

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.526/SRT/2024

Assessment Year: 2018-19

(Physical Hearing)

N. R. Corporation, B-202, Capital Status, Opp – Hariom Nagar, Near Atman Park, L. P. Savani Road, Adajan, Surat - 395009	Vs.	The PCIT - 1, Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAMFN9368A		
(Appellant)		(Respondent)

Appellant by	Shri Suresh K. Kabra, CA
Respondent by	Shri Ritesh Mishra, CIT-DR
Date of Hearing	13/03/2025
Date of Pronouncement	28/05/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 263 of the Income-tax Act, 1961 (in short, 'the Act') by the learned Principal Commissioner of Income Tax, Surat [in short, 'ld. PCIT'], dated 06.03.2024 for assessment year (AY) 2018-19.

2. Grounds of appeal raised by the assessee are as under:

"1. The Ld PCIT-1 has erred and was not just and proper on the facts of the case and in law in considering the Assessment dated Order passed u/s 143 (3) prejudicial to 12/04/2021 as erroneous the interests and of revenue and passing order u/s 263, directing to pass fresh Assessment Order in the case.

2. PRAYER

2.1 The order u/s 263 passed by the PCIT may be kindly set aside.

2.2 Personal hearing may be granted.

2.3 Any other relief that your honours may deem fit may be granted.

3. The assessee craves leave to add, amend, alter or delete any of the grounds at the time of hearing.”

3. The facts of the case in brief are that assessee e-filed its return of income for AY.2018-19 on 13.02.2019, declaring total income of Rs.11,231/-. The case of the assessee was selected for complete scrutiny on the issue of “Income from real estate business”. The Assessing Officer (in short, ‘AO’) issued notices u/s 143(2) and 142(1) of the Act. After receiving the reply through e-filing portal, the AO passed the assessment order u/s 143(3) of the Act accepting the returned income. Subsequently, the Id. PCIT called for the records and noted that the case was selected for complete scrutiny on the issue of income from real estate. On verification of the return, Id. PCIT found that assessee had claimed labour expenses of Rs.1,33,59,652/-, architect fees of Rs.8,07,941/- and professional / consultancy fees for technical services of Rs.50,12,587/-. The total expenses on these three accounts was Rs.1,56,80,153/-. The assessee had furnished details of expenses and copy of bank statement but no details were called for in respect of professional / consultancy fees and architect fees. Provision of section 194C and 194J of the Act are applicable to these expenses. However, the AO has not examined the same and not disallowed any amount u/s 40(a)(ia) of the Act. Since the assessee failed to deduct tax on such expenditure, the AO should have disallowed an amount of Rs.48,04,045/-, being 30% of total expenses of Rs.1,56,80,153/-. Failure to do so resulted in under assessment of Rs.48,04,045/- and short levy of tax of Rs.14,41,210/-. Since the

AO passed the order without proper verification/enquiry subject on the issue, the order passed by him, was erroneous insofar as prejudicial to the interests of justice u/s 263 of the Act. Hence, Id. PCIT issued show cause notice proposing revision u/s 263 of the Act. In reply, the assessee submitted that TDS was deducted and paid in due course on all amount of expenditure (Annexure – A1). Copy of Form No.26Q was also enclosed in Annexure – A2. The Id. PCIT considered the reply and details submitted by assessee. However, on verification, he found that no document (Annexure 2) was furnished by the assessee along with the reply. Further, claim of TDS was not supported by copy of challan or any other documents. The Id. PCIT also found that assessee had submitted ledger account of labour expenses along with bank statement and Annexure 5 which demonstrated payment was made without deducting TDS in contravention of provisions of section 40(a)(ia) of the Act. Hence, the Id. PCIT concluded that AO passed the order without proper verification/enquiry, application of mind and law on the issue mentioned above. Thereafter, he extracted provisions of section 263 of the Act and relying on the decision in cases of Malabar Industries Ltd., 243 ITR 83 (SC), CIT vs. Paville Projects (P.) Ltd., (2023) 149 taxmann.com 115 (SC) and Gee Vee Enterprises vs. Addl. CIT, (1975) 99 ITR 375 (Del.), he set aside the order of AO with a direction to pass fresh assessment order after taking into consideration the issue discussed in the 263 order.

4. Aggrieved by the order of PCIT, the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book containing 10 pages giving details of objection to the show cause u/s 263 of the Act and details of expenses claimed and TDS deducted and order of Id. PCIT rejecting rectification application of assessee u/s 154 of the Act to Id. PCIT. He submitted that all details were given to the Id. PCIT; however, instead verifying the same and deciding the issue, he has set aside the matter to the AO.

5. On the other hand, learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) supported the order of Id. PCIT and submitted that the Id. PCIT has rightly considered the submission of assessee and set aside order of AO for verification and fresh decision by the AO.

6. We have heard both parties and perused the materials available on record. We have also deliberated the case laws relied upon by the parties. It is clear from a plain reading of section 263 of the Act that the PCIT or the CIT may call for and examine the records of any proceedings under the Act. If he considers that any order passed by the AO or the TPO is erroneous in so far as it is prejudicial to the interests of revenue, he is required to give assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, he may pass such order thereon as the circumstances of the case justify including enhancing or modifying the assessment order, cancelling the assessment and directing a fresh assessment. Explanation 2 was inserted below sub-section (1) with effect from 01.06.2015 to

declare as to what shall be deemed to be “erroneous in so far as it is prejudicial to the interest of revenue”. The instances which would fall in the above category are:(i) the order is passed without making inquiries and verification which should have been made; (ii) the order is passed allowing the relief without inquiring into the claim; (iii) the order has not been made in accordance with any order, direction, or instruction issued by the Board u/s 119 of the Act; or (iv) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or the Supreme Court in the case of the assessee or any other person.

6.1 It is an undisputed fact that the case was selected for complete scrutiny under the e-assessment on the issue of income from real estate business. Hence, the AO was not precluded from making detailed inquiry and verification of the subject issue. The AO issued notice u/s 142(1) of the Act and asked the assessee to explain the closing stock. The reply of the assessee was considered by him and he accepted the returned income in the order passed u/s 143(3) of the Act dated 12.04.2021. After verifying of the records, Id. PCIT found that AO had called for the reasons for increase in labour expenses in comparison to the earlier year. The AO had also asked the assessee to submit ledger expenses and statement of bank account. However, no details were called for in respect of professional/ consultancy fees and architect fees. He also found that the assessee violated the provisions of section 40(a)(ia) of the Act. Since assessee failed to deduct tax, the AO should have disallowed 30% of the total expenses of

Rs.1,56,80,153/- amounting to Rs.48,04,045/-. Failure to disallow such amount has resulted in consequential short levy of tax of Rs.14,41,210/- along with applicable interest and penalty. In reply to the show cause notice u/s 263 of the Act, the appellant submitted that TDS was deducted and paid on the expenses wherever applicable. He submitted Annexure 1 and Annexure 2 in support of such details. However, on verification, the Id. PCIT found that no documents were furnished as per Annexure A/2 along with its reply. Further, the TDS was not supported by copy of challans or any other supporting documents. The Id. PCIT also found from the ledger account of labour expenses along with bank statement that payments were made that deducting TDS in contravention of the provisions of section 40(a)(ia) of the Act. Hence, he found that the assessment order was passed without proper verification and enquiry and application of mind or law to the issue mentioned above. After considering the facts discussed above and the details submitted the present proceedings, we do not find any infirmity in the order of Id. PCIT in invoking jurisdiction u/s 263 of the Act which are basically on due appreciation of the facts as submitted by the assessee and the relevant provisions of the Act.

6.2 The Id. AR argued that the Id. PCIT should have decided the matter himself instead of setting aside the issue to the file of AO for fresh assessment. We find that the Id. AR had submitted the details of expenses claimed and TDS deducted during FY.2017-18 (AY.2018-19), which at pages 6 to 9 of the paper book. It includes professional/Consultancy Technical Services, Architect fees and

labour contract expenses. The assessee had deducted TDS @ 10% and 2% on the impugned expenses. He has also filed section-wise detailed report from Form 26Q from Q1 (April – June) to Q4 (January – March) where dates of payment, challan numbers and dates are given. It is seen therefore that all details were filed before the Id. PCIT and assessee has shown that TDS was deducted and deposited on time. Hence, the Id. PCIT should have accepted the explanation of the assessee and should not have set aside the issue to the file of assessee. Accordingly, the order of Id. PCIT is quashed.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 28/05/2025.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 28/05/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A) / PCIT
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat