

THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

I.T.A. No. 11/Ran/2022 (Assessment Year-2017-18)

(Virtual Hearing)

Ashok Kumar Pandey, Durga Mandir Road, Master Para, Hirapur, Dhanbad-826001 (Jharkhand) PAN No. AKUPP 5745 P	Vs.	Pr.CIT, Aaykar Bhawan, Luby Circular Road, Dhanbad-826001
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri M.K. Choudhary, Adv.
Department represented by	Shri Shiv Swaroop Singh, CIT-DR
Date of hearing	24/03/2025
Date of pronouncement	24/03/2025

ORDER

PER: BENCH

1. This appeal by the appellant is directed against the order of the learned Principal Commissioner of Income Tax, Dhanbad [in short, the Id. PCIT] passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) dated 09/02/2022 for the Assessment Year (AY) 2017-18 by raising following grounds of appeal:

- "1. For that the order passed u/s 263 is unjustified on facts and in law, illegal and liable to be quashed.
2. For that Ld. PCIT, erred in not appreciating that this was not a case of no enquiry of lack of inquiry. As such the order passed is unjustified, arbitrary and liable to be quashed.
3. For that no defect has been found by Learned. PCIT on the specific reason of Real Estate Business with High Closing Stock, the specific reason for which the case was selected for scrutiny under Computer Assisted Scrutiny Selection (CASS). Ld. PCIT also erred in pointing out how the view taken by Ld. AO was erroneous and prejudicial to the interest of the revenue. As such the order passed is unjustified and without any cogent basis.
4. For that Ld. PCIT erred in not appreciating that the Ld. AO has made detailed enquiries and has taken one of the possible view as such no

order u/s 263 could have been passed setting aside the order u/s 143(3).

5. *For that Ld. PCIT erred in not appreciating that he could not have enlarged the scope of enquiry in proceeding u/s 263.*
6. *For that as such the view taken by Ld. AO cannot be said to be erroneous and prejudicial to the interest of the revenue.*
7. *For that any other ground(s) if any, will be argued/taken up at the time of hearing."*

2. Facts of the case, in brief, are that, in this case, return of income was filed by the assessee declaring total income of ₹ 9,13,750/- for the assessment year under consideration. The return was duly processed under Section 143(1) of the Act and subsequently the case was selected for complete scrutiny through CASS on specific reason i.e. "Real Estate business with high closing stocks". Statutory notices under Section 143(2) and 142(1) of the Act were issued from time to time and duly served on the assessee. In response to the said notice, the assessee filed his submission online with copy of acknowledgement of the ITR, bank statements, computation of income, audit report, Form 26AS, audited books of account, ledger accounts, Challans regarding PMGKY Scheme alongwith other details and documents as called for through departmental ITBA Module which was duly examined by the Assessing Officer. It is further stated in the assessment order that the relevant papers and documents filed during the course of hearing were duly perused and considered. During the assessment year under consideration, the assessee was engaged in civil construction work under his proprietorship concern in the name and style of M/s Ashoka Builders and Developers, Hirapur, Dhanbad. It is further mentioned in the assessment order by the Assessing Officer that on going through the audited books of account, it was seen that the assessee had shown closing stock as work in progress to the tune of ₹ 12,37,58,750.43 for

the financial year under consideration and when asked to explain the reasons for high closing stocks, the learned Authorised Representative (Id. AR) of the assessee submitted on 16/02/2019 that during relevant financial year, some projects were completed and most of the projects were shown under 'work in progress' since the registration of the same was still to be made. Further on analysis of the opening and closing stock of work in progress, it was observed by the Assessing Officer that the percentage increase of work in progress was much below in comparison to the preceeding previous year. The Assessing Officer also mentioned that the case of assessee has already been scrutinized for the preceeding two consecutive financial years as well on very similar issue of high value closing stock. In this regard, the reason for enhancement of the figures of work in progress was due to intense rise of building material cost as well as labour charges in comparison to the preceeding previous years. Hence, considering all the facts and circumstances, no adverse inference was drawn by the Assessing Officer with regard to enhancement of the value of closing stocks.

3. Two more additions were made by the Assessing Officer on account of 'business promotion expenses', 'travelling and conveyance' and 'new papers and periodicals' amounting to ₹17,000/-, ₹ 5,908/- and ₹ 7,320/- respectively.
4. The Id. PCIT, Dhanbad vide its impugned order dated 09/02/2022 set aside the impugned assessment order dated 09/07/2019 under Section 263 of the Act on the ground that the Assessing Officer failed to enquire into the expenses claimed by the assessee regarding major expenses claimed in the books to arrive at the correct assessment of the income of the assessee with

regard to (i) real estate business with high closing stock, (ii) enquiries and verification with regard to payment made to land owner amounting to ₹ 31,06,375/- and (iii) enquiries and verification with regard to source of advance of ₹ 10,42,27,450/-. The Id. PCIT further directed the Assessing Officer to make a fresh assessment taking into account the findings of the Id. PCIT on the aforesaid points.

5. Aggrieved by the order of Id. PCIT, this appeal has been filed before us. During the course of appellate proceedings before us, the appellant submitted as under:

"During the course of assessment, the appellant duly appeared before the Id. AO and filed its audit report with audited accounts, bank statements, loan statements, capital account, TDS Challan, copy of ledger etc. as required by the Assessing Officer and also produced the books of account alongwith bills and vouchers and filed his submission alongwith details of the projects completed and projects shown under work in progress and the details of the preceding two years also, the detailed enquiry and scrutiny was made by the Id. AO as mentioned in his aforesaid assessment order. In the immediately preceding two years also, the scrutiny assessment of the appellant was also made on similar issue of high value of closing stock and relying upon the facts and circumstances of the case, the closing stock of the appellant was accepted and nominal disallowance of expenses were made at the time of assessment."

It was further submitted by the Id. Appellant's counsel that the Id. PCIT, Dhanbad initiated proceedings u/s 263 of the Act as under:

"That Ld. PCIT Dhanbad initiated proceedings u/s 263 on the ground that Ld. AO has completed the assessment without making enquiries and verifications in respect of below mentioned items:-

(a) Major expenses claimed:

(i) Labour payment of ₹ 46,02,250/-

(ii) Purchase of bricks of ₹ 9,30,150/-

(iii) Stone chips of ₹ 3,20,900/-

(iv) Sand of ₹ 2,94,500/-

(v) Steel of ₹ 11,78,852/-

(vi) Plumbing material of ₹ 1,61,090/-

(vii) Marble & Tiles of ₹ 17,73,356/-

(b) Payment made to land owner of ₹ 31,06,375/-

(c) Source & Advance of ₹ 10,42,27,450/- received in lieu of allotment of flats.

"That the appellant appeared before the PCIT Dhanbad and filed the details of all the aforesaid expenses with supporting documents and his explanation stating, inter alia, that almost all expenses were paid mostly through banking channels and the TDS, wherever applicable, was also deducted and deposited.

In respect of source of advance he has submitted that the aforesaid amount of ₹ 10,42,27,450/- received in lieu of allotment of flats has been brought forward from the books of preceeding year and does not pertains to the year under consideration and further submitted that during the aforesaid assessment proceedings u/s 143(3) all the aforesaid supporting documents were produced and duly verified by the Ld. AO and detailed enquiries were

made. And as such, the order passed may not be treated as erroneous and prejudicial to the interest of the Revenue."

"That, however, Ld. PCIT had at para No. 5 at page No. 5 of his order u/s 263 has, without any cogent basis and in contradiction to the aforesaid facts of the case, has wrongly mentioned that it was cleared that even the assessee did not deny the fact no enquiries were made by the Ld. AO during the assessment proceedings and further directed the AO to make a fresh assessment taking into the findings on the issues discussed in his aforesaid order u/s 263."

It was further submitted by the Id. Appellant's counsel during the course of hearing, that the Id. PCIT, therefore erred in not appreciating the aforesaid facts in a judicious manner. Moreover, the incurring expenses over the work in progress of the project under construction was not charged to Profit and Loss account. As such, even if any disallowance made, no tax is payable on the same and that is why the same is not prejudicial to the interest of revenue, thus in the present case, the twin conditions as required under Section 263 of the Act i.e. the order is prejudicial and erroneous are not satisfied in this case. The Id. Counsel for the appellant finally, submitted that since the necessary verification and enquiries have already been made in this case by the Assessing Officer, further scrutiny by the Id. PCIT amounts to revisit on the same issue which is not permissible under Section 263 of the Act as has been decided by the various courts including Hon'ble Apex Court.

6. The Id. CIT-DR for the revenue, on the other hand, reiterated what has been mentioned in the impugned order that enquiries and verifications were not

made by the Assessing Officer regarding high closing stock, payment to land owners of ₹ 31,06,375/- and source of advance of ₹ 3,42,27,450/-. In response to the query made by the Bench that why the Id. PCIT himself did not make the enquiries during the proceedings under Section 263 as provided under Section 263(1) of the Act where it is mentioned as under:

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

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

In response to that, the Id. CIT-DR for the revenue submitted that Explanation-2 of Section 263(1), which is a deeming provision provides that any order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if, in the opinion of the Pr.CIT if that order is passed without making enquiry or verification which should have been made. Thus, the Id. CIT-DR submitted that under this provision, the action of the Id. PCIT is fully justified.

7. We have considered the facts of the case, original assessment order dated 09/07/2019, the impugned order and the legal provisions in this regard and we are of the opinion that in the present case, all necessary enquiries were made by the Assessing Officer not only as mentioned in the assessment order, during this year, but in earlier years also. Thus, the setting aside of the assessment order dated 09/07/2019 by the Id. PCIT, Dhanbad amounts to

revisit of the same issues which is not permissible as has been decided in plethora of cases including the Hon'ble Apex Court. Thus, the order passed under Section 263 of the Act by the Id. PCIT, is hereby, cancelled.

8. In the result, this appeal of assessee is allowed.

Order announced in open court on 24th March, 2025.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 07/04/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi