur u/s 153A r.w.s 143(3) of the Income Tax Act, 1961 for A.Ys. 2011-12 to 2016-17 and 143(3) of the Income Tax Act for A.Y. 2017-18 dated 21.12.2018, for the sake of brevity we are taking up all these appeal for adjudication under this common order.

2. The assessee has raised the following grounds of appeal:

**A.Y. 2014-15 :**

1. *"The order passed by Ld. Pr. CIT is illegal, ab initio void & unsustainable as the same has been passed without giving any opportunity of hearing to assessee, contrary to mandatory requirement of law. Consequent revision order is illegal & is liable to be quashed/annulled.*
2. *The assessment order passed by AO is neither erroneous nor prejudicial to the interest of Revenue. Ld. Pr. CIT erred in invoking the provisions of section 263 and in setting aside the assessment order for fresh enquiry. Order passed without properly appreciating the facts & evidences.*
3. *On the facts and circumstances of the case, the Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the AO and as such the jurisdiction on this issue u/s 263 cannot be assumed by him.*
4. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only.*
5. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the Pr. CIT.*
6. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry, not in the case of inadequate enquiry.*
7. *On the facts and circumstances of the case, of the case, Pr. CIT has erred both on facts and in law in setting aside the issue of section 43CA to the file of the AO without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove that there is no violation of provisions of section 43CA by the appellant.*

8. *Without prejudice to above grounds, on the facts and circumstances of the case and law, Ld. Pr. CIT erred in branding assessment order, as erroneous/prejudicial on an issue which itself was not covered by ambit of search assessment. Order passed u/s 263 is illegal and is liable to be quashed.*
9. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”*

### **AY 2015-16**

1. *“The order passed by Ld. Pr. CIT is illegal, ab initio void & unsustainable as the same has been passed without giving any opportunity of hearing to assessee, contrary to mandatory requirement of law. Consequent revision order is illegal & is liable to be quashed/annulled.*
2. *The assessment order passed by AO is neither erroneous nor prejudicial to the interest of Revenue. Ld. Pr. CIT erred in invoking the provisions of section 263 and in setting aside the assessment order for fresh enquiry. Order passed without properly appreciating the facts & evidences.*
3. *On the facts and circumstances of the case, the Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the AO and as such the jurisdiction on this issue u/s 263 cannot be assumed by him.*
4. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only.*
5. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the Pr. CIT.*
6. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry, not in the case of inadequate enquiry.*
7. *On the facts and circumstances of the case, of the case, Pr. CIT has erred both on facts and in law in setting aside the issue of section 43CA to the file of the AO without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove that there is no violation of provisions of section 43CA by the appellant.*
8. *Without prejudice to above grounds, on the facts and circumstances of the case and law, Ld. Pr. CIT erred in branding assessment order, as erroneous/prejudicial on an issue which itself was not covered by ambit*

*of search assessment. Order passed u/s 263 is illegal and is liable to be quashed.*

9. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”*

### **AY 2016-17**

1. *“The order passed by Ld. Pr. CIT is illegal, ab initio void & unsustainable as the same has been passed without giving any opportunity of hearing to assessee, contrary to mandatory requirement of law. Consequent revision order is illegal & is liable to be quashed/annulled.*
2. *The assessment order passed by AO is neither erroneous nor prejudicial to the interest of Revenue. Ld. Pr. CIT erred in invoking the provisions of section 263 and in setting aside the assessment order for fresh enquiry. Order passed without properly appreciating the facts & evidences.*
3. *On the facts and circumstances of the case, the Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the AO and as such the jurisdiction on this issue u/s 263 cannot be assumed by him.*
4. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only.*
5. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the Pr. CIT.*
6. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry, not in the case of inadequate enquiry.*
7. *On the facts and circumstances of the case, of the case, Pr. CIT has erred both on facts and in law in setting aside the issue of section 43CA to the file of the AO without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove that there is no violation of provisions of section 43CA by the appellant.*
8. *Without prejudice to above grounds, on the facts and circumstances of the case and law, Ld. Pr. CIT erred in branding assessment order, as erroneous/prejudicial on an issue which itself was not covered by ambit*

*of search assessment. Order passed u/s 263 is illegal and is liable to be quashed.*

9. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”*

### **AY 2017-18**

1. *“The order passed by Ld. Pr. CIT is illegal, ab initio void & unsustainable as the same has been passed without giving any opportunity of hearing to assessee, contrary to mandatory requirement of law. Consequent revision order is illegal & is liable to be quashed/annulled.*
2. *The assessment order passed by AO is neither erroneous nor prejudicial to the interest of Revenue. Ld. Pr. CIT erred in invoking the provisions of section 263 and in setting aside the assessment order for fresh enquiry. Order passed without properly appreciating the facts & evidences.*
3. *On the facts and circumstances of the case, the Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the AO and as such the jurisdiction on this issue u/s 263 cannot be assumed by him.*
4. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only.*
5. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the Pr. CIT.*
6. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry, not in the case of inadequate enquiry.*
7. *On the facts and circumstances of the case, of the case, Pr. CIT has erred both on facts and in law in setting aside the issue of section 43CA to the file of the AO without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove that there is no violation of provisions of section 43CA by the appellant.*
8. *Without prejudice to above grounds, on the facts and circumstances of the case and law, Ld. Pr. CIT erred in branding assessment order, as erroneous/prejudicial on an issue which itself was not covered by ambit*

*of search assessment. Order passed u/s 263 is illegal and is liable to be quashed.*

9. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”*

3. The brief facts of the case, culled out from the material on records are, that the assessee is a proprietor of M/s Mouli Investment, engaged in the business of real estate and derives income from Salary, Business and Profession and other source also. A search and seizure action under Section 132 of the Act was conducted upon the assessee on 25.07.2016. Consequently, notices under Section 153A of the Act were issued to the assessee for A.Ys. 2011-12 to 2016-17 on 07.12.2016. In response to the above notices, the assessee filed the returns and details of the same were submitted. Thereafter, assessment was framed under Section 153A r.w.s 143(3) of the Act for A.Ys. 2011-12 to 2016-17 and 143(3) of the Act for A.Y. 2017-18 on 21.12.2018, making therein following year wise additions as extracted from the assessment order :

A.Y.	Section	Return Income / Assessed Income	Addition	Para Discussed	Assessed Income	Round Off
2011-12	153A/143(3)	1,30,810	Nil	NA	1,30,810	1,30,810
2012-13	153A/143(3)	4,66,020	Nil	NA	4,66,020	4,66,020
2013-14	153A/143(3)	3,04,150	Nil	NA	3,04,150	3,04,150
2014-15	153A/143(3)	7,24,970	Nil	NA	7,24,970	7,24,970
2015-16	153A/143(3)	5,69,210	Nil	NA	5,69,210	5,69,210
2016-17	153A/143(3)	6,42,220	Nil	NA	6,42,220	6,42,220
2017-18	143(3)	12,85,700/-	Nil	NA	12,85,700	12,85,700

4. The order of the Assessing Officer dated 21.12.2018 was subsequently selected by Learned PCIT for revisionary proceedings by exercising powers

under Section 263 of the Act and an order was passed by setting aside the assessment order with the directions to verify the sale deed for the year under consideration and to pass the assessment order afresh by giving adequate opportunity to the assessee. Order of Learned PCIT dated 31.03.2021 was challenged by the assessee before the Co-ordinate Bench of ITAT, Raipur in ITA No.41 to 44/RPR/2021. ITAT considering the facts of the case have restored the matter back to the files of Learned PCIT, since the response filed by the assessee was not recorded by the PCIT in the order under Section 263 of the Act, thus, without going into the merits and demerits of the issue identified by Learned PCIT for revision which was passed in hasty manner, without giving fair opportunity to the assessee, the issues raised in Section 263 order dated 31.03.2021 were restored back by the ITAT to the files of Learned PCIT. Learned PCIT has initiated the matter again, 'show caused' the assessee by issuing a notice dated 03.02.2022 to submit replies by 14.02.2022. In response to the notice issued, the assessee submitted replies vide letter dated 09.02.2022 and 25.02.2022, stating therein the reasons in the satisfaction note recorded by the Learned PCIT and assessee's submissions against such reasons. One more response was also made by assessee on 07.03.2022. All such submissions of assessee were considered by Learned PCIT but was not convinced with such submissions and explanations, therefore, has observed that the assessment is erroneous in so far as it is prejudicial to the interests of Revenue and the same is a suitable case to reopen under the provisions of Section 263 of the Income Tax Act. In conclusion, the assessment order u/s

153A r.w.s. 143(3) was set aside to the Ld. AO to frame a fresh assessment order in accordance with the provisions of the Income Tax Act, 1961.

5. Aggrieved by the order of Learned PCIT under Section 263 of the Act, assessee has filed these appeals which are taken up for adjudication.

6. Since the issues involved in the present appeal are common and interconnected therefore, we are disposing of the grounds of appeal raised in all the four appeals by this common order.

7. **First**, we are taking up the appeal of the assessee for **A.Y. 2014-15** as a lead case, our decision in the lead case would be *mutatis mutandis* applicable in the other cases also.

8. At the outset, Learned AR of the assessee has submitted a written submission pertaining to all the assessment years, the same is extracted as under:

*Hon'ble Sirs,*

1. *The appellant is in appeal before your honour against order of the Ld. PCIT, Raipur-1 dated 31.03.2022 passed u/s 263 of the Income Tax Act, 1961 for the Assessment Years 2014-15 to 2017-18.*
2. *That, a combined order u/s 153A r w s 143(3) of the Income Tax Act for AY 2011-12 to 2016-17 and u/s 143(3) of the Act for AY 2017-18 was passed by the Ld. AO and similar issues are there in all the referred appeals, a request is made to combined all the appeals together and accordingly a combined written submission with respect to common grounds of appeals is presented herewith before your honours.*

**3. The grounds of the appeal are:**

- i. *The order passed by Ld. Pr. CIT is illegal, ab initio void & unsustainable as the same has been passed without giving any opportunity of hearing to assessee, contrary to mandatory requirement of law. Consequent revision order is illegal & is liable to be quashed/annulled.*
- ii. *The assessment order passed by AO is neither erroneous nor prejudicial to the interest of Revenue. Ld. Pr. CIT erred in invoking the provisions of section 263 and in setting aside the assessment order for fresh enquiry. Order passed without properly appreciating the facts & evidences.*
- iii. *On the facts and circumstances of the case, the Ld. Pr. CIT has erred both on facts and in law in ignoring the fact that the issue raised by him in notice u/s 263 was before the AO and as such the jurisdiction on this issue u/s 263 cannot be assumed by him.*
- iv. *On the facts and circumstances of the case, the order passed by the learned Pr. CIT assuming jurisdiction under section 263 is bad in law having been initiated at the instance of audit objection only.*
- v. *On the facts and circumstances of the case, the learned Pr. CIT has erred both on facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting opinion of the A.O. by that of the Pr. CIT.*
- vi. *On the facts and circumstances of the case, the order passed by Pr. CIT under section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in the case of no/lack of enquiry, not in the case of inadequate enquiry.*
- vii. *On the facts and circumstances of the case, Pr. CIT has erred both on facts and in law in setting aside the issue of section 43CA to the file of the AO without properly appreciating the explanation of assessee given during the assessment proceedings brought on record to prove that there is no violation of provisions of section 43CA by the appellant.*
- viii. *Without prejudice to above grounds, on the facts and circumstances of the case and law, Ld. Pr. CIT erred in branding assessment order, as erroneous/prejudicial on an issue which itself was not covered by ambit of search assessment. Order passed u/s 263 is illegal and is liable to be quashed.*
- ix. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.*

#### **4. Statement of Facts:**

The appellant is an individual and has filed e-return u/s 153A of the Income Tax Act, 1961 for the said assessment years except for AY 2017-18 for which e-return was filed u/s section 139(1) of the Act. A combined order was passed by the Ld. AO u/s 153A r.w.s. 143(3) of the Act for AYS 2011-12 to 2016-17 and u/s 143(3) of the IT Act for AY 2017- 18. Search u/s 132 of the Act was conducted upon the assessee on 25.07.2016. The Appellant derives his Income from a proprietorship firm namely M/s Mouli Investment, which is engaged in real estate business. Earlier, order dated 31.03.2021 passed by the Ld. PCIT, Raipur u/s 263 of the Act for AY 2014-15 to 2017-18, was restored back by the Hon'ble, ITAT Raipur bench to the Ld. PCIT, Raipur by the order dated 13.08.2021 (**refer page no.16 to 20 of paper book**) with a direction for making a fresh assessment after providing and giving fair opportunities of being heard to the appellant.

