

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI KHETTRA MOHAN ROY, ACCOUNTANT MEMBER

ITA.Nos.251, 252 & 253/NAG./2024 [E-APPEALS]
Assessment Years 2017-18, 2018-19 & 2019-2020

Neel Infratech, Plot No.7B, Opp. Sever Net Showroom, Wardha Road, Ajni Chowk, Ramkrishna Nagar, NAGPUR-440015 PAN AAHFN9427H Maharashtra.	vs.	The Principal Commissioner of Income Tax, Nagpur-1, NAGPUR. Maharashtra.
(Appellant)		(Respondent)

ITA.Nos.254 & 255/NAG./2024 [E-APPEALS]
Assessment Years 2017-18 & 2019-2020

Padmavati Realities, Plot No.414, Flat No.303, Mahima Apartments, Hanuman Nagar, NAGPUR-440 009. PAN AANFP5347C Maharashtra.	vs.	The Principal Commissioner of Income Tax, Nagpur-1, NAGPUR. Maharashtra.
(Appellant)		(Respondent)

For Assesseees :	Shri Suren Durgakar, C.A.
For Revenue :	Shri Sandipkumar Salunke, CIT-DR

Date of Hearing :	06.01.2025
Date of Pronouncement :	03.02.2025

ORDER**PER V. DURGA RAO, J.M. :**

The above five appeals are filed by twin Assesseees against the respective orders of the learned Principal Commissioner of Income Tax, Nagpur-1, Nagpur, relating to assessment years 2017-18, 2018-19 and 2019-20. Since common issues are involved in these appeals, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

2. First we take-up appeal ITA.No.251/NAG./2024 for the assessment year 2017-2018 as “lead” appeal. Both the parties are agreed to that the decision taken in this appeal, be applicable in the remaining appeals.

ITA.No.251/NAG./2024 – A.Y. 2017-2018 [Neel Infratech] :

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in marketing associate in the field of Real Estate Business. The assessee filed it's original return of income u/sec.139(1) of the Act on 08.09.2017 declaring total income of Rs.23,660/. Subsequently, a survey action u/sec.133A of the Act was conducted at the business

premises of M/s. Tirupati Developers and during the survey proceedings, certain incriminating documents were found and impounded related to the assessee. Accordingly, the case of the assessee was reopened u/sec.147 of the Act after recording reasons as required u/sec.148(2) of the Act by taking necessary sanction from the Competent Authority u/sec.151 of the Act. The Assessing Officer issued notice u/sc.148 of the Act on 17.02.2021. In response to the said notice, the assessee filed revised return of income on 15.03.2022 declaring total income of Rs.23,660/-. Subsequently, the Assessing Officer issued statutory notices u/sec.143(2) and 142(1) to the assessee calling for information. The Authorised Representative of the assessee appeared before the Assessing Officer from time to time and filed requisite details/explanation. The Assessing Officer noted that as per assessee's letter it is acting as Marketing Associate in the field of Real Estate and acts as broker and finds customers for the layout projects of Tirupati Developers and in return receives revenue share/commission. During the year under consideration, the assessee booked share of

income from sale of plot Oasis, Shlok, Suvarnabhoomi, Maple and DB-1 Projects of Tirupati Developers. After examining the books of accounts of the assessee, the Assessing Officer noted the assessee has shown profit on sale of plots at Rs.39,24,600/- which is its marketing income and the said income was arrived at 40 : 60 ratio with Tirupati Developers. In this regard, the Assessing Officer noted that the cash receipts received against the plots from the customers were neither recorded in the books of account nor it offered for the taxation and as per the seized documents the total cash receipts are at Rs.56,97,000/- in respect of sale of plots and estimated the assessee's share of marketing income will be at Rs.22,78,800/- @ 40%. Since the assessee did not show this impugned sum of Rs.22,78,800/-, the Assessing Officer estimated the impugned sum as derived from marketing income by making the addition and determined the total income of the assessee at Rs.23,02,460/- as against the returned income of Rs.23,660/- vide order dated 31.03.2022 passed u/sec.147 of the Act.

4. On being aggrieved with the assessment order, the assessee carried the matter in appeal before the learned CIT(A). The learned CIT(A) after examining the written submissions, documents placed on record such as lay outs, registered sale deeds etc., noted that the Assessing Officer had relied on some diary or loose papers which are incomplete in nature for making the impugned addition. Since such documents are “dumb documents” does not form part of “Books of account” and are not admissible u/sec.34 of the Evidence Act, the learned CIT(A) has given full relief to the assessee by deleting the impugned addition of Rs.22,78,000/- in the hands of the assessee. Similar was the position in respect of remaining assessment years except varying sums.

5. The assessee also carried the matter in appeals before the Tribunal and the Tribunal also granted full relief to the assessee.

6. Subsequently, the PCIT, Nagpur-1 by exercising his revisional jurisdiction u/sec.263 of the Act noted that *prima facie* there was a case of the assessee for the impugned

assessment year [A.Y. 2017-2018] being erroneous in so far as it is prejudicial to the interest of revenue. Accordingly, the PCIT issued notice dated 09.03.2024 u/sec.263 of the Act to the assessee. The assessee filed its reply dated 18.03.2024 in response to the said notice. The PCIT after examining the explanation offered by the assessee and the assessment order, noted two issues (i) that the Assessing Officer had not made proper inquiries while making the impugned addition of Rs.22,78,800/- and (ii) not looked into expenses booked in the P & L A/c and the deduction and payment/receipt of TDS on commission expenditure/receipt and other expenses. Therefore, the learned PCIT noted that the order of the Assessing Officer is not only erroneous but also prejudicial to the interest of revenue as per provisions of sec.263 and Explanation 2(1) and 2(b) to sec.263 of the Act and set aside the assessment order of the Assessing Officer and directed the Assessing Officer to re-do the assessment by making necessary inquiries and verification of the claim of the assessee. Similar was the position, with respect to the appeals ITA.Nos.252 & 253/NAG./2024 for the assessment

years 2018-19 and 2019-2020 and appeals in the case of Padmavati Realities i.e., ITA.Nos.254 and 255/NAG./2024, for the assessment years 2017-18 and 2019-2020, except varying sums.

7. Aggrieved by the order of the learned PCIT, the assessee carried the matter in appeals before the Tribunal and reiterated its submissions made before the Assessing Officer and the learned PCIT.

8. During the course of hearing, the Learned Counsel for the Assessee at the very outset submitted that the impugned addition(s) made by the Assessing Officer are on presumption and as per sec.292C(1) of the Act, such addition(s) are not valid. He submitted that, against the order of the Assessing Officer, the assessee carried the matter in appeals before the learned CIT(A) and the learned CIT(A)-3, Nagpur vide order dated 29.03.2023 in the case of Neel Infratech and vide order dated 03.04.2023 in the case of Padmavati Realities after examining the written submissions and documents filed by the assessee before him as well as the assessment order, deleted the impugned addition(s). While

deleting the addition(s) in the instant appeals, the learned CIT(A) noted that the impugned documents and registers having entries related to, do not match. Therefore, the impugned documents cannot be relied upon as they are not conclusive evidence. He, accordingly, directed the Assessing Officer to delete the impugned addition(s) by giving full relief to the assessees. He submitted that the PCIT must give the assessee an opportunity of being heard with regard to error which he proposes to revise u/sec.263 of the Act. In absence of sufficient opportunity to the assessee, the order passed by the Commissioner u/sec.263 of the Act is vitiated under law. He further drew the attention of the Bench that learned PCIT has directed the Assessing Officer to re-do assessment afresh on two issues i.e., (i) basis of 40% sharing between Tirupati Developers and assessee and (ii) expenses booked in the P & L A/c and deduction and payment/receipt of TDS on omission expenditure/receipt and other expenses. He, submitted that the learned PCIT has directed the Assessing Officer to inquire into the matter beyond the issue noted in the show cause notice(s) dated 09.03.2024 to the assessees,

which is not sustainable in law as held by the Hon'ble Supreme Court in the case of CIT vs. Amitabh Bachchan [2016] 384 ITR 200 (SC) wherein the Hon'ble Supreme Court while dismissing the appeal of the Revenue held that – where the show cause notice u/sec.263 of the Act suggested only two issues but the order u/sec.263 of the Act directed the learned Assessing Officer to make enquiry and examine the two issues and a third issue, cannot form the basis for revision of assessment order u/sec.263 of the Act. He accordingly submitted that the instant issue is squarely covered by the above order of the Hon'ble Supreme Court and pleaded that the orders of the PCIT be quashed.

9. The Learned DR on the other hand relied on the order of the PCIT. He submitted that since the Assessing Officer has failed to conduct detailed inquiries and verification of the claim of the assessee, the learned PCIT has rightly set aside the assessment order and pleaded that the order of the PCIT be confirmed.

10. We have heard the rival submissions of both the parties and perused the material on record. In this case, the

Assessing Officer after examining the books of accounts in detail made the addition of Rs.22,78,800/- @ 40% of its share as marketing income in respect of payment received through banking channel. In appeal before the learned CIT(A), the learned CIT(A) after examining the written submissions, sale deeds, lay-outs, other documents, and the case laws relied on by the assessee, deleted the entire addition of Rs.22,78,800/-. Since the learned CIT(A) after through verification of the documents and case law placed before him and the impugned addition made based on presumption and “dumb documents” which does not part of “Books of account” and are irrelevant and not admissible u/sec.34 of the Evidence Act, he granted full relief to the assessee by deleting the addition made by the Assessing Officer in the hands of the assessee. Therefore, considering the totality of the facts and circumstances of the case, we find that the learned PCIT was not justified in invoking revisionary jurisdiction u/sec.263 of the Act as there was no error in the order of the Assessing Officer nor prejudice caused to the interest revenue. Further, the PCIT directed the Assessing

Officer to do verification/inquiries beyond the issues stated in the notice issued to the assessee u/sec.263 of the Act and as per the Hon'ble Supreme Court decision in the case of CIT vs. Amitabh Bachchan (supra), the impugned notice u/sec.263 of the Act is not valid. In view of the above discussion, we, find that the order of the learned PCIT is not sustainable in law as there was no error or prejudice cause to the revenue and, therefore, we quash the impugned order of the learned PCIT on this issue. Further, reference is invited to Explanation-1 of Sec.263 of the Act reproduced as under :

Sec.263 :

[Explanation-1] *For the removal of doubts, it is hereby declared that, for the purposes of this subsection,*

(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 [Principal Chief Commissioner or] Chief Commissioner or [Principal Director General or] Director General or [Principal Commissioner or] Commissioner authorised 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 [Principal Commissioner or] 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 [Principal Commissioner or] 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.]

10.1. Vide Clause-(c) it is manifest that when matter has been considered and decided in appeal, sec.263 cannot be invoked on the very same issue. So, when during the course of hearing, PCIT-1 was appeased of the learned CIT(A) order, he should not have proceeded. The order u/sec.263, to this extent is unsustainable and is bound to be quashed. It is excruciating to note that PCIT-1 in para-6 of his order has artificially made a distinction and travelled in a tangent path. Incidentally, the Nagpur Bench of the Tribunal in ITA.No.125/NAG./2021 vide order dated 31.07.2024 had dismissed the appeal of Revenue for the assessment year 2019-2020. In this factual backdrop, we quash the revision order passed by the PCIT u/sec.263 of the Act. Accordingly, the grounds of appeal of the assessee are allowed.

11. In the result, ITA.No.251/NAG./2024 of the Assessee is allowed.

12. Same order to follow for the remaining assessment years 2017-18,2018-19, 2019-20, 2019-20 in ITA.Nos.254, 252, 253 & 255/NAG./2024 on account of identical facts in all these appeals.

13. In the result, all the five appeals of the twin Assesseees are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 03.02.2025.

Sd/-
(KHETTRA MOHAN ROY)
ACCOUNTANT MEMBER
Nagpur, Dated 03rd February, 2025
VBP/-

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Nagpur concerned
4.	The D.R. ITAT, Nagpur Bench, Nagpur
5.	Guard File.

//By Order//

True Copy

Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.