

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA-PATNA 'e-COURT', KOLKATA  
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 124/PAT/2023  
Assessment Year: 2018-2019**

***BBCPL-SKPL (JV),..... Appellant  
Ground Floor, Jamui Bazar,  
Jamui-811307, Bihar  
[PAN: AADAB1903F]***

***-Vs.-***

***Principal Commissioner of Income Tax,....Respondent  
Central, Patna,  
Central Revenue Building, 3<sup>rd</sup> Floor,  
Beer Chand Patel Marg,  
Patna-800001, Bihar***

**Appearances by:**

*Shri A.K. Rastogi, Advocate, appeared on behalf of the  
assessee*

*Shri A.H. Chowdhary, CIT (D.R.), appeared on behalf of the  
Revenue*

Date of concluding the hearing : January 24, 2024

Date of pronouncing the order : April 17, 2024

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee against the order of ld. Principal Commissioner

of Income Tax (Central), Patna dated 31<sup>st</sup> March, 2023 passed under section 263 of the Income Tax Act in A.Y. 2018-19.

2. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of the Income Tax Appellate Tribunal Rules. They are descriptive and argumentative in nature.

3. In brief, the assessee has raised 28 grounds of appeal, whereas sole grievance of the assessee is that ld. Pr. CIT was not justified in taking action under section 263 of the Income Tax Act and thereby setting aside the assessment order dated 24.03.2021. The ld. Pr. CIT further erred in directing the ld. Assessing officer to pass a *de novo* assessment order. The other submissions pleaded as ground of appeal are peripheral arguments on this central point.

4. Brief facts of the case are that the assessee has filed its return of income on 28.03.2019 declaring total income for A.Y. 2018-19 at Rs.1,54,78,192/-. The case of the assessee was selected for scrutiny assessment and a notice under section 143(2) of the Income Tax Act was issued and served upon the assessee on 23.09.2019. Thereafter ld. Assessing Officer has issued a formal notice under section 142(1) along with the questionnaire on

31.01.2020. The assessment proceeding remained dormant. The jurisdiction from ACIT, Circle-2, Begusarai to DCIT/ACIT, Central Circle-2, Patna was transferred by Id. PCIT-1, Patna on 13.01.2021 by exercising the powers under section 127 of the Income Tax Act. The Id. Assessing Officer thereafter issued two questionnaires on 12.02.2021 and 14.02.2021. He also issued a show-cause notice on 18.03.2021. The Id. Assessing Officer thereafter passed the assessment order under section 143(3) of the Income Tax Act. The Id. Assessing Officer has observed as under in the assessment order:-

*“No books of accounts, bills and vouchers were found by the survey team during the course of survey operation. During survey, assessee was given several opportunities to produce the books of accounts, bills & vouchers before the survey team. But, assessee failed to produce the same.*

*During the course of assessment proceedings, assessee was again provided the opportunity to produce/furnish the books of accounts and supporting bills and vouchers. But, assessee could produce only some part of books of accounts. No supporting bills and vouchers could be furnished/produced by the assessee.*

*Assessee’s contention that Jamui is a small town and they face difficulty to find good human resources to manage the day to day accounts in proper manner as a reason for not maintaining proper books of accounts, is not tenable as because not finding a good human resources cannot be a reason for not maintaining proper books of accounts, bills and vouchers. Assessee is doing a business of contractors having a turnover of Rs. 19.26 crores but is unable to find a good accountant to maintain proper books of accounts, cannot be accepted.*

*Keeping bills and vouchers in support of entries in books of accounts is a normal work and it does not require a specialized person.*

*From the facts and information gathered during the course of survey proceedings/post survey proceedings, it was gathered that assessee maintains the account of gross receipt only. Then*

*after it back calculates the expenditure to arrive at the desired income.*

*Based upon the aforesaid facts and discussion, the aforesaid submission of the assessee is rejected. It can be concluded that assessee was not having its books of accounts at the time of survey and it has been prepared after the survey operation. Assessee does not have supporting bills and vouchers etc. Hence, the said books of accounts cannot be relied upon. Accordingly, the said books of accounts of the assessee are being rejected. Assessee is Government contractor and its entire receipts are subject to the provisions of TDS. Hence, Assessee cannot suppress its receipts. Hence, total receipt of the assessee for the year can be taken as base for the purpose of calculation of profits and gains from business of the assessee. In the absence of proper books of accounts, for the purpose of calculation of true and correct profits and gains from business of the assessee for the year, I reasonably estimate the income of the assessee a sum equal to 8% of gross receipt (turnover) as true and correct income of the assessee chargeable to tax. Accordingly the income of the assessee chargeable to tax is calculated as Rs.1,54,09,548/- (8% of Rs.19,26,19,348/-). It is clarified here that all deduction allowable under the provisions of sections 30 to 38 shall be deemed to have already been given full effect to and no further deduction under those sections shall be allowed.*

*Further, assessee has received interest income of Rs.19,44,075/- and incentive income of Rs.1,27,810/- during the year. Hence, total from business of the assessee comes to Rs.1,74,81,433/- (1,54,09,548 + 19,44,075 + 1,27,810).*

*Considering the aforesaid facts and discussion, the total income of the assessee from business is calculated at Rs.1,74,81,433/- as stated above”.*

5. The Id. Pr. Commissioner was not satisfied with the conclusions of the Id. Assessing Officer. Therefore, he took cognizance under section 263 of the Income Tax Act. The show-cause notice issued by him is available on page no. 1 of the paper book, which reads as under:-

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
PCIT (Central), Patna

To, BBCPL-SKPL (JV) GROUND FLOOR GROUND FLOOR , JAMUI BAZAR JAMUI 811307 , Bihar India	
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PAN/TAN: AADAB1903F	AY: 2018-19	DIN & Notice No : ITBA/REV/F/REV1/2022- 23/1050941958(1)	Dated: 18/03/2023
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**NOTICE FOR THE HEARING**

**M/s/Mr/Ms**

**Subject:** Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year 2018-19.

In this regard, a hearing in the matter is fixed on **27/03/2023 at 03:00 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any along with supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)

Assessment order in this case has been passed u/s 143(3) vide order dated 24.03.2021 assessing the income at Rs. 2,75,61,652/- as against the income disclosed of Rs. 1,54,78,192/- in the return filed on 28.03.2019 for AY 2018-19. Income has been estimated at 8% of the gross receipts of Rs. 19.26 crores, as no books of accounts were found during the course of survey u/s 133A carried out on 14.09.2017, and no books of accounts were produced after survey, or during the assessment proceedings. The AO rejected the books of accounts, which were never produced, holding the same to be unreliable.

2. The Assessing officer failed to make any enquiry from the contractees/payees of the assessee to verify the nature and scope of contract, and the expenditure involved in execution of the contract, thus the true nature of assessee's business was not examined. The AO also failed to bring on record any comparable case before estimating the profits of the assessee at 8%, and not higher. This makes the assessment erroneous and prejudicial to the interest of revenue.

3. The Assessing officer failed to initiate and impose penalty u/s 271A for failure to keep and maintain books of accounts, as required u/s 44AA of the IT Act, 1961.

Note: If digitally signed, the date of digital signature may be taken as date of document.  
.CENTRAL REVENUE BUILDING, BIRCHAND PATEL MARG, PATNA, Bihar, 800001  
Email: PATNA.CIT.CEN@INCOMETAX.GOV.IN,

4. The Assessing officer failed to initiate and impose penalty u/s 271B for failure to get its books of accounts audited, as required u/s 44AB of the IT Act, 1961.

5. In view of the above, the assessment order appears to be erroneous and prejudicial to the interest of revenue and liable to be revised u/s 263. You are hereby requested to show cause as to why the assessment order as above, not be set aside to be passed afresh as per law. Your reply may be filed on/ or before 27.03.2023. If you wish to be heard in person, you may appear personally or through authorised representative on 27.03.2023 at 3 pm.

SHRIKANT KUMAR AMBASTHA  
PCIT (Central), Patna

6. A detailed reply to this show-cause notice was submitted by the assessee but the Id. Pr. CIT was not satisfied with the explanation of the assessee and set aside the impugned order by recording the following finding:-

*“3. I have considered the submissions of the assessee. It is undisputed fact that during the course of survey u/s 133A dated 14.09.2017 at the business premises of the assessee at Jamui, no books of accounts, bills and vouchers were found and the same was admitted in the course of statement of Sh. Rajiv Ranjan Bhalotia, director of M/s BBCPL, company which is a joint venture partner. The books of accounts, bill and vouchers for purchases/expenses were also not produced during the course of assessment proceeding as mentioned on page-5-7 of the assessment order. It is also a matter of record that return u/s 139 was filed on 28.03.2019, beyond the permissible time u/s 139(1), in which total income disclosed was Rs.15478192/- including Rs.10000000/- of income offered to tax, and interest income of Rs.1944075/-. This interest income pertained to the fixed deposits of the assessee company, which was not related to the business activity and hence assessable under the head ‘income from other sources’. The Assessing Officer determined business profit @8% out of contractual receipts of Rs. 192619348/-, amounting to Rs.15409548/- which is only marginally higher than the business profits (including Rs.1 crore of undisclosed income) declared by the assessee. Books of accounts of the assessee has been rejected, by the AO within the meaning of Section 145(3), however, assessment has been framed u/s 143(3) instead of Section 144, which also makes the assessment erroneous. It may be noted that in case of Amhara Constructions Pvt. Ltd., Patna which is also engaged in the business of government contracts involving construction and maintenance of roads, culverts, footpaths etc. has declared profits of 10% or more on*

*a turnover of about Rs. 100 crores in the relevant assessment year and is a comparable case. It may also be mentioned that subsequent to search and seizure operation carried out on 28.07.2021, the said assessee company (Amhara Constructions Private Limited) was found to be indulging in inflated expenses through bogus purchase bills of raw materials.*

*3.2. Further, the Assessing Officer has added unexplained and non-existent sundry creditors (list provided by the assessee and kept on record) amounting to Rs. 10080219/- in total. It is clear that the creditors related to expenditure involving purchase of goods/services by the assessee during the year or in earlier years. It is also noticed that the sundry creditors' balance as on 31.03.2017 (Rs.66949687/-) has substantially reduced to Rs.18060947/- as on 31.03.2018. It is not clear that whether this balance is after disclosure of Rs.1 crore on account of non-existent creditors for taxation. Assuming that the creditors' balance of Rs.18060947/- as on 31.03.2018, is after excluding the balances offered to tax, the assessee has reduced/repaid creditors of an amount of Rs.38888740/- (Rs.66949687-Rs.28060947), which has not been examined as no details of such creditors (name, PAN, address and ledger) has been called for or submitted by the assessee. The Assessing Officer failed to call for the ledger accounts of the party and examine the nature of expenditure/credits in the books of assessee, genuineness of transactions of such purchases and allowability of the same under the provisions of the Income Tax Act. The chances of such purchases/expenses being bogus is high and the amount may be substantially higher than the credit balances admitted by the assessee to be non-existent and offered for taxation. This lack of enquiry makes the assessment order erroneous and prejudicial to the interest of revenue.*

*4. In so far as non maintenance of books of account is concerned, the assessee's plea that the books of account have been audited by the auditor and audit report required u/s 44AB was submitted as required u/s 44AB of the Income Tax Act is also not acceptable. The assessee has not produced the bills and vouchers relating to the expenses claimed and has offered credit balances appearing in the names of various persons aggregating to Rs.10080219/- shows that the AO failed to examine the total amount of expenditure booked in the accounts, in respect of such parties, for the purposes of computing business profit. It is also noted that more than 30 bank accounts, passbooks and cheques pertaining to various persons were impounded during the course of survey u/s 133A, however, the AO failed to call for the bank statements and examine its use/misuse for inflating expenses and suppression profits/taxable real income. The assessee cannot hide behind the audit report, which has been submitted beyond the time limit permissible under the law, and has*

*been prepared without verification of bills and vouchers relating to expenses claimed by the assessee. An audit report is not a ritual or number balancing exercise carried on some software to arrive at a predetermined amount of profits, which the assessee is willing to offer for taxation. By not maintaining the bills and vouchers in support of the expenses, the books of accounts have no sanctity or reliability, irrespective of the auditor certifying the accounts. It is a settled law that failure to maintain books of account, bill and vouchers from which the receipts, expenses and profits could be computed, and where the Assessing Officer failed to initiate penalty proceeding at the time of passing assessment order, renders such order erroneous and prejudicial to the interest of revenue.*

5. *The assessee has submitted that Audit report in Form No. 3CB and 3CD along with return filed on 28.03.2019, is also not acceptable. The said audit report has merely considered the books of account i.e. cashbook, ledger and journal, bank book besides the purchase/ sale registers. It is undisputed that the bills and vouchers for the expenses incurred were not made available during the course of survey or during the assessment proceeding. In any case, the said audit report (purportedly dated 28.09.2018) were not filed within the time prescribed under the law. The Assessing Officer failed to initiate penalty proceeding u/s 271B in the course of the assessment proceeding which renders the assessment erroneous and prejudicial to the interest of revenue. This had been held so in case of CIT vs. Ganeshilal Ramkrishna (2006) 154 Taxman 238 (Allahabad), and in case of CIT vs. Ashok Construction Co. (2006) 280 ITR 368. The claim that subsequent to the conclusion of the assessment on 24.03.2021, the penalty proceedings u/s 271B was initiated and penalty has been imposed vide order dated 31.01.2023, is also not acceptable. The proceeding having been not initiated during the course of assessment, initiation and imposition of such penalty u/s 271B is not sustainable in the eyes of the law.*

6. *In view of the above discussion, it is held that the assessment order dated 24.03.2021 in this case is erroneous and prejudicial to the interest of revenue. The order is therefore cancelled and set aside with a direction to pass fresh assessment order after examination of impounded materials, examination of expenses claimed and allowability of the same. The Assessing Officer is also directed to examine the creditors' balances as on 31.03.2017 and its repayment, and expenses in relation to the creditors whose balances as on 31.03.2018 (Rs.10080219/-) have been added to the income/profits computed @ 8% of gross contractual receipts. The Assessing Officer shall also initiate proceedings u/s 271A and 271B for failure on the part of the assessee to maintain books of accounts, bills and vouchers for the purpose of determining the true and correct income of the assessee company, and submit the Audit report within the prescribed*

*time limit. The Assessing Officer shall also afford proper opportunity to the assessee of being heard before passing the fresh assessment order.*

7. We have heard the Id. Representatives and with their assistance gone through the record carefully. Before we embark upon an enquiry on the facts and issues agitated before us to find out whether the action u/s 263 of the Act, deserves to be taken against the assessee or not, it is pertinent to take note of this section. It reads as under:-

*“263(1) The 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 interest 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.- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-*

*(a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include-*

*(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income Tax*

*Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

*(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorized by the Board in this behalf under section 120;*

*(b) “record shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;*

*(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.*

*(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.*

*(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction*

*contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.*

*Explanation.- In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.”*

8. A bare perusal of the sub section-1 would reveal that powers of revision granted by section 263 to the learned Commissioner have four compartments. In the first place, the learned Commissioner may call for and examine the records of any proceedings under this Act. For calling of the record and examination, the learned Commissioner was not required to show any reason. It is a part of his administrative control to call for the records and examine them. The second feature would come when he will judge an order passed by an Assessing Officer on culmination of any proceedings or during the pendency of those proceedings. On an analysis of the record and of the order passed by the Assessing Officer, he formed an opinion that such an order is erroneous in so far as it is prejudicial to the interests of the Revenue. By this stage the learned Commissioner was not required the assistance of the assessee. Thereafter the third stage would come. The learned Commissioner would issue a show-cause notice pointing out the reasons for the formation of his belief that

action u/s 263 is required on a particular order of the Assessing Officer. At this stage the opportunity to the assessee would be given. The learned Commissioner has to conduct an inquiry as he may deem fit. After hearing the assessee, he will pass the order. This is the 4th compartment of this section. The learned Commissioner may annul the order of the Assessing Officer. He may enhance the assessed income by modifying the order. He may set aside the order and direct the Assessing Officer to pass a fresh order. At this stage, before considering the multi-fold contentions of the ld. Representatives, we deem it pertinent to take note of the fundamental tests propounded in various judgments relevant for judging the action of the CIT taken u/s 263. The ITAT in the case of Mrs. Khatiza S. Oomerbhoy Vs. ITO, Mumbai, 101 TTJ 1095, analyzed in detail various authoritative pronouncements including the decision of Hon'ble Supreme Court in the case of Malabar Industries 243 ITR 83 and has propounded the following broader principle to judge the action of CIT taken under section 263.

- (i) The CIT must record satisfaction that the order of the AO is erroneous and prejudicial to the interest of the Revenue. Both the conditions must be fulfilled.

(ii) Sec. 263 cannot be invoked to correct each and every type of mistake or error committed by the AO and it was only when an order is erroneous that the section will be attracted.

(iii) An incorrect assumption of facts or an incorrect application of law will suffice the requirement of order being erroneous.

(iv) If the order is passed without application of mind, such order will fall under the category of erroneous order.

(v) Every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the AO has adopted one of the courses permissible under law or where two views are possible and the AO has taken one view with which the CIT does not agree. It cannot be treated as an erroneous order, unless the view taken by the AO is unsustainable under law.

(vi) If while making the assessment, the AO examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determine the income, the CIT, while exercising his power under s 263 is not permitted

to substitute his estimate of income in place of the income estimated by the AO.

(vii) The AO exercises quasi-judicial power vested in him and if he exercises such power in accordance with law and arrive at a conclusion, such conclusion cannot be termed to be erroneous simply because the CIT does not see stratified with the conclusion.

(viii) The CIT, before exercising his jurisdiction under s. 263 must have material on record to arrive at a satisfaction.

(ix) If the AO has made enquiries during the course of assessment proceedings on the relevant issues and the assessee has given detailed explanation by a letter in writing and the AO allows the claim on being satisfied with the explanation of the assessee, the decision of the AO cannot be held to be erroneous simply because in his order he does not make an elaborate discussion in that regard.

9. A perusal of the show-cause notice issued under section 263 as well as the finding recorded in paragraphs no. 3 to 6 (extracted supra), we find that basically Id. Pr. CIT has assigned three reasons. In his first-fold of

reasoning, he observed that the books of account were not produced by the assessee and, therefore, assessment order ought to have not been passed under section 143(3). It should have been passed under section 144 of the Income Tax Act. He made a reference of Amhara Constructions Pvt. Limited, Patna, who has disclosed profit @ 10% and who was engaged in the similar line of construction. On due consideration of this fold of reasoning, we are of the view that the assessee has submitted before the revenue authorities that it derives income from the business of a Government Contractor, it is in this line of business from the last five years. The joint venture used to take large contracts from the Government of Bihar and which are executed by different partners of the joint venture. The contractual receipts credited to the assessee are subject to TDS and, therefore, cannot suppress them. The source of those receipts is Government of Bihar. Apart from the above, the assessee's contracts fall under the ambit of GST. It has to file quarterly return for the first quarter and thereafter monthly return for the remaining nine months under the GST Act. It has to disclose complete contract receipt and purchases made by it. The GST audit report is also required to be submitted in Form No. 9C. The GST Authorities have conducted audit under section 65 of the CGST Act, 2017 for the year under consideration. According to the assessee, the entire input credit claimed

on purchases were allowed by the GST Authorities. It was also submitted that the scope of GST audit is very wide and it includes verification of purchases, contract receipt etc. but no adverse action has been taken by the GST Authorities. In the light of above, it was submitted by the assessee that it has submitted books of account, which were duly audited. What it could not submit is the bills and vouchers at the time of survey and during the assessment proceedings, the submissions were required to be made online. We have made a mention in the upper part of this order that after issuance of a notice under section 143(2), the assessment proceeding mainly remained dormant for a quite long time and thereafter the notice was issued under section 142(1) in the month of February and assessment has been completed in the month of March. The assessee has admitted before the Id. Assessing Officer with regard to non-availability of bills and vouchers. Such bills and vouchers could not be produced during the survey time also, but it was contended by the assessee that its construction work is spread over. It is not practically feasible to collect all those information and submit during the course of survey. Such submissions are reflected on page no. 6, last paragraph of the assessment order. Under these compelling circumstances, the Id. Assessing Officer has rejected the book result.

10. It is pertinent to observe that Section 145 would contemplate that income chargeable under the head “profits and gains of business or profession” or “income from other sources” shall subject to the provisions of sub-section (2) be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Sub-section (2) of this Section further provides the method of accountancy required to be followed by an assessee.

11. Sub-section (3) provides that where the ld. Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee or income has not been computed in accordance with the standard notified under sub-section (2), the ld. Assessing Officer may make an assessment in the manner provided in Section 144. Therefore, reading of sub-section (3) would contemplate that where it is not possible for the ld. Assessing Officer to deduce true income of an assessee, then he would reject the accounts and assess the income in accordance with Section 144 of the Income Tax Act.

12. Section 144 further contemplates that the ld. Assessing Officer could determine the taxable income of an assessee on the basis of best of his judgment. In other

words, such income is to be determined according to the calculations of the ld. Assessing Officer, which are to be based on surrounding facts and circumstances. When assessee could not file bills and vouchers, then ld. Assessing Officer thought to exercise his wisdom available under Section 144 and he determined the income of the assessee at 8% of the contractual receipts.

13. The ld. Pr. CIT in the proceeding under section 263 was not satisfied with this mode of assessment. He was of the view that ld. Assessing Officer ought to have explored other details, namely creditor's balance shown in the accounts, etc.

14. On due consideration of the finding of the ld. Pr. CIT, we are of the view that it is not sustainable simply for the reason that in earlier two assessment years, the assessment of the assessee has been framed under Section 143(3) and under Section 147. In both the years, the profit on the receipts has been accepted at 6% and 7%. This year, ld. Assessing Officer has estimated the profit at 8% of the gross receipts. Therefore, directly there is no revenue loss. Apart from the above, the ld. Assessing Officer was fully aware that source of receipts and their genuineness is not in doubt. The receipts have come to the assessee from the state of Bihar on which TDS has been made. The ld. Pr. CIT though made reference to the case of an assessee

Amhara Constructions Pvt. Limited, Patna but no where demonstrated as to how its construction activities were similar to the assessee, whether that assessee was in the business of executing Government contract or was engaged as a Private Builder/Developer. It is not discernible from the impugned order as to why ld. Assessing Officer should have explored this type of similar cases instead of following the result of assessee's own past history where scrutiny assessment was made.

15. If the result of this year is being compared to the result of earlier year, then, income has been assessed at a higher rate than the earlier past two years.

16. The next objection raised by the ld. Pr. Commissioner is that ld. Assessing Officer failed to initiate and impose penalty under Section 271B read with Section 44AB of the Income Tax Act. Such penalty is to be imposed if accounts of the assessee are not audited and the audit report was not submitted, but in the present case, the assessee's accounts were duly audited and those were uploaded along with the return.

17. The next reason assigned by the ld. Pr. CIT is that ld. Assessing Officer has failed to initiate penalty proceeding under Section 271A for not maintaining the books of account. It is pertinent to observe that the assessee has

demonstrated before the Revenue Authorities that it is maintaining books of account, namely cash book, ledger, journal, Bank account and Bank Pass Book, purchase/sales register. It was also submitted that its total receipts came from the Government of Bihar, which were subject to TDS. Its purchases are subject to GST and it has been filing GST return regularly. It has got its accounts audited for GST return and it has availed the GST credit so basic books of account were maintained by it, which was duly audited. The emphasis of the Id. Assessing Officer in the assessment order was that assessee failed to submit bills and vouchers at the time of survey. It is also important to note that no specific instance has been mentioned by either of the authorities, i.e. Assessing Officer as well as Id. Pr. CIT, which specific details was called for and not available with the assessee. The observations are general in nature and on account of those general in nature, its book result has already been rejected. The Id. Pr. CIT failed to appreciate that what fruitful result would come out if it is re-examined by the Id. Assessing Officer, to our mind, it is just waste of resources because profit has already been estimated at 8% of the gross receipts, which have flown to it from the State of Bihar and in construction activities, there could not be more profit to the assessee. One of the reasons Id. Pr. CIT has observed that assessee has shown credit balances as on 31.03.2018. It is pertinent to note that assessee has

been regularly filing the return. In the past, it has filed returns, which have been duly scrutinized by the Department under sections 143(3) and 143(7), but such credit balances if coming out from other years, have never been doubted. In subsequent years which also assessed under scrutiny assessment. Therefore, all these circumstances were subject to verification in every year. By merely quantifying an amount under the credit balance would not become doubtful. The ld. Assessing Officer has adopted one of the courses and assessed the income. If the method adopted by the ld. Assessing Officer did not match to the view point of the ld. Commissioner, then the assessment order would not become erroneous. The ld. Pr. Commissioner failed to work out, which specific prejudice has been caused to the revenue by estimating the income of the assessee at 8% of the gross receipts. The income has been assessed at a higher rate in this year than the profit ratio adopted earlier in scrutiny assessment. For buttressing our conclusion, we fortify ourselves with the decision of the Hon'ble Jurisdictional High Court in the case of CIT -vs.- Shantilal Agarwalla (142 ITR 778 (Patna) and CIT -vs.- Mukul Kumar 2009 (4) PLJR 417. The copies of these decisions are placed on record by the ld. Counsel for the assessee and we have gone through the record.

18. On due consideration of the above facts and circumstances, we are of the view that ld. Pr. CIT was not

justified in quashing the assessment order and setting aside the assessment order for *de novo* assessment. Therefore, we allow this appeal of the assessee and quash the order of the ld. Pr. CIT passed under section 263 of the Income Tax Act in A.Y. 2018-19.

**19. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 17.04.2024.

Sd/-

**(Manish Borad)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President**

***Kolkata, the 17<sup>th</sup> day of April, 2024***

*Copies to :(1) BBCPL-SKPL (JV),  
Ground Floor, Jamui Bazar,  
Jamui-811307, Bihar*

*(2) Principal Commissioner of Income Tax,  
Central, Patna,  
Central Revenue Building, 3<sup>rd</sup> Floor,  
Beer Chand Patel Marg, Patna-800001, Bihar*

*(3) CIT-*

*(4) The Departmental Representative*

*(5) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***