In this case an information were provided to the Investigating Wing, Raipur by the Police authority on 20.07.2016 that they have seized cash of Rs. 1,50,51,981/- from Shri Sohan Lal Nishad, driver of vehicle Innova having registration number MP09BD4729 at Saraipalli, Dist- Mahasamund, Chhattisgarh. The police officer reported that on enquiry the above named person has stated that the cash belongs to Shri Mukesh Golchha of Raipur.

The appellant vide his submission dated 19.12.2018 before Ld. AO (**refer page no. 120 of paper book**) explained that during search operation u/s 132 of the IT Act, the position of cash found and seized was Rs. 1,50,51,980/- and vide statement u/s 131 of the IT Act, recorded on 25.07.2016 where the appellant has admitted that cash seized by the police belongs to his personal cash and declared as his undisclosed income for FY 2016-17. The appellant included the above referred seized cash in declaration made under Pradhan Mantri Gareeb Kalyan Yojna, 2016 (**PMGKY, 2016**). The appellant further explained that he has offered cash of Rs. 3,00,00,000/- for taxation under PMGKY, 2016 which includes cash of Rs. 1,50,51,980/- found during search u/s 132 conducted in the case of appellant on 25.07.2016. Except cash of Rs. 1,50,51,980/- which was seized no other documents and material has been found during the search operation.

#### **SUBMISSION:**

#### **5. As regards Ground No.1:**

- 1.1 The Ld. PCIT has issued a notice u/s 263 of the Act on 03.02.2022 (**refer page no. 2 to 5 of paper book**) to submit details, documents and necessary evidences through e-mail on or before 14.02.2022. It was also mentioned in the notice that if you wish to appear personally or through your authorized representative, personal hearing may kindly be availed on 14.02.2022 at 11.30 A.M. in the office of the PCIT.

- 1.2. *In response to the said notice written submission along with details, documents and necessary evidences were filed online on 09.02.2022 by the appellant.  
**(Please refer page no. 6 to 7 of paper book).***
- 1.3. *As there was no personal hearing was taken on 14.02.2022, online prayer was made before Ld. PCIT to give opportunity of personal hearing to explain the facts of the case on any convenient day and time **(please refer page no. 8 of paper book)**. However, no such personal hearing was provided by the Ld. PCIT. **Copy of the note sheet of the Ld. PCIT is enclosed. (Please refer page no. 13 of paper book)***
- 1.4. *As there was no personal hearing was provided by the Ld. PCIT within reasonable time, further written submission dated 25.02.2022 and 07.03.2022 with necessary evidences were as filed online. **(Please refer page no. 9 to 12 of paper book)***
- 1.5. *The Ld. PCIT has not accepted the prayer of Appellant to provide for an opportunity of personal hearing to explain the facts of the case and passed an order u/s 263 of the Income Tax Act, 1961 dated on 31.03.2022. The order is passed by the Ld. PCIT with the violation of principles of natural justice" may please be quashed.*
- 1.6. *The appellant relies on the following judicial pronouncements in support of his case which are made available for your kind consideration:*
- A. **CIT v/s Amitabh Bachchan [(2016) 384 ITR 200 (SC)1: (refer page no. 135 to 145 of paper book)**
- Wherein it was held by the Hon'ble Apex Court that "what is contemplated by Section 263 is an opportunity of hearing to be afforded to the Assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice [relevant para-2 at page no. 140 of paper book].*
- B. **Smt. Shardaben B. Patel v/s Pr.CIT [(2020) 180 ITD 328 (Ahd.Trib.)]; (refer page no. 146 to 159 of paper book)**
- Wherein it was held by the coordinate bench at Ahmadabad that "granting of effective opportunity is a sin qua non in Section 263 of the Act for unsettling a statutory order. It is the duty of the Revisional Commissioner to provide the Assessee an effective opportunity to enable it to disengage the truth from wrongs instead of taking an easy course of rejecting the reply in its entirety, solely on the ground that same is not acceptable" [relevant para-2 at page no.156 of paper book].*
- C. **Tata Chemicals Limited vs. DCIT [ITA No.3127/Mum/20101:**
- Wherein it was held by the coordinate bench at Mumbai that "in any case it is one of the fundamental principles of Natural Justice that no person*

can be condemned unheard i.e., *audi alteram partem* and the impugned revision order was thus passed in violation of the principles of natural justice as the Assessee had no opportunity on the ground which is ultimately decided against him”.

D. **Assotech Realty Private Limited v/s National E-Assessment Centre Delhi & ANR [W.P. (C) 6183/2021 & CM APPL, 19582/20211:**

Wherein it was held by the Hon'ble High Court of Delhi that "Where a discretion is conferred upon a quasi-judicial authority whose decision has civil consequences, the word "may" which denotes discretion should be construed to mean a command. Consequently, the requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory. It was further held that the classification made by the Respondent between the matters involving disputed questions of fact and law by way of the Circular dated 23rd November, 2020 is not legally sustainable."

E. **Bharat Aluminium Company Ltd v/s Union of India & ORS. Dt. on 14th January 2022 [W.P.(C) 14528/2021 & CM Appeal 45702/20211:**

Wherein it was held by the Hon'ble High Court of Delhi that "Consequently, this Court is of the opinion that an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. The right to personal hearing cannot depend upon the facts of each case."

F. **DEE VEE Projects Ltd v/s Pr.CIT [ITA No. 27/RPR/20211: [(2021) 63CCH0437(Ryp.Trib)] (refer page no. 160 to 163 of paper book)**

Wherein it was held by the Coordinated Bench, that On the aforesaid analyzations and considerations and following the mandates of the Hon'ble Apex Court, in the case of Amitabh Bachchan (*supra*) wherein it was held that failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice and in the case of "Maneka Gandhi vs. Union of India" wherein it was held that if the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid, the question of remanding the case to the file of Ld. PCIT as prayed for by the Ld. DR, at this juncture at all does not arise as held by co-ordinate Benches as well in the aforesaid cases. In overall effect, the impugned order has violated the principles of natural justice which is essence of fair trial, thus the same is quashed [relevant para-5 & 6 at page no. 162 of paper book].

6. **As regards Ground No.2,3, 5 and 6:**

- 2.1 The Ld. PCIT has referred in his order all the submissions made before him by the appellant and also gone through the submissions made before Ld. AO. However, the Ld. PCIT has after considering the overall

*legal provisions as held in various case laws as enumerated in the order and concluded that No enquiry on the issues or non-application of mind for reaching any conclusion would lead to held the order erroneous so far as prejudicial to the interest of revenue. On the basis of assessment records of Ld. AO and submissions made before Ld. PCIT, conclusion drawn of No enquiry and non-application of mind by the Ld. AO is not factually correct.*

- 2.2 *The issue with respect to applicability of section 43CA and 50C was raised by the Ld. AO vide notice date 20.08.2018. (Refer page No. 109 of paper book). Reply to the said notice was submitted before Ld. AO on 04.10.2018 & 26.11.2018 along with relevant documentary evidences. (Refer page no. 116 of paper book).*

*On further discussions with respect to applicability of section 43CA during the course of hearing of assessment proceedings, the appellant has submitted documents of Sale agreement of property with M/s Adhiraj Developers, approved layout of the plots for residential purposes by the authority and copy of ledger account of M/s Adhiraj Developers (Advance Account under current liabilities head) through submission letter dated 05.12.2018 and 14.12.2018. (Refer page No. 118 & 119 of paper book). Copy of note sheet of Ld. AO is also enclosed herewith. (refer page no 121 of paper book).*

- 2.3 *It is also categorically mentioned by the Ld. AO in the assessment order (at page no. 2 of the order) that in response to the notices, the counsel and AR of the assessee furnished written submissions with supporting documents which were perused and placed on record. Various aspects of the case were discussed with AR*

- 2.4 *The Ld. PCIT in the order issued u/s 263 of the Income Tax Act, 1961 has reiterated the same issues noted and verified by the Ld. AO during the course of assessment. The Ld. PCIT has not brought forward any further incriminating evidence on record as to contend that the order passed by the Ld. AO is not as per the provisions of the Income Tax Act, 1961. The Ld. PCIT has ignored the replies and submissions made by appellant and re-stated all the same issues which were already raised and verified by the Ld. AO.*

- 2.5 *The Ld. PCIT has ignored the facts of the case and the submission made by the appellant and has not established any reasons as to why the same was rejected by him. Mere rejection of the reply of the assessee without giving proper reason and not providing any opportunity of personal hearing to the assessee indicates that the Ld. PCIT himself is unsure as to how the appellant is incorrect. The Ld. PCIT has invoked the provisions of sections 263 of the Income Tax Act, 1961 so as to reconsider the evidences already available on record which is not tenable as per law as there was no further evidence brought on record by the Ld. PCIT to back his contention regarding that the order of the Ld. AO is prejudicial to the Revenue. The Ld. PCIT has drawn adverse*

*inferences but has not brought any additional material on record to substantiate his claim regarding such adverse inferences.*

- 2.6 *The Ld. PCIT has erred in passing an Order and invoking the provisions of section 263 of the Income tax act, 1961. The relevant extracts of the provisions of section 263 of the Income tax act, 1961 are presented before you for your ready reference which reads as under:*

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

*Explanation 2.-For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner- (a) The order is passed without making inquiries or verification which should have been made;*

*(b) The order is passed allowing any relief without inquiring into the claim;*

*(c) The order has not been made in accordance with any order, direction or Instruction issued by the Board under section 119; or (d) The order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."*

- 2.7. *As it can be seen from clause of the Explanation 2 to section 263 of the Income Tax Act, 1961 that an order passed by an Ld. AO can be considered to be erroneous if the Ld. AO passed an order without making inquiries or verification which should have been made. However in the case of the appellant the Ld. AO has already made all the requisite inquiries and necessary verification. There is no law for adequacy of inquiry to be made by the Ld. AO. The order can be erroneous if the assessing officer fails to apply the law rightly on the facts of the case. In the case of your appellant the Ld. AO has properly applied the laws of the Income Tax Act, 1961 and the contention of the Ld. PCIT is arbitrary. What may seem right to the Ld. AO may not seem right to the Ld. PCIT. However invoking the provisions of Section 263 of the Income Tax Act,*

1961 just to substitute the opinion of the Ld. AO with that of the Ld. PCIT is not tenable as per law.

- 2.8. *The Ld. PCIT has erred in setting aside the order of the Ld. AO for fresh enquiry as the Ld. PCIT has not brought on record any material in contention against the appellant and has assumed that the order passed by the Ld. AO is prejudicial to the interest of the revenue. In the order issued by the Ld. PCIT u/s 263 of the Income tax act, 1961 the Ld. PCIT has very generally stated that the assessment made by the Ld. AO is prejudicial to the revenue without bringing forth any material evidence on record as to why such order is prejudicial to the revenue. The Ld. PCIT has concluded that the due to insertion of explanation 2 in section 263 of the Income tax act, 1961 the Ld. PCIT is no longer required to carry out any enquiries in case he is of the opinion that the order issued by the Ld. AO is erroneous as well as prejudicial to the revenue, because of no enquiries or verifications or inadequate enquiries are carried out by AO. (refer at point 8 of page 12 Ld. PCIT order)*
- 2.9. *Furthermore, the Ld. PCIT has ignored the conclusions of the case laws of the various Hon'ble Courts (citation given below) which require the PCIT to carry out enquires, with regards to this insertion made by Finance Act, 2015. This is against the natural justice and beyond the facts of the case of the appellant. Conclusion that the order of the Ld. AO is prejudicial to the interest of the Revenue must be backed by some minimal inquiry. If the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. If he does not do then the Ld. PCIT is not justified in setting aside the order of the Ld. AO, From the above analysis it is abundantly clear that Explanation - 2 of Section 263 of the Income Tax Act, 1961 smells of some degree of discretion given to higher authorities to exercise their revisionary powers, but the same are not to be used arbitrarily and in an irrational manner.*
- 2.10. *The Ld. PCIT has stated that he is no longer required to cause any enquiries in case he finds the order of the Ld. AO prejudicial to the revenue. If this is the case that is taken, then that would lead to needless proceedings of each and every assessee and will not lead to finality of the outcomes in legal proceedings. A literal reading of the explanation 2 of section 263 would mean that the Ld. PCIT has powers to revise any proceedings as he may deem fit without any material on record. However the intention of the Law in this case lies beyond what the literal meaning is. The intention in revisionary powers is to prevent actual loss to revenue and not arbitrary losses. Invoking provisions of Section 263 of the Income Tax Act, 1961 without a proper reasoning and setting aside the order of the Ld. AO is not tenable as per Law.*
- 2.11. *The revisionary powers under section 263 of the Act are given to the Commissioner of Income Tax when he finds the order of the Assessing Officer to be erroneous as well as prejudicial to the interest of the Revenue. In case the Commissioner of Income Tax finds the error in the order of the Assessing Officer, still prefers to direct him to make*

assessment de-novo, these two things contradict each other. If the Commissioner of Income Tax directs the Assessing Officer to make assessment after further enquiry, this act of the Commissioner of Income Tax would show that he is not sure whether the original order was erroneous or not, as on conclusion of further enquiry, the Assessing Officer may not make the proposed addition or disallowance.

- 2.12. Therefore, if the Commissioner of Income Tax holds that there is any error in the order of the Assessing Officer, he should give a categorical finding in this regard and for this purpose, he himself has to make enquiries and investigations, whatever he deems fit in the circumstances.
- 2.13. The assessee had filed various replies to the Ld. PCIT in response to notice under s. 263 of the Act stating that all the issues raised by the Ld. PCIT have been examined by the AO during the course of assessment. The Ld. PCIT has ignored the replies of the assessee. He merely states that the reply has been filed by the assessee but the Ld. PCIT has not discussed the contentions raised by the assessee and why he does not agree with the contentions of the assessee in the Order issued u/s 263 of the Income Tax Act, 1961. The Ld. Principal CIT has merely remitted the matter back to the AO without making any enquiry himself. For provoking the provisions of Section 263 of the Income Tax Act, 1961 The Ld. PCIT has to make some minimum independent enquiry to reach to the conclusion that the order of the AO is erroneous and prejudicial to the interest of revenue. Merely stating that the order of the AO is prejudicial to the revenue and setting the same aside to the AO for assessment is not tenable as per law.
- 2.14. **The appellant relies on the following judicial pronouncements in support of his case:**

**A. CIT v/s Sunbeam Auto [332 ITR 167 (Del.)]:**

Wherein it was held by the Hon'ble Delhi High court that "It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. There must be some prima facie material on record to show that tax which was lawfully eligible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of lack of inquiry"

**B. CIT. v. Gabriel India Ltd [(1993) 203 ITR 108 (Bombay)]:**

*Wherein it was held by Hon'ble Bombay High Court, "If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal and without jurisdiction. The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. [See Parashuram Pottery Works Co. Ltd. v. ITO [1977] 106 ITR 1 (SC)]"*

**C. PCIT Vs. Delhi Airport Metro Express Private Limited [ITA No.705/2017][(2017) 398 ITR 8(Del.H)(refer page no. 164 to 167 of paper book):**

*Wherein it was held by the Hon'ble Delhi High Court that "for the purpose of exercising jurisdiction u./s. 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interest of the revenue has to be preceded by some minimal inquiry. If the PCIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the PCIT to conduct such inquiry. If he does not conduct such basic exercise then the CIT is not justified in setting aside the order u/s. 263 of the IT Act [relevant para-3 & 4 at page no.166 of paper book].*

**D. M/s Amira Pure foods v/s The PCIT [ITA No.: 3205/DEL/2017]: (refer page no. 168 to 204 of paper book) The relevant extracts of the said case are presented below for your ready reference.**

*"30. The assessee had filed various replies to the learned PCIT in response to notice under s. 263 of the Act stating that all the issues raised by the learned Principal CIT have been examined by the AO during the course of assessment. The learned Principal CIT has ignored the replies of the assessee. He merely states that the reply has been filed by the assessee but he nowhere discusses the contentions raised by the assessee and why he does not agree with the contentions of the assessee. The learned Principal CIT has merely remitted the matter back to the AO without making any enquiry himself. The learned Principal CIT has mentioned that the fresh loans have not been examined by the AO. The learned Principal CIT has not considered the contentions of the assessee that there is no fresh loan. Similarly, the other replies of the assessee filed during the course of assessment and in response to notice under s. 263 of the Act have been totally ignored. No enquiry has been made by the learned Principal CIT. It was incumbent for the learned Principal CIT to make some minimum independent enquiry to reach to the conclusion that the order of the AO is erroneous and prejudicial to the interest of revenue. The reliance is rightly placed on the decisions of Delhi High Court in learned Principal*

*CIT vs. Delhi Airport Metro Express (P) Ltd. (supra) and ITO vs. DG Housing Projects Ltd. (supra). The Hon'ble Delhi High Court in Delhi Airport Metro Express (P) Ltd. (supra) has made the following observation: "10. For the purposes of exercising jurisdiction under s. 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interests of Revenue had to be preceded by some minimal inquiry. In fact, if the learned Principal CIT is of the view that the AO did not undertake any inquiry, it becomes incumbent on the learned Principal CIT to conduct such inquiry" [relevant para-2 at page no.200 & 201 of paper book].*

**E. Sh. Narayan Tatu Rane Vs. ITO, [I.T.A, No. 2690/2691/Mum/2016.dt 6.05.2016]:**

*20. Further, clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying out enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquiries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."*

**F. M/S Arun Kumar Garg HUF vs. PCIT, [ITA No. 3391/Del/2018, dt. 08.01.20191 (refer page no. 205 to 210 of paper book)**

*"5.6 Although, there has been an amendment in the provisions of section 263 of the Act by which Explanation 2 has been inserted w.e.f. 1.6.2015 but the same does not give unfettered powers to the Commissioner to assume jurisdiction under section 263 to revise every order of the Assessing Officer to re-examine the issues already examined during the course of assessment proceedings. The Mumbai ITAT Bench has dealt with Explanation 2 as inserted by Finance Act, 2015 in the case of Narayan Tatu Rane vs. ITO reported in (2016) 70 taxman.com 227 to hold that the said Explanation cannot be said to have overridden the liability as interpreted by Hon'ble Delhi High Court, according to which the Commissioner has to conduct the inquiry and verification to establish and show that the assessment order was unsustainable in law. The ITAT*

*Mumbai Bench has further held that the intention of the legislature could not have been to enable the CIT to find fault with each and every assessment order without conducting any inquiry or verification in order to establish that the assessment order is not sustainable in law, since such an interpretation will lead to unending litigation and there would not be any point of finality in the legal proceedings. The ITAT Mumbai Bench of the Tribunal went on to hold that the opinion of the Commissioner referred to in section 263 of the Act has to be understood as legal and judicious opinion and not arbitrary opinion" [relevant para-2 at page no. 208 of paper book].*

**G. Raigul Credit Invest P. Ltd. Vs. PCIT, [I.T.A. No. 2519/DEL/2019, dt. 19.09.2019] (refer page no. 211 to 222 of paper book)**

*The relevant extracts of the case law are presented as under for your ready reference:*

*"We further note that Explanation to section 263 of the Act does not change the scope of section 263 of the Act, the Mumbai Tribunal in the case of Narayan Tatu Rane vs. ITO reported in 70 taxmann.com 227 has also held that in a case where learned Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inference, the learned PCIT is not justified in holding that the impugned assessment order was erroneous. The relevant portion of the decision is as under:-*

*"21. In the instant case, as noticed earlier, the AO has accepted the explanations of the assessee, since there is no fool proof evidence to link the assessee with the document and MIs RNS Infrastructure Ltd, from whose hands it was seized, also did not implicate the assessee.*

*Thus, the assessee has been expected to prove a negative fact, which is humanely not possible. No other corroborative material was available with the department to show that the explanations given by the assessee were wrong or incorrect. Under these set of facts, the AO appears to have been satisfied with the explanations given by the assessee and did not make any addition. We have noticed that the Hon'ble Supreme Court has held in the case of Central Bureau of Investigation (supra) that the entries in the books of account by themselves are not sufficient to charge any person with liability. Hence, in our view, it cannot be held that the assessing officer did not carry out enquiry or verification which should have been done, since the facts and circumstances of the case and the incriminating document was not considered to be strong by the AO to implicate the assessee. Thus, we are of the view that the assessing officer has taken a plausible view in the facts and circumstances of the case. Even though the Ld Pr. CIT has drawn certain adverse inferences from the document, yet it can be seen that they are debatable in nature. Further, as noticed earlier, the Ld Pr. CIT has not brought any material on record by making enquiries or verifications to substantiate his inferences. He has also not shown that the view taken by him is not sustainable in law. Thus, we are of the view that the Ld Pro CIT has*

*passed the impugned revision orders only to carry out fishing and roving enquiries with the objective of substituting his views with that of the AO. Hence we are of the view that the Ld Pr. CIT was not justified was not correct in law in holding that the impugned assessment orders were erroneous.*

*5.4.1 In view of above, we note that notice u/s. 263 of the Act issued by the Pr. CIT is vague and only for making deeper enquiry and re-considering the evidences already on record duly considered during assessment proceedings based on purported proposal that fresh facts have been emerged subsequent to the order of assessment which is factually incorrect and untenable and the conditions or the factors enabling the Ld. Pr. CIT to invoke his jurisdiction u/s 263 have not been satisfied" [relevant para-1 & 2 at page no.220 & 221 of paper book].*

**H. PI Industries Limited v/s PCIT [ITA No. 04/JODH/20211: [(2021)63CCH0156(Jodh.Trib)] (refer page no. 223 to 233 of paper book)**

*Wherein it was held that "the assessee has furnished all information as asked for by AO during the course of assessment proceedings and which have been duly considered by him as evident from the assessment order. The AO had issued detailed questionnaire raising various issues which were also replied by the assessee from time to time. The assessee had also appeared personally and filed the detailed replies to all the queries raised and books of accounts were also produced. We also find that even on the issues on which the addition had been made by AO in the assessment order are subject matter of 263 proceedings, which by no means can be regarded as erroneous or prejudicial to the interest of revenue. The PCIT has failed to specify as to how and on what ground the assessment order is erroneous and/or which part of the CBOT instructions were not adhered to by the AO. Merely not recording the satisfaction, the AO on the records does not make the assessment order erroneous and prejudicial to the interest of revenue, as is decided in the various judicial pronouncements by various courts" [relevant para-3 at page no.230 of paper book].*

**I. SURESH CHAND SURANA vs. ACIT [ITA No.: 25/RPR/20211: [(2021)63CCH0568(Ryp. Trib.)](refer page no. 234 to 239 of paper book)**

*Wherein it was held by the coordinated Bench that "It is trite that where the AO has taken a view which is possible and plausible, the action of the AO cannot be regarded as erroneous per se. Consequently, the twin conditions of order being (i) erroneous as well as (1) prejudicial to the interest of the Revenue, does not co-exist. Hence, the jurisdiction usurped by the PCIT is not sustainable in law" [relevant para-1 at page no.239 of paper book].*

*As it can be seen from the above submissions and the judicial pronouncements relied on by the appellant that the Ld. PCIT is incorrect*

*in assuming jurisdiction without bringing any additional material on record and therefore the order is illegal and unjustified.*

