

IN 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. 09 to 11/Ran/2021

(Assessment Year-2012-13, 2014-15 and 2016-17)

(Virtual Hearing)

Ramesh Kumar Singh, Road No. 13, Indrapuri, Ratu Road, Ranchi-834005 (Jharkhand) PAN No. APCPS 7240 D	Vs.	Pr.C.I.T., (Central), Patna.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri M.K. Chowdhary, A.R.
Department represented by	Shri Uday Bhaskar Jakke, CIT-DR
Date of hearing	20/03/2025
Date of pronouncement	29/04/2025

ORDER

PER: BENCH

1. All These appeals by the assessee are directed against the separate orders of the learned Principal Commissioner of Income Tax (Central), Patna [in short, the Id. PCIT] passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) dated 03/12/2020 and 08/12/2020 for the Assessment Year (AY) 2012-13, 2014-15 and 2016-17 respectively. All these appeals of the assessee are having common facts and grounds, therefore, with the consent of parties, all these appeals of the assessee are clubbed and heard together and being decided by this consolidated order. For appreciation of facts, we take ITA No. 09/Ran/2021 for the A.Y. 2012-13 as a lead case. In this appeal, the assessee has raised following grounds of appeal:

- "1. For that the order u/s 263 passed by Ld. Pr.CIT, Central, Patna is illegal, unjustified, arbitrary and is liable to be quashed.
2. For that the order passed is neither erroneous nor prejudicial to the interest of the revenue.

3. *For that Ld. Pr.CIT, Central, Patna erred in not appreciating that the Capital Gain on the sale of lands was duly disclosed in the case of the company M/s Van Vrindavan Construction Pvt. Ltd. (hereinafter as the Company), in which the appellant was a director. The Lands were purchased and sold through its director, the appellant and the source of purchase was paid by the company and the sale consideration was received by the company. Ld. CIT erred in not appreciating the facts even after explanation filed before him. As such the order passed u/s 263 dated 03/12/2020 is perverse, illegal, ab-initio void and fit to be cancelled.*
4. *For that in any view of the matter, Ld. CIT was not justified in passing order u/s 263 on simply change of opinion and only for re-verification.*
5. *For that other grounds, if any, will be argued/taken up at the time of hearing."*

2. Facts in brief are that a search and seizure operation was conducted by the Income Tax Department under Section 132(1) of the Act in the business and residential premises of "Van Vrindavan Group of cases", Ranchi on 20/08/2015. The group is involved in the business of real estate in an around Jharkhand. The appellant Ramesh Kumar Singh is one of the Director in M/s Vrindavan Construction Pvt. Ltd. The appellant is also a builder and developer and constructed one project in the name of Sahil Apartment. The appellant is also a land broker and earned commission by negotiating between the land owner and the proposed purchaser and/or builder and developer.
3. During the course of search and seizure operation, various books of account and other incriminating materials were seized. Notice under Section 153A of the Act was issued to the appellant on 12/04/2016. In response to that, the appellant has furnished his income tax return under Section 153A of the Act on 06/03/2017 disclosing total income at ₹ 8,04,400/-. Statutory notices under Section 143(2) and 142(1) of the Act were issued and served on the appellant and was duly complied by him.
4. The Assessing Officer on the basis of incriminating documents found and seized during the course of search and seizure operation were marked as "RKS-01 to

RKS-16. It was found from the seized documents that the assessee had made payments to various parties on account of land sale and land development charges but this was not disclosed to the Income Tax Department. When confronted, the assessee admitted that these were payments made to various parties and have not been disclosed to the Department and now disclosed in the return of income as a net profit @ 11.2%. Considering the same, the Assessing Officer added a sum of ₹ 4,85,040/- being 11.28% net profit on the total undisclosed amount of ₹ 43,000/- and added the same in the total income of the assessee for A.Y. 2012-13. Penalty proceedings under Section 271(1)(c) of the Act was also initiated in this case.

5. Subsequently, the Id. PCIT vide its order under Section 263 of the Act for the A.Y. 2012-13 dated 03/12/2020, set aside the assessment order dated 29/12/2017 passed under Section 153A/143(3) of the Act on the ground that the said assessment order was prima facie erroneous and also prejudicial to the interest of revenue as the Assessing Officer had omitted to examine the records and issues involved in this case.
6. Aggrieved by the impugned order under Section 263 of the Act, the appellant has filed this appeal. During the appellate proceedings before us, the appellant has filed a paper book in which the appellant submitted as under:

*"The original assessment order was passed u/s 153A/143(3) Dtd. 29.12.2017
(Paper Book pg. No. 1- 5).*

*The same was re-opened vide Order u/s 263 Dtd. 03.12.2020 by PCIT
(Central), Patna **(Paper Book pg. No. 6-10)** on the ground that **the assessee had purchased a landed property** comprising 79 decimals vide Purchase Deed no. 16343 dated 15.07.2011 **(Paper Book pg. No. 13-20)** for a consideration of Rs. 8,56,425/- including*

Stamp Duty and Registration charged (being Rs. 8,00,000/- + 32,000/- + 24,425/-). It was further observed that the said landed property has not been exhibited by the assessee in his relevant books of accounts either in Fixed Asset or Investment as per accounts filed and the return of Income. Besides, the Purchase Deed did not reflect that the purchase was made by the assessee as a Director of the Company because the name of the Company does not appear at any place of the Deed.

*The appellant appeared before the PCIT on various dates and submitted that the said land was registered in his name on behalf of the company M/s Van Vrindavan Construction Pvt. Ltd. in which he was a Director at that time. The entire purchase consideration was duly paid by his company **(Paper Book pg. No. 11, 21-24 bank statements)** and the same was duly shown in the books of the company in the Schedule of Current Assets under the heading "Stock of Raw materials including Land" **(Paper Book pg. No. 27, 28, 35)**. It was further submitted that though the deed was executed in his name, however, PAN of the company i.e. AACCV6106B **(Paper Book pg. No. 14)** was used while executing the Registered Sale Deed.*

However, Ld. PCIT without appreciating the facts judiciously has re-opened the case u/s 263 of the Act.

For the sake of clarity of facts it is clarified that a Land comprising 79 decimals at village Ulatu was purchased in AY 2012-13 by executing the Deed in the name of the appellant on behalf of the company M/s Van Vrindavan Construction Pvt. Ltd. for Rs. 8,56,425/-. Out of that 10 Decimals of land was sold in AY 2014-15 for a consideration of Rs. 7,00,000/- and further 10 Decimals of land was sold by Deed no. 3410 dated 18.06.2015 in AY 2016-17 for a consideration of Rs. 14,40,000/-, on behalf of the company.

It is further clarified that in AY 2016-17 vide Deed no. 2703 dated 14.05.2015 land at village Boreya - 22 Decimals was purchased for a consideration of Rs. 15,40,000/- by the appellant in his Individual capacity.

7. During the course of appellate proceedings before us, the appellant also revised its grounds of appeal as under:

- "1. For that the order u/s 263 passed by the Ld. Pr.CIT, Central, Patna is illegal, unjustified, arbitrary and is liable to be quashed.*
- 2. For that the order passed is neither erroneous nor prejudicial to the interest of the revenue.*
- 3. For that Ld. Pr.CIT, Central, Patna erred in not appreciating that the alleged Land was duly purchased by the company M/s Van Vrindavan Construction Pvt. Ltd., in which the appellant was a Director and was duly disclosed in the case of the company. The Lands were purchased and sold through its Director the appellant and the purchase consideration was paid by the company. Ld. PCIT erred in not appreciating the facts judiciously even after explanation filed before him. As such the order passed u/s 263 dated 03/12/2020 is perverse, illegal, ab-initio void and fit to be cancelled.*
- 4. For that in any view of the matter, is PCIT was not justified in passing order u/s 263 on simply change of opinion and only for re-verification and its fit to be cancelled as it is not erroneous and prejudicial to the interest of the revenue.*
- 5. For that other grounds, if any, will be argued/taken up at the time of hearing."*

8. We have considered the submissions made by the appellant's counsel stated as above and also the impugned order of the Id. PCIT. It is found that the Id. PCIT in his order under Section 263 of the Act dated 03/12/2020 has observed that the assessee had purchased a plot of landed property comprising 79 decimals vide purchase deed No. 16343 dated 15/07/2011 for a consideration of ₹ 8,56,425/- including stamp duty and registration charges during the F.Y. 2011-12 relevant to A.Y. 2012-13. It was further observed that the said landed property was not shown by the assessee in its books of account either in the 'fixed assets' or 'investments' schedule as per the accounts filed with the return of income for the assessment year under consideration. But the Assessing Officer did not consider the said facts and issue in question and had completed

the assessment without taking into account the assessee's undisclosed investment of ₹ 8,56,425/- in the said landed property. Therefore, the Id. PCIT found that the assessment order passed under Section 153A/143(3) of the Act dated 29/12/2017 was prima facie erroneous and also prejudicial to the interests of revenue in so far as the Assessing Officer had omitted to examine the records and issues in this case. Therefore, a show cause notice under Section 263 of the Act dated 06/03/2020 was issued and served on the assessee confronting him on the above issue and also asking him to show cause as to why the action under Section 263 of the Act should not be invoked to revise the order passed under Section 153A/143(3) dated 29/12/2017. In its response to the above show cause notice, the assessee in his submission filed before the Id. PCIT submitted that the said land, though, registered in the name of appellant Ramesh Kumar Singh, the said transaction was made on behalf of the company M/s Van Vrindavan Construction Pvt. Ltd. in which the assessee was a Director at that time and the total payment was made to the land owners from the company's bank account. The appellant further submitted before the Id. PCIT that since the above purchase of land was not done in the individual capacity of the Director, the same was not shown by him in his books of account. The Id. PCIT, however, was not satisfied by the appellant's explanations and asked the assessee to provide following details:

- "1. Whether there was a difference in Stamp Duty rate for individual and company for transaction in land.
2. Why was name of the company was mentioned in the Deed and why the assessee had mentioned his name.
3. Copy of audited accounts of the company showing the purchase and when was the audit report filed with the Department."

The assessee in response to the above query, reiterated that through the deed was registered in the name of the Director but that was done on behalf of the company and therefore, it was not accounted for in the books of account of the assessee. The assessee also submitted that the PAN of the company which was used in the registered sale deed though the registration was made in the name of the Director. The assessee further submitted as under:

- There is no difference in the Stamp Duty rate of individual.
- The Deed was executed in his name however PAN of company i.e. AACCV6106B was used in the Deed.
- M/s Van Vrindavan Construction Pvt. Ltd. has shown it as a purchase for the F.Y. 2011-12 as well as in the closing stock and filed its return with the Department on 31/07/2016 u/s 153A.

The Id. PCIT, however, did not accept the submission of the assessee stated as above and set aside the said impugned assessment order dated 29/12/2017 and the Assessing Officer was directed to pass a fresh assessment order considering all the issues raised in the order under Section 263 of the Act by the Id. PCIT after taking necessary enquiries in respect of purchase of the said land. The Id. PCIT also invoked Explanation-2 of Section 263 of the Act and also placed reliance on the decision of Hon'ble Supreme Court in the case of Rampyari Devi Saraogi Vs CIT (1968) 67 ITR 84 (SC) and Smt. Tara Devi Aggarwal Vs CIT (1973) 88 ITR 323 (SC) wherein it was held by the Hon'ble Supreme Court that the assessment order would become erroneous and prejudicial to the interest of revenue in absence of proper enquiries.

9. Aggrieved by the order of Id. PCIT, this appeal has been filed by the assessee before the Tribunal. During the appellate proceedings before us, the assessee, besides filing written submissions including revised grounds of appeal, reiterated that the said land was purchased on behalf of assessee by the Director of the company and all the transactions involved in the registration of sale deed and the payment thereof were reflected in the books of account of the company and therefore, the Id. Pr.CIT was not justified in cancelling the original assessment order passed under Section 153A/143(3) of the Act. The appellant's counsel submitted that since all these issues were examined by the Assessing Officer while passing the order under Section 153A r.w.s 143(3) of the Act dated 29/12/2017, the action of the Id. PCIT is simply a change of opinion and is only for re-verification and thus, the action of the Id. PCIT is not as per provisions of Section 263 of the Act and therefore, the same is fit to be quashed.
10. The Id. CIT-DR for the revenue, on the other hand, relied on the order of Id. Pr.CIT.
11. We have considered the rival submissions and we are of the opinion that, it is not a fit case where action under Section 263 of the Act was required as the appellant has categorically stated during the original assessment order and the proceedings under Section 263 of the Act that the said land was purchased on behalf of the company and all the transactions have been duly reflected in the books of account of the company. We, therefore, hold that the impugned order of the Id. PCIT was uncalled for and unnecessary as the assessee has, time and again, reiterated that these transactions were duly reflected in the books of account of the company. Thus, the findings of the Id. PCIT is not correct that

the said original assessment order dated 29/12/2017 was erroneous in so far as prejudicial to the interests of revenue on the ground that necessary enquires were not made by the Assessing Officer. The assessee has already submitted both before the Assessing Officer and the Id. PCIT that the said land was purchased on behalf of the company and transactions were duly reflected in the books of account of the company. Hence, the said impugned order passed by the Id. PCIT under Section 263 of the Act is quashed. In the result, grounds of appeal raised by the assessee are allowed.

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

13. Now we shall take ITA No.10 & 11/Ran/2021 for the A.Y. 2014-15 and 2016-17, we find that in these cases, the assessee has raised similar grounds of appeal as raised in ITA No. 09/Ran/2021 for A.Y. 2012-13. We also find that the facts of these appeals are also similar to the facts of ITA No. 09/Ran/2021 for A.Y. 2012-13, where we have allowed the appeal of assessee by quashing the order of Id. PCIT passed under Section, 263 of the Act. Therefore, keeping in view the principle of consistency on similar set of facts, both these appeals of assessee i.e. ITA No.10 & 11/Ran/2021 for the A.Y. 2014-15 and 2016-17 are also allowed. In the result, grounds raised by the assessee in both these appeals are allowed.

14. In the result, all these appeals of the assessee are allowed.

Order announced in open court on 29th April, 2025.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 29/04/2025
**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Ranchi