

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1915/Mum/2023  
(A.Y. 2018-19)**

M/s RDC Ventures Office No.-110 RidhhiSidhhi Premises Society, Near Sahakar Talkies Tilak Nagar, Chembur (West) Mumbai- 400089	Vs.	Principal Commissioner of Income Tax-27 Room No. 401, 4 <sup>th</sup> Floor, Tower No. 6, Vashi Railway Station, Commercial Complex, Vashi, Navi Mumbai -400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAKFR0914Q		
Appellant	..	Respondent

Appellant by :	Dhran Gandhi
Respondent by :	Sanyogita Nagpal

Date of Hearing	29.11.2023
Date of Pronouncement	09.02.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the ld. Pr.CIT(A)-27, Mumbai dated 30.03.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. The order u/s 263 of the Act dated 30.03.2023 is bad in law and therefore, should be set aside.
2. The Ld. PCIT erred in setting aside the order of the Learned Assessing Officer dated 02.03.2021 on the ground that the same is erroneous and prejudicial to the interest of revenue.
  - a. The Ld AO has applied his mind to the issues under consideration and has made proper inquiries and therefore, the order u/s 143(3)

*of the Act dated 02.03.2021 is not erroneous and prejudicial to the interest of the revenue.*

- b. The issues being debatable issues, cannot be subject matter of revision u/s 263 of the Act, as the order u/s 143(3) of the Act dated 02.03.2021 cannot be considered as erroneous and prejudicial to the interest of the revenue.*
3. *The Ld. PCIT had no jurisdiction to pass order u/s 263 of the Act dated 30.03.2023.*
4. *The Ld. CIT, has violated principles of natural justice, by not considering the submissions filed by the assessee in passing order u/s 263 of the Act dated 14.03.2023 and by changing the basis of invoking jurisdiction itself*
5. *The Ld CIT, has erred in setting aside the assessment order for making fresh inquires and verification.*
6. *The appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.”*

2. Fact in brief is that return of income declaring total income of Rs.228, 82,260/- was filed on 29.08.2018. The case was selected for scrutiny assessment under the E-assessment Scheme 2019 on the following issues:

- i. Income from real business:
- ii. Unsecured Loans:

A notice u/s 143(2) dated 22.09.2019 was issued and served upon the assessee. The assessment u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act was finalised on 20.03.2021 by accepting the income returned by the assessee.

3. Subsequently, the Id. Pr.CIT, Mumbai-27 issued a notice u/s 263 of the Act on 01.03.2023 and 03.03.2023. The relevant extract of the notice issued is reproduced as under:

- “1. *On the basis of details available on record, it is seen that:*
  1. *The assessee is builder/developer and engaged in construction of housing Projects.*
  2. *On perusal of Profit & Loss A/c., it is seen that during the year under consideration the assessee has shown Sales of Rs.15,53,02.580/- and Closing Finished Goods at Rs.*

*15,27,80,503/- Further assessee has claimed expenses under the head Interest Expenses of Rs. 1,90,10,995/- and TDR Expenses of Rs 5,00,000/-*

**ISSUE NO. 1**

*On carefully considering the above facts, it is seen that assessee is builder/developer and engaged in construction of housing projects. On verification of the details submitted during the course of assessment proceedings, it is not specifically mentioned that whether assessee is following percentage completion method or project completion method for recognizing the revenue. However, as per the details submitted, it is seen that assessee is following project completion method for recognizing the revenue.*

*On verification of the Profit & Loss A/c., it is seen that assessee has debited an amount of Rs.1,90,10,995/- during the year. The Hon'ble ITAT, Mumbai in the case of Wallstreet Construction Ltd. Vs. JCIT has decided that where the assessee is following project completion method of accounting, the interest identifiable with that project should be allowed only in the year when the project is completed and the income from that project is offered for taxation.*

*Keeping in view of the above, it is seen that assessee has completed two projects during the year and one project has been initiated. Taking into consideration that assessee is following project completion method, the interest on loans taken during the year is not allowable in the year under consideration (following Wallstreet Construction decision). On verification of the detail of unsecured loans, it is seen that during the year under consideration, assessee has taken unsecured loans amounting to Rs. 4,96,36,010/- on which assessee has paid interest of Rs. 31,98,292/-*

*Further, on verification of Balance Sheet as on 31.03.2018, it is seen that assessee has shown secured loan from Tata Capital Hsg Fin. Ltd. amounting to Rs.1,79,98,713/- for which the date of loans taken is not available on record*

**ISSUE No 2**

*On verification of Profit & Loss A/c., it is seen that assessee has debited an amount of Rs. 5,00,000/- towards TDR Expenses. As TDR Expenses are in the nature of capital expenditure, the assessee is not entitled to claim it as revenue expenditure.*

*Therefore, you are being allowed an opportunity of being heard and show-cause as to why an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment within the meaning of section 263 of the Income Tax Act, may not be passed in your case."*

4. Vide notice issued u/s 263 of the Act the Id. Pr. CIT has pointed out that the assessing officer in the assessment order has not mentioned that whether the assessee was following percentage

completion method or project completion method for recognising the revenue. The ld. PCIT was of the view that assessee was following project completion method therefore claim of interest on loan taken during the year was not allowable in the year under consideration. The ld. Pr.CIT noticed that during the year the assessee has taken unsecured loan amounting to Rs.496,36,010/- on which the assessee has paid interest of Rs.31,98,292/-. The ld. Pr.CIT further stated that assessee has also shown secured loan from Tata Capital Housing Finance Ltd. amounting to Rs.179,98,713/- for which the date of loan taken was not available on record and interest component need to be examined.

5. The Pr.CIT had also seen that assessee debited amount of Rs.5,00,000 towards TDR expenses and stated that these expenses were of the nature of capital expenditure, therefore, assessee was not entitled to claim the same as revenue expenditure.

6. The Pr.CIT stated that that while making assessment u/s 143(3) dated 02.03.2021 for the A.Y. 2018-19 the AO had failed to examine the above facts of the case in respect of method of revenue recognition, interest on loan and nature of expenditure as capital in nature, therefore held that order passed by the assessing officer u/s 143(3) of the Act on 02.03.2021 was erroneous insofar as it is prejudicial to the interest of revenue.

7. During the course of appellate proceedings before us, the ld. Counsel submitted that the assessing officer has completed the assessment after examination and verification of the issue pointed out by the PCIT at the time of original assessment made u/s 143(3) of the Act on 02.03.2021. In support of his contention the ld. Counsel filed a paper book comprising copies of documents along with detail of information asked by the assessing officer and submitted by the

assessee at the time of assessment. The Id. Counsel also referred copies of notices issued by the assessing officer u/s 142(1) of the Act on 19.02.2020 and 09.11.2020. He referred serial no. 5 of the Annexure to notice u/s 142(1) dated 19.02.2020 wherein as per serial no. 5 the assessing officer asked the following detail:

*“5. Kindly furnish details of 'Loans taken/received and interest expenses paid/credited as per Performa given below, in respect of New loans and Old loans during the year. (In case of no such transactions carried out by you, you may skip the reply to this question)*

<i>Sr. No.</i>	<i>Name of loan Creditor with PAN number</i>	<i>Amount b/f as on 01.04.2017</i>	<i>Amount of Loantaken during the year</i>	<i>Total interest</i>	<i>TDS made if any</i>	<i>Repayment of loan during year</i>	<i>Balance c/f 31.03.2018</i>
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*Also furnish the following*

- 1. The identity details of the loan creditor*
- 2. The copy of duly signed 'Loan confirmations' from the loan creditors*
- 3. The copy of the income tax return and/or balance sheet of loan creditors,*
- 4. The bank statement of the loan creditor showing the transactions.*

*Please note that the primary onus to substantiate the identity, genuineness and creditworthiness of the loan creditors' and genuineness of such loan transactions' lies upon you.*

*For each loan taken from any financial institution, kindly provide loan sanction letter.”*

He also referred serial no. 11, 12, 13 and 18 of the questionnaire wherein the AO has asked the following detail:

- “11. Kindly furnish the details of major heads of expenditure debited to the Trading and Profit & Loss a/c and details of TDS made on such expenses, if applicable. Also kindly furnish details of ledgers and all major bills regarding the above.*
- 12. Please provide project wise party wise details of Sales made along with the (i) details of property i.e. Bungalow/flat/shop no., (ii) area of property, (iii) date of sale and/or agreement of sale, (iv) the name(s), PAN & complete postal address of the party, (v) total amount of transaction value, (vi) amount received, (vii) amount receivable, to whom, sales (and/or agreement of sales) of units/flats/shops were made during the year ended on 31.03.2018.*

*Also kindly provide copy of Sale/Agreement deed and supporting vouchers/ledgers of sales account/ evidences etc. substantiating your claim.*

*In case of no such transactions carried out by you, you may skip the reply to this question.*

13. *Kindly furnish the proper & complete details [Project wise] of (i)Opening Stock, (ii)Closing Stock, and (iii) Work in progress, if any. (In case of no such transactions carried out by you, you may skip the reply to this question)*

18. *You are running real estate business and disclosing closing stock as well. In regard kindly provide following details:-*

1. *Kindly explain and furnish the complete computation of Income/Profits [Project wise, for each complete and ongoing project] from real estate business, along with all necessary details & supporting evidences, to substantiate such computation of Income/Profits.*
2. *Also explain the methodology adopted by you for booking of profit and apportionment of expenditures in the light of various accounting standards in this regard, such as AS-7.*
3. *Further, kindly explain along with necessary evidences whether provisions of deemed rent are applicable in any of the real estate projects mentioned above.”*

8. The ld. Counsel further referred the detail of submission made by the assessee in response to notices issued by the assessing officer during the course of assessment proceedings. He also referred page no. 123 of the paper book pertaining to the submission of the assessee made during the course of assessment proceeding on 06.02.2021 for complete detail of completed projects along with allocation of cost etc.

9. On the other hand on merit, the Ld.DR has submitted that assessing officer has not verified the method of completion projects followed by the assessee and allocation of the interest cost. She has supported the order passed by the ld. PCIT u/s 263 of the Act.

10. In respects of grounds of appeal No. 1 to 2 and 4 to 5 filed by the assessee on merit of order passed u/s 263 of the Act, we have heard both the sides and perused the material on record. The ld. Pr.CIT

observed that assessee was following project completion method for recognizing the revenue. Therefore, the Id. Pr.CIT was of the view that since assessee was following project completion method, therefore, the interest on loans taken during the year was not allowable in the year under consideration. However, on perusal of the record and hearing of both the side we find that during the course of assessment proceedings the assessee has filed copies of audited profit and loss account, balance sheet audit reports, ICDS notes and computation as placed on page no. 1 to 32 of the paper book filed during the course of appellate proceedings. On perusal of the profit and loss account it is noticed that assessee has shown sales of flats to the amount of Rs.15,53,20,580/- and in the profit and loss account also debited interest expenses of Rs.1,90,10,995/-. It is also noticed in the profit and loss account that assessee has shown closing stock of unsold finished flat to the amount of Rs.15,27,80,503/-. Further we have gone through the audit report filed by the assessee during the course of assessment proceedings in form 3CB and noticed that under the head significant accounting policies and disclosures as per ICDS on page no. 26 of the audit report assessee at Serial No. 2 under the head Revenue Recognition reported as under:

- a. During the year, the Company has followed the **Percentage Completion Method of accounting** as per the Guidance Note on Revenue Recognition by the Real Estate Developers issued by The Institute of Chartered Accountants of India. Total Sale Consideration as per the agreements of sale of constructed properties is recognized as revenue based on the percentage of actual project cost incurred thereon, including the cost of land, estimated construction and development cost of the such properties, subject to actual construction cost incurred being 25% or more of the total cost of the construction of the project.*
- b. The amount received from customers which does not qualify for revenue recognition under the **Percentage Completion Method** is accounted as Current Liabilities under the head Other Current Liabilities Sub Head Advance from Customers. The amount receivable against the percentage of revenue recognized is accounted for as Current Assets under the head Trade Receivables and the excess amount received from customer is accounted as current Liabilities under the head Advance from Customers.*

- a. *Interest on refund of any tax, duty or cess and dividend has been recognized on the receipt basis*
- b. *The Operating Revenue in respect of sale of goods is normally recognized at the point of dispatch to the customers. The operating revenue is net of Indirect Taxes and return, if any.*
- c. *Revenue in respect of time basis service income is recognized on prorata basis over period of contract. Revenue in respect of other services is recognized as and when the related service is completed or right to receive the same is established.*
- d. *Revenue in respect of Investment/other income except interest on refund and dividend is recognized as and when the right to receive the same is established.”*

11. It is clearly evident from the submission made before the assessing officer and disclosure made in the Audit Report that assessee has followed the percentage completion method of accounting as per the guidance note of Revenue Recognition by the Real Estate Developer issued by the Institute of Chartered Accountant of India. Further at serial no. 5 under the head significant Accounting Policies and Disclosure as per ICDS of the audit report that borrowing cost in respect to the acquisition and construction of assets are capitalised as part of the cost of respective asset up to the date when such assets get ready to intended use.

12. Further we have perused the notice u/s 142(1) of the Act issued by the assessing officer on 19.02.2020 in which at serial no. 5 of the annexure the assessing officer asked the assessee to furnish detail of loan taken/received and interest expenses etc. Then at serial no. 13 the assessing officer has asked the assessee to furnish the complete details of project wise opening stock, closing stock, work in progress etc. The AO has also asked as per serial no. 18 of the annexure to the notice to explain the method adopted by the assessee for booking profit and apportionment of expenditure in the light of various accounting standard in this regard such as AS-7. The AO has also

asked the assessee to furnish the complete computation of income/profit project wise for each project from real estate business. In response vide submission dated 11.01.2021 the assessee has submitted detail of loan taken and interest provided. Vide submission dated 06.02.2021 the assessee has furnished project wise computation of sales and profit. The relevant extract of the same is reproduced as under:

Project	Units sold	Note on project
Teak Wood	2	This project was completed in the previous year. We had <u>two</u> units as stock in hand. We have sold them <u>as per details</u> given in separate sheet.
Pine Wood	36	This project is completed during the year. Units sold are recorded as sale in books and unsold units are appearing in books as unsold stock.
Red Wood	Nil	This is new project started in the previous year. This project is at very initial stage. No sale is recognized in the project.

2. Sr. no.13 - Details of project wise Work in progress and Finished Stock **attached**.

3. Sr. no. 18 -

a. Computation of project wise Sales and Profit of completed and ongoing project:

**A. Teak Wood Project – Completed Project**

Particulars	Amount (Rs)
No. of Units Sold	2
Agreement Value of Units	1,18,84,645
Sales As per Books	1,18,84,645
Less : Cost of units as per WIP (Finished Goods)	88,09,703
Gross Profit	30,74,942

**B. Pine Wood Project – Completed Project**

Particulars	Amount (Rs)
No. of Units Sold	36
Agreement Value of Units (A)	20,78,44,608
Less : Sales Recognized in A.Y. 2017-18 (B)	6,94,30,673
Value of Units Sold (A – B) (C)	13,84,13,935
Add : Value of Other Service Provided (D)	50,04,000
Sales as per Books (C + D)	14,34,17,935
Less : Cost of Flat Sold (As per WIP)	7,30,97,891
Gross Profit	7,03,20,044

**C. Red Wood – Ongoing Project**

As the project is at initial stage no sales is booked.

**D. Computation of Income**

Particulars	Amount (Rs)
Gross Profit of Teak Wood Project (A)	30,74,942
Gross Profit of Pine Wood Project (B)	7,03,20,044
Total Gross Profit (A+B) (C)	7,33,94,986
Add : Interest on FD & Discount (60,290+16,763) (D)	77,053
Less : Indirect Expenses (As per Costing Sheet <b>enclosed</b> ) (E)	2,65,95,281
Net Profit as per P&L F = (C + D – E)	4,68,76,758

13. The assessee has further explained that in respect of all the three projects sales were recognized as per the guidance note of recognition of revenue by real estate developer issued by the institute of chartered accountant of India. Further we have also noticed the assessee has submitted work in progress account for the year ended on 31.03.2018 in respect of all three projects. Before the AO the assessee has also furnished detail of project wise cost sheet as placed at page no. 131-132 of the paper book.

14. After taking into consideration the entire material available on record it is evident that during the course of assessment proceeding assessee has filed the relevant copies of audit report and information pertaining to revenue recognition demonstrating that assessee has followed the percentage completion method and not the project completion method as mentioned by the ld. Pr.CIT in her order passed u/s 263 of the Act. In relation to the above the assessing officer has also called the various details like project wise value of work-in-progress and finished stock, detail of cost incurred and adjusted against sales reported project wise, party wise sale, receipts of each project and project wise gross profit etc. It is undisputed fact that it has also been brought to the notice of ld. Pr.CIT that it has already been verified in the assessment order passed u/s 143(3) for assessment year 2012-13 to 2015-16, 2017-18 and 2018-19 that assessee has constantly followed the percentage completion method. It is evident from the various information obtained by the assessing officer during the course of assessment proceedings that AO has verified and considered the various detail in respect of the method adopted by the assessee for recognizing the revenue. After taking into consideration the above facts and material on record, we find that ld. Pr.CIT has not disproved the material placed on record by the assessee

in support of their claim that they have followed percentage completion method and not project completion method.

15. In respect of claim of TDR expenses of Rs.5 lac, it is undisputed fact that assessee was engaged in the business of construction and development of building. The assessee has explained that TDR was a right of construction in form of FSI relating to land and building which was part of stock in trade in the business carried out by the assessee, therefore, we consider that treating TDR in the nature of capital expenditure was not justified. The Id. Pr.CIT has not substantiated that how the assessment order passed by the assessing officer is erroneous as well as prejudicial to the interest of revenue. Therefore, ground no.1 & 2 and 4to5 of the appeal of the assessee are allowed.

**Ground No.3: The Id. Pr.CIT has no jurisdiction to pass order u/s 263 of the Act:**

16. During the course of appellate proceedings before us the Id. Counsel submitted that assessment order has been passed under the faceless assessment scheme. He further stated that such scheme was notified vide CBDT notification dated 12.09.2019 and as per the scheme of NFAC the jurisdiction has been vested in the NEAC to make assessment He further stated that as per notification no. 60/2020 dated 12.09.2019 issued u/s 143(3) of the Act as per para 5 (xvi) NFAC shall examine the order by way of automated examination tool and then finalized the assessment. After referring the above faceless scheme the Id. Counsel submitted that assessment order dated 02.03.2021 in the case of the assessee was passed by NFAC. He also stated that NEAC comprised of team of people including Pr.CCIT, CIT, Addl/Joint CIT and DCIT/ACIT. He submitted that since the assessment order was passed by team unit consisting of officers either senior to PCIT, Mumbai or similarly placed officer such order cannot

be revised by PCIT, Mumbai u/s 263 of the Act. He also referred notification of the CBDT dated 13.08.2020 relating to procedure of assessment and notification dated 31.03.2021 pertaining to the Income Tax Authorities and notification dated 10.06.2022 pertaining to various income tax authorities specified for the purpose of faceless assessment. He also referred SOP for assessment unit, verification unit, technical unit and review unit of REAC, dated 19.11.2020. Similarly, he filed copy of CBDT letter dated 13.08.2020 regarding setting up/reconstitution of NEAC under faceless assessment scheme 2019 and the other related notification. He further submitted that there is no notification to the effect that power u/s 263 of the Act has to be exercised by the territorial PCIT. He further submitted that faceless assessing officer is subordinate to PCIT of assessment unit, therefore, territorial PCIT, Mumbai has no power to exercise his supervisory power u/s 263 of the Act. He also referred the various judicial pronouncements:

- i. *(1996) 57 ITD 328 (Bom) Trustees of Parsi Panchayat Funds & Properties vs. DIT*
- ii. *203 ITR 108 (Bom) CIT vs. Gabriel India Ltd.; 314 ITR 81(SC) CIT vs. Greenworld Corporation*
- iii. *152 TTJ (Mumbai) 265 Essar Steel Ltd. vs. Addl. CIT*
- iv. *ITA(TP) no. 3121 and 3122/Mum./2013 Tata Communications Limited vs. DCIT dated 20.12.2013*
- v. *132 taxmann.com 231 (Del) Abha Bansal vs. PCIT*
- vi. *(1996) 57 ITD 328 (Bom) Trustees of Parsi Panchayat Funds & Properties vs. DIT*
- vii. *Hon'ble Telangana High Court judgment in [2023] 156 taxmann.com 178 (Tel) Kankanala Ravindra Reddy vs. ITO*
- viii. *[1998] 231 ITR 53 (SC) CIT vs. Shree Manjunathesware Packing Products & Camphor Works.*
- ix. *346 ITR 443 (Bom) Ghanshyam K. Khabrani vs. ACIT:*

17. On the other hand, the ld. D.R has vehemently contended that the Pr.CIT-27, Mumbai had territorial jurisdiction over the case and correctly exercised the power to invoke provision of Sec. 263 of the Act. The ld. D.R has made reference to the various notification issued

by the CBDT regarding the faceless assessment scheme. She further stated that E-Assessment Scheme 2019 was renamed as Faceless Assessment Scheme vide CBDT notification dated 13.08.2020. Subsequently, Sec. 144B of the Income Tax 1961 was inserted in the I.T. Act w.e.f 01.04.2021 to provide the manner in which faceless scheme shall be conducted within the Income Tax Act itself. She further stated that as per Sec. 144B of the Act the National e-assessment shall after completion of the assessment, transfer all the electronic records of the case to the assessing officer having jurisdiction over the said case for such action as may be required under the Act. She also submitted that as per CBDT notification dated 31.03.2021 all the Income Tax Authorities of Regional Faceless Assessment Center such as the concerned CCIT, PCIT, Addl/JCIT, DCIT/ACITs and ITOs shall exercise the power and functions of assessing officer concurrently to facilitate the conduct of faceless assessment proceedings u/s 144B of the Act. She particularly referred office memorandum dated 06.02.2023 issued by the CBDT on the issue of concurrent jurisdiction of the Faceless Assessment Unit and the original jurisdiction of the jurisdictional assessing officer. She vehemently contended that when the case is specifically assigned to assessment unit under the faceless assessment scheme it exercises concurrent jurisdiction till the completion of the assessment and the scope of the Faceless Assessment Scheme is limited to the making of the assessment in the selected case after which the electronic records pertaining to the assessment are transferred back to the jurisdictional Assessing Officer for other actions required under the Act. After referring the aforesaid scheme of Faceless Assessment she submitted that in the case of the assessee after completion of the assessment for the year under consideration the case was transferred electronically to the DCIT-27(3), Mumbai for other actions required under the Act.

Consequently, thereafter the PCIT-27, Mumbai had initiated proceedings u/s 263 of the Act on 01.03.2023 and contended that the PCIT, -27, Mumbai has correctly exercised the revisionary jurisdiction and supervisory jurisdiction conferred upon by Sec. 263 of the Income Tax Act 1961. She has also submitted that concurrent jurisdiction of the PCIT (Assessment Unit) has been restricted to the conduct of faceless assessment proceedings only u/s 144B of the Act and it does not extend to the exercise of power u/s 263 of the Act and neither separate notification has been issued by the CBDT nor the provision of the Income Tax Act have been amended by the legislature for granting power to exercise jurisdiction u/s 263 of the Act to the PCIT (assessment unit). She has also referred the decision of Hon'ble Kolkata High Court in the case of Sanghi Steel Udyog Private Ltd. vs. Union of India &Ors. WPO/1549/2023 dated 13.09.2023

18. Heard both the side and perused the material on record. Regarding ground no. 3 of the assessee that Pr.CIT-27 has no jurisdiction to invoke revisionary power u/s 263 of the Act as the assessment order has been passed by NFAC, the ld. Counsel was of the view that since the assessment order under faceless scheme is passed by a team/unit/centre and such order cannot be revised by Pr.CIT, Mumbai u/s 263 of the Act. The ld. Counsel submitted that power u/s 263 is not based on territorial jurisdiction but is based on the jurisdiction which a PCIT/CIT exercise over his subordinate. He also referred the Board Notification as referred above in this order pertaining to the scheme on e-assessment. He was of the view that assessment order is passed with concurrent/approval of additional CIT/JCIT and PCIT at various stages therefore such order cannot be revised by PCIT, Mumbai having territorial jurisdiction physically over the case.

We have perused the provision of e-assessment scheme 2019. The said scheme was notified by the CBDT vide notification dated 12.09.2019 which was later renamed as faceless assessment scheme 2019 FAS vide the CBDT notification date 13.08.2020 reproduced as under:

19. As discussed the Faceless Assessment Scheme was notified vide the CBDT notification dated 12.09.2019 for the purpose of making assessment of total income or loss for the assessee as u/s 143(3) of the Act. Subsequently, Sec. 144B was inserted in the Income Tax Act w.e.f 01.04.2021 to provide the manner in which faceless assessment shall be conducted within the Income Tax Act. We have perused the S.O. 2745(E) dated 13.08.2020 wherein procedure for e-assessment has been given as per clause 4(iv) the National E-assessment Center shall assigned the case selected for the purpose of e-assessment under this scheme to a specific assessment unit in anyone regional assessment center through an automated allocation assessment. Further as per clause 4 (xxvi) under the procedure for assessment it is laid down that National e-Assessment Center shall, after completion of assessment transfer all the electronic record of the case to the assessing officer having jurisdiction over the said case for such action has may be required under the Act. We have also perused the provision of Sec. 144B of Faceless Assessment Scheme 2021 inserted w.e.f 01.04.2021. Under the provision of Sec. 144B the whole procedure of faceless assessment has been specified. As per the detailed procedure laid down in clause xxxi of sub-section (1) of Sec. 144AB of the Act the National e-Assessment Center shall after completion of the assessment, transfer all the electronic records of the case to the assessing officer having jurisdiction over the said case for such action as may be required under the provisions of the Act. The

relevant extract of the clause xxxi of sub-section (1) of Sec. 144AB of the Act is reproduced as under:-

*“the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act,”*

It is evident from the provision of Sec. 144B of the Act that once after completion of assessment the faceless assessment unit transfer all the electronic record of the case to the assessing officer having territorial jurisdiction thereafter for all the other action the jurisdiction is vested with the assessing officer having territorial jurisdiction and the PCIT having such territorial jurisdiction. The provision of Section 263 is invoked after the completion of the assessment on examination of record of any proceedings under the Act, therefore, once the assessment record is transferred by the faceless unit to the assessing officer having territorial jurisdiction then no action u/s 263 of the Act is possible with the PCIT who was having jurisdiction of the faceless assessment unit. We further noticed that the faceless assessment unit does not pass the assessment order after obtaining the approval of PCIT and the PCIT in the faceless assessment system play the role of only administrative supervisory on the functioning of faceless assessment unit till the completion of faceless assessment.

20. We find that the case law referred by the Id. Counsel are distinguishable on the fact from the case of the assessee. The case of Trustees of Parsi Panchayat Funds & Properties Vs. DIT referred by the Id. Counsel of ITAT, Mumbai is pertained to the issue of similarity between the jurisdiction of the Directors(Exemption) and Commissioners of Income Tax with reference to the assessment falling under the provisions of Sec. 11 & 12 of the Act because Director of Income Tax has been appointed to carry out the functions of

Commissioner of assessing persons and grant them the status of charitable and religious trust. The same is distinguishable from the case of the assessee in respect of jurisdiction of territorial PCIT for making revision of assessment u/s 263 of the Act after the completion of the assessment. The decision in the case of Kankanala Ravindra Reddy Vs. ITO (2023) 156 taxmann.com 178 (Telangana) is pertained to the different proposition on the issue of reassessment u/s 147/148 and 148 in a faceless manner and not pertained to the issue of revisionary power of PCIT u/s 263 of the Act. The case of CIT Vs Shree Manjunathesware Packing Products & Camphor Works (1998) 96 taxman 1 (SC) is also pertained to different proposition of invoking Sec. 263 on the basis of valuation report submitted by DVO. Similarly, the case of Ghanshyam K. Khabrani Vs. ACIT, circle 1 (2012) 20 taxman.com 716 (Bom) is related to the issue of issuing of notice u/s 148 that there is no statutory provision under which a power of Addl. CIT to be exercised by the Commissioner of Income Tax. We have also gone through the decision of Essar Steel Ltd. Vs. Additional Commissioner of Income Tax, vide ITA No.4007/Mum/2010 AY: 2005-06, this case is pertained to the issue of jurisdiction of the CIT over the TPO for initiating proceeding u/s 263 of the Act. Since, the TPO is different from the assessing officer as he performs the transfer pricing function under the Director of Income Tax Transfer Pricing, therefore, CIT has no jurisdiction over the TPO whereas in the case of the assessee the facts are totally different pertaining to jurisdiction of territorial PCIT. The case of CIT Vs. Gabriel India Ltd. (1993) 71 Taxman 585 (Bombay) is related to different issue of exercising of power by the supervisory authority can be exercise only if the circumstances specified therein exist. We find that the fact of the case of the assessee are entirely different. The case of Tata Communication Limited Vs. Dy.CIT, Range 1(3) vide ITA No. 3121/Mum/2013 dated

20.12.2013 is similar to the case of Essar Steel Ltd. Vs. Additional Commissioner of Income Tax, vide ITA No.4007/Mum/2010 AY: 2005-06 which we have already discussed to be different from the case of the assessee. The ld. Counsel also referred the case of Smt. Abha Bansal Vs. Pr.CIT, (Central) Gurgaon (2021) 132 taxmann.com 231 (Delhi – Trib) which is entirely different and is pertained to the issue that when the assessment order is passed after getting approval of JCIT u/s 153C, then Pr.CIT has no jurisdiction to revise the order u/s 263 of the Act. However, in the case of the assessee assessment order under the faceless assessment scheme was not passed with any specific approval of the PCIT having jurisdiction over the faceless assessment.

Similarly, the other cases referred by the ld. Counsel are entirely different on fact and issue from the case of the assessee on completion of faceless assessment u/s 144B of the Act, thereafter exercising of revisional jurisdiction by the jurisdiction PCIT u/s 263 of the Act.

21. We have perused the decision of Hon'ble Kolkala High Court in the case of Sanghi Steel Udyog Private Ltd. vs. Union Of India &Ors regarding issue of notice u/s 148 of the Act. The Hon'ble High Court has also discussed on the proposition that the Act does not distinguish between jurisdictional assessing officer or NFAC with respect to jurisdictional over a case and both of them having concurrent jurisdiction. This is further corroborated by the fact that u/s 144B of the Act the records are transferred back to the jurisdictional assessing officer after the faceless assessment proceedings are completed. The Hon'ble High Court has also discussed the provisions of Sec. 144B of the Act which lays down the role of NFAC and the units under it for specific purpose of conduct of assessment proceedings in a specific case in a particular assessment

year. The Hon'ble High Court has discussed the nature of jurisdiction u/s 144B of the Act and held that both the jurisdictional assessing officer and NFAC have concurrent jurisdiction.

22. We find merit in the contention of the Ld.DR that concurrent jurisdiction of the PCIT (Assessment Unit) has been restricted to the conduct of faceless assessment proceedings only u/s 144B of the Act and it does not extend to the exercise of power u/s 263 of the Act and neither separate notification has been issued by the CBDT nor the provision of the Income Tax Act have been amended by the legislature for granting power to exercise jurisdiction u/s 263 of the Act to the PCIT (assessment unit). In the light of the above facts and finding we consider that once the record are transferred to the jurisdictional assessing officer on completion of assessment the jurisdictional PCIT assume jurisdiction therefore can exercise power u/s 263 of the Act over the order passed by the faceless assessment unit for all the subsequent action including power to review cases u/s 263 of the Act. Therefore, we don't find any merit in the ground no. 3 of the appeal of the assessee and the same stand dismissed.

23. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 09.02.2024

Sd/-

(Vikas Awasthy)  
Judicial Member

Place: Mumbai

Date 09.02.2024

Rohit: PS

Sd/-

(Amarjit Singh)  
Accountant Member

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.