**As regards Ground No. 4:**

- 4.1 *In the case of appellant, on Audit examination of the case file by ITRAP-II on basis of assessment records discrepancies with respect to underassessment of Income as prescribed u/s 43CA of the IT Act was raised. (refer page no. 131 of paper book)*
- 4.2 *The Ld. AO has not accepted the audit observation (refer page no.129 of paper book) stating that, the assessee has executed an agreement with M/s Adhiraj Developers for sale of plots in the previous year 2012-13 on 17th August, 2012 and part of consideration has been received by account payee cheque as mentioned in the agreement. After that sale deeds executed as per terms and conditions mentioned in the agreement in various years as directed by M/s Adhiraj Developers favouring various persons. Thus, the assessee has not violated provisions of section 43CA of the Income Tax Act. Copy of Agreement with M/s Adhiraj Developers was filed on 7 December, 2018 during the course of assessment proceeding vide reply letter dated 05.12.2018 is enclosed. (Refer page no.118 of paper book)*
- 4.3 *The aforesaid audit objection of the Revenue Audit Department goes to prove that the Revenue Audit Department apparently had not agreed with the view taken by the Id. AO. Hence there exists two views on the same subject within the Income Tax Department itself. There is absolutely no incorrect assumption of fact or incorrect application of law by the Id. AO. Hence it could be safely concluded that the Id. AO had taken one of the possible view. Once a possible view has been taken by the Id. AO, his order cannot be termed as erroneous warranting revision proceedings u/s 263 of the Act. In any case, we find that there is no dispute that the Revenue Audit Party had indeed raised an objection on the very same subject under assessment of income u/s 43CA of the Act and that the Id. AO had not accepted the same. This is evident from the detailed reply given by the Id. AO to the Revenue Audit Party vide his letter dated 22.11.2019 (refer page no.129 of paper Book). We find that the Id. PCIT had invoked revision jurisdiction u/s 263 of the Act on the very same point of under assessment u/s 43CA of the Act. Hence, it could be safely concluded that the revision proceedings has been invoked by the Id. PCIT u/s 263 of the Act based on audit objection, which is nothing but borrowed satisfaction. Hence, the said revision proceedings u/s 263 of the Act needs to be construed as bad in law.*
- 4.4 ***The appellant relies on the following judicial pronouncements in support of his case:***
- A. **GRASIM INDUSTRIES LTD. (Successor to Aditya Birla Nuvo Ltd.) vs. PRINCIPAL COMMISSIONER OF INCOME TAX (2021) 62 CCH 0148 MumTrib Gabriel India Ltd reported in 203 ITR 108 (Bom) Nirav Modi reported in 390 ITR 292 (Bom).**

**(refer page no, 240 to 251 of paper book)**

*It is also pertinent to note that the Special Leave Petition (SLP) preferred by the Revenue before the Hon'ble Supreme Court against the judgement of Nirav Modi was dismissed in 77 taxmann.com 15 (SC).*

*AO had addressed a letter to The Deputy Director, ITRA objecting to the audit objection raised by the audit party. In this letter, the AO had actually accepted to the entire contentions of the assessee by placing all facts and legal points thereon before the Audit Party (para 8)*

*A possible view has been taken by the AO in the matter and merely because the PCIT is of a different view on the same issue, he cannot resort to invoke revision proceedings u/s 263, Assessee's appeal allowed. (para 9)*

**Conclusion: [relevant para at page no.241& 242 of paper book].**

*When a possible view has been taken by the AO in the matter merely because the PCIT is of a different view on the same issue, he cannot resort to invoke revision proceedings u/s 263.*

**B. SURINDER KUMAR JAIN vs. INCOME TAX OFFICER IN THE ITAT DELHI BENCH 'G' (2016) 48 CCH 0158 DelTrib(refer page no. 252 to 263 of paper book)**

**Conclusion: [relevant para at page no.254 of paper book]** *Non-application of mind of CIT to the facts of the case before issuing the show cause notice u/s 263, audit objection cannot be a basis of revision of assessment orders.*

**C. SRI KUMAR PAPPU SINGH vs. DEPUTY COMMISSIONER OF INCOME TAX IN THE ITAT VISHAKAPATNAM (2019) 198 TTJ 0310 (Visakha) CIT Vs. Sohana Woollen Mills (Punjab & Haryana), [296 ITR 238] and Jaswinder Singh Vs. CIT, followed.**

**Conclusion:**

*For purpose of taking up case for revision, PCIT had to apply his mind, but not to initiate proceedings only based on audit objection.*

**As regards Ground No. 7:**

- 7.1. *With reference to the provisions of Section 43CA of the Income Tax Act, 1961, the appellant has duly complied with the provisions of the section 43CA of the Income Tax Act, 1961 with regards to the facts of the case. The appellant had entered into a sale agreement with M/s Adhiraj developers with respect to sale of plots during previous year 2012-2013 on 17th August, 2012 and part consideration of Rs. 10,00,000/- has been received by account payee cheque (Cheque No.: 9400025 of Union bank of India dated on 11.08.2012) from M/s Adhiraj developers as mentioned*

*in the agreement. According to the sale agreement executed between the appellant and M/s Adhiraj developers, the plots will be transferred to various parties according to the directions and instructions of M/s Adhiraj developers. The appellant reserved the right to transfer the plots i.e. the appellant did not transfer the right to transfer of such plots to M/s Adhiraj developers. This sale agreement has already been submitted before the Ld. AO during the assessment proceedings and no adverse inference was drawn from it by the Ld. AO. It can be clearly seen from the above submissions of the appellant that part consideration of Rs. 10,00,000/- has been received by the appellant on or before the date of agreement from M/s Adhiraj developers. On analysis of the provisions of Section 43CA of the Income Tax Act, 1961 it can be clearly seen that the appellant has complied with the respective provisions. The appellant had entered into a sale agreement for transfer of plots, the appellant had received part consideration in any mode other than cash, the agreement fixed the value of consideration, the amount of Rs. 10,00,000/- has been received before the date of agreement and the date of agreement and the date of registration of the plots are not the same. On compliance of the above conditions as per the provisions of sub-section (3) and sub-section (4) of Section 43CA of the Income tax Act, 1961, the full value of consideration, for the purposes of computing profits and gains from transfer of such asset, shall be the stamp duty value of the asset as on the date of agreement. The appellant has fulfilled all the above conditions of section cumulatively and nowhere in the provisions is said/stipulated that the agreement for sale and sale deed is to be executed with same individual/person. Had it been the intention of the statute, same would have been stipulated in the section along with other cumulative conditions, Sale deed is required to be executed as per the terms and conditions of agreement to sale. In the case of the appellant, sale deed is executed as per sale agreement in favour of various parties as directed by M/s Adhiraj Developers and the appellant has received consideration amount from M/s Adhiraj Developers as per terms and conditions of agreement and same has been duly verified by the Ld. AO with books of accounts and relevant documents during the course of assessment proceedings.*

- 7.2. *The Ld. PCIT's contention that sale deed/ conveyance deed is to be executed with the same people/person with whom the agreement has been made is incorrect since the agreement of sale does not transfer the right to transfer.*
- 7.3. *Furthermore the Ld. PCIT in the order under section 263 of the Act has contended that **"There was an amendment made in section 17(1A) of the Registration Act, 1908 in the year 2001 in such a manner that the documents containing contracts to transfer for consideration of any immovable property for the purpose of section 53A of Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of Registration and other Related Laws (Amendment Act, 2001 and if such documents are not registered on or after such commencement then they shall have no effect for the purpose of section 53A of Transfer of Property Act,***

**1882 subject to one safe-guard that unregistered agreement of sale executed earlier would be taken as a tool to enforce part performance of the contract by other part and hence we may partially conclude that General Power of Attorney for sale, agreement to sale, contract to sale etc. should be compulsorily registered as per the amended provisions of the Registration Act otherwise as per the transferee would not get clear title on the property involved therein." (refer page no. 11 of Ld. PCIT Order para-3)**

However the Ld. PCIT has misunderstood the facts of the case and the contention. of the Ld. PCIT is incorrect. On the facts of the case, the Section 53A of the Transfer of Property Act, 1882, is not applicable on the appellant. The sale agreement executed on 17th August 2012 with M/s Adhiraj developers does not mention anything about the possessions of immovable properties and about right to transfer the Immovable properties. Section 53A requires registration of those agreements/deeds where the possession of the immovable property has been transferred to the transferee or where the transferee was already in possession of the said immovable property which is beyond the facts of the case of the appellant considering that possession was not even a question in the said Agreement. The Ld. PCIT has without proper analysis of the section has leaned into the literal interpretation of the section without any application of mind on the practicality of such section in the case of the appellant. The registration for the transfer of the immovable property has been duly made in favour of the various parties as per the directions and instructions of M/s Adhiraj Developers. The appellant has made the registration for the conveyance deed at the time of transfer of immovable property and the rights to the same have been duly transferred to such various persons as per the instruction of M/s Adhiraj developers which is in compliance of the Sale agreement executed with M/s Adhiraj developers. Therefore the contention of the Ld. PCIT is factually incorrect. The sale agreement with M/s Adhiraj developers need not require registration. The conveyance deed for transfer of immovable property has been duly registered and stamp duty on the same has been duly paid.

As it can be seen from the above submissions and facts of the case, the appellant has not violated the provisions of section 43CA of the Act. Hence, assuming jurisdiction u/s 263 on issue of application of section 43CA of the Act in the case is bad in law and liable to quashed.

**As regards Ground No.8:**

- 8.1. With reference to this ground of appeal it is submitted that assessment order passed by the Ld. AO on 21.12.2018 covered seven assessment years i.e., AY 2011-12 to 2017-18. With respect to AY 2017-18 it was fresh assessment u/s 143(3) of the Act and in respect of AY. 2011-12 to 2016-17 it was assessment u/s 153A r.w.s. 143(3) of the Act. The returns filed for seven assessment years is tabulated below for clarity:

A.Y.	Date of filing of return u/s 139	Due date for issuing notice u/s 143(2)	Date of filing of return against notice u/s 153A	Returned Income Rs.	Income declared u/s 153A Rs.
2011-12	Not filed	-	16.01.2017	NA	1,30,810/-
2012-13	31.03.2014	30.09.2014	17.01.2017	2,40,580/-	4,66,020/-
2013-14	31.03.2014	30.09.2014	17.01.2017	3,12,060/-	3,04,150/-
2014-15	31.03.2015	30.09.2015	17.01.2017	5,39,510/-	7,24,970/-
2015-16	31.03.2016	30.09.2016	17.01.2017	5,32,170/-	5,69,210/-
2016-17	Not filed	-	17.01.2017	NA	6,42,220/-
2017-18	27.02.2018	30.09.2018	NA	12,85,700/-	NA

*The assessee is an individual filed returns of Income for all the assessment years i.e. assessment years 2011-12 to 2015-16. Subsequently, a search action was conducted u/s 132 of the Act in the business of the assessee and AO has asked the assessee to file its return of income for all the assessment years i.e. AYS 2011-12 to 2016-17 by issue of notice u/s 153A of the Act on 07.12.2016. In response to that, assessee has filed returns of Income for AY 2011-12 on 16.01.2017 and for AYS 2012-13 to 2016-17 on 17.01.2017. That time limit for issue of notice u/s 143(2) of the Act was expired for assessment years i.e. AYS. 2011-12 to 2014-15 before the date of search date 25.07.2016 except for AYS 2015-16, 2016-17 & 2017-18. All the assessment years from AY 2011-12 to 2014-15 are concluded and non-abated assessments. The AO cannot reopen the assessments u/s 153A of the Act for AYS 2011-12 to 2014-15 as there are no incriminating materials seized /found during the course of search operation relating to these years. With respect to AY 2015-16, the return u/s 139 was filed 30.03.2016 and last date for issuing notice u/s 143(2) of the Act for this return was 30.09.2016 although falling after the date of search i.e. 25.07.2016, no notice u/s 143(2) was issued on or before the due i.e. 30.09.2016. Notices u/s 143(2) read with section 153A for Assessment years 2011-12 to 2015-16 were issued after the regular due dates u/s 143(2) of the Act. It is only on the basis of records and documents filed on subsequent search by issue of notice u/s 153A of the Act additions are proposed to be made u/s 263 proceedings by the Id. PCIT. Therefore, in our opinion, all the assessment years from 2011-12 to 2015-16 are concluded assessments and non-abated assessments and for any addition to be made in respect of those assessment years, there must be an incriminating material seized during search.*

*In the case of assessee, there is no incriminating material/documents found therefore, the addition proposed by the Ld. PCIT u/s 263 is not sustainable*

8.2 For this purpose the appellant relies on the following judicial pronouncements:

**DEPUTY COMMISSIONER OF INCOME TAX & ORS.VS. MCS TRADING COMPANY PVT. LTD. & ORS. [ITAT-INDORE] [(2019) 55 CCH 0405]**

**(refer page no. 264 to 279 of paper book)**

**Conclusion:[relevant para at page no.265 of paper book].**

*If there is no incriminating material found during the course of search AO cannot make any addition on the basis of information called during assessment proceeding.*

**DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs, R. R. ENERGY LTD, & ANR.IN THE ITAT RAIPUR [(2018) 52 CCH 00 521]**

*(refer page no. 280 to 300 of paper book)*

***Conclusion:[relevant para at page no.282 of paper book].***

*In the absence of seized material found during search, addition made in an order passed u/s 153A of the Act is not sustainable.”*

9. Learned AR apart from original grounds in appeal have further submitted additional grounds challenging the approval granted by the Learned JCIT under Section 153D of the Act when the assessment u/s 153A r.w.s 143(3) of the Act for A.Ys. 2011-12 to 2016-17 was completed. The additional grounds raised by the assessee along with application to grant leave to raise additional ground is extracted as under:

*“Hon'ble Sirs,*

- 1. The appellant is in appeal before your honour against order of the learned PCIT, Raipur-I dated 31.03.2022 passed u/s 263 of the Income Tax Act, 1961 for the assessment year 2014-15 to 2017-18.*
- 2. There are identical issues in all the Appeals of relevant four assessment years, therefore a combined request application to grant us leave to raise the following additional grounds of appeal has been filed before your honours.*
- 3. Without prejudice to the existing grounds of appeal raised in the Memorandum of Appeal, the Appellant prays for the admission and adjudication by the Hon'ble Tribunal, of the following Additional Grounds of Appeal which are purely legal and deal with the root of the matter of the case, which do not require investigation into, or examination of, any new facts or evidence that were not already available before the Ld. AO and Ld. Pr. CIT. The additional grounds of appeal merely involve interpretation of the provisions of the Income Tax Act, 1961, which the Hon'ble Tribunal is otherwise competent to do, in view of the principles laid down by the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC).*


Before Ground No. 1, the following additional grounds may kindly be allowed to be added.

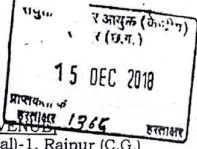
**Additional Grounds of Appeal:**

1. *That, the combined Search Assessment Order framed under section 153A EW.S 143(3) of the Act for AY 2011-12 to 2016-17 and under section 143(3) of the Act for AY 2017-18, on the strength of purported approval granted by the Ld. JCIT, Range-Central u/s 153D of the Act, is void ab-initio, invalid, illegal and bad in law hence, deserves to be quashed since, the mandatory prior approval granted is no approval in the eyes of law as the same has been accorded on presumption and without application of mind. That the entire assessment made in the case of the appellant is null and void as approval granted under section 153D is mechanical in nature and without any application of mind. The Ld. JCIT has failed to peruse the assessment records and replies submitted by the assessee. The approval accorded by the Ld. JCIT in a mechanical manner on presumptive basis. Further, the Ld. AO has clearly erred in complying with requirements of section 153A and 153D of the Act, by obtaining a consolidated approval for AY 2011-12 to AY 2017-18, instead of a separate approval for "each assessment year". Hence, it is earnestly prayed that the Combined Assessment Order passed u/s.153A r.w.s. 143(3) for AY 2011- 12 to 2016-17 and u/s 143(3) for AY 2017-18 of the Act, may please be quashed and cancelled.*
2. *That, the separate orders passed by the Ld. Pr. CIT u/s 263 of the Act dated 31.03.2022 for relevant assessment years, setting aside the combined order passed by the Ld. AO dated 21.12.2018 u/s 153A/143(3) of the Act, is illegal, bad in law, and without Jurisdiction as the Original combined assessment order passed by the Ld. AO itself is void ab-initio which is based on non-est approval u/s 153D of the Act.*
4. *A copy of request letter dated 15.12.2018 issued by the Ld. AO seeking approval u/s 153D of the Act and a copy of approval letter by the Ld. JCIT dated 20.12.2018 u/s 1530 of the act is enclosed herewith.*
5. *In view of the above, since the additional ground of appeal raised goes to the root of the matter having a vital bearing on the tax liability of the appellant, it is prayed that the additional grounds of appeal raised may kindly be admitted exercising the plenary powers vested in your honours under Rule 11 of the Appellate Tribunal Rules, 1963 r.w.s. 254 of the Income Tax Act, 1961.*
  
10. With respect to additional ground raised by the assessee pertaining to approval granted under Section 153D of the Act. It was the submission of Learned AR that the approval granted was mechanical in nature without any application of mind. Learned JCIT had failed to peruse the assessment order

and replies submitted by the assessee. The approval recorded by the Learned JCIT was on presumptive basis, the Learned AO has clearly erred in compliance with requirements of Section 153A & 153D of the Act by obtaining consolidated approval for A.Ys. 2011-12 to 2017-18 instead of separate assessment for each assessment year. Therefore, the combined assessment order passed under Section 153A r.w.s 143(3) of the Act for A.Ys. 2011-12 to 2016-17 and under Section 143(3) for A.Y. 2017-18 may please be quashed and cancelled. It was the submission of Learned AR that the order of Learned PCIT under Section 263(3) dated 31.03.2022 was therefore, illegal, bad in law, and without Jurisdiction as the original combined assessment order passed by the Learned AO itself is *void-ab-initio* which is based on non-est approval u/s 153D of the Act. A copy of approval under Section 153D of the Act is furnished along with the application for additional ground raised by the assessee. The additional ground submitted by the assessee was with the contentions that since the issue raised is purely a legal contention raised by the assessee therefore, the Tribunal is otherwise competent to decide such issues at this stage in view of principles laid down by Hon'ble Supreme Court in the case of National Thermal Power Corporation vs. CIT (1998) 229 ITR 383 (SC). In the present case though, the additional contentions are raised by assessee by way of additional ground, which were never raised before the lower authorities, but, since the admission of the same is incumbent upon us under the settled position of law as accorded by Hon'ble Apex Court in the case of NTPC (Supra), therefore, the same is admitted for adjudication. For the sake of clarity copy of request for seeking approval u/s 153D of the Income Tax Act, 1961 dated

15.12.2018 by ACIT, Central Circle-1, Raipur (CG) and the approval dated  
20/12/2018 by JCIT, Range-Central, Raipur is extracted as under:

  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE: DEPARTMENT OF REVENUE  
Office of the Assistant Commissioner of Income Tax, (Central)-1, Raipur (C.G.)  
Central Revenue Building, Civil Lines, Raipur (C.G.) - 492001  
Fax - 0771-2331059; E-mail : raipur.dcit.cen1@incometax.gov.in



F. No. : ACIT/Central-1/RPR/153D/2018-19/ Dated:- 15.12.2018

To,  
The Joint Commissioner of Income Tax (Central)  
Raipur (C.G.)

Sir,

**Sub:- Request for seeking approval u/s 153D of the Income Tax Act, 1961-  
in the cases pertaining to Hitesh Golecha Group and VIP Group --  
Regarding**

Kindly refer to the subject cited above and find enclosed herewith a CD containing draft assessment orders u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 in the cases pertaining to Hitesh Golecha Group and VIP Group.


In this connection, it is submitted that following draft orders, along with case records, are being submitted for kind perusal, guidance and for seeking necessary approval u/s 153D of the Income Tax Act, 1961. The details are as under:

S. N.	Group	Name	PAN	A.Y.	No. of Volume
1.	Hitesh Golecha	Hitesh Golecha	AGJPG7698F	2011-12 to 2017-18	2
2.	VIP	Raviprem Contractors Pvt. Ltd.	AACCR8539C	2011-12 to 2017-18	2
3.	VIP	Dhires Chandra Pandey	AUKPP0245L	2011-12 to 2017-18	1
4.	VIP	Nirupama Pandey	AESPP3362E	2011-12 to 2017-18	1

Submitted for kind perusal and necessary approval.

Encl : Case records as stated.

Yours sincerely,  
(Dharmendra Singh)  
Asstt. Commissioner of Income Tax  
Central Circle-1, Raipur (C.G.)



Office of the  
Joint Commissioner of Income Tax (Central), Raipur  
Aayakar Bhawan, Civil Lines, Raipur 492001  
Email: raipur.addcit.cen@incometax.gov.in Tel/Fax 0771-2331044  
F.No. JCIT(C)/RPR/153D/2018-19/524 Dated: 20/12/2018

To,  
The Asst. Commissioner of Income tax (Central)-1,  
Raipur

Subject – Approval under u/s 153D of the I.T. Act – VIP Group –  
Regarding.

Please refer to your letter in F.No. ACIT/Central-1/RPR/153D/2018-19/ dated 15/12/2018.

2. The draft assessment orders u/s 153A and 143(3) in the following cases submitted vide above mentioned letter are hereby approved u/s 153D of the I.T. Act with the following remarks –

S. No.	Name of the assessee	PAN	AY
1	Hitesh Golecha	AGJPG7698F	2011-12 to 2017-18
2	Raviprem Contractors P Ltd	AACCR8539C	2011-12 to 2017-18
3	Dhiresch Chandra Pandey	AUKPP0245L	2011-12 to 2017-18
4	Nirupama Pandey	AESPP3362E	2011-12 to 2017-18

As regards the interest received on KVP which is offered by the assessee in the year of receipt, the AO may verify whether the interest is to be taxed on accrual basis or receipt basis. In case it is on accrual basis, the earlier years' income needs to be revised and penalty u/s 271(1)(c) needs to be initiated. Further the individual assessee are introducing miscellaneous income which in the absence of any evidence needs to be taxed u/s 115BBE.

3. Further in view of this office letter no. F.No. JCIT(C)/RPR/Draft Asst. Order/2016-17/ dated 09.09.2016 it is presumed that the AO has –

- given proper opportunity of hearing has been given to the assessee
- thoroughly verified the seized material and that there are no adverse findings
- satisfied himself that all the issues emanating from the records have been verified and the additions wherever required have been proposed.

4. You may act accordingly. The copy of the final order may be submitted for record purpose in this office in a CD. Retention proposals if any may be submitted well within time.

Encl: case records



(R.M. Mujumdar)  
Joint Commissioner of Income tax,  
Range- Central, Raipur

11. On the basis of the aforesaid documents, Ld. AR has advanced the arguments that the Ld. JCIT has failed to peruse and appreciate the facts of the case, that the last submissions made by the assessee was on 19/12/2018 & the draft orders were sent for approval by the Ld. AO on 15/12/2018. Therefore, the draft order were put up before the Ld. JCIT without considering all the replies of the assessee. Hence, the approval granted by the Ld. JCIT u/s 153D of the Act,

was illusory, ritualistic and Pre-functionary with complete neglect to the provisions of section 153D. Ld. AR placed his reliance on various case laws, as under:

**A. Akshata Realtors Pvt. Ltd v/ s ACIT, Central Circle-2, Raipur f (2023) IT(SS) A No. 09/RPR/2018 27.03.2023 (ITAT-RAIPUR), AY: 2013-14):**

**It was concluded by the Hon'ble Tribunal as follows:**

*The JCIT, Range-Central Raipur has granted approval on the presumption basis, which in our opinion is not permissible. When the approval is not valid, then the assessment framed u/s.153A r.w.s. 143(3) of the Act in the case of the assessee is not sustainable.*

*Where approval was granted by the Ld. JCIT himself but on the basis of certain presumptions without verifying the seized material by himself, even the responsibility of satisfaction was placed on shoulders of the AO.*

*In view of the above discussion and observations, respectfully following the decision of the Hon'ble High Court of Allahabad as well as orders of the coordinate benches of the Tribunal referred to above, in absence of any submission or decisions contrary to what has been emerged by the observations herein above, we do not have any reason to upheld the order of the authorities below, consequently we hold that the order of Ld. CIT (A) in affirmation of the order of Ld. AO u/s.153A r.w.s.143(3) of the Act is unsustainable and derives to be quashed and we do so. Accordingly, the assessment order in the case of the assessee u/s.153A r.w.s. 143(3) of the Act stands cancelled.*

**B. M/S Goyal Energy & Steel Pvt. Ltd. v/ s ACIT, Central Circle-2, Raipur [(2021) ITA Nos. 240 to 243/RPR/2019 17.09.2021 (ITAT-RAIPUR). AM: 2011-12 TO 2015-161: wherein the approval granted by the JCIT was identical to the approval granted in the case of the present assessee, held as under:**

*Respectfully following the decisions of coordinate benches in Sanjay Duggal & others (supra) and Archpharma Labs & Arch Impex P Ltd (supra), we find convincing force in the submissions of the assessee that the approval granted by JCIT suffer from non-application of mind and depends on presumption of proper performance of duty by A.O. such per functionary approval under section 153D cannot termed as legitimate. The consequential assessment orders based on non-est approval under section 153D, thus are void-ab-initio on this ground alone.*

**C. Pr. CIT v/s Subodh Agrawal [ITA No. 86 of 2022 Dtd 12.12.2022 (Allahabad HC)]:**

**It was concluded in by the Hon'ble High Court as follows:**

*"The approval of draft assessment order being an in-built protection against any arbitrary or unjust exercise of power by the Assessing Officer, cannot be said to be a mechanical exercise, without application of independent mind by the Approving Authority on the material placed before it and the reasoning given in the assessment order. It is admitted by Sri Gaurav Mahajan, learned counsel for the appellant revenue that the approval order is an administrative exercise of power on the part of the Approving Authority, but it is sought to be submitted that mere fact that the approval was in existence on the date of the passing of the assessment order, it could not have been vitiated. This submission is found to be a fallacy, in as much as, the prior approval of superior authority means that it should appraise the material before it so as to appreciate on factual and legal aspects to ascertain that the entire material has been examined by the Assessing Authority before preparing the draft assessment order. It is trite in law that the approval must be granted only on the basis of material available on record and the approval must reflect the application of mind to the facts of the case. The requirement of approval under Section 153D is pre-requisite to pass an order of assessment or reassessment.*

*Section 153D requires that the Assessing Officer shall obtain prior approval of the Joint Commissioner in respect of "each assessment year" referred to in Clause (b) of sub-section (1) of Section 153A which provides for assessment in case of search under Section 132. Section 153A(1)(a) requires that the assessee on a notice issued to him by the Assessing Officer would be required to furnish the return of income in respect of "each assessment year" falling within six assessment years (and for the relevant assessment year or years), referred to in Clause (b) of subsection (1) of Section 153A. The proviso to Section 153A further provides for assessment of the total income in respect of each assessment year falling within such six assessment years (and for the relevant assessment year or years),*

*The careful and conjoint reading of Section 153A (1) and Section 153D leave no room for doubt that approval with respect to "each assessment year" is to be obtained by the Assessing Officer on the draft assessment order before passing the assessment order under Section 153A.*

*In the instant case, the draft assessment order in 38 cases, i.e., for 38 assessment years placed before the Approving Authority on 31.12.2017 was approved on same day i.e., 31.12.2017, which not only included the cases of respondent-assessee but the cases of other groups as well. It is humanly impossible to go through the records of 38 cases in one day to apply independent mind to appraise the material before the Approving Authority. The conclusion drawn by the Tribunal that it was a mechanical*

*exercise of power, therefore, cannot be said to be perverse or contrary to the material on record.*

**D. Pr. CIT v. Sapna Gupta in I.T. Appeal No.88 of 2022 (Date of Judgment: 12.12.2022) 2023 147 Taxmann.com 288 (Allahabad HC), wherein the similar findings were offered by the Hon'ble High Court of Allahabad as in the case of Subodh Agrawal (supra) and held as under.**

*The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record, As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeals being in the nature of second appeal. No substantial question of law arises for consideration before us. The Appeals are dismissed being devoid of merit.*

**E. Pr. CIT v. Siddarth Gupta in I.T. Appeal Nos. 85,87,& 90 of 2022 (Date of Judgment: 12.12.2022) (2023) 147 Taxmann.com 305 (Allahabad HC), wherein the similar findings were offered by the Hon'ble High Court of Allahabad as in the case of Subodh Agrawal (supra) and held as under:**

-  
*The conclusion drawn by the Tribunal that it was a mechanical exercise of power, therefore, cannot be said to be perverse or contrary to the material on record. As the facts are admitted before us, the questions of law framed on the factual issues related to the findings recorded by the Assessing Officer are not open to agitate within the scope of the present appeals being in the nature of second appeal. No substantial question of law arises for consideration before us. The Appeals are dismissed being devoid of merit.*

**F. Ritanjali Khatai & Ors. v. ACIT, cc-I, Bhubaneswar in IT(SS) A.No.51 to 53/CTK/2019 (Date of Order: 08.04.2022) (ITAT Cuttack), wherein the Tribunal has held that the assessment framed u/s.153A/143(3) of the Act is not sustainable without proper approval u/s.153D of the Act.**

12. Ld. AR further submitted that the assessment order passed u/s 153A/143(3) by the Ld. AO is invalid and void ab initio and under non-est approval u/s 153D of the Act, therefore, the Pr. CIT in absence of valid order passed by the AO cannot revised the same u/s 263 of the Act. Submission of the Ld. AR towards additional ground no. 2 is as under:

**6. As regards Additional Ground No.2:**

2.1. That Assessment order passed u/s 153A/143(3) for relevant assessment years by the Ld. AO is invalid and void ab initio under non-est approval u/s 153D of the Act, therefore, the Pr. CIT in absence of a valid order passed by the AO cannot revise the same u/s 263 of the Act.

2.2. That, as the Ld. AO vide his combined order passed u/s 153A/143(3) of the Act dated 21.12.2018 for AYs 2011-12 to 2017-18 had accepted the Assessee's returned income and had not made any addition/disallowance, therefore, there was no occasion much the less any justification for the assessee to have carried the said order any further in appeal.

2.3. That, the proceedings before the Ld. PCIT u/s 263 of the Act were in the nature of collateral proceedings, therefore, the assessee has well within its right to challenge the validity of the impugned assessment order that was passed by the AO u/s 153A/143(3) of the Act.

2.3. That when the assessment order is itself null and void, then, the PCIT could not exercise his revisional jurisdiction u/s 263 of the Act.

2.4. When the order passed by the AO u/s 153A/143(3) dated 21.12.2018 was in itself non-est, therefore, the same could not have revised by the Pr. CIT u/s 263 of the Act,

2.5. The appellant relies on the following judicial pronouncements in support of his case, are made available for your kind consideration:

**A. Maruti Clean Coal and Power Lt. vs PCIT 66 CCH 0221 ITA No. 55/RPR/2021 Date of order 31.12.2021: wherein held as under:**

29. On the basis of our aforesaid observations, we herein conclude that as the order of reassessment under Sec. 143(3) r.w.s 147, dated 30.12.2018 in itself had been passed on the basis of invalid assumption of jurisdiction by the AO, therefore, as claimed by the assessee and, rightly so, the same could not have been revised by the Pr. CIT under Sec. 263 of the Act. Accordingly, we herein quash the order passed by the Pr. CIT under Sec. 263 of the Act, dated 27.03.2021 for want of valid assumption of jurisdiction. As we have quashed the impugned order passed by the Pr. CIT under Sec, 263 of the Act, dated 27.03.2021 on account of invalid assumption of jurisdiction, therefore, we refrain from adverting to and therein adjudicating the other contentions that have been advanced by the Id. A.R both as regards the validity of the impugned order as well as those

canvassed before us as regards the merits of the case, which, thus, are left open.

**B. Westlife Development Ltd. Vs PCIT (ITAT-MUMBAI), [(2017) 88 TAXMANN.COM 439 Date of order 2.06.2016]: wherein held as under:**

The original assessment order passed u/s 143(3) dt 24-10-2013 was null & void in the eyes of law as the same was passed upon a non-existing entity and, therefore, the Ld. CIT could not have assumed jurisdiction under the law to make revision of a non-est order and, therefore, the impugned order passed u/s 263 by the Ld. CIT is also nullity in the eyes of law and therefore the same is hereby quashed.

**C. Hari Mohan Das Tandon (HUF) vs PCIT 91 TAXMANN.COM 199 Date of order 08.01.20181: wherein held as under:**

When assessment order itself is null and void based on non-est revised return, the Ld. CIT could not have exercise jurisdiction under section 263 of the I. T. Act.

**D. CIT vs Gitsons Engineering co. 90 CCH 0353 Date of order 16.09.20141: wherein held as under:**

In the instant case, even though a plea was taken by the learned counsel for the Revenue that the objection in relation to non-service of notice contemplated under Section 143(2) of the Act was not an issue before the Assessing Officer and the Commissioner of Income Tax (Appeals) and the same was raised for the first time before the Tribunal, it was found that it was a legal plea which goes to the root of the matter and, therefore, the assessee was entitled to raise such a plea before the Tribunal, which was the ultimate fact-finding body.

The basic requirement of Section 143(2) of the Act having not been satisfied, the department's further proceedings, in Tribunal's considered opinion, becomes non-est in law.

**E. CIT vs Escorts Farms Pvt. Ltd. 180 ITR 280 Date of order 21.07.19891: wherein held as under:**

The assessee appealed against an assessment by the ITO before the Commissioner (Appeals) who allowed the appeal. On further appeal by the department, the Tribunal decided in favour of the department. The assessee again moved the Tribunal under section 254(2) to rectify its earlier order on the ground that at the time of hearing of the main appeal, the assessee had submitted that the assessment order itself was barred by time, but that submission had not been dealt with by the Tribunal. The Tribunal decided that the assessment was barred by time and consequently, all subsequent proceedings by way of appeal before the Commissioner (Appeals) and the Tribunal would lose effect and would

*become in fructuous. The Tribunal also refused to make reference under section 256(1). On a reference application under section 256(2):*

*In view of above submission, it is humbly requested before your honours to allow the appeal and oblige.*

13. In response to, the additional grounds challenging the validity of the order u/s 153A/143(3), picked-up for revisionary proceedings u/s 263, on account of mechanical approval u/s 253D without any application of mind, Ld. CIT DR has submitted that on perusal of assessment records and the report of the DCIT (Central-1), Raipur, wherein the fact pertaining to submission of draft order by the Ld. AO to Ld. JCIT on 15/12/2018 was discussed and it is also clarified that the approval u/s 153D dated 20/12/2018 was granted after due deliberations between the Range head and AO, therefore, the submissions of the assessee dated 19/12/2018 were also duly considered while issuing the approval u/s 153D. Copies of correspondence showing monitoring of the case on regular basis, questionnaire u/s 142(1) send for approval of the JCIT by the AO are also enclosed with the report by the Ld. AO. Copy of the report by Ld. AO dated 04/09/2023, is extracted as under:


Putraj  
S. D. Dhasgiri  
04/09/23

अपर/संयुक्त आयकर आयुक्त (केन्द्रीय)  
नया रायपुर (छ.ग.)

04 SEP 2023

628 &c  
Government of India  
Ministry of Finance  
Department of Revenue

भारत सरकार  
वित्त मंत्रालय : राजस्व विभाग  
कार्यालय आयकर उपायुक्त-सेन्ट्रल-1,  
8वीं तल, रूम नं-820  
सी.बी.डी. कॉम्प्लेक्स, सेक्टर-21,  
अटल नगर, नया रायपुर (छ.ग.)



O/o Dy. Commissioner of Income Tax- Central-1,  
8<sup>th</sup> floor, Room No. 820  
C. B. D. Complex, Sector-21  
Atal Nagar, Naya Raipur (C.G.)

e-mail : raipur.dcit.cen1@incometax.gov.in

F.No. DCIT(Central)-1/RPR/ ITAT/2023-24

Dated 04.09.2023

To,  
The Commissioner of Income Tax, DR  
ITAT, Raipur (C.G.)

//Through : The JCIT(Central), Raipur//

Sir,

**Sub:- Report on the additional grounds raised in the case of Shri Hitesh Golchha, A.Y.2017-18- Reg:-**

Kindly refer to your letter F.No.CIT-ITAT/RPR/Clarification/2023-24 dated: 11/08/2023 on the above subject. The desired report in the case is submitted as under-

2. **Facts of the Case :-** The assessee is engaged in real estate business with proprietorship firm namely M/s Mouli Investment, Budhapara, Raipur. In this case, a Search & Seizure action u/s 132 of the I.T. Act, 1961 was conducted on 25.07.2016 by the ADIT(Inv.-3, Raipur and cash amounting to Rs. 1,50,51,980/- was seized. Accordingly, original assessment order u/s 153A r.w.s 143(3) of the Act was passed for A.Y. 2011-12 to A.Y 2016-17 and u/s 143(3) of the Act for 2017-18 by ACIT(Central Circle)-1, Raipur on 21.12.2018 and the income was assessed as under:

A.Y.	Section	Return Income	Addition	Para Discussed	Assessed Income
2011-12	153A/143(3)	1,30,810/-	NIL	NA	1,30,810/-
2012-13	153A/143(3)	4,66,020/-	NIL	NA	4,66,020/-
2013-14	153A/143(3)	3,04,150/-	NIL	NA	3,04,150/-
2014-15	153A/143(3)	7,24,970/-	NIL	NA	7,24,970/-
2015-16	153A/143(3)	5,69,210/-	NIL	NA	5,69,210/-
2016-17	153A/143(3)	6,42,220/-	NIL	NA	6,42,220/-
2017-18	143(3)	12,85,700/-	NIL	NA	12,85,700/-

3. Later, it came to the notice, that during A.Y.2014-15 to A.Y.2017-18, the assessee has sold some diverted plots of land to various persons in lesser values than the values adopted by the stamp duty authority and accordingly order u/s 263 was passed by the PCIT-1, Raipur on 31.03.2021 remanding the matter back to the Assessing officer for fresh adjudication by conducting necessary enquires and framing fresh assessment order after affording adequate opportunity to the assessee for the A.Y.2014-15 to 2017-18. Aggrieved with the order of PCIT-1, Raipur the assessee filed appeal before the Hon'ble ITAT, on the ground that no fair and proper opportunity of hearing was given while passing order u/s 263 of the Act. The Hon'ble ITAT vide its order No. 41 to 44/RPR/2021 dated 13.08.2021 has disposed off all the appeals of the assessee for all the four A.Ys i.e 2014-15 to 2017-18 and restored the case back to the file of Ld PCIT to decide the issue identified by him afresh after giving opportunity of hearing the assessee. The Ld PCIT-1, Raipur vide his order dated 31.03.2022 after giving opportunity of hearing to the assessee for all the four A.Ys i.e 2014-15 to 2017-18 has held that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue and has set aside the case to the file of AO with the direction that the AO will provide proper opportunity to the assessee and examine the issue afresh and pass fresh assessment order as per the provisions of the I.T. Act, 1961.

4. Subsequently, as per CBDT instruction (Copy enclosed) the case was again centralized to ACIT(Central Circle)-1, Raipur being original jurisdiction of the case for passing fresh assessment order as per PCIT, Raipur's order u/s 263 dated 31.03.2022. Later on, fresh assessment order in the case for A.Y.2014-15 to 2017-18 has been passed by the DCIT(Central)-1, Raipur on 27.03.2023 u/s 153A rws 263 in respect of A.Y.2014-15 to 2016-17 AND u/s 143(3) rws 263 in respect of A.Y.2017-18.

5. On perusal of case records, it is found that the assessee has never objected on the questionnaire issued by the A.O during both (previous & current) assessment proceedings. It is also noticed that during revision proceedings u/s 263 of the Act, the assessee never questioned about the limitation of questionnaire issued or the first assessment proceedings completed u/s 153A r.w.s 143(3) or 143(3) of the Act in his case. All the questioned raised by the then A.O was duly complied by the assessee.

6. Now the assessee has raised the additional ground before the Hon'ble ITAT, which deserves to be rejected as the assessee has never challenged the notice issued u/s 143(2) of the Act previously or questionnaire issued during the assessment proceedings from time to time.

6.(a). As regards the first ground raised by the assessee that the PCIT-1, Raipur erred in revisiting the Limited Scrutiny order of A.Y.2017-18 without appreciating that AO was not required to look into matters other than that forming part of Limited Scrutiny as per instructions issued by CBDT with respect to Limited Scrutiny under CASS and no notice u/s 143(2) of the Act for the year under search i.e. A.Y.2017-18 is issued by the Ld.AO other than the Limited Scrutiny notice, it is noted, on verification of records, it is found that after Search & Seizure action u/s 132 of the Act, the then A.O has issued notice u/s 153A of the Act for A.Y. 2011-12 to 2016-17 and notice u/s 142(1) of the Act for A.Y. 2017-18 on 07.12.2016. A copy of the same is enclosed. Later on after filing of return of income in response to the notice issued u/s 153A, the A.O issued notice u/s 143(2) of the Act manually for A.Y. 2011-12 to 2016-17 on 19.07.2017. Later on the manual notice u/s 143(2) of the Act for A.Y. 2017-18 was issued on 20.08.2018 and it is issued for complete scrutiny as per CBDT Instruction- Guidelines for selection of cases for scrutiny during the F.Y. 2018-19 (Copy enclosed) which reads as under:

(iii) Assessment in search and seizure cases to be made under section under section(s) 158B, 158BC, 158BD, 153A & 153C read with section 143(3) of the Act and also for the returns filed for AY relevant to the previous year in which authorization for search and seizure was executed u/s 132 or 132A of the Act'

- In view of above, it is crystal clear that the concept of Limited Scrutiny for A.Y.2017-18 by the assessee is not applicable since as per CBDT Instruction no.4/2018, assessment in search and seizure cases has to be compulsorily made u/s 153A & 153C r.w.s 143(3) of the Act.

- The additional ground raised by the assessee at this juncture is on the basis of the facts that the case was manually selected for scrutiny as per the CBDT, New Delhi's above instruction but the same was selected for scrutiny through CASS for limited purpose. As per the CBDT, New Delhi's direction, the AO has passed the block assessment order manually and abated the CASS proceedings. The Hon'ble PCIT-1, Raipur has given approval for revival of abated assessment proceedings on 04.01.2022 (copy enclosed) by uploading manual order passed for A.Y. 2017-18. Therefore, the ground raised by the assessee that the Ld. PCIT erred in revisiting the limited scrutiny deserves to be rejected.

6.(b). As regard the additional ground raised by the assessee that the Ld. JCIT has failed to peruse and appreciate the facts of the case in as much as the last submission made by the assessee on 19.12.2019 has not been considered before granting approval u/s 153D of the Act, it is submitted that though the draft order was put up before the Ld. JCIT on 15.12.2018, but approval u/s 153D of the Act has only been accorded by the Ld. JCIT on 20.12.2018. It also evident from the case records that the questionnaire u/s 142(1) of the act was sent by the A.O to the assessee only after previous approval of JCIT, Central Range, Raipur. Cop of correspondence between AO and Range head in this regard is enclosed herewith. It is also a matter of fact that the A.O and the JCIT both are seated in the same building and the Range head was taking meeting on day to day basis on the time barring matters at that time. Further, on going through the letter of approval dated 20.12.2018 issued by the JCIT(Central)-Raipur it is evident that the last submission made by the assessee on 19.12.2018 was duly considered by the Ld. JCIT.

On the above facts, the additional ground raised by the assessee is deserves to be rejected.

Encl: As above

Yours faithfully,



( Ratnesh Kumar Sharma )  
Dy. Commissioner of Income Tax(Central-I)  
Raipur.

14. Based on aforesaid report by the Ld. AO and on perusal of assessment records, the argument of the revenue against the additional ground raised by the assessee stating that, "the approval granted u/s 153D was of mechanical nature and without application of mind which leads to invalidating the assessment order framed u/s 153A r.w.s. 143(3)", was found to be supported with the evidences showing the interaction between the AO and the Range Head, who had approved the questionnaire issued by the AO and who was fully informed of each and every action of the AO in completing the assessment. Accordingly, it cannot be inferred that there was no application of mind by Ld. JCIT in approving the draft order submitted by the Ld. AO. Contrary to the arguments and to distinguish with the case laws relied upon by the Ld AR, in

present case the revenue has submitted a report of the AO to substantiate that there was deliberations between the AO and JCIT, also certain additional evidence in the form of communications between the departmental authorities were furnished before us, which were further strengthened by producing the assessment case records maintained by the department. Since the issue regarding approval u/s 153D and its validity depends upon verifications of such facts, also the contention raised before us was never raised before the departmental authorities, under such facts and circumstances, in the interest of natural justice, on careful perusal of the material available on record, case laws pressed into and report of the department, we find it appropriate to restore this issue to the file of AO for fresh adjudication of the same on the basis of facts and law, the assessee shall remain at liberty to raise such issues before the revenue authorities and to furnish necessary information/ evidences and submissions in support of his contentions. Consequently, the additional ground of the assessee regarding noncompliance of provisions of section 153D in granting the approval to draft order by Ld JCIT, is partly allowed.

15. Learned AR further argued with respect to ground no.8 of the appeal pertaining to non-abated assessment year wherein no incriminating material was found during the course of search applying recent verdict of the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (2023) 116 CCH 0307 ISCC has held as under:

*11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or*

*reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to subsection (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.*

12. *If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the*

*undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and subsection (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.*

*13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of Kabul Chawla (supra) and the Gujarat High Court in the case of Saumya Construction (supra) and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.*

*14. In view of the above and for the reasons stated above, it is concluded as under:*

- i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*
- ii) all pending assessments/reassessments shall stand abated;*
- iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*
- iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened*

by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

16. Pertaining to the impugned Ground No.8 of the assessee, Learned AR has submitted following written submissions, which reads as under:

S.No	ARGUMENTS					
1.	That, the Ld. Pr.CIT has erred by making additions proposed u/s 263 of the Act. There is no incriminating document seized/found during the search except seizure of cash. Therefore, without any incriminating material/documents found during the course of search, no addition can be made in the case of non-abated assessments and ITA No 101/RPR/2022 (AY 2014-15) squarely falls under non-abated and concluded assessment. For this purpose we rely on the recent verdict of the Hon'ble Supreme Court held in the case of Pr.CIT v/s Abhisar Buildwell Pvt. Ltd. (Copy Enclosed).					
2.	Here is a chart showing the necessary dates for classification under non-abated and concluded assessments: <b>(Date of Search: 25.07.2016)</b>					
	AY	Date of filing of return u/s 139	Due date for issuing notice u/s 143(2)	Date of filing of return against notice u/s 153A	Returned Income Rs.	Income declared u/s 153A Rs.
	2011-12	Not filed	-	16.01.2017	NA	1,30,810/-
	2012-13	31.03.2014	30.09.2014	17.01.2017	2,40,580/-	4,66,020/-
	2013-14	31.03.2014	30.09.2014	17.01.2017	3,12,060/-	3,04,150/-
	2014-15	31.03.2015	30.09.2015	17.01.2017	5,39,510/-	7,24,970/-
	2015-16	31.03.2016	30.09.2016	17.01.2017	5,32,170/-	5,69,210/-
	2016-17	Not filed	-	17.01.2017	NA	6,42,220/-
	2017-18	27.02.2018	30.09.2018	NA	12,85,700/-	NA
	Therefore, from the above chart it can be evidently seen that AY 2011-12 to AY 2014-15 are non-abated and concluded assessments.					

In view of above arguments, it is requested that the appeal of appellant may kindly be allowed.

17. It was the contentions of Learned AR that the A.Y. 2014-15 wherein due date for issuing of notice under Section 143(2) of the Act was 30.09.2015, however, since the date of search in the case of assessee was 25.07.2016

which eventually has happened to be after the date of issuing the notice under Section 143(2) of the Act. Therefore, the A.Y. 2014-15 was treated as completed and thus, the said year should be classified as non-abated assessment year. Since, no incriminating material pertaining to A.Y. 2014-15 was found during the search proceedings, therefore, it was the submission that under such circumstances, the case of the assessee is squarely covered by judgment of Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt. Ltd.* (supra), thus no addition could be made for the said assessment year.

18.    Learned CIT-D.R. against this contention of the assessee has submitted that such contentions should not have been raised at this stage when the said contention was not raised by the assessee before the Learned PCIT or at the time of assessment proceedings, therefore, the order of Learned PCIT cannot be invalidated on this count.

19.    We have heard the rival contentions and perused the material available on record. On perusal of the order of Assessing Officer dated 21.12.2018 nothing is apparent or emanating pertaining to incriminating material in the relevant AY 2014-15, therefore, in absence of information pertaining to incriminating material on record, we are unable to comprehend that whether there was any incriminating material pertaining to A.Y. 2014-15, unearthed during the search proceedings or not. Under such circumstances, such a contention of the assessee cannot be concurred with at this stage and therefore, the grounds raised pertaining to no incriminating material surfaced for a non-

abated assessment year is liable to be dismissed. Our observations are supported with the judicial pronouncement in the case of NTPC(supra), wherein Hon'ble Apex Court has held that the tribunal is not prevented to consider the questions of law arising in assessment proceedings though not raised earlier, but the relevant facts should be available on records. Such guiding interpretation by the Hon'ble Apex Court suggests that the tribunal has the power to consider question of law which are based on relevant facts and material available on records, but without involving itself in the issue as an investigator to unearth the relevant facts. The relevant findings of the Apex Court in the case of NTPC (supra) are extracted as under:

*Under [Section 254](#) of the Income-tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, **so long as the relevant facts are on record in respect of that item.** We do not see any reason to restrict the power of the Tribunal under [Section 254](#) only to decide the grounds which arise from the*

*order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*

20. In terms of aforesaid observations, the contention raised by the Ld. AR w.r.t. non-abated assessment without any incriminating material is rejected in absence of any observation in the orders of revenue authorities that there was no incriminating material for the un-abated assessment year 2014-15.

21. Pertaining to the remaining regular grounds of appeal, Ld. AR submitted that the Ld. PCIT has not provided fair opportunity of being heard to the assessee while directing the Assessing officer by setting aside the assessment order to re-adjudicate the case of the assessee afresh. Since the PCIT has accepted return submissions of the assessee dated 09/02/2022, 25/02/2022 and 07/03/2022, has duly reproduced the entire submission of the assessee and has duly recorded his observations after considering such replies of the assessee. Ld. PCIT has examined the assessment records and has found that the needful enquiries pertaining to transaction of sale of plots of land, for which the consideration was less than the value adopted by the stamp duty authority, covered by the provisions of sections 43CA of Income Tax Act, 1961, were not conducted by the Ld. AO, therefore, it is incumbent upon him to take-up the issue according to explanation 2 of section 263 of the Act (introduced w.e.f. 01/06/2015) applicable

to the AY under consideration i.e., AY 2014-15 to 2017-18. It is further observed by the Ld. PCIT that no agreement was executed between Shri Hitesh Golchha and purchaser of the plots, no part consideration was received by Shri Hitesh Golchha through account payee cheque or other specified mode from the purchaser of plots. The claim of the assessee that, he had executed an agreement with M/s Adhiraj Developers, but the property was sold to other person could not be substantiated by showing any reference of such agreement in the sale deed. Ld. PCIT also observed that the fact explained by the assessee that the purchasers were arranged by M/s Adhiraj Developers and the part considerations of sale was made to the Adhiraj Developer could not be established with corroborative evidences or any mention in the Sale Deed. Ld. PCIT has discussed amendments made in section 17(1A) of the registration act, 1908 in the year 2001, wherein the documents containing contracts to transfer of consideration of any immovable property for the purpose of transfer u/s 53A of Transfer of Property Act, 1882, accordingly, agreement to sale or contract to sale should be compulsorily registered, which such observations Ld. PCIT has concluded that there was a violation on the part of the assessee in compliance of provisions of Sections 43CA of the I.T. Act during the year.

22. The contention of the assessee that the issue raised in initiating the proceedings u/s 263 was based on objection by the revenue audit department proves that the revisionary proceedings have been invoked by the Ld. PCIT based on audit objection which is nothing but borrowed satisfaction hence the said revision proceedings shall be treated as bad in law. In this context, since

there were lots of deliberations by Ld. PCIT in invoking the provisions of section 263, therefore, it cannot be perceived that the initiation of proceedings with borrowed satisfaction, further, our observation is supported with the decision in the case of Gopal Sponge and Power Pvt. Ltd., in ITA no. 226/RPR/2022 dated 17.10.2023, wherein the coordinate bench of ITAT, Raipur has observed, as under:

*“13. We have considered the rival submissions qua the additional ground pertaining to audit objection / borrowed satisfaction raised by the Ld AR, perused the material available on record and the relevant provisions of the law. In the present case the notice u/s 263 dated 20-12-2021 was issued to the assessee raising the question on deduction claimed by the assessee u/s 80-IA, under the situation wherein there was an alleged violation of provisions of section 80AC of the IT Act, wherein it is mandated that the return of income was supposed to be filed on or before the due date specified u/s 139(1), whereas as observed by the Ld PCIT, in the present case the assessee has filed the return on 08-08-2018 for the AY 2017-18 i.e., after the date specified u/s 139(1). There were also certain other violations on the part of the assessee as recorded by the Ld. PCIT, whereby the assessee’s claim u/s 80-IA was found to be not in accordance with the provisions of law or with compliance of the procedure laid down in the law. The objections of the assessee that Ld. PCIT has not exercised independent application of mind and all the shortcomings noted in the notice u/s 263 were picked up from the audit objection, therefore, such an action of the Ld. PCIT in assuming jurisdiction conferred upon him within the provisions of section 263 was*

*bad in law, which in turn makes the order passed u/s 263 void, is not acceptable, since the PCIT has perused the case records of the assessee for the relevant AY, may be after the issue has been raised under the audit objection but still it was the duty of Ld. PCIT to check whether such issue has been examined by the AO or not, adequate enquiries as required in terms of the provisions of the law were conducted or not, and in case it is found that the order passed by the Ld. AO was without proper verification of the issue and, therefore, the same was erroneous so far as prejudicial to the interest of revenue, then the PCIT has to decide and to consider the matter to exercise the powers u/s 263, so as to remove the error in the order of AO by initiating the revisionary assessment proceedings. Under such scenario, it cannot be construed that, if an issue is surfaced by the audit team, the Ld. PCIT has no powers to touch the said issue by way of invoking the provisions of section 263, rather with effect from 01-06-2015 after introduction of explanation 2 in section 263, the Ld. PCIT's powers are further strengthen and widened to exercise the same, in the circumstances, wherein in the opinion of the PCIT, (a) the order passed by the AO was without making inquiries or verifications which should have been made; (b) allowing any relief without enquiry into claim, the order has not been made in accordance with any order; (c) direction or instruction by the board u/s 119 or (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the Jurisdictional High Court or Supreme Court in the case of the assessee or any other person. Our conviction to this position further fortified in terms of CBDT's Instruction no. 7/2017 dated 21.07.2017, wherein PCIT is specifically entrusted in the cases wherein objections have been raised by*

Revenue Audit and such objections are accepted, the PCIT shall decide if the relevant order under audit requires revision u/s 263, as remedial action, if yes, he shall call for the relevant records and proceed to initiate action u/s 263. Extract of the Circular No. F. No. 246/06/2023-A&PAC-I-79 Dated:16.02.2023, specifically explaining the Procedure for remedial action in cases where Revenue Audit Objection is accepted, therein having a mention about the action required on the part of the Ld. PCIT which is binding on the revenue authorities, is affixed here under for ready reference:

Government of India  
Ministry of Finance, Department of Revenue  
Central Board of Direct Taxes  
Audit & Public Accounts Committee Division — I.

F.No. 246/06/2023-A&PAC-I-79 Dated: 16.02.2023

To,  
All the Pr. Chief Commissioners of Income Tax,  
All the Pr. Director General of Income Tax (Investigation)

Respected Sir/Madam.

Sub: Procedure for remedial action in cases where Revenue Audit Objection is accepted – reg.

Kind attention is invited to the process prescribed in para 5.3 to 5.6 of Board's [Instruction no. 7/2017 dated 21.07.2017](#) for objections raised by Revenue Audit where objection is accepted. The same is reproduced hereunder:

**“Action when Objection is acceptable:**

*5.3 Where the Revenue Audit objection is accepted, the PCIT shall decide if the relevant order under audit requires revision u/s 263 as remedial action. If yes, he shall call for the relevant records and proceed to initiate action u/s 263.*

*5.4 In other cases, the PCIT shall communicate his decision not to invoke section 263 to the Assessing Officer who shall examine the facts of each case and take a suitable action as per his independent application of mind on the facts of each case.*

*5.5 In case the Assessing Officer decides to choose section 154 as the appropriate remedial measure in 5.4 above, he shall initiate the action after approval of the Range head.*

*5.6 The remedial action in case of accepted audit objection shall be initiated within three months and shall be completed within further period of six months from initiation. The objection shall be treated as settled once the intimation of completion of remedial action and issue of demand notice is given to concerned CAG officer.”*

2. Thus, the prescribed procedure requires the PCIT to decide if the order with respect to which objection is raised, warrants revision u/s 263 of the IT Act, 1961 where the objection is acceptable depending upon facts of the case (refer para 5.2 of Instruction no. 7/20M. It is only if the Pr.CIT decides not to invoke section 263 that the AO is required to examine the facts of the case and take suitable action as per his independent application of mind. In case the AO decides to invoke section 154, action is required to be initiated after approval of the Range head as per para 5.5 of the Instruction.

3. It is noticed that many a time, section 154 of the IT Act, 1961 is routinely invoked even in cases where the mistake is not apparent from record or in cases where action u/s 263/147 is warranted, resulting in avoidable unfavourable judgements at the appellate stage.

4. In view of the above, all the field authorities are requested to ensure that the procedure prescribed in [Instruction No. 7/2017](#) is followed scrupulously and remedial action is taken under appropriate section of the IT Act, 1961 after due application of mind.

5. This issues with approval of Member (Audit & Judicial), CBDT.

Yours faithfully,  
**(Nitesh Kumar)**  
DCIT (OSD), (A&PAC-I)  
CBDT, New Delhi

Copy to: The JDIT, Database Cell with a request to upload the above on the portal of IRS Officers Online including A&J Corner.

*14. In view of aforesaid discussion, based on provisions of law as well as binding nature of instructions of CBDT, we are of the considered opinion that there is no substance in the additional ground raised by the assessee which constitutes that the revision proceedings u/s 263 are bad in law since the same is based on borrowed satisfaction i.e., audit objection and not with independent application of mind by the Ld. PCIT. Consequently, additional ground raised by the assessee is rejected.”*

23. On perusal of the order of Ld. PCIT, after thoughtfully considering the submissions of the parties, material available on record and case laws referred to by the Ld. Counsels. Admittedly, the questions and aspects pertaining to the transactions of Sale of plots by the assessee were validly raised by the Ld. PCIT, though the information qua the transactions were called for by the Ld. AO and

duly submitted by the assessee but the necessary enquiries w.r.t. section 43CA were not conducted by the Ld. AO leads to hold the assessment order erroneous and accordingly prejudicial to the interest of revenue. The assessee's contention that proper opportunity of hearing was not granted cannot not accepted while 3 responses by the assessee were considered by the Ld PCIT, and the issue is remitted back to the files of AO for fresh adjudication without any binding conclusion to be followed by the AO, the assessee is also at liberty to submit all his explanations and contentions before the AO.

24. In the course of hearing to substantiate the questions raised by Ld. PCIT, certain additional evidence under a request application to grant leave to furnish such evidence dated 07/06/2023 have been submitted by the Ld. AR, which are allowed to be admitted and on perusal of such details which contains affidavit from M/s Adhiraj Developers, Flow chart explaining the Flow of consideration received from M/s Adhiraj Developers w.r.t. sale deed executed and relevant part of Bank Statement of M/s Adhiraj Developers. On perusal of such additional evidence, it is amicably realized that all these information, which were never submitted before the revenue authorities, are crucial in deciding the issues in hand, at the same time these needs further examination, analysis and verification of its veracity to arrive at the conclusion that whether they support the contentions raised by assessee or not, thus should be restored back to the file of AO. This itself shows that the Ld AO, who have never enquired for all such information, was failed in performing his duties in examining the facts in light of applicable provisions of law. Under such facts and circumstances, thoughtfully considering

the material available on records and judicial pronouncement relied upon by the parties hereto, we are of the considered view that the order of Ld. PCIT is justified, the assumption of jurisdiction in initiation of proceedings u/s 263 are according to law, with proper application of mind. Since, the assessment order is set aside and opportunity of being heard is granted to the assessee, there is no prejudice to the assessee, accordingly, we find substance in the order of Ld. PCIT and therefore the same stands sustained.

25. Since, we have approved the order of Ld. PCIT u/s 263 in restoring the case of the assessee back to the file of Ld. AO for fresh assessment in ITA no. 101/RPR/2022 for the AY 2014-15, our decision rendered therein shall be *mutatis mutandis* applicable in other appeals of the assessee in ITA No. 102, 103, 104/RPR/2022 for the AY 2015-16, 2016-17 and 2017-18, having identical facts, issues and circumstances except the quantum involved.

26. In ITA no 104/RPR/2022, Ld. AR has raised another additional ground with respect to assessment under limited scrutiny as per notice u/s 143(2), but the Ld AO had raised issues other than the issues specified and forming part of the Limited scrutiny. This ground is later withdrawn by the Ld AR, thus the same is dismissed as withdrawn.

27. In the combined result all the aforesaid appeals of the assessee are partly allowed, in terms of our observations herein above.

Order pronounced on the 02 day of November 2023, in Raipur.

**Sd/-**  
(रवीश सूद)  
**(RAVISH SOOD)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**  
(अरुण खोडपिया)  
**(ARUN KHODPIA)**  
लेखा सदस्य/ACCOUNTANT MEMBER

रायपुर/Raipur,

दिनांक/Dated: 02,November, 2023.

*Priti Yadav, Sr.PS (on Tour), Vaibhav*

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Raipur (C.G)
4. The Pr.CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर /  
The DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाईल/Guard File

आदेशानुसार / By Order

// सत्यापित प्रति **True Copy**//

(Assistant Registrar)  
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur