

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGARAO, JUDICIAL MEMBER AND
SHRIK.M. ROY, ACCOUNTANT, MEMBER

ITA no.27/Nag./2021
(Assessment Year : 2016-17)

City Land Associates
Gulshan Tower, 2nd Floor
Amravati 444 601 PAN – AAHFC1602K

..... Appellant

v/s

Principal Commissioner of Income Tax
Nagpur-1, Nagpur

..... Respondent

Assessee by : Shri R.B. Atal
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 21/01/2025

Date of Order – 14/02/2025

ORDER

PER K.M. ROY, A.M.

This appeal by the assessee is against the impugned order dated 23/02/2021, passed under section 263 of the Income Tax Act, 1961 (*"the Act"*) by the learned Principal Commissioner of Income Tax, Nagpur-1, Nagpur, [*"learned PCIT"*], for the assessment year 2016-17.

2. Following grounds have been raised by the assessee:-

"1. That keeping in view facts of the case, the Hon'ble CIT erred in holding in the proceedings u/s 263 that the assessment order passed by AO is erroneous & prejudicial to the interest of the revenue.

2. The Hon'ble CIT erred in initiating the proceedings u/s 263 and directing AO to pass fresh assessment order. The order passed u/s 263 deserves to be set aside.

3. *That any other ground/ (s) that may be raised at the time of hearing."*

3. Brief Facts:- The assessee is engaged in the business of builders and developers. The assessee, for the year under consideration, filed its return of income on 17/10/2016, declaring total income of ₹ 4,04,84,280. In assessee's case, a survey action under section 133A of the Income Tax Act, 1961 ("*the Act*") was conducted on 22/09/2015. During the survey proceedings, the assessee had disclosed ₹ 2.20 crore as additional income. Thereafter, the assessment under section 143(3) of the Act was completed on 12/12/2018 and the income returned by the assessee was accepted by the Assessing Officer.

4. Subsequent to the passing of assessment order, during the course examination of record, it was found that there were certain issues which were not properly enquired into and verified by the Assessing Officer. Thus, the Assessing Officer, having noted the above facts, the Assessing Officer being ACIT, Amravati Circle, Amravati, submitted a proposal under section 263 of the Act in assessee's case through proper channel and the same was forwarded to the office of the concerned Jt. CIT, Amravati, who, agreeing with the contention of the Assessing Officer that this was a fit case for revision. On receipt of the above proposal for action under section 263 of the Act, the issue was examined once again, the records were perused and thereafter a show cause notice under section 263 of the Act was issued vide this office letter dated 04/02/2021, the relevant part of which are reproduced as under:

"Order u/s 143(3) of the Income Tax Act, 1961, was passed in your case for the assessment year 2016-17 on 12.12.2018 and the income was assessed at Rs. 4,04,84,280/-.

On perusal of the records and the assessment order, it is seen that the assessment order is erroneous and prejudicial to the interest of revenue for the following reasons:

It is seen from the record that additional income of Rs.2,20,00,000/- for AY 2016-17 was disclosed during survey u/s. on 22.09.2015. However, it is seen from the record that instead of this income being offered to tax what has been credited to the P&L A/c is receipts of Rs.2,20,00,000/-. It is also seen that the incriminating documents having a bearing on assessment of income impounded during survey have not been examined by the Assessing Officer, more particularly the impounded diary identified as A-32, which records cash receipts of Rs.5.76 Cr during the year on account of sale shops. These cash receipts of Rs.5.76 Cr have not been considered by the Assessing Officer while framing the assessment. It is evident that the assessment has been completed by the Assessing Officer without any verification of the relevant impounded material.

The order passed under section 143(3) is thus erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the I. T.Act, 1961. I therefore, propose to invoke the provisions of section 263 of the Act to revise the order passed u/s.143(3), or to issue appropriate directions to the AO.

You are therefore called upon to show cause either by appearing personally or through an authorized representative in my office at Room No. 108, Aayakar Bhavan, Nagpur on 11.02.2021 at 11.:40 A.M. to reply to this office u/s.263 of the Act. Please note that in case of non-compliance, it will be presumed that you have no objection to the proposed revision u/s.263 of the Act and order shall be passed on the basis of facts available on record."

5. In response to the aforesaid show cause notice, the assessee furnished submissions, which are reproduced below:–

"5. Submission of assessee

In response, the Authorized Representative (AR) of the assessee filed a submission on 10.02.2021. The relevant parts of the submission are reproduced here under:

"1. The assessment for AY 2016-17 is completed u/s.143(3) after scrutiny. In the scrutiny various information was called for along with a questioner to which assessee has given detailed explanation and replies.

2. The books of accounts are duly audited u/s.44AB. In profit and loss account the receipts amounting to Rs.2.2 crores are shown as per statement in survey which was conducted on 22.09.2015. In the survey assessee has disclosed the amount of Rs.9 crore as an additional income as a result of survey and also paid taxes as directed by the authorities at that time as detailed hereunder.

"We, all the partners hereby further undertake that the additional income declared as a result of survey proceedings shall be shown over and above the

normal profit declared in the returns of income to be filed for the FY 24-15 and FY 2015-16. The year-wise additional income declared as a result of survey is given as under.

2012-13	Amount disclosed	Remark
2013-14	₹ 0.3 crore	On account of token amount received in cash at the time of booking of shops not disclosed in the books of account.
2014-15	₹ 2.5 crore	
2015-16	₹ 4 crore	
Total	₹ 9 crore	ON account of on-money of ₹ 1.5 crore received in cash on sale of shops not accounted for in the books of account and ₹ 70 lakhs as also to cover up the discrepancies that may be appearing in the books of account and documents impounded

It is requested that assessee's above proposal to offer the above amounts be accepted as being offered voluntarily on the basis of documents impounded by the department with a view to buy peace and to avoid litigation and save their time so that it can be used properly in the business and to curtail the litigation cost."

Copy of the letter submitted on 29.08.2015 is enclosed.

3. In the notice u/s.263, it is mentioned by your goodness that the impounded diary identified as 32 which records cash receipts for Rs.5.76 cr on account of sale of shops and the same have not been considered by the AO and further mentioned that assessment is completed without any verification. In this regard may please be made available to assessee for verification so that after going through the same the say can be given.

In fact after appraising the contents of all the impounded material and records including diary A-32, if any, at the time the declaration of Rs.9 crore was given as directed by the survey party to which assessee agreed with a view to avoid litigation and buy peace and also paid the taxes thereon. Accordingly assessment for AY 2013-14, 2014-15, 2015-16 and 2016-17 have been completed for all the years us. 143(3) by accepting the additional income as shown in the returns.

Moreover, it is submitted that the GP for the year under consideration even after excluding 2.2 crores works out at 14.84% which is quite reasonable & after including 2.2 crores the GP jumps upto 22.61%.

Considering all theses the proceedings u/s.263 may please be dropped or next date be given after allowing inspection of the impounded records.

It is requested that next date may please be given after 28th February so that the extended time limit for submitting audited returns and also application under Vivad se Vishwas is over. This request is made as some staff members of the office are suffering due to corona and because of this workload pressure is increased. Hence requested to give next date in March-2021."

6. The learned PCIT, after considering the submissions so furnished by the assessee, set aside the impugned assessment order passed by the Assessing Officer and the Assessing Officer was directed to re-assess the income of the assessee afresh after examining the relevant details and other issues and conduct proper and necessary enquiry by observing in detail which is relevant to quote herein below:-

"Decision of the PCIT

I have considered the submissions made by the assessee as well as the materials available on the records and after giving due consideration to the entire facts as well as circumstances of the case, I find that the contentions raised by the assessee in respect of show cause notice issued for invoking Section 263 of the Income Tax Act 1961, are not acceptable for the reasons discussed in subsequent paragraphs-

6.1 On perusal of the facts it is found that the assessee is a registered firm deriving income from business of builders and developers.

6.2 The assessee filed its return of income for A.Y. 2016-17 on 17.10.2016 declaring total income of Rs.4,04,84,280/- and the assessment u/s.143(3) of the Act was completed on 12.12.2018 accepting the returned income. In this case a survey action u/s.133A of the Act was conducted on 22.09.2015 and the assessee had disclosed Rs.2.20 Crores as additional income for the AY 2016-17. However, it was found from one of the impounded documents that the assessee had received total cash of Rs.5.76 Crore during the year under consideration on account of selling of shop. However, the assessee had declared the additional income of Rs.2.20 Crore only for the year under consideration. The AO in the assessment order has not discussed anything relating to the difference amount of Rs.3.56 Crore. Hence, the order u/s.143(3) is erroneous in so far as it is prejudicial to revenue.

From the above narrated facts it is clear that the AO has not applied his mind with reference to the relevant provisions of the Act while framing the assessment order rendering the assessment order erroneous as well as prejudicial to the interest of the revenue. In the

case of the assessee the assessment order passed by the AO on 12.12.2018 and the time to invoke section 263 has not elapsed.

6.3 Besides, it is also relevant to cite the provisions of Explanation 2 to Section 263 of the Income Tax Act which is as under :-

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 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.*

6.4 *In this case, the assessment order has been passed without taking into consideration the treatment of remaining cash of Rs.3.56 crore received by the assessee and which should have been made by the AO. Accordingly, it has to be considered erroneous and prejudicial to the interest of revenue.*

6.5 *The above Explanation 2 to Section 263 of the Income Tax Act find favour in the various court decisions, which are enumerated below:-*

6.6 *The Hon'ble Apex Court, in The Malabar Industrial Co. Ltd. Vs. CIT (243 ITR 83) had on the scope of proceedings u/s263 observed as under:*

"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase prejudicial to the interests of the revenue is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax."

6.7 *Further reference may be made to the decision of Hon'ble ITAT Bench in the case of Apollo Tyres Ltd vs Assistant Commissioner of Income Tax, as reported in the 65 ITD 263 (Delhi), where it has been held as under:*

"On appeal, the assessee contended (i) that under section 263, the Commissioner could only act suo motu for assuming jurisdiction under section 263 and hence, the action initiated at the instance of the Assessing Officer was null and void ab initio; (ii) that the action taken by the Commissioner in relation to the incomes which had escaped assessment and which could be lawfully brought to tax under section 147 did not come within the ambit of section 263 as there was no order of the Assessing Officer in regard to such incomes; (iii) that the firm findings of the Commissioner relating to under-assessment by Rs. 2.10 crores and assessment of income of Rs. 19.05 crores on account of dividend on units of UTI purchased by the assessee but not registered in its name on the one hand and setting aside the entire assessment with directions to make fresh assessment after proper investigation on the other, was erroneous; (iv) that while cancelling the entire assessment the Commissioner had erred in law in pointing out certain mistakes of the Assessing Officer, and (v) that the Commissioner had gone beyond his jurisdiction under section 263 in directing the Assessing Officer to examine action under sections 276C and 277. On the other hand, it was contended on behalf of the Department that the Commissioner was entitled to initiate

proceedings either suo motu or on the basis of information given by the Departmental authorities or by audit, that there was no bar in the exercise of powers under section 263 in relation to income escaping assessment or having been under-assessed and that the Commissioner was justified in giving firm finding about the under-assessment of items of income in question.

HELD

A plain reading of section 263 clearly indicates that the Commissioner may call for and examine the records of any proceedings under the Act. For this purpose, he is not required to show as to what reasons prompted him to call for and examine the record. The provisions also do not prescribe any limitation that the Commissioner should suo-moto call for and examine the record and he cannot take into consideration or rely upon any report or information which may be supplied to him by the other officers of the department or on the basis of any information which he may obtain from any other source. The authority of the Commissioner to call for and examine the record on the basis of any information from any source or suo moto is purely an administrative matter. If after calling for and examining the records, the Commissioner considers that the order of the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the revenue, then subsequent proceeding acquires quasi-judicial character. On comparison of sections 263 and 264 it would be seen that in section 264 the Commissioner may, either of his own motion or on an application by the assessee, call for the records of any proceeding under the Act. However, in section 263 the expression 'on his own motion' is absent. In the absence of such an expression and also in view of the fact that there is no restriction or limitation on the power of the Commissioner to call for and examine the record of any proceeding pursuant to the report given by the Assessing Officer or by other Departmental Officer, the Commissioner could validly call for and examine the record of the assessee in the instant case for the relevant year pursuant to a letter of the Assessing Officer containing a proposal under section 263. Therefore, there was no merit in the contention of the assessee in this regard.

As regards the question as to whether the Commissioner can exercise revisionary jurisdiction in relation to income which escaped assessment, various courts have held that simultaneous initiation of proceedings under section 263 as well as proceedings under section 147 are legally possible. The words 'prejudicial to the interests of the revenue' used in section 263 are of wide import and they will certainly cover within its ambit the cases where income liable to tax had been under-assessed or escaped assessment on account of the failure on the part of the Assessing Officer to conduct necessary and proper investigation. Since no limitations and restrictions have been provided for in section 263, the Commissioner is clearly entitled to invoke jurisdiction under this section in cases where he considers that the order by the Assessing Officer is erroneous and prejudicial to the interests of the revenue regardless of the fact that action could also be taken by the Assessing Officer under section 147.

It is a well-settled law that where the Assessing Officer fails to make proper inquiries and investigation, such failure on the part of the Assessing Officer will result in prejudice to interests of the revenue and initiation of action under section 263 by the Commissioner under such circumstances will be perfectly valid and justified. The question whether an order of the ITO is prejudicial to the interests of the revenue and whether there was a failure on the part of the ITO to make proper and necessary enquiries would depend upon the facts of each case.

.....

However, the Commissioner should have simply set-aside the order of the Assessing Officer in relation to the aforesaid two points and ought to have directed the Assessing Officer to decide the aforesaid two points after conducting necessary investigation and inquiries and after providing reasonable opportunity to the assessee instead of giving a firm finding that total income had been under-assessed by a sum of Rs. 2.10 crores in respect of loss on purchase and sale of said units and also in regard to under-assessment of income by a sum of Rs. 19.5 crores on account of dividend on such units. The firm findings given by the Commissioner for inclusion of the said income of Rs. 2.10 crores and Rs. 19.5 crores were, therefore, cancelled and the order of the Commissioner in relation to those two items was modified to the extent that the Commissioner had rightly held that the order of the Assessing Officer was erroneous and prejudicial to the interests of the revenue as the same was passed without making proper and necessary inquiries in relation to the aforesaid two points and consequently, the order of the Commissioner directing the Assessing Officer to make fresh assessment after proper investigation and after giving due opportunity to the assessee in relation to the aforesaid two items, was upheld."

6.8 *Rajmandir Estates Private Limited V. Principal Commissioner of Income Tax'* - 2016 (5) TMI 801-CALCUTTA HIGH COURT- The High Court held that lack of enquiry, where enquiry is necessary, can be treated as prejudicial to the interest of the Revenue so as to justify revisional jurisdiction. It was for non inquiry, the validity of action under Section 263 was held justified in a case of non verification of share capital contribution when there was evidence to suggest that the transaction could not be genuine.

6.9 The Hon'ble Kamataka High Court in the case of CIT Sri. Biluru Gurubasave Pattina het that

This Court had an occasion to consider Section 263 of the Act in the case of COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LITD. [2013] 354 ITR 489 (Karn) where paragraph-18, it has held as under.

"As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act 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 Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. "Prejudicial to the Revenue" means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise this jurisdiction under Section 263."

6.10 Hon'ble Rajasthan High Court in the case of CIT Vs. Bhawal Synthetics (Iridis) has held that,

"So far as the second question is concerned as to whether the Commissioner of Income Tax was justified in invoking powers under section 263 of the Act of 1961 by holding that the inquiry conducted by the assessing officer before the assessment order was neither proper nor adequate, we would like to state that the order passed by the assessing officer nowhere reflects about any inquiry said to be made. It simply refers the explanation given by the assessee and nothing beyond that"

6.11 The Hon'ble ITAT Ahmedabad Bench in the case of M/s. Sonalank Investment Trading Pvt. Ltd. Vs. CIT, (ITA No. 1343/AM/2011) and relied on following observations:

"An assessment order can be erroneous either in law or in fact. An assessment order can be an erroneous one when prima facie a claim is allowed which according to the learned CIT was against the provisions of law. An assessment order can be held as prejudicial to the interest of the revenue if in the opinion of the learned CIT the inquiry was not adequate or no inquiry at all has been made. We may like to mention that the assessing officer is not only an adjudicator but also an investigator. The assessing officer cannot remain a passive spectator while dealing with a return of income filed by the tax payer. If on the face of the return it is apparent that an inquiry is required: then it is expected from the assessing officer to conduct an investigation so as to ascertain correctness of the return filed as also the income declared therein. It is his duty to ascertain the truth of the facts stated in the return. Where the circumstances indicate to provoke an inquiry, then the same should not be withheld. In a landmark decision in the case of G.V. Enterprises, 99 ITR 375, the Hon'ble Delhi High Court has held that "inadequacy of inquiry is a good reason for invoking the proceedings under section 263 of the Act." In any case, we are not confining our decision entirely on the issue of "lack of inquiry" or "inadequate inquiry". From the side of the assessee the learned authorized representative, Mr. Tushar P. Lilmani has argued that this is not the case of lack of inquiry by assessing officer and that if the assessing officer had made inadequate inquiry then that should not be a ground to applying the provisions of section 263 of the IT Act. Nevertheless, we are on the issue that no inquiry at all has been made by the assessing officer in respect of the determination of the nature of the transaction. The law is very clear that the assessing officer has quasi-judicial powers vested on him. By exercising those powers it is necessitated to pass a reasoned order. If the reasoning is lacking in an assessment order, then also the learned CIT can invoke the revisionary powers. There must be some prima facie materials on record to show that the tax which was offered by the assessee was lawfully excisable on the assessee and, therefore, it was accepted by the assessing officer without any change or alteration".

7. In the light of facts mentioned in the foregoing paras and the details on record clearly indicate that the said issue and discrepancies were neither verified nor inquired upon and the effect of the same has not been brought on the record and in the absence of express consideration and reflection of same in the assessment order as well as on perusal of the records, the assessment order passed by the AO is erroneous in so far as prejudicial to the interest of the revenue. Therefore, the said assessment order passed by the AO, is set aside to the Assessing Officer who is directed to reassess the income of the assessee afresh after examining the relevant details and other issues and conduct proper and necessary enquiry, as may be relevant and necessary and then pass a speaking assessment order. Needless to state, the Assessing Officer should follow due procedure and also afford reasonable and fair

opportunity of being heard to the assessee before the completion of the reassessment."

7. Before us, the learned Authorised Representative relied on the disclosure letter dated 29/09/2015, vide Page-1 to 4 of the Paper Book placed on record, runs as follows:-

*"To
The Dy. C.I.T.,
Amravati Circle, Amravati*

Sir,

Sub: Survey proceedings u/s 133A of the I.T. Act 1961 conducted on 22/09/2015

Kindly refer to the above.

The survey proceedings u/s 133A of the I.T. Act 1961 is conducted in our case on 22/09/2015. During the course of survey proceedings, documents have been impounded by the department. Certain discrepancies were found on account of cash receipts and out of books expenses incurred for providing extra amenities to purchasers. Considering the various aspects and irregularities found in the books of accounts, the details of which have been explained in the statement of Shri Manohar Dhalumal Sadhwani, recorded u/s 131 of the I.T. Act 1961, we, all the partners of the firm M/s Cityland Associates, Amravati, jointly agree to disclose the following income in the hands of the partnership firm M/s Cityland Associates, Amravati which was not declared in the returns of income filed for the relevant assessment years. We all the partners jointly undertake responsibility to pay the tax liability including interest arising on such income disclosed in this statement. We all the partners hereby further undertake that the additional income declared as a result of survey proceedings shall be shown over and above the normal profit declared in the returns of income already filed as well as the returns of income to be filed for the FY 2014-15 and F.Y. 2015-16. The year-wise additional income declared as a result of survey is given as under:-

<i>F.Y.</i>	<i>Amount disclosed</i>	<i>Remark</i>
<i>2012-13</i>	<i>₹ 0.3 crores</i>	<i>On account of token amount received in cash at the time of booking of shops not disclosed in the books of accounts.</i>
<i>2013-14</i>	<i>₹ 2.5 crores</i>	<i>On account of on-money received in cash on sale of shops not accounted for in the books of accounts, and the balance amount after incurring expense on construction of bathrooms, pantry, staircase, tiles, or extra mezzanine floor which was received from the buyers of shops.</i>
<i>2014-15</i>	<i>₹ 4.0 crores</i>	<i>On account of on-money received in cash on sale of shops not accounted for in the books of accounts, and the balance amount after incurring expense on construction of bathrooms, pantry, staircase, tiles, or extra mezzanine floor which was received from the buyers of shops.</i>
<i>2015-16</i>	<i>₹ 2.2 crores</i>	
<i>TOTAL</i>	<i>₹ 9.0 crores</i>	

We hereby handover to you the post dated cheques against the tax liability arising as a result of additional income declared and it will be ensured that the cheques will be honoured on their presentation. We hereby state that in case any of the cheques is not honoured, we shall make the necessary arrangements for payment of tax liability within three days of dishonouring the cheque.

Sr. no.	Date of Cheque	Amount
1.	02/10/2015	₹ 70 lakh
2.	15/10/2015	₹ 70 lakh
3.	15/11/2015	₹ 90 lakh
4.	30/03/2016	₹ 70 lakh

It is requested that assessee's above proposal to offer the above amounts be accepted as the same is being offered voluntarily on the basis of documents impounded by the department with a view to buy peace and to avoid litigation and save their time so that it can be used properly in the business and to curtail the litigation cost.

It may please be appreciated that the assessee has voluntarily disclosed the additional income as a result of the survey proceedings u/s 133A of the I.T. Act 1961 to purchase peace of mind and has cooperated in the survey proceedings as well as post survey proceedings. We have already undertaken to offer above additional income over and above the regular income shown in the returns of income filed as well as returns to be filed for AY 2015-16 and AY 2016-17. We have also undertaken to pay full amount of tax without any further claim or litigation. It is with an understanding that penalty proceedings will not be initiated or imposed for any of the assessment years involved.

Submitted on 29/09/2015.

Sd/-
Shri Manohar Dhalumal Sadhwani
(Partner)

Sd/-
Shri Ghanshyam Basarmal Pinjani
(Partner)

Sd/-
Shri Deepak Bhagwandas Dhamecha
(Partner)

Sd/-
Shri Mukesh Chetandas Harwani
(Partner)

Sd/-
Shri Shankar Gurbomal Harwani
(Partner)

Sd/-
Shri Sanjay Premchand Harwani
(Partner)

Sd/-
Shri Subhash Nanakram Talda
(Partner)

Sd/-
Shri Manoj Nandlal Bharani
(Partner)

Sd/-
Shri Shashi Prataprai Chhatwani
(Partner)"

8. The learned Authorised Representative harped upon the point that same disclosure has been accepted in earlier years on the ground of consistency, no tinkering is required.

9. On the other hand, the learned Departmental Representative pointed out that the statements do not have any evidentiary value in survey proceedings as under section 132(4) of the Act and disclosure must be based on corroborative evidences. Hence the Assessing Officer has not considered the document at all into consideration and was simply swayed by the disclosure statement.

10. We have dispassionately heard the arguments of both the parties. It is pertinent to reproduce the cover page of the Paper Book furnished by the Chartered Accountant Shri Mahavir Atal, appearing for the assessee along with the note.

"BEFORE THE INCOME TAX APPELLATE TRIBUNAL

Appellant: City Land Associates
ITA no. 27/Nag./2021
Assessment year : 2016-17

<i>Sr. no.</i>	<i>Particulars</i>	<i>Page No.</i>
1.	<i>Disclosure letter dated 29/09/2015</i>	<i>1 - 4</i>
2.	<i>Relevant seized document A-32</i>	<i>5 - 86</i>
3.	<i>Spread Sheet working of the above impugned document in cash book format</i>	<i>87 - 113</i>
4.	<i>Year wise details of the cash receipts and cash payments (Working for A-32 document)</i>	<i>114 - 118</i>
5.	<i>Assessment Order A.Y. 2013-14</i>	<i>119 - 121</i>
6.	<i>Assessment Order 2014-15</i>	<i>122 - 123</i>
7.	<i>Assessment Order A.Y. 2015-16</i>	<i>124 - 125</i>

Representative for Appellant
Sd/-
CA Mahavir Atal

Note: Document at Sr. No. 1 is disclosure letter given during the survey, this document is borne on the file of the lower authorities. Document at Sr. No. 2 are the impugned documents found during survey proceedings and seized by the revenue. Documents No 3 are workings prepared on the basis of the document No2. submitted first time before Tribunal. Other documents are in a form of an assessment orders, issued by the revenue."

11. It is the categorical submission that the working prepared on the basis of seized document is submitted for the first time before the Tribunal. So it is manifest that the Assessing Officer never bothered to apply his mind to the seized document at all, as it is crystal clear from the note on the index Page. It is a classic case of not conducting any enquiry by the Assessing Officer. The very fact that similar proceedings were not initiated for other years is immaterial because to perpetuate an error is no heroism. The assessee should not be allowed to be enriched at the cost of mistake by the Assessing Officer. The revisional order passed under section 263 of the by the learned PCIT is perfectly justified. Consequently, we uphold the impugned order passed by the learned PCIT under section 263 of the Act. Thus, the grounds raised by the assessee are dismissed.

12. In the result, assessee's appeal stands dismissed.

Order pronounced in the open Court on 14/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 14/02/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur